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Standards, Procedures and Public Appointments Committee

Comataidh Inbhean, Dòighean-obrach is Cur-an-dreuchd Poblach

Stage 1 Report on the Scottish Elections (Reform) Bill



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Contents

The Committee's conclusions and recommendations	1
Introduction	6
The proposals in the Bill	7
Term Lengths	7
Avoiding electoral clashes	7
Other views	8
Scheduling of boundary reviews	8
Scottish Government position	9
Committee view on term lengths	10
Electoral wards and the number of councillors	10
Views on electoral wards	11
Scottish Government view	12
Committee view on electoral wards and the number of councillors	12
Voting more than once – local government elections	13
Enforcement and registering on more than one register	13
Committee view on voting more than once	14
Entitlement to register as an elector before attaining voting age	15
Committee view on registering 14 year olds to vote	16
Postponement of Scottish Parliament general elections	17
Electronic Voting	17
Scottish Government position on electronic voting	19
Committee view on electronic voting	19
The Electoral Commission	20
Maximum fine	21
Powers in relation to information	21
Committee view on the Electoral Commission	22
Subjects consulted on, but not included in the Bill	23
The list order effect	23
Views	23
Scottish Government position	25
View of the Committee	25
Addresses of candidates	26
Remuneration for returning officers	27
Accessibility issues	27

Other electoral reform issues	29
Review of multi-member wards	29
View of the Committee	30
Delegated powers and accompanying documents	31
Delegated powers	31
Policy Memorandum	31
Equality Impact Assessment	31
Financial memorandum	31
Scottish Parliamentary Corporate Body	31
Funding of the Electoral Management Board	32
The general principles of the Bill	33
Annex A: Extract from minutes	34
Annex B: Evidence	36
Oral evidence	36
Written evidence	36

Standards, Procedures and Public Appointments Committee

The remit of the Standards, Procedures and Public Appointments Committee is to consider and report on—

- (a) the practice and procedures of the Parliament in relation to its business;
- (ab) a proposal for a Bill relating to the arrangements for financial assistance to non-Government political parties represented in the Parliament;
- (b) whether a member's conduct is in accordance with these Rules and any Code of Conduct for members, matters relating to members interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties;
- (c) the adoption, amendment and application of any Code of Conduct for members; and
- (d) matters relating to public appointments in Scotland;
- (e) matters relating to the regulation of lobbying; and
- (f) matters relating to Scottish general elections falling within the responsibility of the Cabinet Secretary for Government Business and Constitutional Relations.



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The Committee's conclusions and recommendations

Committee view on term lengths

The Committee notes the views it has received on the relative merits of four and five year terms for Scottish Parliament and local government elections. The Committee is satisfied that the balance of evidence supports a move to five year terms for both these elections. From a practical point, this schedule will make clashes between elections less frequent. Both local government and the Scottish Parliament already have had experience of five year terms. There is also an argument that a five year term will give more time for policy development and the delivery of an administration's programme. The Committee therefore supports the proposed term length of five years as set out in the Bill. The Committee also recommends that the Scottish Government amends the Bill to provide for a review period of 15 years, as proposed by the Local Government Boundary Commission for Scotland.

Committee view on electoral wards and the number of councillors

The Committee supports the proposal in the Bill to allow two and five member wards. The proposal was generally welcomed by witnesses and those who provided evidence. It will allow the Local Government Boundary Commission for Scotland greater flexibility to take account of local circumstances when proposing ward boundaries. The Committee anticipates that this will be particularly useful in more remote or rural areas.

However, the Committee has heard some concerns expressed about the impact of two member wards on the proportionality between votes cast and wards won. The Committee is disappointed that the Scottish Government does not seem to have prioritised research into this point before bringing forward the proposals in the Bill. In light of the concerns about proportionality of two member wards, the Committee believes that the LGBCS should only recommend two member wards in very exceptional circumstances such as remoter rural areas. The Committee notes that there is already provision in the Islands (Scotland) Act 2018 to allow for one or two member wards in council areas that include inhabited islands.

The Committee discusses the question of whether there should be a wider review of the multi-member ward system later in this report.

Committee view on voting more than once

The Committee supports the proposal in the Bill to make it an offence to vote more than once at Scottish local government elections held on the same day. This brings local government elections into line with UK and Scottish Parliament elections.

The Committee did hear some concerns about how this particular provision could be enforced. It is not clear how a person who committed the offence of voting twice would be detected, given the challenges of cross-referring between electoral registers. One solution might be to establish a single register, however it is likely that this would be a complex exercise and fairly resource intensive.

