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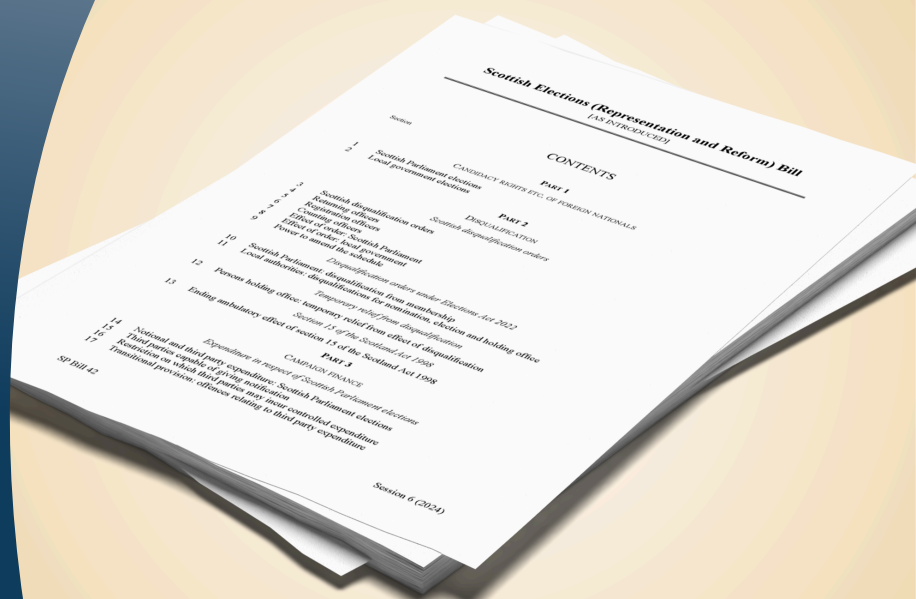
SPICe Briefing

Pàipear-ullachaidh SPICe

Electoral reform in Scotland and the Scottish Elections (Representation and Reform) Bill

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This briefing considers recent electoral reform in Scotland, the Scottish Government's most recent consultation and the Scottish Elections (Representation and Reform) Bill introduced in the Scottish Parliament on 23 January 2024.



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Summary

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

The Scottish Government [consulted on electoral law](#) from 14 December 2022 to 15 March 2023. The Bill follows that consultation. The Scottish Government published [an analysis of consultation responses](#) and also its [response to that analysis](#) in 2023.

The purpose of the Bill is stated as being:

“ To make a number of improvements to the law affecting Scottish Parliament and Scottish local government elections.”

The Scottish Government , 2024¹ paragraph 8

Throughout this briefing “devolved Scottish elections” and “Scottish elections” are used to mean elections to the Scottish Parliament and to local government in Scotland.

The Bill makes provision relating to:

- the extension of candidacy rights at Scottish Parliament and local government elections in Scotland to foreign nationals with limited leave to remain
- extending the Elections Act 2022 disqualification order to bar individuals who have received such an order from being able to stand for election in Scotland
- creating a new Scottish disqualification order which can apply to individuals found guilty of intimidating electoral workers
- changes to the definition of notional expenditure at devolved Scottish elections, bringing the definition in line with that provided for in the Elections Act 2022
- reducing the amount campaigners who do not have to register with the Electoral Commission can spend at Scottish Parliament elections to £700, in line with the Elections Act 2022
- changing the rules on third party campaigners at Scottish Parliament elections by requiring the Electoral Commission to provide a code of practice on such campaigning, and by allowing Scottish Ministers to change the categories of third party campaigners by secondary legislation
- measures to allow for re-scheduling of Scottish elections in emergency situations
- allowing the Electoral Management Board for Scotland, Electoral Registration Officers and Scottish Ministers, as well as local authorities, to be able to propose electoral pilots
- giving Scottish Ministers a power to allow funding for increased democratic engagement

- changing the law on digital imprints on material relating to Scottish elections
- changing the Boundaries Scotland review deadline to match five year local government election cycles
- creating a deputy convener post within the Electoral Management Board for Scotland
- changing the legal status of the Electoral Management Board for Scotland
- parliamentary scrutiny of the Electoral Commission's activities in relation to Scottish elections.

Law Commission Joint Review 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.”

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. 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.”

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](#).

A [final report](#) by the Law Commission was published in March 2020. The Commission’s main findings were that:

- electoral law should be rationalised into a single, consistent legislative framework with consistent electoral laws across all elections, except where differences are necessary (for example, due to different voting systems)
- the process for challenging elections should be modernised, making it easier for parties to understand and use and that judges be given the power to limit the potential costs for challengers
- existing electoral offences should be updated and made easier for the electorate, officials and prosecutors to understand.

Recent electoral legislation

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 devolved Scottish elections. A further [consultation on prisoner voting](#) was held in 2018.

As a result of the consultations, the Scottish Government introduced the [Scottish Elections \(Franchise and Representation\) Bill](#) and [the Scottish Elections \(Reform\) Bill](#) in 2019. Both became Acts of the Scottish Parliament in 2020.

In 2021, the UK Government introduced the [Elections Bill](#) (now the [Elections Act 2022](#)) in the House of Commons. The Bill sought to make changes to electoral law across the UK, including in areas of devolved responsibility linked to devolved Scottish elections. The Standards, Procedures and Public Appointments Committee considered a [Legislative Consent Memorandum for the Elections Bill](#) and [published its report in December 2021](#). On 1 February 2022 the Parliament agreed [motion S6M-03009](#) which stated:

“ That the Parliament agrees not to consent to the UK Elections Bill, as it is for the Scottish Parliament to legislate on electoral law in relation to Scottish Parliament and local government elections; notes that the Scottish Government intends to consult on a number of electoral reforms later in 2022 with a view to bringing forward legislation.”

Provisions in areas of devolved responsibility were removed from the UK legislation as a result of the Scottish Parliament withholding its consent. The [Elections Act 2022](#) does, however, make some changes to electoral law in Scotland. This is because elections to the UK Parliament are reserved as are some areas of electoral law even where it applies to devolved Scottish elections.

The Scottish Parliament also passed the [Scottish Government Local Elections \(Candidacy Rights of Foreign Nationals\) Act 2022](#). That Act ensures that international treaty obligations entered into by the UK, which give certain foreign nationals the right to stand as candidates at local government elections in Scotland, are fulfilled.

Background to the introduction of the Bill

The [Scottish Government and Scottish Green Party shared Policy Programme](#) published in August 2021 committed to:

“ promote legislation on electoral reform”

During the course of the Parliament’s consideration of the [legislative consent memorandum for the Elections Bill](#) (lodged 21 September 2021), the Scottish Government indicated that it wished to bring forward Scottish legislation for a number of areas covered in the UK Bill.

In December 2022, the Scottish Government launched [a consultation on electoral reform](#). The Scottish Government consultation closed on 15 March 2023. The [consultation analysis](#) was published in July 2023 and the [Scottish Government's response to the analysis](#) was published in October 2023.

Scottish Government Electoral Reform Consultation

The Scottish Government's [consultation on electoral reform](#) (published December 2022) linked to the [Scottish Government and Scottish Green Party shared Policy Programme](#) which stated that legislation on electoral reform will be promoted which:

“ enables more people to stand as candidates at Scottish Parliament and local government elections and to improve the accessibility of elections, with a particular focus on people with sight loss.”

The Scottish Government stated that:

“ the results of the consultation will inform preparation of draft legislation on electoral reform to be brought before the Scottish Parliament in in time for the Scottish Parliament election scheduled for 7 May 2026.”

The Scottish Governemnt , 2022²

The consultation covered five main areas:

- candidates
- voting
- scheduling of elections
- campaigning and finance
- administration and governance

The Scottish Government published its [analysis of consultation responses](#) on 31 July 2023 and its [response to the analysis](#) on 19 October 2023.

The next section of this briefing explains what was considered under each section of the consultation, as well as highlighting other relevant material and recent developments. The top line results from the analysis of consultation responses are also provided.

Candidacy

Candidacy rights

At present, 16 and 17 year olds can vote at Scottish elections but cannot stand for election. Debate on this issue is not entirely new. During the course of the [Scottish Elections \(Franchise and Representation\) Bill](#) (now the [Scottish Elections \(Franchise and Representation\) Act 2020](#)), Mark Ruskell MSP, [lodged amendments which sought to give 16 and 17 year olds the right to stand](#) as candidates.

Foreign nationals living in Scotland legally (this means either those with ‘leave to remain’ or individuals who do not require such permission such as EU citizens with settled status and pre-settled status) are able to vote. They are, however, only able to stand for election to the Scottish Parliament if they fulfil all requirements (e.g. are 18 years old or over) and

have [indefinite leave to remain](#) (i.e., the right to live, work and study for as long as an individual wishes to) in the UK or do not require such leave. EU citizens with settled and pre-settled status can also stand for election to the Parliament. These changes were brought about by the Scottish Elections (Franchise and Representation) Act 2020. The same Act allows for foreign nationals living in Scotland who have indefinite leave to remain or do not require such leave to stand in local government elections in Scotland.

The [Scottish Government Local Elections \(Candidacy Rights of Foreign Nationals\) Act 2022](#) allows foreign nationals of some countries (currently Luxembourg, Poland, Portugal and Spainⁱ) to stand for election as councillors even where they do not have indefinite leave to remain. This legislation fulfils treaty obligations entered into by the UK.

The Scottish Government's recent consultation on electoral reform sought views on whether candidacy rights (i.e., who can stand for election to the Scottish Parliament and to local government in Scotland) should be extended. Specifically, it asked two questions:

1. whether 16 and 17 year olds should be able to stand for election
2. if foreign nationals with limited rights to remain in Scotland should be able to stand for election.

The analysis of consultation responses indicated that 77% of all respondents disagreed with the proposals to extend candidacy rights. Organisations were more supportive of an extension than individuals with 67% in favour of permitting 16 and 17 year olds to stand in both Scottish Parliament and local government elections, and 88% in favour of candidacy rights for foreign nationals with limited rights to remain.

The analysis also noted the concerns of the [Scottish Parliamentary Corporate Body](#) and the observations of the [Electoral Management Board for Scotland](#) around the practical challenges of extending candidacy rights to 16 and 17 year olds, for example, balancing the role of an elected representative with education.

Disqualification for intimidatory or abusive behaviour

In December 2017 the independent [Committee on Standards in Public Life](#) published its report '[Intimidation in Public Life](#)'. The Committee's review had considered electoral events and its report states that:

“our evidence confirms the prevalence of intimidatory behaviour during election campaigns in recent years...While intimidation in public life in the UK is nothing new...the scale and intensity of intimidation is now shaping public life.”

The report highlights that:

- 33% of candidates surveyed had experienced 'inappropriate' behaviour during the election campaign
- 56% of candidates surveyed are concerned about abuse and intimidation, and 31% say they are fearful

ⁱ A [treaty with Denmark](#) has recently been agreed but, at the time of publication, is not yet in force.

The report concluded that:

“ During an election period, it would therefore be appropriate to have specific electoral sanctions that reflect the threat that intimidation of Parliamentary candidates and their supporters poses to the integrity of elections...We believe that any new electoral offence that is introduced should not have any wider scope than the existing criminal law in respect of intimidatory behaviour. No behaviour which is currently legal should be made illegal.”

In its report on the [2022 Scottish Local Government elections](#), the [Electoral Commission](#) stated that:

“ While over half (56%) of candidates who responded to the survey said that they did not have a problem with threats, abuse or intimidation, over two in five (44%) experienced some kind of problem (that is, on a scale of '1 to 5', rated their problem with threats, abuse or intimidation as a '2' or above). One in 10 (11%) said that they had a serious problem (rated '4' or '5' out of '5').”

At present there is no specific offence of intimidation of elected representatives, candidates and campaigners for devolved Scottish elections. A person may, however, be prosecuted for harassment or intimidation under non-specific electoral legislation.

The [Election Act 2022](#) introduced an additional sanction of a disqualification order for anyone convicted of such criminal offences where they related to the harassment and intimidation of candidates and campaignersⁱⁱ. A disqualification order under the Elections Act 2022, does not, however, prevent an individual subject to such an order from being elected to the Scottish Parliament or local government in Scotland. In effect therefore, an individual could be disqualified from standing for election to the UK Parliament in respect of an offence committed in Scotland but could stand for election to the Scottish Parliament.

The Scottish Government indicated at the time of the Parliament's consideration of the legislative consent memorandum on the Elections Bill (now the [Elections Act 2022](#)) that it was sympathetic to the change brought about by the introduction of disqualification orders, but planned to introduce its own legislation.

The Scottish Government's consultation sought views on the proposal that disqualification orders of five years relating to holding office at the Scottish Parliament and at local government in Scotland be introduced. The consultation indicated that the relevant circumstances would be:

“ Where an individual is convicted of certain offences, and the court is satisfied, beyond reasonable doubt, that the offence was aggravated by hostility towards:”

- a candidate at an election;”
- a holder of an elective office, such as an MSP or a local councillor; or”
- certain individuals who are campaigning on behalf of a candidate or political party at an election.”

ⁱⁱ The provision of the Elections Act 2022 [came into effect on 1 November 2023](#) and prevents someone subject to an order from standing for election to the House of Commons, Senedd Cymru, Northern Ireland Assembly, and local authorities in England, Wales and Northern Ireland. It also prevents a person from standing as Mayor of London, as a member of the London Assembly and from various other elected offices such as a Police and Crime Commissioner.

The analysis of consultation responses showed wide support for the proposal to introduce disqualification orders. 77% of individuals who responded to the question and 89% of organisations supported it.

Free mailout

At UK Parliament elections and Scottish Parliament elections, each candidate is entitled to send one letter or leaflet to all electorsⁱⁱⁱ (or all homes) in the constituency they are contesting without postage charge. For regional seats at the Scottish Parliament the arrangement is that each independent candidate and each political party has the right to send a free mailing to each voter. The postage cost is met from public funds and is delivered via Royal Mail.

Candidates standing for election to local government in Scotland (as elsewhere in the UK) do not have an entitlement to a free mailout.

The Electoral Commission report on the 2022 Scottish Local Government elections concluded that:

“ Just over half (52%) of all voters said they had enough information on candidates to be able to make an informed decision on who to vote for. However, more than a quarter (26%) disagreed. Voters aged 25-34 were most likely to disagree (40%).”

The Scottish Government consultation indicated that the [Convention of Scottish Local Authorities](#) has argued for a “*right to send a free letter or leaflet be extended to candidates at Scottish local elections*” being of the view that “*allowing for a free letter or leaflet would encourage participation and engagement with Local Government elections.*”

The consultation did, however, raise the Scottish Government’s concerns over the potential cost, stating:

“ the Government has concerns about how much the introduction of free letters or leaflets for Local Government candidates would cost. At the 2022 Local Government elections, there were 2,548 candidates standing for 1,205 seats across 355 electoral wards. Whilst it is difficult to estimate exact costs, due to uncertainty around postage costs and how many candidates would make use of the free letter or leaflet option, we would expect the cost of free mailings to be higher than the £11 million spent on free mailings at the Scottish Parliament elections in May 2021. If it were decided to permit free letters or leaflets, it would be for Local Government to meet the cost of the free mailings.”

The cost of the scheme at the May 2021 Scottish Parliament election was £10,568,955. At the May 2016 Scottish Parliament election, the cost was around £5.6 million.

The consultation sought views on extending the free postage right to candidates at local government elections. It also suggested that local authorities could be given a right to choose whether to adopt such a scheme, given they would need to meet the cost. It also raised the question of whether the free mailout should be limited to one per household, rather than one per voter.