The Committee does not think it is likely that many people would attempt to vote twice at future local government elections. Nevertheless, in responding to this report, the Committee asks the Scottish Government to provide an explanation of how these provisions in the Bill will be enforced.

The Committee also considered the question of whether a person should be restricted to appearing on only one electoral register. The Committee has not taken a position on this subject, but instead notes the arguments for and against such a proposal. On one hand, this would reduce the likelihood that a person would be able to vote twice. If a person (for example a student) happened to away from the constituency in which they were registered, they could apply for a postal vote. On the other hand, there is an argument that appearing on more than one register would make it easier for individuals who had links to more than one constituency to vote.

Committee view on registering 14 year olds to vote

The Committee welcomes the proposal to allow a person who is 14 years of age or over to register as an ‘attainer’. This is a sensible administrative change which was widely supported. The Committee notes the importance of ensuring that young people are informed about the electoral system ahead of voting. The Committee heard that many young people are well informed about politics, but that some specific information about the practicalities of voting would be useful. The Committee asks the Minister to confirm how this type of information will be targeted at younger voters.

Committee view on the postponement of Scottish Parliament general elections

The Committee supports the proposal in the Bill that the Presiding Officer should have new powers to postpone Scottish Parliament elections in certain circumstances. It was generally welcomed by those individuals who expressed a view. However the Committee asks the Scottish Government to address the point raised by one witness that the Bill should specify the sorts of circumstances in which a postponement would be appropriate.

Committee view on electronic voting

The Committee notes that the provisions in the Bill take a light-touch approach to the question of electronic voting. They are enabling in nature. This is probably the most appropriate approach. Primary legislation is not the place to set out the details of how electronic voting should take place.

Having said that, the Committee does think that the enabling nature of the Bill has created a fair amount of confusion as to what the Scottish Government was intending in relation to electronic voting. It is helpful that the Minister has clarified the position, but it would have been better if this had been clearer from the start.

Nonetheless the Committee welcomes the approach being proposed by the Scottish Government. The Committee considers that electronic voting has the potential to improve the efficiency and accessibility of the electoral system in Scotland. However, there is a need to proceed with caution in relation to relatively untested technology. The proposal to undertake pilots is welcome, as is the focus on smaller scale improvements to enhance the accessibility of the voting process. The Committee believes it is sensible that the Scottish Government has ruled out the

prospect of internet voting or any proposals for the electronic transmission of voting information.

The Committee did not get the impression that any significant resources were being devoted to electronic voting or that a pilot of new measures to improve accessibility was imminent. The Committee suggests the Scottish Government should accelerate its engagement with groups representing disabled people with a view to understanding whether electronic voting and postal ballots could improve access to the electoral system. The Committee recommends that the Scottish Government should publish a timetable for this work.

The Committee reiterates the point that if the desire is to increase voter turnout and participation, then the Committee is of the view that further consideration should be given to how postal ballots could increase turnout.

Committee view on the Electoral Commission

The provisions in the Bill affecting the Electoral Commission have been generally welcomed. The Electoral Commission has, however, raised several points on which it would like clarification from the Scottish Government and these are highlighted in this report and in the Electoral Commission's submission to the Committee. The Committee invites the Scottish Government to respond to these points.

The Committee wishes to comment on two other specific points. First, the Committee supports the case for increasing the maximum fine that the Electoral Commission can impose for each breach of the election spending rules. The Committee awaits further information from the Scottish Government on its plans, but notes that a maximum fine of £500,000 would provide consistency with the approach in the Referendums (Scotland) Bill.

Second the Commission has requested additional powers in relation to requiring and sharing information, and has raised this as an issue with this Committee. The response from the Scottish Government Bill Team official suggested that these powers might be outwith the responsibilities of the Scottish Parliament. The Committee asks for further information from the Scottish Government on this point. If the powers sought by the Commission cannot be provided via Scottish Parliament legislation, then it is important that the Commission is made aware of this position.

Committee view on the list order effect

The Committee is clear that there is evidence that a list order effect exists, particularly in relation to STV elections. The Committee believes that this situation is potentially unfair to certain candidates in elections, who may be unfairly penalised simply on the basis that their surname is further down the alphabet.

The Committee notes, however, that there is no consensus on how the list order effect should be addressed. As many witnesses have said, there is the risk of unintended consequences if a new system is introduced without proper research as to its impact. There is no point simply replacing one set of problems with another. Any changes to the ballot paper should be piloted first and these pilots should be properly assessed to determine the impact of ballot design on vote behaviour, accessibility, and fairness to candidates.

The Committee considers that the previous research commissioned by the Scottish Government on the list order effect was fairly narrow in scope. The Committee recommends that the Scottish Government should ask the Electoral Commission to take a wider look at the alternatives to the current alphabetical ordering system, in order to set out the pros and cons of different approaches. The Scottish Government could then consider whether there would be merit in piloting any specific alternatives and report back to the Parliament on the proposed approach.

Committee view on the requirement for candidates' addresses to appear on ballot papers at local government elections

The Committee welcomes this commitment from the Minister to remedy this situation as soon as is feasible. The Committee is grateful to those individuals who brought this issue of concern to its attention.

Committee view on remuneration for returning officers

The Committee has not examined the issue of payments to returning officers in detail as part of its Bill scrutiny, as these payments are not a matter for primary legislation. However, the Committee notes the view of the Local Government and Communities Committee that the payment regime is in need of reform. On that basis, the Committee welcomes the indication from the Minister that he plans to take action on this subject.

Committee view on accessibility issues

The Committee considers it is very important that any barriers which might exist to registering to vote should be removed. The Equality and Human Rights Commission has raised some specific examples of barriers which some individuals have faced. The Committee asks the Scottish Government to address these points in its response to this report with a view to resolving the concerns which have been highlighted.

Committee view on other electoral reform issues

The Committee has highlighted several suggestions for the improvements to the electoral system which are not featured in the Bill. The Committee notes that there will continue to be scope to reform the electoral system in the future including the important issue of addressing under-registration.

The Committee notes that the Local Government and Communities Committee and others have argued that there should be a wide-ranging review of the multi-member system for local government elections. The Minister appeared to be open minded to such a proposal, but that this would be something for the next session of the Scottish Parliament to consider. The Committee would be supportive of such a review taking place. This would allow an assessment to be made of how well the STV electoral system is working and whether there is any scope for improvements.

The general principles of the Bill

At Stage 1, the lead committee's role is to consider and report to the Parliament on the general principles of the Bill – that is, on the principal purposes of the Bill, rather than the fine detail.

The Committee's view is that the principal purpose of the Scottish Elections (Reform) Bill is to make a range of changes to electoral law covering Scottish Parliament and local government elections in Scotland. As this report sets out, these proposed changes in the Bill have been broadly welcomed. On that basis, the Committee is content to recommend that the general principles of the Bill be agreed to.

Introduction

1. The Scottish Government is proposing changes to the laws on elections in Scotland.
2. The proposals are set out in the Scottish Elections (Reform) Bill. The Bill was published on 3 September 2019. ¹ The Scottish Parliament Information Centre (SPICe) has published a briefing on the Bill. ²
3. The Standards, Procedures and Public Appointments Committee is the lead committee which has been examining the Bill at Stage 1 of the legislative process. Stage 1 is for the Parliament to consider the general principles of the Bill and decide whether or not to agree to them.
4. This report sets out the Committee's views on the general principles of the Scottish Elections (Reform) Bill. The first part of the report discusses some of the specific proposals in the Bill. The Bill proposes a number of changes to electoral practice and administration in Scotland, which all fall within the general theme of electoral reform. A number of the proposed changes are somewhat administrative in nature. Others, such as changes to the length of parliamentary and local government terms, are arguably more significant.
5. The report then discusses some topics which were included in the Scottish Government's consultation on electoral reform, but were not included in the Bill. Lastly the report touches on the question of wider electoral reforms.
6. The Committee thanks those individuals who took the time to give evidence to the Committee on the Bill in person and who provided written submissions. Electoral administration is a fairly specialist area. The Committee is grateful to have been guided by the views of those with knowledge of how it operates and those who have suggestions on how it can be improved.
7. The Local Government and Communities (LGC) Committee also undertook work on the Bill, focusing primarily on the provisions affecting local government. The LGC Committee wrote to this Committee with its views on the Bill and this letter can be found online.
8. At points in this report, the Committee asks for the views of the Scottish Government on certain issues. The Committee requests a response on these points from the Scottish Government in advance of the Stage 1 debate. The Committee also invites the Scottish Government to respond to the letter issued by the Local Government and Communities Committee.
9. Finally the Committee notes the conclusion of the Gould Report which investigated the issues that arose in the 2007 Scottish Parliament and local government elections. This report concluded that electoral legislation should not be applied to any election held within six months of the new provision coming into force. The Committee welcomes the comments of the Minister for Parliamentary Business and Veterans that the Scottish Government intends to follow this principle. ³

The proposals in the Bill

Term Lengths

10. The Bill proposes changing term lengths (the normal length of time between elections) to five years for both the Scottish Parliament and for local government in Scotland. The current term length is four years. However, in recent times the term length for both the Scottish Parliament and local government has been extended on a non-permanent basis to five years in order to avoid clashes with other elections.
11. The Policy Memorandum noted that five year terms “is not the settled preference of the Scottish Ministers, but has been included to promote debate on this issue”. Nonetheless the default position in the Bill is five years. Parliament would need to amend the Bill to retain four years.
12. The Committee heard various views on this proposal in the Bill.