ⁱⁱⁱ Electors are entitled to vote and appear on the electoral register.

The analysis of consultation responses indicated a difference of views between organisations and individuals over whether free mailouts should be extended to local government candidates. All organisations which responded to the question supported extension, but only 37% of individuals who answered the question supported extension.

The proposal to limit mailings to one per household was more widely supported with 78% of individuals and 70% of organisations in favour.

Publication of home addresses

Candidates' home addresses are not published at Scottish Parliament elections. In 2020, the Parliament legislated to end the requirement for candidates' addresses to be made public at local government elections in Scotland.

Agents are, however, required to give an address which is made public. Some candidates act as their own agent. Although an office address is acceptable, it is not always feasible, particularly for independent candidates and those from smaller parties.

The Scottish Government is therefore proposing a change to allow candidates who act as their own agent to provide a correspondence address (which could be, for example, a workplace or the address of a relative or friend) should they not wish their home address to be made public. This approach was recently adopted in Wales.

The analysis of consultation responses showed that there was general support for this proposal. 75% of individual respondents agreed this should be an option and 90% of the organisations supported the change.

Residential location on ballot paper

At the most recent local government elections in Scotland (May 2022) candidates were not required to have their home address printed on the ballot paper. Where a home address was not provided, the council area in which the candidate lived was printed.

The consultation sought views on whether candidates should, if they wished, be able to state the ward they live in as well as the local authority area. This would mean that candidates would have three options to choose from in terms of what appeared on the ballot paper:

1. their home address
2. the council area in which they live
3. the ward and council area in which they live.

The analysis of consultation responses showed that 90% of individuals and all organisations who answered the question supported the proposed change.

Franchise

The consultation sought views on whether the right to vote should be given to some people detained in hospital due to offending behaviour, and individuals seeking asylum.

Recent changes to electoral law in Scotland, as a result of the [Scottish Elections \(Franchise and Representation\) Act 2020](#), mean that people serving a custodial sentence of 12 months or less already have the right to vote.

The consultation on electoral reform highlights the potential discrepancy between those serving short custodial sentences and those detained on mental health grounds linked to criminal justice.

The analysis of consultation responses indicates that all organisations which responded to the question were in favour of extending the franchise to those detained on mental health grounds. 81% of individuals who responded to the question were, however, against the proposal. Of those individuals against the proposal the most common themes were that those held on mental health grounds in relation to criminal justice should not be enfranchised, and the issue of mental capacity to make decisions.

On the issue of extending the franchise to those seeking asylum, 75% of organisations were in favour and 79% of individuals were against.

Voting

The [Scottish Government and Scottish Green Party Shared Policy Programme of September 2021](#) states that:

“ We are committed to the fullest possible democratic participation in Scotland. Turnout at the 2021 Scottish Parliament election was the highest ever, but some groups are less likely to register or vote, including 16- and 17-year-olds and foreign nationals. We want to encourage more people to register to vote, to stand as candidates and to remove the barriers some people experience so they can vote independently.”

Registration

In order to vote, eligible individuals must register with the Electoral Registration Officer (ERO) in their area. EROs are appointed by local authorities to prepare and maintain the Register of Electors. EROs are under a statutory duty to encourage people to register to vote^{iv}. They are also under a statutory duty, as explained in the [Electoral Commission's guidance to support EROs](#):

“ to take all necessary steps to comply with your duty to maintain the electoral register, and to ensure, as far as is reasonably practicable, that all those eligible (and no others) are registered in it.”

During its evidence taking on the Scottish Elections (Franchise and Representation) Bill in 2019, the session five SPPA Committee heard that EROs:

iv The digital service provided by the UK Government for voter registration is a reserved matter.

“ are proactive in encouraging registration. We do an annual canvass each year; we send a form to every household to identify anybody new. We also mine databases such as the council tax database, school registers and university lists. We issue an invitation to register to anybody we identify who is not on the register. We follow that up with a reminder and then another reminder and we also try to visit the property to engage with the elector and encourage them to register. The one thing to note is that registration is a voluntary exercise within the UK^v—it is not compulsory—and a certain number of people choose not to register.”

[Official Report of the Scottish Parliament, 3 October 2019, Col 3](#)

Electoral registers come into force on 1 December each year and are updated monthly between January and September. After September updates cease so that the annual canvass of households can take place. During this time, forms are issued to each household. The forms request details of residents eligible to vote. The information obtained helps EROs to identify incomplete information as well as providing information to prepare a new register for 1 December^{vi}. In 2020 the annual canvass was reformed across the UK, with EROs able to target resources at properties where they felt changes to the register were more likely to be required.

The Electoral Commission is required to report on the completeness of the electoral register in Scotland every four years. The [last published report](#) was on the registers at December 2022 (published 2023). The report [was considered by the Standards, Procedures and Public Appointments Committee at its meeting on 9 November 2023](#). The report was the first since the franchise was extended by the [Scottish Elections \(Franchise and Representation\) Act 2020](#) and since the reform of the annual canvass. The 2023 report concluded that:

- local government registers were 81% complete^{vii} (-2 from 2018) and 88% accurate (+2 from 2018)
- parliamentary registers were 83% complete and 90% accurate.

Errors when considering completeness of the registers are categorised as either ‘major’ or ‘minor’. Minor errors would not prevent an individual from voting. Major errors fall into three sub-categories:

1. those eligible residents who are not included on the register at their current address
2. errors in a person’s name which may prevent them from voting
3. errors which would wrongly indicate ineligibility to vote.

The report shows that the major errors total in Scotland was 18.5% (16.5% in 2018). The report further shows that 17.1% (16.2% in 2018) of major errors are the result of the person not being registered at their current address. The same measure across Great Britain stood at 13.4% (16.5% in 2018).

Minor errors were found among 13.4% (13.8% in 2018) of eligible residents in Scotland.

^v Electoral Registration Officers in some circumstances can require that an individual registers to vote. Where an Electoral Registration Officer does ask an individual to register and they do not, they can be fined.

^{vi} [Scottish Assessors Association](#)

^{vii} Completeness is a measure of how many people entitled to have an entry on an electoral register are actually registered at their current address.

The same measure across Great Britain was 8.6% (8.2% in 2018).

The report stated that:

“ Patterns among key demographics are similar to those from 2018 with lower levels of registration among younger people, private renters and those living at their address for a shorter duration. These patterns reflect levels of completeness in Great Britain – however private renters in Scotland are significantly less likely to have a complete entry on the local government register than Great Britain as a whole.”

Completeness of the local government register in Scotland by characteristic showed a 45% rate for private renters (49% in 2018) compared to a 65% rate across Great Britain (58% in 2018).

Those in the 18-34 age category were also less likely to have a complete entry – 68% compared to 76% for the 35-44 age group; 93% for 55-64 year olds; and 92% for 65+.

Accuracy errors are also categorised as ‘major’ (those which would prevent voting, or incorrectly allow someone to vote) and ‘minor’ (those which would not prevent voting or change eligibility).

Local Government registers in Scotland were found to be 88% accurate and parliamentary registers 90% accurate.

The highest proportion of major errors was found in entries where the individual on the register no longer lived at the address. This was 9.7% in Scotland (10% in 2018). The Great Britain figure was 9.8% (10.4% in 2018).

Minor errors were identified in 14.3% (9.6% in 2018) of eligible residents. The same measure for Great Britain was 8.8% (9.1% in 2018).

In Scotland, as is the trend across Great Britain, private renters and those who lived at their address for a shorter time were less likely to have accurate entries on the register. Accuracy of local government registers for private renters in Scotland was 58% (79% 2018).

The Scottish Government consultation sought views on what can be done:

“ nationally or locally to improve registration levels, especially among under-represented groups such as younger people and foreign nationals.”

During its consideration of the Scottish Elections (Franchise and Representation) Bill, the session five SPPA Committee considered the accuracy of the electoral register and concluded in its [Stage 1 report](#) that it:

“ was concerned by the high number of people who are eligible to vote, but who are not on the electoral register, as well as the number of people who are not correctly registered. The Committee believes that if the Scottish Government is seeking to promote democratic participation by extending the franchise to foreign nationals, it must also consider how it can promote participation more widely by ensuring that the register of local government electors is as complete and accurate as possible.”

The analysis of consultation responses indicated the most common themes suggested in response to the question on how voter registration could be increased. These included (in

order of prevalence):

- increase public awareness, e.g., via media campaigns
- information and awareness raising in schools
- make voting compulsory
- outreach with organisations working with target groups
- work through schools to register young people
- improve the standing of politics and politicians
- remove barriers to registration
- automatic registration
- digital voting.

Improving accessibility

The support provided to people with disabilities at Scottish elections are, the Scottish Government consultation states, “limited and very specific”:

“ Returning Officers are required to provide a number of items to support voters with sight loss including a large print ballot paper and a device for use by blind and partially sighted people to support them to vote at the polling station. The device has been prescribed in legislation...and is commonly known as the Tactile Voting Device.”

[The Elections Act 2022](#) removed a requirement for all polling places to have tactile voting devices (which are used to support blind and partially sighted people). There is now a general requirement to provide ‘reasonable equipment’ to support people with disabilities to vote. The Electoral Commission was charged with providing guidance on this accessibility aspect of the 2022 Act, including on minimum equipment standards.

[The Scottish Elections \(Reform\) Act 2020](#) requires that the Electoral Commission reports on measures taken to support voters with disabilities at devolved Scottish elections.

The final report of the joint Law Commission on electoral law (March 2020) concluded that:

“ the law should continue to give voters the opportunity to use the ordinary voting procedure, which is the most secret and most secure, wherever possible. We therefore proposed that the law should continue to require every polling station to have equipment to help blind or partially sighted electors to vote without assistance. In our view, the specific requirement in the Representation of the People (England and Wales) Regulations 2001 to make tactile voting devices available at polling stations was too detailed, as it gives a very exact description of a very specific device[...]We thought a more general requirement would be appropriate, with descriptions of particular equipment being left to guidance. We also proposed moving away from the terminology of “device” to allow the law to keep up with technological solutions.”

[Law Commission, Electoral Law, A Joint Final Report, March 2020](#) (para 8.61)

The Scottish Government consultation noted that it:

“ intends to amend the rule requiring only a specific form of Tactile Voting Device to be provided in polling stations, to allow more flexibility and ensure the accessibility support offered can be adapted to take account of future innovations. It also intends to place a duty on the Electoral Commission to provide guidance that includes minimum standards.”

The options set out in the consultation were:

- That the current legal requirement for a specific Tactile Voting Device is replaced by a general requirement on Returning Officers to provide appropriate support.
- That the current legal requirement for a specific Tactile Voting Device is replaced with a requirement to provide a non-specific form of tactile support.

The consultation response analysis showed that 57% of those who answered indicated that no change to current legislation around provision of a Tactile Voting Device was required. 30% felt that the existing requirement should be replaced by a general requirement on Returning Officers to provide appropriate support.

The Scottish Government consultation also sought views on two further changes which may help people with a range of disabilities. The first was whether to increase the number of voters a companion can assist per election to five (from two). The second was whether to introduce digital poll cards when requested. Digital poll cards would potentially be more convenient and sustainable to some voters, whilst for others it may benefit accessibility (for example through the use of screen reader technology).

The analysis from the consultation indicates that 77% of individuals feel there should be no change to the two people per election who can be assisted by a companion. 33% of organisations supported an increase to five people, 42% another number, and 25% favoured the current two person limit.

On digital poll cards, the analysis of the consultation responses again highlighted a difference between the views of individuals and organisations. 55% of individuals who responded supported digital poll cards but 45% opposed. 89% of the nine organisations who answered the question around digital poll cards supported them as an option.

Undue influence

Undue influence is a ‘corrupt practice’ under electoral law.

The law in this area for devolved Scottish elections refers to outdated and unrecognisable harms. The [Elections Act 2022](#) updated the offence for reserved elections to include harms like physical violence, damage to a person’s property or reputation, undue spiritual pressure and injury, or inflicting financial loss. Intimidation of electors is explicitly listed as a form of undue influence. The proposal in the consultation was to update the law on undue influence for devolved Scottish elections to make it understandable in the modern context, thus bringing it into line with that for reserved elections.

A person convicted of a corrupt practice may face a fine and/or imprisonment. Under the proposals in the consultation, a person convicted would also be prevented from standing

for election due to a disqualification order.

89% of respondents to the Scottish Government consultation agreed with this proposal (individuals 89% and organisations 92%).

Absent voting

Those entitled to vote are able to request an absent vote. An absent vote can be made by post or proxy.

Proxy voting

The application deadline for a proxy vote is usually a couple of weeks prior to election day. Only voters which fall into certain groups (e.g., those with a long-term disability or those serving overseas in the armed forces) are able to request a proxy for more than one election at a time.

The consultation noted that the Scottish Government intends to update the language around 'long-term disability' to make it clear that it means a long-term condition.

Emergency proxy

Emergency proxy votes are only available in certain situations, where the need for a proxy vote has arisen after the deadline for proxy votes. The circumstances include:

- sudden medical disability
- unexpectedly away for work
- sentenced to custodial sentence of 12 months or less
- change to existing proxy arrangement where designated proxy is no longer able to vote.

The consultation sought views on whether a right to an emergency proxy should be extended to companions of anyone who has to attend an unexpected medical appointment where the appointment would prevent the companion from voting.

The Electoral Commission has asked that this be considered given that, as the law stands, the person with the medical appointment would be entitled to apply for a proxy vote, but their companion is not able to apply for a proxy vote.

The analysis of consultation responses showed that 61% of individuals favoured the change and all organisations who answered the question supported the proposal.

Acting as a proxy

At devolved Scottish elections an individual can hold two proxy votes. An individual cannot hold a proxy vote for a close family member.

For reserved elections, the Elections Act 2022 increased the number of proxy votes an individual can hold to five (no more than two can be normally resident in the UK). The Act also removed the bar to holding proxy votes for close family members.

The consultation notes that the Scottish Government does not propose to increase the number of proxy votes an individual can hold. No changes were proposed to the exemption from holding proxy votes for close family members.

Postal voting

At devolved Scottish elections, postal votes can be returned by post, or handed in at a polling station by the voter or someone acting on their behalf.

The Elections Act 2022 changed the position for reserved elections by banning political campaigners from handling postal votes and introduced a limit on the number of electors on behalf of whom a person may hand in postal votes to a returning officer or at a polling station.

Whilst the Scottish Government consultation sought comments on postal ballots, it is not proposing any change to the regime in place for devolved elections at present.

The analysis of consultation responses shows that only around 25% of respondents answered the question on postal voting. Themes which arose included the need for more robust safeguards, concerns about corruption or fraud, and on the handling of postal votes. Some respondents also felt existing arrangements were adequate. The Electoral Commission was amongst those who highlighted that a change in arrangements could create practical difficulties in enforcing limits and additional barriers for those who need assistance.

The consultation also highlighted the implications of the Elections Act 2022 on the frequency with which people have to apply for a postal vote. This is every three years for UK Parliament elections, but a refreshed signature every five years is sufficient for devolved Scottish elections. Responses to the consultation noted the potential for confusion in the differing arrangements.

The consultation also asked around voter ID requirements under the Elections Act 2022, making it clear that the Scottish Government did not intend to introduce a requirement for photographic voter ID for devolved Scottish elections. The analysis of consultation responses showed that views on voter ID were split.

Scheduling of elections

Dissolution of the Scottish Parliament

The [Scotland Act 1998](#) sets out the timings of normal general elections to the Parliament. There are, however, circumstances where a date may need to be moved, such as a public health emergency. Another situation which may arise is the calling of a UK Parliament election at short notice ^{viii}.