Avoiding electoral clashes

13. One common theme was the need to avoid electoral clashes when considering term lengths.
14. The Policy Memorandum noted that a five year term would avoid a clash between the 2022 Scottish local government election and the UK general election. However the subsequent announcement of a UK general election on 12 December 2019 has meant this particular clash is no longer an issue.
15. Professor Toby James of the University of East Anglia pointed out that the Fixed-Term Parliament Act 2011 was not successful in giving predictable timing for Westminster elections. He felt there is a risk that there will always be a clash.⁴
16. A number of witnesses noted that electoral best practice is to avoid large scale electoral events from falling on the same day. This was a conclusion of the Gould Report. The Electoral Management Board written submission summed up the position as follows—

” “While holding elections on the same day may in some areas increase overall turnout, Gould commented that this arrangement can in some areas of Scotland “dilute” the importance of the local elections and of local issues, with debate dominated by national questions. There is also an increased risk of voter confusion and the potential for higher volumes of rejected ballots given that different voting systems are used in these different elections.”⁵
17. East Renfrewshire Council made the point that extending the term of both local government and Scottish Parliament elections would avoid these two elections clashing in the future.
18. Dr Alistair Clark of Newcastle University suggested that if four year terms were to be retained, one alternative might be to consider moving the dates of elections from May to September.

19. Professor Toby James noted that there were advantages and disadvantages to holding elections simultaneously. If elections are held at the same time with Westminster elections, then turnout for Scottish local and parliamentary elections is likely to be higher. On the other hand, he commented that “there are good reasons to avoid the clash of elections from the perspective of the integrity of the election”.⁶

Other views

20. Responses to the Scottish Government consultation in advance of the introduction of the Bill found that 44% favoured four year terms and 50% favoured five year terms.
21. Malcolm Burr, giving evidence in his role with SOLACE and the Electoral Management Board, was asked whether it made a difference whether the term length was four or five years. He responded—

” “Not really. The point is to have a schedule that is known in advance. Whether four-year or five-year terms are preferred is a policy decision.”⁷
22. Dr Alistair Clark of Newcastle University noted that one benefit of a five year term versus four years would be greater stability in policy making.⁸
23. On the other hand, the Committee received some submissions from individuals arguing that the current four year terms should be retained in order that elected members could be held to account more frequently.
24. Written evidence from Comhairle Nan Eilean Siar referred to the “need to strike a balance between facilitating longer term policy planning and engagement with electorates, favouring longer terms, against the provision of greater opportunities for electorates to hold governments to account, favouring shorter terms”.
25. This need for a balanced approach was a common theme in the views we heard. This was the view of Willie Sullivan of the Electoral Reform Society.⁹ The Local Government and Communities Committee commented—

” “No clear preferences were expressed in our own evidence-taking. As was noted, there is a trade-off between allowing local administrations time to deliver their programme and ensuring that people feel democratically invested in their communities. For what it is worth, there is also a minor benefit to the public purse in having less frequent elections.”¹⁰
26. The Local Government and Communities Committee concluded that it supported the proposal in the Bill for five year electoral cycles in local government elections.

Scheduling of boundary reviews

27. The Local Government Boundary Commission for Scotland (LGBCS) told us that the Commission is neutral on the question of four or five year terms. However, it made two points.

28. First, a five year term would allow the Commission more time to carry out its reviews. The Chair of the Commission told us this “might make our work a little easier but we are not saying that it is a paramount consideration”.¹¹
29. Second, the Commission has identified issues around the timings of its reviews of electoral arrangements which it felt should be addressed. These issues would arise regardless of whether five year terms were adopted, or four year terms retained. The Commission explained in its written submission—
- ” “Relatively small changes to the Bill would allow retention of a time limit between reviews but also facilitate a move towards a phased programme of reviews which would have the advantage of fewer areas being reviewed at any one time. These changes would realign the review schedule with the electoral cycle which is out of kilter because of the current 5 year electoral term.”
30. In evidence to the Committee, Ailsa Henderson of the LGBCS commented—
- ” “An adjustment to 15 years for reviews, if five-year electoral terms are used, would be helpful. That would mean that the boundaries were designed for three electoral terms, which would be useful, because it would minimise disruption.”¹²
31. According to the LGBCS, this change would allow the Commission to begin to stagger its programme of reviews so they are undertaken in smaller groups rather than all 32 at once.

Scottish Government position

32. The Minister for Parliamentary Business and Veterans gave evidence on the Bill on 5 December 2019. He was asked if he had a preference between four and five year terms. He responded—
- ” “The more I reflect on that, the more I come to the view that five-year terms ought to be the direction of travel.”¹³
33. The Minister felt that five year terms are “a tidier approach”.¹⁴ He noted that five year terms have become the norm in the Scottish Parliament over the past two parliamentary sessions. Wales and Northern Ireland have moved to five year terms, as have other countries including France and Ireland.
34. The Minister noted that four year terms would result in two potential electoral clashes over the next 15 years or so, which would not be desirable. He did not want council elections to be overshadowed by national elections.
35. The Minister also noted there are cost-saving implications with five year terms. He estimated that, for both sets of elections, £37 million would be saved over the next 20 years.
36. Finally the Minister commented on the suggestion from the LGBCS that its review period should be 15 years in the event of the introduction of five year terms. He told the Committee—

” “I have reflected on the commission's views on that and am sympathetic to them. I will write to the committee about that in due course. The commission has made a reasonable case.” ¹⁵

37. In a letter of 20 December 2019, the Minister confirmed that he would write to the LGBCS shortly to confirm the Scottish Government's next steps and provide an update to the Committee as soon as possible. ¹⁶

Committee view on term lengths

38. **The Committee notes the views it has received on the relative merits of four and five year terms for Scottish Parliament and local government elections. The Committee is satisfied that the balance of evidence supports a move to five year terms for both these elections. From a practical point, this schedule will make clashes between elections less frequent. Both local government and the Scottish Parliament already have had experience of five year terms. There is also an argument that a five year term will give more time for policy development and the delivery of an administration's programme. The Committee therefore supports the proposed term length of five years as set out in the Bill. The Committee also recommends that the Scottish Government amends the Bill to provide for a review period of 15 years, as proposed by the Local Government Boundary Commission for Scotland.**

Electoral wards and the number of councillors

39. The Local Governance (Scotland) Act 2004 provides that three or four councillors must be returned for each local government electoral ward in Scotland. The LGBCS recommends how many councillors should be returned for each ward. There is a requirement that the ratio of electors to councillors in each ward should be “as nearly as may be, the same”. ¹⁷
40. The Islands (Scotland) Act 2018 allows the LGBCS to recommend the creation of one or two member wards in council areas that include inhabited islands. The purpose of this is to allow the ‘island voice’ to be better represented. Three or four member wards can mean that populated islands may be placed in an electoral ward which also contains a significant proportion, and often a majority, of mainland population.
41. The Bill provides for the LGBCS to have the flexibility to set the size of all council wards by allowing two and five member wards in addition to three and four member wards. One member wards will continue to only be allowed for those areas which fall under the Islands (Scotland) Act 2018.
42. The Policy Memorandum explained the Scottish Government's thinking—

- ” “Permitting wards with two or five members allows special local circumstances and geographical considerations to be taken into account. Local circumstances, historical factors and geographical considerations, such as coastal or mountainous terrain could be taken into account by allowing flexibility for the LGBCS to look at each case on its merits.” ¹⁸