At present, the Presiding Officer has a power to propose (after consulting the Electoral Commission) a new date for polling day. The date must be within one month of the original polling day.

MSPs cease to hold office at dissolution. Once dissolved a Parliament cannot be reconvened.

The [Scottish General Election \(Coronavirus\) Act 2021](#) changed the date of dissolution for the 2021 election to the day before polling day. This meant that the Parliament could meet should it need to. Rather than dissolution on 25 March 2021, the Parliament went into recess.

The Scottish Government states in its consultation that it is:

“ of the view that if a UK Parliament election was called on, or close to, the date of a Scottish Parliament election, then it would be preferable for the Scottish Parliament to meet to discuss the options around any possible postponement of the Scottish Parliament election.”

The consultation sought views on two options in relation to dissolution of the Scottish Parliament.

First, whether the Presiding Officer’s power to postpone an election by up to a month should be changed to allow for a longer maximum period (i.e., a postponement of over a month).

Second, whether the date of dissolution of the Scottish Parliament prior to a Scottish Parliament election should be changed to the day before polling day.

The Scottish Government highlighted in the consultation potential challenges with changing the Presiding Officer’s power to postpone an election (to a period of longer than one month). These challenges include that July and August are traditionally avoided for elections because of summer holidays, and the fact that there would not be a Parliament for a longer period.

There are also consequences to changing dissolution arrangements. These include financial considerations (MSPs would continue to be paid); unfair advantage (MSPs would continue to hold office whilst others contesting the same constituency/region would not), and other practical challenges for the Parliament (for example less time to turn around office and IT equipment).

The analysis of consultation responses showed that there was unanimous support amongst organisations for a presumption for devolved Scottish elections and a UK Parliament election not to be held on the same day. Individuals were, however, split with 49% in favour of the presumption and 51% opposed to it.

In terms of the Presiding Officer being able to postpone an election by more than a month, 67% of organisations and 21% of individuals agreed.

On the question of whether dissolution of the Scottish Parliament should move to the day

viii The [Dissolution and Calling of the Parliament Act 2022](#) allows for an election of the UK Parliament to be held 25 working days following a proclamation to dissolve the current Parliament. The 2022 Act also repealed the Fixed Term Parliament Act 2011.

before polling day, the analysis indicated that 100% of organisations^{ix} which responded to the question agreed that the date of dissolution should be changed. Individuals were split, with 47% in favour and 52% opposed.

By-elections

The consultation sought views on the Scottish Government's proposal to give the Presiding Officer a power to postpone a Scottish Parliament by-election by up to three months. At present, the only means to change the date of a by-election to the Parliament once the date is set is by primary legislation.

The analysis of consultation responses showed that 52% of individuals and 57% of organisations who responded to this question agreed with the proposal. The difference in views of both organisations and individuals here when compared to a similar question on the Presiding Officer having the power to delay a general election of the Scottish Parliament by more than a month (as set out above) is notable.

Postponement of scheduled local government elections

The [Local Government etc. \(Scotland\) Act 1994](#) provides that local elections must be held on the first Thursday of May every five years. The legislation only allows for the date to be changed in two situations:

- if a Scottish Parliament election is to be held between 11 March and polling day for the local government elections, they can be held on the same day
- where secondary legislation is made to move the date no later than 1 February in the year before the year in which a local government election is to be held.

Other changes can be made only by primary legislation. This means that if, for example, a local government election needed to be postponed because of a public health issue, the Scottish Parliament would need to pass primary legislation.

The Scottish Government's consultation sought views on whether provision should be made to allow for the postponement of local government elections without recourse to primary legislation. The Scottish Government appears to favour a one month limit for postponement.

In terms of the consultation response analysis, 32% of individuals were in favour of this. Organisations were split - 56% in favour and 44% opposed. For those who supported the proposal, there was no clear view on who should be able to make the decision. 87% of organisations which answered supported the Returning Officer making the decision.

^{ix} The analysis does note that the Scottish Parliamentary Corporate Body “highlighted several logistical challenges associated with changing the date of dissolution, including financial, technical and administrative implications.”

Campaigning and finance

The Elections Act 2022 made some changes to campaign finance for reserved elections^x.

The Scottish Government's position as set out in the consultation is that:

“ Reflecting these changes in devolved Scottish electoral law may provide consistency and clarity for voters, campaigners, and electoral administrators.”

Notional expenditure, third party campaigners and Electoral Commission fines

The proposals contained in the consultation were:

- to clarify the legal test for what constitutes notional campaign expenditure (when candidates, parties and certain campaigners receive goods and/or services for free or at a discounted rate)
- to restrict spending by ineligible (i.e., they are not eligible to register with the Electoral Commission as a campaigner) foreign third party campaigners, unless spending less than £700 (the current limit is £10,000)
- to explore if third party campaigners should have to register with the Electoral Commission if spending more than £10,000 across the constituent parts of the UK, but less than the limits in each individual country (in Scotland the limit is £10,000)
- to give Scottish Ministers a power to add or remove categories of eligible third party campaigners where the Electoral Commission has recommended such a change
- to ensure that the Electoral Commission's code of practice for third party campaigning is extended to include devolved Scottish elections, and
- to increase the maximum amount the Electoral Commission can fine people for breaking electoral law (currently £10,000 at devolved elections and £500,000 at referendums).

There was widespread backing for the proposal to clarify notional expenditure. 75% of organisations which answered and 84% of individuals who responded supported it.

66% of respondents supported restricting spending of foreign third party campaigners to £700.

82% of those who responded indicated that they supported the proposal for third party campaigners to have to register with the Electoral Commission where they plan to spend £10,000 across devolved elections across the UK.

58% of individuals and 67% of organisations opposed the proposal to give Scottish Ministers a power to change categories of third party campaigners where recommended by the Electoral Commission.

There was a high level of support for the proposal to extend the Electoral Commission's

^x And in some instances devolved elections where the timing of the regulated period coincides with a UK Parliament election.

code of practice for third party campaigners to devolved Scottish elections.

Overall 75% of respondents favoured an increase in the amount the Electoral Commission can fine. This equated to 75% of individuals supporting the proposal and 50% of organisations.

Digital imprints

An imprint is included on campaign material to show who has produced and promoted it. Imprints sometimes also show who has paid for the material.

Digital imprints – that is imprints on digital campaign material – have been a requirement at devolved Scottish elections since 2020. They were also required during the independence referendum in 2014.

[The Elections Act 2022](#) created a regime for digital imprints at all UK elections, including devolved elections^{xi}. The regime is similar to that which has been legislated for in Scotland at previous electoral events.

The consultation highlighted the potential for confusion if the two regimes coexist for devolved Scottish elections. This is because the UK Elections Act 2022 provisions would apply to all elections and referendums in Scotland. In addition, the Scottish regulations would apply to elections to the Scottish Parliament and local government.

The consultation sought view on two options:

“ (i) Option A, a complete repeal of the Scottish provisions and (ii) Option B, a partial repeal, with some aspects of the Scottish regime preserved where it is considered that they could operate alongside the Elections Act provisions.”

The consultation analysis shows that of those who responded to this question, all of the organisations and 64% of individuals supported the revocation of the Scottish regulations. It also highlights the response of the Electoral Reform Society Scotland which called for “*strict monitoring*” of the regime as the Elections Act 2022 has a potential loophole which means that a digital imprint need not appear on the material itself ‘if not reasonably practicable’.

Administration and governance

Review of electoral boundaries and adoption of Boundaries Scotland recommendations

[Boundaries Scotland](#) is the independent Commission which is responsible for undertaking boundary reviews and recommendations for Scottish Parliament constituencies and regions and local government areas, wards and councillor numbers.

^{xi} The UK Government and Scottish Government disagreed on competence on the matter of digital imprints during the passage of the Elections Bill (now the Elections Act 2022).

[The Scottish Elections \(Reform\) Act 2020](#) removed Ministerial discretion to modify or decide not to implement changes contained in a report by Boundaries Scotland. The Parliament is able to accept (or reject) the changes by approving or rejecting secondary legislation to implement the changes recommended by Boundaries Scotland.

The Scottish Government's consultation sought views on whether there should be any Parliamentary process around accepting recommendations made by Boundaries Scotland. The purpose of any change being to remove any political interference from the process.

The consultation noted the position in relation to UK Parliament constituencies where, due to the provisions of the [Parliamentary Constituencies Act 2020](#), recommendations are approved automatically. The [explanatory notes to the 2020 Act](#) explain the position:

“ The Act provides that, in future, the Boundary Commissions will submit their final reports to the Speaker of the House of Commons (who is the Chair of the Boundary Commissions) who will lay the reports before Parliament. The Secretary of State or the Minister for the Cabinet Office will then be required to submit the draft Order in Council giving effect to the recommendations in the reports to His Majesty in Council as soon as reasonably practicable after the date on which all four Boundary Commission reports have been laid before Parliament, and in any case, within the period of four months from that date unless there are exceptional circumstances. The Act provides that the draft Order in Council giving effect to recommendations will no longer be subject to any parliamentary procedure or approval before it is made.”

In Wales, a recommendation has been made by the [Special Purpose Committee on Senedd Reform](#) that boundary recommendations should be implemented without the requirement for the Senedd's approval. Recommendation 245 of the [Special Purpose Committee's report](#) stated that:

“ We have unanimously concluded that it would not be appropriate for the Boundary Commission's recommendations to be subject to the Senedd's approval or, when implementing recommendations, for the Welsh Ministers to have power to alter them, other than if requested by the Boundary Commission to correct errors.”

The Scottish Government's consultation set out three options:

Option 1 was to remove the requirement for Ministers to instruct Boundaries Scotland to undertake a further review should its recommendations be rejected by the Parliament.

Option 2 suggested that the Parliament only be allowed to reject recommendations made by Boundaries Scotland where there were concerns that statutory guidance or duties had not been followed.

Option 3 was to change the process to an automatic adoption of recommendations made by Boundaries Scotland. This would take away the opportunity for the Parliament to object to the recommendations. A legal challenge would be the avenue available should there be concerns that Boundaries Scotland had not followed statutory guidance and duties.

The analysis of consultation responses showed that 39% of respondents did not support a change to the process. Of the 61% of respondents in favour of change, 58% of those supported option 3 (the majority of organisations, including Boundaries Scotland, supported option 3) making it the most popular.

The Electoral Commission in Scotland

The [Electoral Commission](#) "is the independent body which oversees elections and regulates political finance in the UK"³. The [Scottish Elections \(Reform\) Act 2020](#) changed the reporting and funding arrangements for the Electoral Commission's work in relation to devolved Scottish elections so that it is funded by and accountable to the Scottish Parliament.

After the end of each financial year the Electoral Commission must prepare and lay before the Parliament a report on its performance in relation to its devolved Scottish functions during that financial year.

The Commission must also submit a report on its functions in relation to devolved Scottish elections to the [Scottish Parliamentary Corporate Body](#) (SPCB) every five years ([Scottish Elections \(Reform\) Act 2020 section 17](#)). This report is, however, the same report as the Electoral Commission is required to submit to the [Speaker's Committee on the Electoral Commission](#)^{xii} under [paragraph 15\(1\) of schedule 1 of the Political Parties, Elections and Referendums Act 2000](#)^{xiii}.

The SPCB must then report to the [Speaker's Committee on the Electoral Commission](#) on its findings and any recommendations arising from its consideration of the Commission's five year plan in relation to its devolved functions in Scotland. The SPCB must also lay the plan before the Scottish Parliament.

The consultation sought views on whether the Scottish Parliament should "*take a greater role in oversight of the Electoral Commission's devolved activities*", for example its spending plans.

The consultation document highlighted recent changes in Wales which require:

- the Commission to report to the Senedd on its performance in relation to devolved Welsh elections and devolved Welsh referendums during the financial year (similar provision to existing requirement in Scotland)
- the [Llywydd Committee](#)^{xiv} to report to the Senedd on its oversight of the Commission and scrutiny of financial estimates submitted by the Commission in relation to its spending. The Llywydd Committee had a role prior to the recent changes in scrutinising the Commission's five year plan and financial estimates.

The analysis of consultation responses showed that 60% of respondents were opposed to the proposal for greater oversight of the devolved functions of the Electoral Commission by the Scottish Parliament.

The Electoral Commission stated in its [response to the consultation](#).

xii The Speaker's Committee on the Electoral Commission is a statutory body established under the Political Parties, Elections and Referendums Act 2000

xiii The five year plan must be tabled in the UK Parliament in the first financial year following a general election to the UK Parliament.

xiv The Llywydd's Committee scrutinises the Electoral Commission's financial estimates and five year plans as they relate to the exercise of the Commission's functions in relation to devolved Welsh elections and referendums.

“ It is important that the Scottish Parliament can have confidence in our work and plans, and we would welcome additional scrutiny by a relevant committee in the Parliament[...]An option to facilitate further scrutiny of the Commission’s estimate could be to require, in an albeit already tight timeframe, a subject committee of the Parliament, which would likely be the SPPAC, to undertake at the request of the SPCB a consideration of our estimate submission and provide the SPCB with an opinion on our estimate prior to the SPCB taking a decision. In addition, if the Parliament wishes to formally allocate wider policy scrutiny of the Commission’s work to a subject committee, we would support that development.”

Structure of the Electoral Management Board for Scotland

The Electoral Management Board for Scotland (EMB) coordinates and administers devolved elections in Scotland. 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 is made up of a number of Returning Officers (ROs) and Electoral Registration Officers (EROs). The costs of the EMB are met by the Scottish Government.

The convener of the EMB is seen as a key role in devolved Scottish elections, and with the change of the EMB’s remit to encompass Scottish Parliament as well as local government elections as a result of the Scottish Elections (Reform) Act 2020, the role and its demands have change. The role is not paid apart from expenses.

The consultation sought views on whether the role and structure of the EMB should be updated. This included whether the EMB should be established as a public body and whether a deputy convener post should be established.

The analysis of responses to the consultation indicated a low response level on the question of the role and remit of the EMB.

On the question of whether there should be a deputy convener of the EMB, 51% of individuals agreed as did all the organisations which answered.

The EMB itself supported the idea of a deputy convener role. On its role and remit more generally, the EMB stated:

“ while what is expected of the EMB has developed, the legal structure, resourcing and formal remit remain as they were at its establishment a decade ago. These structures limit the ability of the EMB to fulfil the role increasingly expected of it and put at risk the Board’s ability effectively to support elections in future.”

The Scottish Government , 2023⁴

The Scottish Elections (Representation and Reform) Bill

This section of the briefing considers the provisions of the Bill in detail.

Part 1: Candidacy rights of foreign nationals

Part 1 of the Bill proposes one change to candidacy rights at Scottish elections (i.e., those to the Scottish Parliament and local government in Scotland) by allowing foreign nationals with any form of leave to remain to stand as candidates so long as they meet other candidacy requirements and are not disqualified from standing.

The Bill achieves this by Part 1 section 1 which amends [section 16 of the Scotland Act 1998](#). Section 2 of the Bill amends [section 29 of the Local Government \(Scotland\) Act 1973](#).

The Scottish Government states in the Policy Memorandum to the Bill that it:

“ Considers that voters with limited leave to remain in the UK should be empowered to hold elected office, although it is acknowledged that this was not a favoured course of action amongst consultees. As a result, Part 1 of the Bill will provide candidacy rights in Scottish Parliament and local government elections for all resident foreign nationals aged 18 or older with limited leave to remain.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 23

As explained [earlier in this briefing](#) foreign nationals are only able to stand as a candidate at a Scottish Parliament election at present if they have indefinite leave to remain (the right to live, work and study for as long as an individual wishes to) settled status or pre-settled status in the UK^{xv} and meet other candidacy requirements.