Views on electoral wards

43. Respondents to the Scottish Government's consultation favoured allowing the LGBCS this flexibility, with 72% of respondents agreeing with the proposal.
44. The proposal was generally welcomed by those who gave evidence. However a common theme was the potential trade-off between the recognition of community boundaries and the proportionality of representation. East Renfrewshire Council's view was typical—
- ” “...any moves which enable the Commission to more accurately reflect the representative requirements in a particular area are to be welcomed, although the Council notes that allowing wards with fewer councillors sees a further dilution of Single Transferable Vote principles.” ¹⁹
45. The LGBCS supported the option for two or five member wards, although it did refer to the consequences for proportionality of two member wards. ²⁰ Its written submission noted that in areas of sparse population, two member wards might allow geographically smaller wards to be created, thereby facilitating more effective representation. Currently the average ward size in the Highland Council area is 1,261 square km, compared to 161 square km in the rest of Scotland.
46. Dr Alistair Clark noted that proportionality between votes cast and seats won was an explicit objective of the Local Governance (Scotland) Act 2004 which introduced the single transferable vote (STV) voting system. He argued that, if widely adopted, two member wards “would undermine a key aim of the STV electoral system”. ²¹ He felt that two member wards should be subject to ministerial approval and should be used sparingly with a presumption against such ward boundaries except in absolutely compelling cases.
47. Willie Sullivan of the Electoral Reform Society commented on an alternative approach—
- ” “We should be looking at having more local councillors and more local authorities. Having five members for what would be quite a big ward would not be such a problem, because we could have five members in quite a small ward, where they could know virtually everybody.” ²²
48. On a practical level, the Association of Electoral Administrators noted that five member wards might increase the number of candidates which could cause some practical issues with the production of ballot papers. ²³ The Electoral Management Board did not think, however, that the proposed changes would introduce any particular administrative challenges. ²⁴

49. The Electoral Commission thought it important that it should be able to deliver a public awareness campaign if there were any changes.²⁵
50. The Local Government and Communities Committee welcomed the Bill's proposals on ward sizes "...as a step in the right direction, as did our witnesses".²⁶

Scottish Government view

51. The Committee asked the Minister about paragraph 46 of the Financial Memorandum. It states—
 - ” “It is not envisaged that the total number of councillors for a local government area would change as a result of a Boundaries Scotland review.”
52. The Committee asked the Minister if this meant the LGBCS would be able to recommend different ward configurations, but only if this did not increase overall councillor numbers. A Scottish Government Bill Team official indicated this was not the case. She explained that the last boundary review worked on the assumption that there would not be “vast changes” in the number of councillors. However there was no absolute ban on increasing the number of councillors.²⁷
53. The Committee also asked about the Bill proposals on ward configurations and the proportionality of wards won to votes cast, particularly in two person wards. A Scottish Government Bill Team official commented—
 - ” “We have not looked at the proportionality issue. Obviously, it is relevant, but it was not part of the consultation and it has not been specifically looked at. We did not look at quite a lot of aspects of the boundary commission legislation. Topics were picked, and that was not one of them.”²⁸
54. The Minister told the Committee he could write with more detail on this point, however this information has not yet been received.

Committee view on electoral wards and the number of councillors

55. **The Committee supports the proposal in the Bill to allow two and five member wards. The proposal was generally welcomed by witnesses and those who provided evidence. It will allow the Local Government Boundary Commission for Scotland greater flexibility to take account of local circumstances when proposing ward boundaries. The Committee anticipates that this will be particularly useful in more remote or rural areas.**
56. **However, the Committee has heard some concerns expressed about the impact of two member wards on the proportionality between votes cast and wards won. The Committee is disappointed that the Scottish Government does not seem to have prioritised research into this point before bringing forward the proposals in the Bill. In light of the concerns about proportionality of two member wards, the Committee believes that the LGBCS**

should only recommend two member wards in very exceptional circumstances such as remoter rural areas. The Committee notes that there is already provision in the Islands (Scotland) Act 2018 to allow for one or two member wards in council areas that include inhabited islands.

57. **The Committee discusses the question of whether there should be a wider review of the multi-member ward system later in this report.**

Voting more than once – local government elections

58. At UK Parliament elections and Scottish Parliament elections it is already an offence to vote more than once. At local government elections it is, however, possible to cast more than one vote so long as the vote is not in the same local authority area.
59. Section 5 of the Bill seeks to restrict electors to voting in only one local authority area in Scotland at local government elections held on the same day. The Bill achieves this by making it an offence to vote more than once at Scottish local government elections, as is currently the case for UK and Scottish parliamentary elections.
60. The Bill does not propose to change the existing situation where an individual can be registered to vote in more than one local authority area. The main determinant of residency is where an individual's 'main business of life' is conducted. The Policy Memorandum describes a person being on more than one register as “relatively rare” but acknowledges that it can occur when a person divides their time between local authority areas. This might occur, for example, when a worker works away from home during the week.
61. In addition, the proposals in the Bill would mean that someone could still vote in one area at a scheduled election and then in another area at a by-election held on a different day.
62. The proposal in the Bill about not voting more than once was generally welcomed as a sensible reform, however some questions were raised about how it would work in practice.