For local government elections, those foreign nationals (so long as they meet other candidacy requirements) able to stand for election at present are:

- those with indefinite leave to remain (including EU citizens with settled status) and those with [pre-settled status](#)
- foreign nationals of countries listed in schedule 6A to the [Local Government \(Scotland\) Act 1973](#) as inserted by the [Scottish Government Local Elections \(Candidacy Rights of Foreign Nationals\) Act 2022](#). This legislation was passed to ensure that treaty obligations were complied with by allowing foreign nationals of Luxembourg, Poland, Portugal and Spain^{xvi} to stand for election at local government level (across the UK) whether they had indefinite leave to remain or not.

Any candidate at a Scottish election must meet candidacy requirements. For any Scottish

xv At present this is, British citizens, Irish Citizens, eligible citizens of [Commonwealth countries](#) (i.e. those who have indefinite leave to remain in the UK or do not require leave to remain in the UK) and qualifying foreign nationals (those who have indefinite leave to remain in the UK or do not require leave to remain in the UK)

xvi At the time of publication no additional countries have been added to Schedule 6A to the Local Government (Scotland) Act 1973. A [treaty with Denmark](#) has recently been agreed but, at the time of publication, is not yet in force.

election the person must be 18 years old or older and not be disqualified from standing^{xvii}.

Candidates for local government in Scotland must, in accordance with section 29 of the [Local Government \(Scotland\) Act 1973](#) also meet at least one of the following requirements:

1. be registered as a local government elector for the local authority area in which they wish to stand on the day of their nomination
2. 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 their nomination
3. their main or only place of work during the 12 months prior to the day of their nomination be in the local authority area
4. have lived in the local authority area during the whole of the 12 months before the day of their nomination⁶.

It is unclear how many individuals would become eligible to stand as candidates at Scottish elections as a result of the change proposed in the Bill. The Scottish Government has stated that:

“ In terms of assessing the number of people ages 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 July 2021 (including 165,000 non-EU) but many of these people would have indefinite leave to remain or pre-settled status and so already have candidacy rights[...]

The Scottish Government published by the Scottish Parliament , 2024⁷ Paragraph 43

No other legislature in the UK extends candidacy rights to individuals with limited leave to remain. To be able to stand as a candidate at the Senedd, for example, an individual must be:

- at least 18 years old, and
- a British citizen, a qualifying Commonwealth citizen, a qualifying foreign citizen (a person who is not a Commonwealth citizen, a citizen of the Republic of Ireland and who has or does not require leave to remain or is treated as having leave to enter or remain in the UK), a citizen of the Republic of Ireland or a citizen of the European Union who is resident in the United Kingdom, and
- not disqualified from standing⁸.

In the Scottish Government's consultation on Electoral Reform it is stated that:

xvii For example, at local government level, an individual is disqualified for certain criminal convictions and bankruptcy and certain office holders are also disqualified (sections 30 and 31A Local Government (Scotland) Act 1973). Disqualifications from membership of the Scottish Parliament are set out in [sections 15 and of the Scotland Act 1998](#) and generally follow disqualification criteria for the House of Commons. Section 17 of the Scotland Act 1998 provides that if a person who is disqualified from being a member of the Parliament is returned their return is void and their seat is vacant.

“ Scotland has one of the world’s most generous and inclusive arrangements for voting and candidacy rights. Many democracies extend voting and candidacy rights on an equivalent basis, set out in an international treaty with two or more countries agreeing to grant voting and candidacy rights to each other’s nationals. The Scottish Parliament has instead chosen to extend voting and candidacy rights in devolved elections on a unilateral basis. This is intended to allow anyone who has chosen to make their life in Scotland the right to participate in our democracy. It means that the provision of voting and candidacy rights to those living in Scotland is not dependent upon their place of birth. A person need not be the citizen of a democracy that has agreed an electoral rights treaty with the United Kingdom to participate in devolved Scottish elections. Voting rights are extended to all those with any form of leave to remain in the UK who live in Scotland for long enough to be able to register to vote. This supports the Scottish Government’s view that anyone who is living in Scotland should have a say on how Scotland is run.”

The Scottish Government , 2022⁹

The proposal means that an individual could be elected whilst not being guaranteed to be able to stay in the UK for the full period of office (five years for both MSPs and councillors). The Financial Memorandum to the Bill states that the extension of candidacy rights:

“ is expected to have a minor financial impact on electoral administration that can be absorbed within existing resource.”

The Scottish Government published by the Scottish Parliament , 2024⁷ Paragraph 11

There is, however, a potential for additional cost for local government arising from the need for any by-elections as a result of an elected representative losing their leave to remain during their term of office. A by-election would need to be held if there is no scheduled election within the next six months and the vacancy relates to a Scottish Parliament constituency or local government ward.

The Scottish Government states that:

“ The possibility of by-elections arising as a result of changes from the Bill are considered to be extremely remote.”

The Scottish Government published by the Scottish Parliament , 2024⁷ Paragraph 41

This is because for such a by-election to be required a person with limited leave to remain would need to choose to stand for elected office in Scotland, be successfully elected, lose their right to remain during their period of office as a constituency MSP or councillor, and this fall outwith the period of six months of a scheduled election^{xviii}.

The Financial Memorandum estimates the cost of a Scottish Parliament constituency by-election at £150,000-£200,000 and that of a local government by-election at between £50,000 and £80,000 ⁷ . The cost of any Scottish Parliament by-election is met from the Scottish Consolidated Fund. The cost of local government by-elections are met from the funds of the relevant local authority. It is unclear whether there is an increased likelihood of costs arising for some local authorities in Scotland as a result of the changes to candidacy rights proposed in the Bill. That is to say, whether there are more individuals within some local authority areas who will gain candidacy rights under the Bill and whether this translates to an increased probability of a by-election being required because of a change

xviii This briefing was updated on 21 March 2024 to correct an error in original publication. The change made was from 'indefinite leave to remain' to 'limited leave to remain'.

in an individual's immigration status part way through their term of office.

Candidacy rights for foreign nationals with limited leave to remain^{xix} was an issue which was discussed during the passage of the Scottish Elections (Franchise and Representation) Bill^{xx}. The Policy Memorandum explains that during the passage of that Bill in 2019/20:

“ concerns were aired that a person subject to limited leave to remain might not be able to serve as an elected representative.”

Paragraph 26

Further information is available in a [SPICe blog which considered the key areas of discussion, and changes made to the Scottish Elections \(Representation and Reform\) Bill at stage 2](#).

The UK Government changed immigration rules in October 2022¹⁰. The changes mean that:

“ Standing for or filling an elected post in local or devolved government is not considered to be employment for the purposes of the immigration rules, and conditions restricting employment do not affect the ability to undertake such activities.”

Home Office, UK Government, 2022¹⁰

Part 2: Disqualification

[As explained earlier in this briefing](#), concern has been raised around the intimidation of candidates and campaigners at elections.

The Bill makes four proposals relating to disqualification:

1. creates a new Scottish disqualification order
2. extends the effect of a disqualification order made under the Elections Act 2022 to stop any person subject to such an order from being able to be an MSP or a councillor
3. provides for temporary relief from the effect of disqualification
4. ends the 'ambulatory effect of section 15 of the Scotland Act 1998' - i.e., ends the automatic link between disqualification from being a member of the House of Commons and disqualification as a member of the Scottish Parliament.

xix This briefing was updated on 21 March 2024 to correct an error in original publication. The change made was from 'indefinite leave to remain' to 'limited leave to remain'.

xx Now the [Scottish Elections \(Franchise and Representation\) Act 2020](#)

Scottish disqualification order

“ The Government continues to hold the position set out in the consultation paper that removing the right of someone convicted of harassing or intimidating those involved in the electoral process to stand or hold an elective office for a period is a reasonable response to their actions and links the punishment directly to the offence.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 35

Part 2 of the Bill introduces a new Scottish disqualification order. The effect of the order is to disqualify an individual subject to an order from standing for election to the Scottish Parliament and/or local government in Scotland for five years.

Where an individual 18 years old or over is found guilty of certain criminal offences in Scotland, and the Court believes beyond reasonable doubt that the offence was "aggravated by hostility related to" ¹¹ electoral workers (defined in sections 4-6 of the Bill as returning officers, registration officers, counting officers and their staff) the Court will, in most cases, be required to impose an additional sanction of a disqualification order^{xxi}. The relevant offences are listed in the Schedule to the Bill and includes common law offences tried under solemn procedure and some common law and statutory offences tried under summary procedure ^{xxii}.

The Explanatory Notes to the Bill state that:

“ In terms of section 3(4), the 'victim' of the offence doesn't necessarily need to be an election worker in order for the offence to be aggravated by the necessary hostility. This means that an offence could be aggravated by hostility where (for example) an offender commits a relevant offence against person A (e.g., an election worker's parent) and that offence is motivated by the offender's hostility towards person B because B is an election worker.”

The Scottish Government published by the Scottish Parliament , 2024¹² Paragraph 30

With regards to the Scottish Parliament, the Bill achieves this by amending section 15 of the Scotland Act 1998 to state that disqualification from membership of the Scottish Parliament includes where an individual is subject to a Scottish disqualification order. Section 15 of the Scotland Act 1998 relates to membership of the Parliament and not candidacy. Section 17 of the same Act deals with the effect of disqualification and provides that if a disqualified person is returned as a member of the Parliament their return is void and their seat vacant.

“ So whilst there is no specific rule that an ineligible person may not be a candidate in a Scottish Parliament election, there is a *de facto* prohibition as they would be unable to take their seat if successful.”

The Scottish Government published by the Scottish Parliament , 2024¹² Paragraph 39

With regards to local government elections in Scotland, the Bill amends [section 31 of the Local Government \(Scotland\) Act 1973](#) which deals with 'Disqualifications for nomination,

xxi Part 2 section 3(3) provides the Court with some discretion over whether to impose a disqualification order where, because of individual circumstances, it considers it would be unjust to do so. Where a Court decides not to impose a disqualification order it must provide its reasons in open court.

xxii In Scotland the most serious crimes are tried under solemn procedure and are tried before a jury. Less serious crimes are tried under summary procedure and do not have a jury.

election and holding office as member of a local authority.'

Financial considerations appear minimal. The Financial Memorandum notes that:

“ These changes have been discussed with official from the Crown Office and Procurator Fiscal Service and 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.”

The Scottish Government published by the Scottish Parliament , 2024⁷ Paragraph 14

There could be costs associated with the Bill if by-elections are required at either the Scottish Parliament or local government because a serving MSP or councillor is issued with a Scottish disqualification order during their term of office. The Financial Memorandum indicates that *"Few instances of disqualification orders are anticipated in general."*

Section 9 of the Bill gives Scottish Ministers a power to amend the Schedule to the Bill (i.e., to add to the list of offences or omit offences where a Scottish disqualification order may be made) by regulations subject to the affirmative procedure. The Delegated Powers Memorandum explains the rationale for Scottish Ministers taking the power:

“ The purpose of the provision in section 9 is to enable Scottish Ministers to respond promptly to, and ensure compliance with, any changes in the criminal law, for example where an offence is amended or created or repealed.”

The Scottish Government published by the Scottish Parliament , 2024¹³ Paragraph 10

Elections Act 2022 Disqualification Orders

[The Elections Act 2022 \(part 5\)](#) introduced a disqualification order which must be imposed by a court as an additional sanction where a person over the age of 18 is found guilty of certain offences and where *"the court is satisfied beyond reasonable doubt that the offence is aggravated by hostility related to" candidates, campaigners or elected representatives*¹⁴ ."

The Scottish Parliament [withheld its consent on the legislative consent motion for the Elections Bill](#). Following that, provisions were removed in the Bill which would have meant that anyone subject to a disqualification order was prevented from membership of the Scottish Parliament or nomination, candidacy and holding office in local government in Scotland (see also [ending the ambulatory effect of section 15 of the Scotland Act 1998](#)).

As such, a disqualification order under part 5 of the Elections Act 2022 prevents an individual from being elected to certain offices in England, Wales and Northern Ireland. It does not, however, prevent an individual subject to such an order from holding office as an MSP or a councillor in Scotland.

Sections 10 and 11 of the Bill extend the effect of disqualification orders made under the Elections Act 2022 to membership of the Scottish Parliament and nomination, election and holding office in a local authority in Scotland.

Temporary relief from the effect of disqualification

Section 12 of the Bill relates to circumstances where an MSP or councillor becomes subject to a Scottish disqualification order or disqualification order made under the Elections Act 2022 and can therefore no longer continue in their position as an elected representative. The provision allows for temporary relief from the effect of the order to appeal the conviction and associated order.

For a member of the Scottish Parliament, this means, rather than vacating their seat immediately, they have:

- three months from the time the court made the disqualification, or
- the period of time during which an appeal against their conviction or sentence is allowed (if this is less than three months).

If their appeal is upheld then the individual is not disqualified. If an appeal is dismissed or abandoned then the member is disqualified and must vacate their seat at that point in time (even where this is under three months).

Section 12(3) of the Bill also amends Section 17(4) of the Scotland Act 1998 so as to provide that, during the period in which a member is not disqualified because of the temporary relief rule but is subject to a disqualification order, the MSP cannot participate in any parliamentary proceedings and may have other rights and privileges withdrawn where the Parliament so resolves (i.e., where the Parliament agrees a motion).

For councillors, the temporary relief period is the same as for MSPs (i.e., a maximum of three months). Section 12(5) of the Bill amends section 31 of the Local Government (Scotland) Act 1973 to provide for this.

Ending the ambulatory effect of section 15 of the Scotland Act 1998

An ambulatory reference in legislation is where a reference is interpreted as updated in one piece of legislation when it is changed in another piece of legislation.

At present section 15 (disqualification from membership of the Scottish Parliament) of the Scotland Act 1998, provides that a person is disqualified from membership of the Scottish Parliament where they are disqualified from membership of the House of Commons (subject to section 16 of the same Act which provides for exceptions and relief from disqualification). As such, if the disqualification criteria for membership to the House of Commons change, so too do the disqualification grounds for a member of the Scottish Parliament

[As explained earlier in this briefing](#), provisions in the Elections Act 2022 were removed so that disqualification orders made under that Act did not have the effect of preventing individuals from standing as councillors or being members of the Scottish Parliament. It is, however, unclear whether the effect of section 15 of the Scotland Act could, in fact, have resulted in disqualification.

Section 13 of the Bill ends the ambulatory effect of section 15 of the Scotland Act and

instead provides that whether a person is disqualified from membership of the Scottish Parliament is based on the law on 27 April 2022. This date is prior to the Elections Act 2022 coming into force. As such, it makes the position on disqualification unequivocal and means that any future changes in relation to disqualification of members of the House of Commons will not be automatically replicated for members of the Scottish Parliament.

The Policy Memorandum explains the Scottish Government's position on this proposal within the Bill:

“ Section 15(1)(a) and (b) of the Scotland Act operates so that anyone disqualified from being a member of Parliament is also disqualified from being a Member of the Scottish Parliament. The Scottish Government considers that regulation of membership of the Scottish Parliament should principally be a matter for the Parliament[...]The Bill therefore seeks to change section 15 of the Scotland Act to end automatic application of new House of Commons eligibility rules to the Scottish Parliament disqualification. The change will retain the current eligibility criteria for MSPs as of 27 April 2022 (the day before the Elections Act attained Royal Assent).”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraphs 40-41

The Policy Memorandum states that the provision was not included in the Scottish Government's consultation on Electoral reform *"as it was identified as a change that seemed desirable after the consultation was published."*⁵

The Financial Memorandum indicates that there is no direct cost associated with this proposal.

Part 3: Campaign finance

Part 3 of the Bill relates to campaign finance and contains provisions concerning notional expenditure and third party campaigners. Most of the changes mirror provisions in the Elections Act 2022 relating to reserved elections. The Scottish Government acknowledged that those changes *"were intended to help to ensure elections are free from foreign interference and ensure that voters can transparently see who funds election campaigns"* whilst also acknowledging the legitimate part that third party campaigners play in the UK's democratic system⁵.

Notional campaign expenditure

Notional campaign expenditure is when candidates, parties or other campaigners (see section on [third party campaigners](#)) receive goods or services for free or for a discounted amount or rate and so a notional value is provided in any required spending return.

“ Notional spending is the difference in value between the commercial rate for an item or service and the price actually paid by the candidate. This is to prevent candidates evading spending limits by obtaining cheap or free services from supporters.”

Johnston, 2021¹⁵

In most instances, the full price of the goods or services must be declared as an election expense.

“ For example, if a candidate received a 50% discount on printing campaign material from a printing shop, the full price of the printing (as if the discount had not applied) must be declared as campaign expenditure.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 47

Following a Supreme Court judgment^{xxiii} which held that notional campaign expenditure was an election expense which did not require authorisation from either the candidate or election agent, the Elections Act 2022 made provision to clarify the law.

“ The question of law certified by the Court of Appeal (Criminal Division) as a point of law of general public importance was as follows: “Do property, goods, services or facilities transferred to or provided for the use or benefit of a candidate free of charge or at a discount (as identified in section 90C(1)(a) of the Representation of the People Act 1983 (as amended)) only fall to be declared as election expenses if they have been authorised by the candidate, his election agent or someone authorised by either or both of them?””

Supreme Court UK, 2018¹⁶

The Scottish Parliament withheld consent on the legislative consent memorandum to the Elections Bill as the Scottish Government indicated that it would prefer to consult and potentially legislate in this area itself for devolved Scottish elections. Provisions on notional campaign expenditure in the Elections Act 2022 therefore only extend to reserved elections (i.e., in Scotland those to the UK Parliament) and some devolved elections where the timing of the regulated period coincides with that of, or is within a certain time period from, a UK Parliament election. The Election Act 2022 change means that for reserved elections^{xxiv} candidates and their agents are only responsible for campaign expenditure which they have knowledge of.

The Electoral Commission explains the changes around notional spend as:

“ The rules before the change: Notional spending Where something is provided to the candidate for free or at a non-commercial discount, and it is made use of by or on behalf of the candidate, then the value of what is provided counts as spending towards the candidate’s limit. We call this type of spending ‘notional spending’. The value of what is provided also counts as a donation to the candidate. The changes are: (1) ‘Use on behalf of a candidate’ in notional spending In the notional spending rules, the phrase ‘use on behalf of a candidate’ is defined so that someone only uses something on behalf of a candidate if that use *has been directed, authorised or encouraged by the candidate or agent*. The new definition will apply whenever an item is made use of after the law changes.”

The Electoral Commission , 2022¹⁷

At present, notional expenditure for Scottish elections is incurred by receiving goods or services for free or for a discounted amount or rate whether or not such an expense has been authorised by the candidate or election agent. The Bill proposes to bring the definition of notional expenditure at Scottish elections in line with the definition in the Elections Act 2022 so that it is the same across elections. In effect this means that notional spend at Scottish elections will only be incurred where such costs have been directed, authorised or encouraged by the candidate or their election agent.

xxiii [R v Mackinlay and others, UKSC 42](#) , 2018

xxiv And some devolved elections where the timing of the regulated period coincides with that of, or is within a certain time period from, a UK Parliament election.

As the Policy Memorandum explains:

“ This will mean that candidates and their agents will not need to declare spending they had no knowledge about (e.g. Political party posting flyers without the candidate's consent or knowledge), even when the spending may have been to their benefit[...]This change is intended to provide clarity to parties, candidates and campaigners, as they will follow consistent rules whether they campaign for a UK Parliamentary election or a Scottish devolved election.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraphs 50-51

Section 14 of the Bill amends the [Political Parties, Elections and Referendums Act 2000](#) to provide for the change in relation to notional spend by political parties at Scottish Parliament general elections.

Section 14 also updates electoral law for devolved Scottish elections to bring it into line with provisions in the Elections Act 2022 in relation to notional expenditure by third party campaigners. The change makes it clear that any notional spend incurred by a third party campaigner (authorised by a candidate or their agent to promote them) does not require to be paid by a candidate or their election agent and is authorised spend ¹⁸ .

Section 19 of the Bill amends the [Representation of the People Act 1983](#) so that notional expenditure is only incurred at a local government election in Scotland where such spend has been directed by the candidate or their election agent.

Changes in relation to the expenditure of candidates at Scottish Parliament elections will be made by secondary legislation ⁵ .

Third party campaigners

Third party campaigners can be individuals or organisations. Although they campaign at elections, third party campaigners are not political parties and do not stand candidates at elections (as such, third party campaigns are sometimes referred to as non-party campaigners). Some third party campaigners have to register with the Electoral Commission and are known as "recognised third party campaigners" ¹⁹ .

The Elections Act 2022 made provision in relation to third party campaigning. The Scottish Government did not recommend consent to the Elections Bill ²⁰ (and the Parliament withheld its consent) although it indicated in its [legislative consent memorandum](#) that it had sympathy with the provisions and wished to consult on them ahead of introducing Scottish legislation on the issue.

Third party campaigning

The Elections Act 2022 allows the Secretary of State to change, by Order (a type of secondary legislation), the list of categories of organisation able to register as third party campaigners for reserved elections. Where the Secretary of State amends or removes a category of third party campaigner the Electoral Commission must first recommend the change. In the case of a new category being added to the list of organisations able to register as a third party campaigner, the Electoral Commission does not need to make a recommendation.

The Scottish Government included a proposal to take an equivalent power in relation to devolved Scottish elections in its consultation on electoral reform.

“ 42% of respondents agreed with this policy proposal.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 55

Section 15 of the Bill provides a similar power to Scottish Ministers in relation to devolved elections. It would allow Scottish Ministers to amend, by secondary legislation subject to the affirmative procedure, the list of categories of organisation able to register as a third party at Scottish Parliament and local government elections in Scotland. The provision would allow Scottish Ministers to add to the list without a recommendation from the Electoral Commission. The Electoral Commission would need to recommend any changes or removals from the list in advance of Scottish Ministers proposing a change through an [affirmative Scottish statutory instrument](#).

The Delegated Powers Memorandum states that:

“ The purpose of the provision is to ensure the Scottish Ministers are able to respond to changes made by the UK Secretary of State to the list of third party campaigners at reserved elections[...]This will allow for consistent rules between devolved and reserved elections, where this is desired. It will also allow for categories to be added if deemed necessary, in response to potential further changes in campaigning.”

The Scottish Government published by the Scottish Parliament , 2024¹³ Paragraph 13

Spending by third party campaigners based overseas

“ The amount that can be spent on elections and referendums is regulated. Campaign expenditure is defined as expenditure ‘promoting or procuring electoral success’ for the party or for the candidate. For third party campaigners, campaign expenditure is referred to as ‘controlled expenditure’.”

Johnston, 2021¹⁵

Prior to the Elections Act 2022 being in force, third party campaigners based overseas could spend up to £10,000 during the regulated period (the time during in the run up to an election when spending is regulated and reported) at reserved elections. The 2022 Act reduced the spending limit for overseas based third party campaigners to £700. There is no requirement for overseas third party campaigners spending up to £700 to register with the Electoral Commission.

The Political Parties, Elections and Referendums Act 2000 requires any third party campaigner wishing to spend more than £10,000 in the regulated period to be UK based and register with the Electoral Commission.

In its response to the Scottish Government's consultation on electoral reform, the Electoral Commission stated that reducing the limit for third party campaigners based overseas:

“ would make it clear that foreign interference in UK elections is not permitted.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 60

As stated [earlier in this briefing](#), 66% of individuals who responded to the Scottish Government's consultation indicated that they were in favour of reducing the amount that

overseas third party campaigners can spend at Scottish Parliament elections.

Section 16 of the Bill provides that overseas third party campaigners can only spend up to £700 in a regulated period for a devolved Scottish election. An offence of authorising expenses in breach of the restriction is also included in the Bill. Such an offence is punishable by a fine.

Section 17 of the Bill provides that the changes made by section 16 only apply to a regulated period for a devolved Scottish election which begins on or after the day on which section 16 of the Bill comes into force.

The Policy Memorandum explains that:

“ This provision differs from the Elections Act in one way, as it does not exempt UK-registered unincorporated associations from the £700 limit, as doing so could allow some non-resident UK citizens (who are able to vote in reserved elections) to campaign more extensively in devolved Scottish elections, despite not being eligible to vote in such elections. This mirrors the rules for overseas campaigning in devolved Welsh elections, where UK citizens resident overseas also are not included in the voting franchise.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 61

Electoral Commission code of practice on third party campaigning

The Electoral Commission is responsible for providing guidance to those involved in elections (candidates, campaigners, political parties, Returning Officers and so on).

At present, the Commission publishes a code of practice for the rules on third party campaigning at reserved elections. Section 18 of the Bill would require the Electoral Commission to prepare a similar code of practice relating to third party campaigning in a regulated period for an ordinary or extraordinary general election to the Scottish Parliament^{xxv}. The code must in particular set out guidance on what expenses are considered qualifying expenses, whether or not types of spending are considered to promote or procure electoral success, notional expenditure, donations, and arrangements with other third parties.

The Bill provides for the process the Electoral Commission must follow in preparing a code. This includes consultation with the Scottish Parliament, and any other persons the Electoral Commission feels is appropriate.

The process for the code to be approved is also set out in the Bill (section 100BA). Scottish Ministers can approve a draft code which they may or may not have modified, and must lay it before the Scottish Parliament. Where Ministers have made modification they must also provide a statement on their reasons for making them. The Parliament has 40 days in which it can resolve not to approve the code.

The power for Scottish Ministers to approve a code of practice is:

xxv Ordinary general elections take place every five years. Provision on extraordinary general election is made in [section 3 of the Scotland Act 1998](#).

“ To facilitate the creation of a statutory code of practice on controlled expenditure for third party campaigners for Scottish devolved elections and Scottish devolved regulated periods by the Electoral Commission.”

The Scottish Government published by the Scottish Parliament , 2024¹³ Paragraph 17

Part 4: Rescheduling of elections

As has been discussed earlier in the briefing, the Scottish Government [consulted on scheduling and postponement of Scottish Parliament and local government elections](#). The area was consulted on due to concerns following the Covid-19 pandemic that there may be a number of situations in which it might be necessary to change the date of a scheduled election in Scotland. ²¹ Part 4 of the Bill proposes a range of measures intended to improve the arrangements for re-scheduling elections. The Policy Memorandum to the Bill indicates that these measures are being proposed based on the experience of holding elections during the Covid-19 pandemic. ⁵

Amendments to the power of the Presiding Officer to postpone an ordinary general election

The current arrangements for postponing a Scottish Parliament election, set out in [section 2 of the Scotland Act 1998](#), only allow the Presiding Officer to propose an alternative date for an election a month either side of when an election is scheduled. ²² Section 20 of the Bill amends section 2 of the Scotland Act 1998 to give the Presiding Officer the power to propose an alternative election date up to four weeks earlier than, or 8 weeks after, an ordinary general election is scheduled (usually the first Thursday in May). ¹² The Bill also allows for a further 8 week extension, meaning a general election could be postponed up to 16 weeks. ¹²

Section 20 of the Bill sets out that when the date of the general election is postponed, or subsequently extended in this way, His Majesty will by proclamation dissolve the Parliament (unless the Parliament is already dissolved), require the general election to be held on the day proposed, and require the Parliament to meet "*as soon as reasonably practicable*" after that date. ¹² The Bill also sets out that the Presiding Officer must consult the Electoral Commission and the convener of the Electoral Management Board for Scotland (EMB) before proposing a date for a postponed general election and before proposing an extension to the alternative date.

The Policy Memorandum sets out the Scottish Government's position on the aforementioned changes:

“ The one month period is thought to be insufficient to satisfactorily arrange a new polling date. Such a short period would place a great deal of pressure on electoral administrators in finding suitable accommodation and staffing cover and would be likely to increase costs. A postponement of a month or less would also mean that the campaign periods for both elections would significantly overlap, potentially confusing voters and risking one election overshadowing the other. It is also considered that it is more helpful to consider the period of any delay in weeks rather than months. This is because the most likely scenario would be for the election to move from one Thursday to another: so it is considered likely that any postponement under current arrangements would in fact be likely to be for four weeks.”

The Scottish Government published by the Scottish Parliament , 2024⁵

Power of Presiding Officer to schedule extraordinary general elections

[Section 3 of the Scotland Act 1998](#) allows for the Presiding Officer to propose a date for an extraordinary general election if either of the following two events occur:

- the Parliament resolves, with a two-thirds majority in favour, to be dissolved
- the Parliament fails to nominate a Member as First Minister within 28 days of any of the events provided for by [section 46 of the Scotland Act 1998](#)^{xxvi} .²²

Section 21 of the Bill amends section 3 of the Scotland Act 1998 to stipulate that the Presiding Officer cannot propose a polling day for an extraordinary general election if an ordinary general election is expected to occur within 8 weeks.¹²

Election of the Presiding Officer and Nomination of First Minister following a rescheduled general election

The Bill proposes amendments to the timescales for electing a Presiding Office and nominating a First Minister following a rescheduled general election. The Policy Memorandum indicates this is to take account of the events which may give rise to the need for a rescheduled general election (e.g., public health emergency).⁵ Similarly, the Policy Memorandum indicates that these changes are being made on the basis that they will improve the resilience of the election process if an unexpected event like a public health emergency was to occur in the period surrounding an election.⁵

Section 22 of the Bill amends section 19 of the Scotland Act 1998 so that a Presiding Officer can be elected from members returned to the Parliament following a rescheduled general election "*as soon as reasonably practicable*".¹² In normal circumstances, the Parliament must elect a Presiding Officer within 14 days of the general election.²²

Section 23 of the Bill amends section 46 of the Scotland Act 1998 so that the period

xxvi The events provided for by section 46 of the Scotland Act 1998 are: a general election; the First Minister tendering their resignation to His Majesty; the vacation of office of a First Minister (i.e., not through resignation); the First Minister ceasing to be a Member of the Scottish Parliament (i.e., not through dissolution of the Parliament).

following the rescheduled general election does not count towards the 28 day period for nominating a First Minister if the Parliament does not meet within 7 days of the rescheduled general election.¹²

Rescheduling of constituency by-elections

Section 9 of the Scotland Act 1998 provides for the Presiding Officer to fix a date for a by-election when a constituency seat becomes vacant.²² By-elections are to be held within three months of the seat becoming vacant, as long as the last day on which it can be held is not within three months of the due date of the next ordinary general election.²²

Section 24 of the Bill amends section 9 of the Scotland Act 1998 to give the Presiding Officer a power to set a new date for a by-election within three months of the original date, provided it is not within 6 months of the next ordinary general election.¹² If the initial date of the by-election falls within the 3 to 6 months before the next general election, then the Presiding Officer is given a power to determine that the by-election is not held. Prior to fixing a date for a rescheduled by-election or determining that a by-election is not held, the Presiding Officer must consult with the Electoral Management Board for Scotland (EMB), the Electoral Commission, and the Returning Officer for the constituency.