Enforcement and registering on more than one register

63. One issue was about how a new law would be enforced.
64. SOLACE and others made the point that double voting would only become apparent after an election through the examination of the marked register. This would be complex and might risk breaching the secrecy of the ballot.
65. The Electoral Commission noted that at the moment the electoral register for an area is only held by the Electoral Registration Officer (ERO) for that area, and there is no mechanism for EROs to compare entries across all the registers.²⁹

66. The Local Government and Communities Committee noted that it was not clear how a Returning Officer would become aware that a person had cast two or more votes in an election, if that person was legitimately registered in those places.
67. SOLACE commented that this situation could be circumvented by removing the ability to be registered in more than one place. In evidence, Malcolm Burr from SOLACE and the Electoral Management Board indicated that this was ultimately a policy choice to be made. At present, “legally and in principle, the contests are separate, and a person can legitimately be on two registers”.³⁰
68. The Local Government and Communities Committee concluded in its letter on the Bill—
- ” “We consider that there would be merit in exploring further issues around both illegal multiple voting (and how it would be caught) and multiple registration, as the Bill progresses.”³¹
69. Professor Toby James commented—
- ” “It is difficult to argue against changing the law so that people cannot vote twice. It is probably a given that that should be amended. The question then is whether anyone who has done so can be easily identified. We have multiple electoral registers, so that is difficult.”³²
70. The question of whether there should be a consolidation of electoral registers was mentioned by Bob Posner of the Electoral Commission—
- ” “One of the keys to accessibility is modernising and joining up the UK’s electoral registers. Achieving that would open up options for accessibility.”³³
71. The Local Government and Communities Committee considered any reform to prevent multiple registration should not disenfranchise people such as students who find themselves in the ‘wrong’ place when an election is called.
72. Pete Wildman from the Scottish Assessors Association explained that case law allowed individuals to register to vote where they carry out their “main business of life”. He indicated that it was mainly students who are registered twice. The number of other people is “relatively low”.³⁴
73. The Committee asked the Minister why the Bill did not prevent a person from appearing on more than one electoral register.
74. The Minister noted that resources would be required to establish a new single register. In addition, he noted that students, who sometimes reside in two different areas at different times of the year, might be deterred from voting. He felt the Scottish Government’s approach was “proportionate”.³⁵

Committee view on voting more than once

75. **The Committee supports the proposal in the Bill to make it an offence to vote more than once at Scottish local government elections held on the same day.**

This brings local government elections into line with UK and Scottish Parliament elections.

76. **The Committee did hear some concerns about how this particular provision could be enforced. It is not clear how a person who committed the offence of voting twice would be detected, given the challenges of cross-referring between electoral registers. One solution might be to establish a single register, however it is likely that this would be a complex exercise and fairly resource intensive.**
77. **The Committee does not think it is likely that many people would attempt to vote twice at future local government elections. Nevertheless, in responding to this report, the Committee asks the Scottish Government to provide an explanation of how these provisions in the Bill will be enforced.**
78. **The Committee also considered the question of whether a person should be restricted to appearing on only one electoral register. The Committee has not taken a position on this subject, but instead notes the arguments for and against such a proposal. On one hand, this would reduce the likelihood that a person would be able to vote twice. If a person (for example a student) happened to away from the constituency in which they were registered, they could apply for a postal vote. On the other hand, there is an argument that appearing on more than one register would make it easier for individuals who had links to more than one constituency to vote.**

Entitlement to register as an elector before attaining voting age

79. Section 4 of the Representation of the People Act 1983 provides that a person who is approaching voting age (16 for Scottish elections and 18 for UK Parliament elections) can apply to be added to the electoral register before they reach the legal voting age. A person in this situation is known as an 'attainer'.
80. The Scottish Government's position is that the current description of when a person is entitled to register as an attainer has become "unnecessarily complicated". It is currently based on a 1 December cut off because of a historic registration process. The registration process now used means that voters are added and removed from the register throughout the year. The Bill provides that a person who is 14 years of age or over can register as an attainer.
81. Allowing individuals to register as an attainer from an earlier age provides additional time for the electoral registration process. The change will also mean that Electoral Registration Officers will be able to register all 14 year olds as attainers, rather than only some after performing a calculation of their age on 1 December.
82. This provision does not change the date at which an individual is able to vote.
83. This proposal in the Bill was broadly welcomed. The Scottish Assessors Association commented, for example, that—

” “The proposed change means that all 14 year olds are eligible to register, making the rules clear and easy to understand and communicate.” ³⁶

84. Revati Campbell, member of the Scottish Youth Parliament, commented on the proposal to the Committee—

” “It would mean that young people could get involved. They would have two years between the ages of 14 and 16 to educate themselves, learn about the process and learn about political parties, what they represent and whether they fit into their ideologies.” ³⁷

85. The Parliament's Committee Engagement Unit attended a Scottish Youth Parliament engagement event on 27 October where young people were asked about the proposal to allow people to register to vote from the age of 14. The majority of respondents (51 respondents out of 53) supported this proposal. However, when asked whether young people receive enough information about how to vote, only 6 respondents indicated 'yes' while 48 indicated 'no'.