Local government elections

Postponement of ordinary local elections

The [Representation of the People Act 1983](#) provides that local elections in Scotland are held on the first Thursday in May every year that local elections are to be held (currently every 5 years).²³ Section 25 of the Bill amends the Representation of the People Act 1983 to grant the convener of the Electoral Management Board for Scotland (EMB) the authority to delay ordinary local government elections by up to two weeks, following consultation with the Electoral Commission and Scottish Ministers.¹²

Local elections use the single transferable vote system to return members to councils with vote counting done using eCounting systems.⁵ The Scottish Government indicates that the shorter postponement power (relative to the one proposed in the Bill for Scottish Parliament elections) has been decided on with these factors in mind. The Scottish Government states in the Policy Memorandum:

“ The nature of the planning, set-up and provision of specialist resource and capacity to deliver eCounting in each of the 32 local authority areas means that it would be very challenging to pause and re-deploy the system and that supporting resource for an ordinary local government election that was postponed 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 also risk results being subject to a significant delay and a high degree of human error (given how complex a voting system it is to count by hand) and would require a legislative change since electronic counting is required by law. 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[...] 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[...] 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).”

The Scottish Government published by the Scottish Parliament , 2024⁵

Section 26 of the Bill provides an additional power to returning officers to postpone a local election in their area up to two weeks following consultation with the Electoral Commission, convener of the EMB, and Scottish Ministers. In theory, if both the convener of the EMB and local returning officer postpone the election, the total delay of a local election in a local authority area could total four weeks.

Postponement of local by-elections

Section 27 of the Bill amends section 37 of the Local Government (Scotland) Act 1973 (which provides for a by-election to be held when a councillor vacancy arises through death, resignation, or disqualification).¹² It proposes giving returning officers the power to set a new date for a by-election within three months of the originally scheduled date, and if necessary, to further delay the rescheduled by-election by up to three months. The power to postpone a local by-election would only be applicable if the new date does not fall within six months before the next ordinary local election, unless the number of unfilled vacancies exceeds one-third of the total council membership. If the new date falls within the six-month period before the next ordinary election, the returning officer can decide not to hold the by-election, with the vacancy filled during the next ordinary local elections. Consultation with the Electoral Commission and the convener of the EMB is required before fixing a new date for a local by-election or determining that a local by-election is not held.

Part 5: Election pilots and democratic engagement

Part 5 of the Bill includes amendments to sections 5 and 6 of the [Scottish Local Government \(Elections\) Act 2002](#) allowing for the piloting of electoral processes.

Additionally, Part 5 of the Bill includes new funding powers for Scottish Ministers to provide financial support for initiatives aimed at promoting democratic engagement.

The Scottish Local Government (Elections) Act 2002 permits local authorities to propose to Scottish Ministers that a pilot scheme for local government elections is held in their area.

²⁴ Section 5 of the Scottish Local Government (Elections) Act 2002 provides that Scottish Ministers can approve and make an order to initiate the proposed pilot scheme. ²⁴ The existing provisions allow for election pilots on voting methods, locations, vote counting, and candidate election communications. ²⁴ After the relevant pilot and elections, the Electoral Commission is required to prepare a report with a description of the scheme, its differences from provisions in the Representation of the People Act 2000, and an assessment of the scheme's impact on voting, informed decision-making, and ease of use.

²⁴ Section 6 of the Scottish Local Government (Elections) Act 2002 allows Scottish Ministers to implement permanent changes by order based on the outcomes of pilot schemes. The Policy Memorandum to the Bill indicates that the existing power to propose an election pilot has not been used since 2004. ⁵

The Scottish Government [consulted on improving accessibility of elections](#). It indicates in the Policy Memorandum to the Bill that several of the suggestions to improve accessibility of elections that were raised in the consultation could be the subject of an election pilot. ⁵ As such, section 28 of the Bill, as introduced, amends sections 5 and 6 of the Scottish Local Government (Elections) Act 2002 to include Scottish Ministers, the Electoral Management Board for Scotland (EMB), and Electoral Registration Officers (EROs) as persons that can propose election pilots. The requirement in the Scottish Local Government (Elections) Act 2002 for election pilots to be likely to facilitate voting or encourage more voting is unaffected by the amendments proposed by the Bill. ^{xxvii} Subsection 2(c) of the Bill removes the provision limiting proposed election pilots to provisions which differ from the Representation of the People Acts. The Scottish Government states in the Explanatory Notes to the Bill:

“ This is too restrictive in terms of local government elections in Scotland, given that the Representation of the People Acts are not the only source of electoral law in Scotland. For example, provisions about the conduct of local government elections in section 3 of the Local Government Scotland Act 2004 and the Scottish Local Government Elections Order 2011 which has the rules for those elections, including actions to be taken before the poll and voting procedure.”

The Scottish Government published by the Scottish Parliament , 2024¹²

The Bill makes several consequential amendments to reflect the range of persons that would be able to propose an election pilot and therefore need to be consulted on an order initiating an election pilot. Similar consequential amendments are made to update the recipients of an Electoral Commission review of a piloted scheme.

The Delegated Powers Memorandum indicates that the order initiating the election pilot will be subject to a negative procedure, as is currently the case for pilots proposed under the Scottish Local Government (Elections) Act 2002. ¹³ Section 28(3) of the Bill adds a requirement to consult the EMB before making an order implementing permanent changes

xxvii Paragraph 92 of the explanatory notes to the Bill in reference to these amendments refer to subsection (3)(d). This is a drafting error and should read subsection (2)(d).

following a successful election pilot.¹³ If permanent changes following an election pilot are proposed, Scottish Ministers may make an order subject to the affirmative procedure.¹³

The Scottish Government sets out in the Financial Memorandum to the Bill that the expansion of electoral pilot powers will not directly result in any additional costs.⁷ It does however estimate that an election pilot should one be proposed and its subsequent assessment by the Electoral Commission may cost between £50,000 and £150,000.⁷ The Scottish Government states in the Financial Memorandum that no election pilots are currently planned and sets out that future election pilots are likely to be sporadic. The Financial Memorandum sets out that elections pilots proposed by the Scottish Government (and the EMB) will be met from Scottish Government funds when funding is available. Local government will be responsible for funding its election pilots and could also fund ERO-initiated pilots. However, the Financial Memorandum sets out that the Scottish Government will likely provide funds for an EMB-initiated pilot.

Section 29 of the Bill introduces a new funding power for Scottish Ministers to offer financial support, including grants, loans, guarantees, and indemnities, with the goal of promoting democratic engagement. The support can be used for activities related to local government or Scottish Parliament elections which the Scottish Ministers determine are aimed at enhancing participation of voters, candidates, campaigners, and others. Scottish Ministers may provide the financial support to any parties deemed suitable and attach conditions (e.g., repayment of interest) in respect of any financial support provided. The Explanatory Notes to the Bill provides examples of initiatives which may be funded, such as:

“ digital surgeries connecting councillors and MPs with people, chatbots answering common questions on registering and voting in different languages and videos tailored to different groups giving a “walk through” or other information about a polling station.”

The Scottish Government published by the Scottish Parliament , 2024¹²

The Financial Memorandum to the Bill notes that the provision in the Bill to fund democratic engagement initiatives will only enable expenditure once funds and a business case is approved.⁷ Any funding for such financial support will also be subject to approval through the Scottish Budget process. The Scottish Government cite a similar Welsh Government scheme which makes £300,000 available each year and indicate that agreement for similar funding in Scotland has not yet been agreed. Instead, the Financial Memorandum estimates that the Scottish Government may provide up to £300,000 subject to availability of funds in any financial year and when agreement of a business case has been reached. The Financial Memorandum states:

“ 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.”

The Scottish Government published by the Scottish Parliament , 2024⁷

The Financial Memorandum also indicates that the Scottish Government endeavours to

inform the lead Scottish Parliament committee on elections (currently the Standards, Procedures, and Public Appointments Committee) each time democratic engagement funding is granted.⁷

Part 6: Information to be included with certain electronic material at Scottish elections

Part 6 of the Bill sets out new provisions for devolved Scottish elections which would require a digital imprint on unpaid for electronic campaigning material which is published on behalf of or promoted by a relevant third party organisation.

“ It is considered that this will make it easier for the Electoral Commission to prepare relevant guidance and for campaigners to familiarise themselves with the changes.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 149

'Imprints' are information on election material to tell people who has produced and promoted (and in some instances paid) for it. Digital imprints are similar but feature on electronic campaign material.

The background to the position on imprints at devolved elections and the changes as a result of the Elections Act 2022 are set out earlier in the [digital imprints section of this briefing](#).

At present, two different regimes apply to devolved Scottish elections because of the provisions in the Elections Act 2022 and those in Scottish legislation. The Scottish Government put forward two options relating to digital imprints in its consultation - complete revocation and partial revocation - as it:

“ accepted that it would be too confusing for all aspects of the existing Scottish digital imprints scheme to continue to apply alongside the Elections Act measures.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 147

Although the majority of respondents favoured complete revocation of the Scottish legislation, the Electoral Commission stated in its consultation response:

“ Digital campaigning counts for an increasingly large proportion of spending reported by campaigners after elections. Requiring campaigners to include imprints on digital campaign material delivers greater transparency for voters and helps improve public confidence in digital campaigning at elections and referendums.”

The Scottish Government published by the Scottish Parliament , 2024⁵

As such, the Bill revokes the Scottish regime in place at present, but also seeks to reinstate one element of it related to unpaid for digital campaigning material by relevant third party organisations.

This change, if adopted, would mean that at devolved Scottish elections an imprint would be required in one additional instance. This is because whilst the Elections Act 2022 does require a digital imprint on unpaid for material printed or published on behalf of some groups such as political parties, candidates and recognised third party campaigners, it does not require a digital imprint on unpaid postings by organisations which are not

registered third party campaigners with the Electoral Commission.

Section 44 of the Bill revokes the regulations which provide the Scottish rules on digital imprints for devolved Scottish elections at present: the [Scottish Elections \(Details to appear on Election Material\) Regulations 2020](#) and the [Scottish Elections \(Details to appear on Election Publications\) Regulations 2020](#).

Section 30 of the Bill provides that Part 6 applies to Scottish Parliament and Scottish local government elections. Section 30(2) makes it clear that this section applies in addition to requirements on digital imprints under the Elections Act 2022.

Relevant third party and other key terms are defined in section 31 of the Bill.

“ "Relevant third party"[...]means a body (not a candidate or another individual) involved in campaigning or influencing the election while not being a direct participant, such as a political party[...]the "relevant" qualification recognises that there are other third parties involved in campaigning which are not covered by this Part. For example, "recognised third parties" (campaigning groups which have registered with the Electoral Commission) fall to be regulated under the regime in Part 6 of the Elections Act 2022.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 100

Section 31 also gives Scottish Ministers a power to amend the section to modify the definitions of:

- electronic material
- promoter
- published
- relevant third party

This power can only be exercised following a recommendation made by, or in consultation with, the Electoral Commission.

“ This provision allows the Scottish Ministers to react to changes made by the UK digital imprints regime set out in the Elections Act and also to account for any issues arising in the operation of part 6 of the Bill.”

The Scottish Government published by the Scottish Parliament , 2024¹³ Paragraph 33

Section 32 provides for further definitions, notably that of "future candidate". This ensures that there is clarity around when imprints are required. Candidates are only candidates legally for a limited time in the run up to elections although they may have been campaigning before that point.

Section 33 provides three conditions for when digital imprints are required and section 34 sets out the purpose of electronic material (as mentioned in the first condition of section 33). Section 35 provides for the information required in a digital imprint. Scottish Ministers are given a power in section 35 to modify the information to be included in the imprint. Modification can only be made following a recommendation from the Electoral Commission, or in consultation with it.

Section 36 provides for exceptions to the requirements of Part 6. For example, material

which is re-shared will not require a new imprint so long as the original imprint remains on the material and the material has not been "materially altered". This could be, for instance, a social media post. Scottish Ministers are given a power to amend exceptions by secondary legislation. Again, this power can only be exercised by Scottish Ministers following a recommendation by or consultation with the Electoral Commission.

The Bill also provides for an enforcement regime related to the requirement for an imprint on unpaid campaign activities by organisations. The regime is very similar to the one provided for in the Elections Act 2022 in relation to breaches of other digital imprint requirements. Sections 37 and 38 provide for the offences where rules on digital imprints are not followed. Sections 39 and 40 allow the Electoral Commission to use its investigatory powers and to impose civil sanctions to enforce the digital imprint rules.

Under section 41 of the Bill, the Electoral Commission is required to issue statutory guidance on the digital imprint regime. The section also provides that the draft guidance can be modified by Scottish Ministers prior to laying it before the Scottish Parliament. Where Ministers do make changes to the guidance they must provide a statement of reasons for them. The Scottish Parliament has 40 days in which it can resolve not to approve the guidance.

Section 42 of the Bill requires the Electoral Commission to include, in its annual report, information about convictions or offences in relation to the operation of part 6 of the Bill.

Part 7: Boundaries

Part 7 of the Bill proposes to revise the deadline by which Boundaries Scotland must submit its review of local authority areas, wards, and numbers of councillors. The Bill proposes to extend the deadline from 31 December 2028 to 30 April 2031. The Policy Memorandum indicates that this adjustment aims to synchronise the review with the five-year local government election cycle and the 15-year boundary review cycle (n.b., the last local authority review was conducted in 2016).⁵ It also allows for a 12 month period before the subsequent local authority elections.

Although [elections administration and governance was consulted on](#), the provisions in Part 7 were not included in the [Scottish Government Electoral Reform consultation](#). The Policy Memorandum indicates that the provisions were developed "in discussion" with Boundaries Scotland and also states that the provisions were not included in the consultation because they:

“ Were technical in nature and as such likely to be of limited interest to the wider public.”

The Scottish Government published by the Scottish Parliament , 2024⁵

There were proposals relating to Boundaries Scotland that were included in the Scottish Government Electoral Reform consultation but are not included in the Bill. [A later section of this briefing](#) covers those proposals in more detail.

Part 8: Electoral Commission five year plan

Recent changes in relation to the funding and reporting requirements of the Electoral Commission in relation to its devolved functions in Scotland are set out [earlier in this briefing](#).

At present, the Electoral Commission provides a five year plan in the first financial year following a UK general election to the Speaker's Committee on the Electoral Commission. The [Scottish Parliamentary Corporate Body](#) (SPCB) is, at the same time, sent the plan and reviews it in relation to the Electoral Commission's devolved functions in Scotland.

The Bill proposes to change the reporting requirements for the Electoral Commission in relation to devolved elections and referendums in Scotland, to require that it:

“ prepare a separate plan for Scottish elections and for the timing of these plans to correlate with Scottish Parliament general election cycles, giving the SPCB better oversight in terms of the Commission's strategic and financial priorities.”

The Scottish Government published by the Scottish Parliament , 2024¹² Paragraph 141

The changes would bring oversight arrangements of the Electoral Commission's work in Scotland in line with that of the Llywydd's Committee in Wales and the Speaker's Committee at the UK Parliament.

The Bill (section 46) provides that the Electoral Commission^{xxviii}:

- prepares for every financial year- and sends to the SPCB for approval no later than six months before the start of the financial year - an estimate of its income and expenditure in relation to its devolved functions (i.e., Scottish Parliament general elections, Scottish Parliament by-elections; and local government elections and any referendum held under the Referendums (Scotland) Act 2020)
- provides in the first financial year following a general election of the Scottish Parliament, (alongside the financial estimate) a plan setting out its aims and objectives in relation to its devolved functions for the next five years, along with an estimate of total resource requirements^{xxix}.

It would be, under section 46 of the Bill, for the SPCB to consider such plans and decide *"whether it is satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their devolved Scottish functions"*. If the SPCB is not satisfied it can recommend modifications of the plan to the Electoral Commission.

Before taking a decision on whether it is satisfied with the plan, or making recommended changes, the SPCB can ask other committees of the Scottish Parliament or those it considers appropriate to provide comments on it. The Policy Memorandum explains that the Scottish Government:

xxviii In section 46(d) reference is made to "the draft code". This is also referenced in paragraph 146 of the Explanatory Notes. This is a drafting error and should be read as "the draft plan".

xxix The Bill also provides that a revised plan may be submitted by the Commission, whether or not at the request of the SPCB, at any time during the five year period.

“ Has considered adopting the approach of the Welsh Senedd and establishing a dedicated subject Committee to consider the Commission's work. In discussion with Scottish Parliament officials and the Electoral Commission, it has been concluded that it should be possible (if the Scottish Parliament so decides) to create a structure under which substantial policy consideration of the Commission's activities in relation to Scottish Parliament and local government elections is considered by a nominated Committee of the Parliament (most likely the Standards, Procedure and Public Appointments Committee) reporting to the SPCB.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 180

After receiving the report of the SPCB the Commission must make *"whatever modifications"* it considers necessary to the plan *"in light of the SPCB's findings and recommendations"*; lay the plan before the Parliament and also, if the case arises, provide a document providing its reasons for not following the views of the SPCB in relation to any recommendations or modifications. The Policy Memorandum notes that at the UK Parliament and the Senedd, the legislature and not the Electoral Commission has the final say on the plan. The Scottish Government notes that it:

“ considers that placing the final decision with the Commission sends a strong message of support for the Commission's independence.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 181

It is, however, also acknowledged by the Scottish Government that there are merits in both approaches and that this is an issue it would *"specifically highlight for consideration during the course of the Bill."*⁵

The Financial Memorandum states that:

“ 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.”

The Scottish Government published by the Scottish Parliament , 2024⁷ Paragraph 23

60% of respondents to the Scottish Government's consultation on electoral reform were opposed to the Scottish Parliament having increased oversight of the Electoral Commission due to concerns about the Commission's independence⁵ :

“ the majority of responses "focussed on the importance of the Electoral Commission's impartiality; many stressed the need for the Electoral Commission to remain free from political influence. As such, some expressed disapproval of the proposal to give the Scottish Parliament a greater role in oversight of Electoral Commission activity.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 170

The Scottish Government has stated that it:

“ is committed to ensuring that the Electoral Commission is not subject to political interference[...]But the current arrangements mean that the principal scrutiny role in relation to the Commission's activities in relation to Scottish Parliament and local government elections is a matter for the Speaker's Committee at Westminster.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 172

Part 9: Electoral Management Board for Scotland

Part 9 of the Bill provides for changes to the constitution of the Electoral Management Board for Scotland (EMB) and the establishment of a deputy convener of the EMB. These changes were consulted on by the Scottish Government [as discussed earlier in this briefing](#).

The EMB is a statutory body with responsibility for coordinating the administration of Scottish Parliament and local government elections. It was established by the Local Electoral Administration (Scotland) Act 2011. Its functions and membership are set out in Part 1 of that Act.²⁵

The Bill proposes to change the status of the EMB from a statutory body to a body corporate. This means that the EMB would have its own legal personality, be able to enter into contracts, and would be required to prepare its own accounts. The EMB responded to the Scottish Government consultation and stated in its response:

“ [...]while what is expected of the EMB has developed, the legal structure, resourcing and formal remit remain as they were at its establishment a decade ago. These structures limit the ability of the EMB to fulfil the role increasingly expected of it and put at risk the Board’s ability effectively to support elections in future[...] The EMB has initiated work to consider what may be appropriate changes to its remit, resourcing and legal personality to allow it to respond to these expectations. These have been discussed with stakeholders including the Electoral Commission and with the Scottish Government and the Board would wish to continue these discussions as a result of this consultation.”

The Scottish Government, 2023²¹

The Policy Memorandum sets out the Scottish Government's position on why the EMB as a body corporate could benefit the coordinating of elections in Scotland. The Policy Memorandum states that the current status of the EMB:

“ [...]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.”

The Scottish Government published by the Scottish Parliament , 2024⁵

The Bill also provides for the establishment of a deputy convener of the EMB. The EMB currently comprises a convener (who must be a returning officer) and 8 other members (comprising 5 Returning or Deputy Returning Officers, and 3 Electoral Registration Officers).²⁵ The convener is appointed by Scottish Ministers with the convener appointing the remaining members of the EMB.²⁵ Each member of the EMB is appointed for a period of four years and may be reappointed more than once.²⁵

The Bill proposes that a deputy convener may be appointed from the EMB membership to

assume the powers of the convener should the office become vacant or should the officeholder be unable to perform the functions of the convener (e.g., due to incapacitation). This means that the deputy convener could issue directions under the Local Electoral Administration (Scotland) Act 2011 to Returning Officers and Electoral Registration Officers during Scottish elections. Unlike the convener and other members of the EMB, the Bill proposes that the deputy convener can only be re-appointed once.

The Financial Memorandum to the Bill recognises that the establishment of the EMB as a body corporate has the potential to increase its running costs.⁷ However, the Financial Memorandum only estimates changes to running costs for the EMB that would occur if EMB officeholders were to become paid officeholders.⁷ The Financial Memorandum states:

“ 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[...] 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[...].”

The Scottish Government published by the Scottish Parliament , 2024⁷

The Financial Memorandum indicates that the Scottish Government will write to the Scottish Parliament committee with elections in its remit (currently the Standards, Procedures, and Public Appointments Committee) if and when funding for the change in constitution and expansion of the EMB is secured.⁷

Part 10: General provisions

Section 48 'ancillary provisions' allows Scottish Ministers to make regulations in order to give the legislation full effect. This includes the ability to modify the legislation itself once enacted as well as other primary legislation and secondary legislation. Section 48(3) provides that regulations which amend the text of an Act are subject to the [affirmative procedure](#). Other regulations are subject to the [negative procedure](#).

“ The power to make a range of ancillary provision is needed to ensure that the policy intention of the Bill is fully achieved. Whilst there are no specific proposals to use this power, it provides a flexible and efficient way to make ancillary provision should the need arise[...]The Scottish Government recognises the potentially broad application of this power, which includes the power to modify primary legislation. However, it is limited to the extent that it may only be used if the Scottish Ministers consider it appropriate to do so for the purposes of, in connection with or for giving full effect to the Bill.”

The Scottish Government published by the Scottish Parliament , 2024¹³ Paragraphs 51-53

Section 49 'commencement' provides that the section 50 (short title) and section 49 will come into force on the day after Royal Assent. Ministers can bring other sections into force by making the necessary regulations.

Section 50 means that, if the Bill is passed and receives Royal Assent, the Act will be the Scottish Elections (Representation and Reform) Act 2024.

Disqualification of MSPs and local councillors appearing on the sex offender register

The Policy Memorandum includes the disqualification of MSPs and local councillors who appear on the sex offenders register. This is a matter which is not provided for in the Bill but which the Scottish Government is "actively considering ahead of Stage 2 of the Bill." ⁵

Individuals are disqualified from standing for or holding office in local government in Scotland if, within five years prior to election day or since being elected, they have been convicted (in the UK, Channel Islands or Isle of Man) of any offence or received a custodial sentence for three months or more without the option of a fine ⁵.

Individuals are disqualified from standing for the Scottish Parliament, or continuing to serve as an MSP, if convicted of an offence and sentenced to be detained for more than a year in the UK, Republic of Ireland, Channel Islands or Isle of Man.

In May 2023 the Scottish Government published a consultation paper '[Disqualification criteria for councillors](#)' which sought views on protecting the electorate from offenders who appear on the sex offender register. The consultation noted:

“councillors frequently engage with a diverse range of people within their communities, often on a one-to-one basis, we are concerned that some individuals subject to SONR [Sex Offender Notification Requirements] could potentially pose a risk to vulnerable individuals.”

The Scottish Government, 2023²⁶

The Scottish Government states in the Policy Memorandum to the Bill that:

“The impetus for the consultation was a high profile case involving a councillor who was sentenced to a community payback order upon being convicted of a sexual offence. Because they were not given a custodial sentence of 3 months or more, the statutory provisions excluding certain offenders from being local authority councillors were not engaged. It was suggested there was a potential issue arising from long term sentencing trends and the Scottish Government's continuing commitment to reduce the use of short custodial sentences and encourage wider use of community sentences.”

The Scottish Government published by the Scottish Parliament, 2024⁵ Paragraph 199

Legislation has been passed in Wales and at the UK Parliament to prevent individuals who are subject to notification requirements or orders under Part 2 of the [Sexual Offences Act 2003](#) from standing for election or holding office as councillors and/or mayors.

The Scottish Government has said that it has included the issue in the Policy

Memorandum to "*promote debate*" during stage 1 considerations.

" One specific issue on which views are sought is the question of how the list of restrictions which will attract disqualification will be maintained (e.g. If new types of restriction are created)."

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 210

The Minister for Parliamentary Business also [wrote to the Convener of the Standards, Procedures and Public Appointments Committee](#), Martin Whitfield MSP, on the issue in February 2024. The letter states:

" [...]I have been working with the Minister for Local Government Empowerment and Planning on this issue and we both consider that a disqualification provision should be created and the Scottish Elections (Representation and Reform) Bill presents an opportunity to make this change. However, there also seems to be a clear case for the same or a similar restriction to be put in place in relation to MSPs. The same central arguments - in relation to protection of vulnerable members of the public and wider confidence in elected representatives - appear to us to mean that very similar, or identical, standards should apply. [...]we would like to invite the Committee to consider including this issue in its Stage 1 consideration of the Bill. We would then undertake to consider the Committee's approach at Stage 1 and to work on appropriate Stage 2 amendments in light of any recommendations from the Committee."

Areas consulted on but not included in the Bill

There are various issues which featured in the Scottish Government consultation on electoral reform but which have not been included in the Bill. Brief consideration is given to these areas below.

Automatic adoption of recommendations by Boundaries Scotland

The Scottish Government Electoral Reform consultation consulted on proposals around the automatic adoption of Boundaries Scotland recommendations or only allowing the Parliament to reject Boundaries Scotland recommendations. [Further detail of the exact proposals and respondents' views on them](#) is set out earlier in this briefing.

No proposals in this area appear in the Bill as introduced. The Policy Memorandum to the Bill states:

“ The consultation paper noted that international best practice, including at a UK-level, is that the recommendations made by independent boundary commissions should be approved automatically (in a process often referred to as “automaticity”). The Scottish Government is sympathetic to this view, and presented automaticity as one of the potential models in the consultation, noting that the political independence of Boundaries Scotland should be preserved. However, the scale of such a change, and the knock-on effect on other aspects of how Boundaries Scotland operate and conduct reviews, means that further consideration on the best way to approach such a reform is required.”

The Scottish Government published by the Scottish Parliament , 2024⁵

The Scottish Government appears to be giving further consideration to this matter.

“ The Scottish Government is considering a range of options for future development of how Boundaries Scotland reviews are conducted and approved.”

The Scottish Government , 2023²⁷

Candidacy rights for 16 and 17 year olds

The Scottish Government had consulted on whether 16 and 17 year olds should be able to stand for election at the Scottish elections (those to the Scottish Parliament and local government in Scotland). Its position being that those who are able to vote in Scottish elections should also be able to stand as candidates. There was not broad support for this amongst respondents to the consultation.

“ As part of the consultation process, a round-table discussion with young people was held, attended by high school students, representatives of the Scottish Youth Parliament, and representatives of stakeholder groups focussed on young people. Support for the proposed extension of candidacy rights to young people was voiced by some individuals, however some of the practical concerns raised in the consultation paper were also voiced, including the need to ensure appropriate safeguarding and support was in place for young people”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 22

The Scottish Government has not, therefore, included this proposal in the Bill concluding that *“the time is not right for an extension of candidacy rights to 16 and 17 year olds”*⁵ .

Extension of franchise to asylum seekers and those detained on mental health grounds relating to criminal justice

Through its consultation on electoral reform the Scottish Government sought views on two franchise extensions (see [section on franchise](#)).

The proposals to extend the franchise to asylum seekers and those detained on mental health grounds relating to criminal justice were not favoured by respondents to the consultation.

The Scottish Government stated in its response to the analysis of consultation responses that:

“ Scotland has one of the most generous voting franchises in the world, and questions were posed on whether to extend the right to vote in Scottish Parliament and local government elections to asylum seekers, and to those detained on mental health grounds related to criminal justice. These proposals were not supported by many respondents to the consultation, with 78% against extending voting rights to asylum seekers, and 80% opposed to those detained on mental health grounds related to criminal justice. We will continue to consider these issues and work to identify suitable routes forward in future.”

The Scottish Government , 2023²⁷

The Bill does not provide for an extension of franchise rights, the Policy Memorandum states:

“ The Government accepts that there are significant challenges in extending voting rights to asylum seekers, and concerns have been raised by EROs [electoral registration officers] in relation to whether they would know when an asylum claim had been conclusively rejected so as to remove the person from the electoral register.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 214

Electoral Commission maximum fine

The Scottish Government's consultation on electoral reform sought views on whether the maximum fine the Electoral Commission is able to impose at devolved elections and referendums should be increased where people break electoral law. The maximum fine which the Electoral Commission can currently impose is £10,000 at devolved elections and £500,000 at referendums.

There is no further mention of this issue in the Bill or accompanying documents. As [stated earlier in this briefing](#), there was wide support for this proposal by respondents to the consultation.

Cumulative spend by third party campaigners at devolved elections

The Elections Act 2022 introduced lower tier registration for third party campaigners. Prior to the Act being in force, where a third party campaigner planned to spend in excess of £20,000 in England or £10,000 in Wales, Scotland or Northern Ireland on [controlled expenditure](#) during the regulated period for a UK Parliament general election, they had to register with the Electoral Commission.

The Act created a lower tier of registrants. This means that third party campaigners have to register with the Electoral Commission at the lower tier where:

“ they intend to spend in excess of £10,000 on controlled expenditure during a regulated election period across, or in any constituent parts of, the UK, but below the existing country specific thresholds for registration. For example, if a campaigner wanted to spend over £10,000, with £6,000 in Scotland and £6,000 in Wales but short of the £10,000 limit in each country it will register at the new lower tier.”

Johnston, 2021¹⁵

The Scottish Government sought views on whether third party campaigners should have to register with the Electoral Commission if, during a regulated period for a devolved election, they spent £10,000 or more across the UK but less than the individual limits in each of the nations of the UK.

“ This would impact, for example, campaign groups wishing to campaign in both Scottish Parliament and Welsh Senedd election periods taking place simultaneously. It would, for example, have meant that third party campaigners spending more than £10,000 across multiple countries within the UK (e.g. £9,000 in Scotland and £5,000 in Wales) would be obliged to register with the Electoral Commission.”

The Scottish Government published by the Scottish Parliament , 2024⁵ Paragraph 67

The Scottish Government has stated that it is not pursuing this change. The Electoral Commission has indicated in discussions with Scottish Government that there would likely be little increased transparency as a result of the measure.

Undue influence

The Bill does not make provision to [update the definition of undue influence](#) as set out in the consultation on electoral reform. It is, however, likely that the Scottish Government could update the definition by secondary legislation.

The Scottish Government stated in its response to the analysis of the electoral reform consultation that:

“ The responses to the consultation were strongly in favour of making this change, and we will fully explore bringing forward legislation to this effect before the next Scottish Parliament election.”

The Scottish Government , 2023²⁷

Absent voting

The Bill does not make provision in relation to emergency proxy votes. Although a number of issues in relation to absent voting were consulted on by the Scottish Government, the consultation document noted that it did not plan to pursue changes in most areas. This is covered in further detail [earlier in this briefing](#).

The Scottish Government has stated that:

“ On allowing emergency proxy votes for those accompanying people attending unexpected medical treatment, responses were broadly in favour of making this change. We see merit in pursuing this change, and will discuss the issue further with stakeholders. A question was also asked in the consultation on whether the changes made in the UK Elections Act 2022 to the number of voters a person may act as a proxy for should be introduced for Scottish Parliament and Local Government elections. We do not intend to take this policy forward, as no problems with the current policy have been identified in relation to Scottish Parliament or local government elections.”

The Scottish Government , 2023²⁷

It is likely that the Scottish Government could make [changes in relation to emergency proxy votes](#) by secondary legislation.

Free mailout

The Bill does not propose changes to the rules around freepost mailings for Scottish elections .

The Scottish Government's response to the electoral reform consultation analysis stated:

“ Concerns around how this measure would be funded remain, given the ongoing financial climate. The Scottish Government is engaging further with stakeholders to discuss this issue. The consultation also asked for views on changing the freepost mailing rules so that leaflets are sent one per household, rather than to each individual voter. The Scottish Government is sympathetic to this change, and the proposal was popular among consultation respondents. We will engage further with political parties and key stakeholders to identify the most appropriate steps that can be taken on this issue.”

The Scottish Government , 2023²⁷

Publication of home addresses and residential location on ballot paper

As [set out earlier in this briefing](#), the Scottish Government's consultation in electoral reform sought views on amending the way that addresses of candidates at local government elections are displayed and published. The Bill does not contain provision on the issue.

The Scottish Government has, however, indicated that:

“ These proposals were both popular with respondents to the Electoral Reform Consultation, and the Scottish Government is considering secondary legislation changes that could be put to the Parliament in 2024.”

The Scottish Government , 2023²⁷

Registration

The consultation on electoral reform by the Scottish Government sought views on how voter registration could be improved. Views were sought particularly in relation to improving voter registration levels for under-represented groups such as young people and foreign nationals.

An [earlier section of this briefing](#) highlights some of the ideas received through the consultation to improve registration levels.

The Bill is silent on the issue. The Scottish Government has stated that:

“ A wide range of responses to this question were received, and suggestions included increased public awareness campaigns and raising awareness in young people while in school. We are committed to improving registration, and will explore the legislative and non-legislative options fully. The Government is also considering the recent report by the Electoral Commission on the accuracy and completeness of the electoral registers.”

The Scottish Government , 2023²⁷

Accessibility

The Bill does not make provision on the issues relating to accessibility which the Scottish Government sought views on in its consultation on electoral reform, namely:

- changes relating to the provision of Tactile Voting Devices
- an increase the number of voters a companion can assist per election to five (from two)
- the introduction of digital poll cards when requested.

The Scottish Government stated in its response to the analysis of consultation responses:

“ A key theme in the responses to this point was to ensure there is sufficient flexibility for Returning Officers to provide appropriate support to voters with sight loss. Further consideration is being given to the legislative changes which could be made to support this group. The consultation also asked whether the number of times a companion can support voters in casting their votes should be changed and whether the provision of digital polling cards would promote improved accessibility. We will carefully consider the responses to these questions, noting that most people did not consider that a change on companions was necessary and that many respondents were keen to ensure there was no risk to the integrity of the voting process.”

Additional issues of interest

This final section of the briefing covers some areas which are linked to elections and representation which may be of interest.

Dual mandate

The Parliament's Standards, Procedures and Public Appointments Committee is currently considering the issue of dual mandate MSPs in light of [petition PE1949/D: Reviewing the rules concerning dual mandate MSPs](#) which calls on the Scottish Parliament to urge the Scottish Government to bring forward legislation to prevent MSPs from holding a dual mandate.

Dual mandate is the term used to describe MSPs who, in addition to their seat in the Scottish Parliament, also hold a seat in either the House of Commons (MPs), House of Lords (Peers) or represent a ward in their local council (councillors).

Under the [Wales Act 2014](#) the holding of dual mandates between the Senedd and the House of Commons is banned. An existing MP elected as an Senedd Member has 8 days grace to resign from the House of Commons; an existing Senedd Member elected as an MP must resign immediately from the Senedd. Those elected as an a Senedd Member and MP in close proximity have 8 days to choose a seat.

Similar provisions were made in the [Senedd and Elections \(Wales\) Act 2020](#) so that the following are disqualified from being a member of the Senedd (effective for Senedd elections held after 5 April 2021):

- members of the House of Lords
- members of the Scottish Parliament
- members of the Northern Ireland Assembly
- members of local authorities in Wales

More [details on the provisions of the Senedd and Elections \(Wales\) Act 2020](#) can be found in a recent evidence submission from the Senedd to the Public Petitions Committee on Petition PE1949/D.

The Northern Ireland (Miscellaneous Provisions) Act 2014 bans members of the Northern Ireland Assembly from also being members of the House of Commons. The Act also provides that Assembly members are not allowed to be members of Dáil Éireann (the lower house of the Irish Parliament). The Local Government Act (Northern Ireland) 2014 prohibits Councillors from being members of the Assembly, House of Commons, House of Lords or elected to any other legislature.

Further information on the work of the Standards, Procedures and Public Appointments Committee can be found on its [webpage](#).

Security of elections

In 2024, over 2 billion people in more than 50 countries are expected to vote in elections leading to this year being considered “*the year of elections*”.²⁸ Given this context, there has been broader interest in the risk of interference from external actors, particularly through digital means, in the electoral process.²⁸ This section covers cybersecurity of electoral infrastructure, protecting elected officials and candidates, and disinformation from AI-generated content.

Secure and resilient electoral infrastructure

The [National Cyber Security Centre](#) (part of GCHQ) is the UK’s technical authority on cyber security. In its election guidance for local authorities, the National Cyber Security Centre notes that the UK electoral systems does not lend itself to direct manipulation given that voting and vote counting are manual processes.²⁹ This is also the case for Scottish Parliament elections. Scottish local elections mark a slight departure from this with manual voting and electronic vote counting.

The National Cyber Security Centre election guidance for local authorities sets out that certain electoral operations may be at risk of interference by external actors through [denial of service \(DoS\) cyber attacks](#).²⁹ Such attacks usually involve key websites or digital systems being maliciously inundated with traffic or hacked to make them unavailable for proper use or to compromise the data held on the digital systems. For example, government websites hosting applications to register to vote may be subject to a denial of service attack before the deadline to register to vote in an election.²⁹

Cyber attacks to UK electoral infrastructure that do not affect service provision are also a key risk. For example, the Electoral Commission announced in August 2023 that it was the subject of a complex cyber attack.³⁰ The Chief Executive Officer of the Electoral Commission, Shaun McNally, said in a statement on the cyber attack:

“ The UK’s democratic process is significantly dispersed and key aspects of it remain based on paper documentation and counting. This means it would be very hard to use a cyber-attack to influence the process. Nevertheless, the successful attack on the Electoral Commission highlights that organisations involved in elections remain a target, and need to remain vigilant to the risks to processes around our elections. We regret that sufficient protections were not in place to prevent this cyber-attack. Since identifying it we have taken significant steps, with the support of specialists, to improve the security, resilience, and reliability of our IT systems. As part of the attack, hostile actors were able to access reference copies of the electoral registers, held by the Commission for research purposes and to enable permissibility checks on political donations[...] The Commission’s email system was also accessible during the attack. ”

The Electoral Commission, 2023³⁰

The UK Government set up the Defending Democracy Taskforce in 2022 to help protect and ensure the resilience of electoral infrastructure.³¹ The Taskforce is responsible for coordinating electoral security and election preparedness.³¹ In 2023, the Taskforce established the Joint Election Security Preparedness unit (JESP) which convenes UK Government departments, the devolved governments, and security resources to support security of elections and resilience of electoral operations.³² There is also an Inter-

Ministerial Group for Elections and Registration which convenes Ministers from the UK and devolved governments.³³ At its meeting on 23 January 2024, Ministers agreed to discuss security of elections at a future meeting.³³

Protecting elected officials and candidates

In its 2023 Annual Review, the National Cyber Security Centre identified the cybersecurity of high risk elected officials and candidates as a key challenge during an election.³⁴ The Annual Review states:

“ One of the most notable trends we have seen over the past year is a rise in individuals’ personal accounts being targeted. This is not a mass campaign against the public but a persistent effort to target people whom attackers consider might hold information of interest. [...]In particular, we have seen personal accounts targeted instead of corporate ones, as security is less likely to be managed in depth by a dedicated team.”

The National Cyber Security Centre, 2023³⁴

The National Cyber Security Centre defines "high risk individuals" as individuals whose work or public status means they have access to or influence over sensitive information that could be of interest to nation state actors. High-risk individuals can currently opt-in to a scheme with the National Cyber Security Centre to receive alerts and advice if malicious activity is identified on their personal devices.³⁴ The National Cyber Security Centre also publish and update guidance on cyber threats for political parties, devolved governments, local authorities, and high risk individuals.³⁵ The guidance, last reviewed on 7 December 2023 (at the time of publication of this briefing), notes that further guidance for high risk individuals is expected in 2024.³⁵

In a written statement to the UK Parliament on 14 September 2023, Prime Minister Rishi Sunak MP indicated that the UK Government Defending Democracy Taskforce (the Taskforce) is preparing a reinforced security assistance offer for elected officials on this matter.³² The statement reads:

“ The Taskforce is working with Parliament and National Cyber Security Centre to develop an enhanced cybersecurity offer for elected officials, including MPs, and their teams to help better protect them from the cyber-attacks that threaten them personally and our national security.”

UK Parliament, 2023³²

Disinformation from AI-generated content

The proliferation of AI-generated content on social media has generated concern about the risks to the integrity of public discourse during an election campaign.³⁴ Of particular concern during election campaigns is disinformation at scale through the creation of "deepfakes" by malicious actors.^{34 36}

- Disinformation is the deliberate creation and dissemination of false information that is intended to mislead people for financial, personal, or political gain.³⁷
- Deepfakes are artificial images, videos, or audio recordings that are created to depict the likeness of an individual.³⁴

Craig Westwood, Director of Communications, Policy, and Research at the Electoral Commission (when speaking to the Scottish Parliament Standards, Procedures and Public Appointments Committee on 9 November 2023) gave an overview of how the the regulator is preparing for potential disinformation from AI-generated content during an election campaign.³⁸ Craig Westwood stated:

“What we are doing is ensuring that we are prepared with the right processes to support an immediate reaction if something was put out that was of significant concern. The main thing that is of concern is a deepfake—either video or audio—of a senior politician saying something controversial immediately before a poll. In that situation, we need to ensure that we, with other regulators—we have very strong relationships with the other regulators that have linked functions across elections—can act either independently or collectively to do what we can to ensure that the public is aware of what is happening. Of course, any campaigning material that is a deepfake will now have to have an imprint on it. That is a really important step, because, even if somebody cannot necessarily believe or understand the message that they see in campaign material, they will at least know who posted it. [...] We have been cognisant in all our discussions around AI that the target of the work, from our perspective, is unlikely to be registered parties and key candidates; it is much more likely to be people who are looking to disrupt, including internationally. The issue with the imprint is that, because it is an absolute requirement, we can talk to social media companies about it—for example, if something does not carry an imprint, whether they take something down does not involve a subjective judgment. It is a factual thing; either it has an imprint or it does not, so it is a clear statement of whether something falls within the legal requirements.”

The Scottish Parliament Official Report, 2023³⁸

Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill

Graham Simpson MSP has [secured the right to introduce](#) a Member's Bill on removal from office and recall of Members of the Scottish Parliament.

Recall is a process through which an electorate can trigger a special election to remove an elected representative from office before the end of their term, usually through a petition. Around 20 countries worldwide have some form of recall mechanism which can be applied either to individuals or to particular offices³⁹.

Since 2016, there has been a [mechanism in place to recall MPs from the House of Commons](#) under the [Recall of MPs Act 2015](#). The conditions required to initiate a recall petition against an MP are related to criminal sentences, suspension from the House of

Commons, and convictions under the Parliamentary Standards Act 2009.

There is no recall mechanism in the Scottish Parliament at present. There is existing provision for the automatic removal from office of Councillors in Scotland. Councillors may be removed from office if they fail to attend meetings of the council for six months consecutively without the approval of the council. In such circumstances, a vacancy is created which would usually trigger a by-election.

Removal from office does not necessarily constitute disqualification (a disqualified person may not be able to stand for election or hold elected office).

The draft proposal for Graham Simpson MSP's Member's Bill was lodged on 19 January 2022 and the consultation closed on 13 April 2022.

“ This is a proposal for a Bill to introduce new measures on removing an MSP from office, including additional grounds for removal and new processes for removal, such as recall. Proposed new grounds for removal include where an MSP does not participate in parliamentary proceedings for a given period without valid reason or receives a prison sentence lower than the current threshold for automatic removal.”

The Scottish Parliament , 2022⁴⁰

Mr Simpson's consultation on the Bill stated that the Bill had three main elements:

“ The first element of my proposal is based on section 35 of the Local Government (Scotland) Act 1973. This would enable an MSP to be removed from office automatically due to a lack of participation in proceedings at Parliament, unless there was a valid reason provided, such as maternity leave or ill health[...] The second element of my proposal is to strengthen the current disqualification provisions where an MSP is sentenced to prison. At present, MSPs are automatically removed from office when they are sentenced to prison for more than one year[...] The third element of my proposal is to consider establishing a system of recall for MSPs.”

The Scottish Parliament , 2022⁴¹

The final proposal for the Member's Bill was lodged on 22 September 2022. The [consultation summary](#) indicates that 128 responses to the consultation were received and that 92% of respondents supported the proposal.

Graham Simpson MSP offered commentary on responses and next steps in the consultation summary. In particular, the challenge of a recall system in the Scottish Parliament which was workable and fair to constituency and regional MSPs was highlighted:

“ I suggested that the recall of constituency MSPs could follow the same model as used at Westminster under the Recall of MPs Act 2015. However, the difficulty I faced is that we have two types of MSPs, constituency members elected first-past-the-post and regional members like myself who are elected through a party list. Any recall system would have to be fair to both. If a constituency member faced a recall vote they could stand in any by election. However, if a regional member is removed, they are replaced by the next person on the party list and it is not obvious how they could fight a by election since there is no mechanism for one with regional members. This posed a real test to respondents to the consultation. There was widespread support (81 per cent fully supportive) among respondents for the introduction of a recall element but, unsurprisingly, neither members of the public, academics or politicians could agree on a definitive solution to this problem[...] I propose, were a regional member to step out of line and a recall process triggered the electorate would first be asked if there should be a recall – that’s the same as for constituency members under the Westminster system. If the answer is yes, then I believe there should then be a vote as to whether the member should be allowed to continue. The member would have the opportunity to fight to stay on – effectively giving them the same rights as constituency member to put their case to the voters.”

24 MSPs from the Conservative and Unionist Party and the Labour Party supported Graham Simpson MSP's proposed Bill. As such, Mr Simpson has the right to introduce the Member's Bill.

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