86. Revati Campbell explained that the Scottish Youth Parliament has adopted the policy that all secondary schools should have some form of compulsory political education classes, to educate young people about political systems and how voting works so that they can make an informed decision. She told the Committee—

” “...young people are informed. They have opinions about issues, but applying those to the political system is more of a grey area. They are not 100 per cent sure how to approach that.” ³⁸

87. The Minister was asked about educating young people about the electoral system. He noted that there is currently a political literacy strand to young people's education. He also commented that there will also be a lot of publicity in the future to raise awareness about voting, involving organisations such as YoungScot and the Scottish Youth Parliament.

88. The Minister was also asked about whether 16 or 17 year olds should be able to stand for election. He commented—

” “I recognise the argument around 16 and 17-year-olds voting and the point at which they can stand. That is an on-going conversation. Right now, however, I think we are in the right space.” ³⁹

Committee view on registering 14 year olds to vote

89. **The Committee welcomes the proposal to allow a person who is 14 years of age or over to register as an 'attainer'. This is a sensible administrative change which was widely supported. The Committee notes the importance of ensuring that young people are informed about the electoral system ahead of voting. The Committee heard that many young people are well informed about politics, but that some specific information about the practicalities of voting would be useful. The Committee asks the Minister to confirm how this type of information will be targeted at younger voters.**



Postponement of Scottish Parliament general elections

90. The Bill provides that the Presiding Officer of the Scottish Parliament is able to propose a new date for a general election to the Scottish Parliament if the Parliament is already dissolved.
91. The Presiding Officer already has the power to propose a new date for the poll at a Scottish Parliament election if the Parliament has not yet been dissolved. There is, however, uncertainty over what would happen if, after the dissolution of Parliament but in the lead up to polling day for a Scottish Parliament election, there was an unexpected event which could have an impact on the feasibility of the poll.
92. The Policy Memorandum notes that this provision has been included in the Bill because "concerns have been expressed by electoral administrators and the Electoral Commission".
93. This proposal was generally welcomed. SOLACE noted that it might be used in circumstances such as a public health emergency, which could affect the security and safety of the poll.
94. Dr Alistair Clark welcomed the provision that the Presiding Officer should consult the Electoral Commission ahead of a postponement. However, he made the point that the Bill does not specify the circumstances in which a postponement may be proposed. He concluded—
- ” “This leaves the potential reasons for postponement unacceptably wide”⁴⁰
95. Dr Clark felt that the Bill should more tightly specify these reasons.
96. **The Committee supports the proposal in the Bill that the Presiding Officer should have new powers to postpone Scottish Parliament elections in certain circumstances. It was generally welcomed by those individuals who expressed a view. However the Committee asks the Scottish Government to address the point raised by one witness that the Bill should specify the sorts of circumstances in which a postponement would be appropriate.**

Electronic Voting

97. Section 6 of the Bill contains enabling provisions on electronic voting at local government elections. The Policy Memorandum explains that this will help facilitate pilots that include some form of electronic voting or other digital processing to be undertaken at a future date, should any such pilot be proposed.
98. The Bill does not by itself enable or require any trials or pilots to take place and secondary legislation will be required to provide for any trial or pilot.
99. The Scottish Government is considering whether some form of trials or pilots, initially likely to focus on improving the accessibility of voting for people with

disabilities, might take place. It is likely that exploratory trials would take place prior to any formal pilot.

100. The proposals in the Bill were welcomed by some. Professor Toby James noted the potential benefits of electronic voting for turnout and accessibility for voters with disabilities.
101. The potential benefit for voters with disabilities was also mentioned by Revati Campbell, a member of the Scottish Youth Parliament. She said that 51% of SYP respondents to the Scottish Government's consultation supported electronic voting. However she also made the point that some people preferred to vote in person as it made the process feel more significant.
102. Vonnie Sandlan from the Equality and Human Rights Commission made the point that any new systems should be co-designed and co-produced with disabled people to ensure that they are fully accessible.⁴¹
103. However there were some comments from witnesses that the term “electronic voting” was a broad one. Electronic voting could range from internet voting to allowing people to vote using electronic machines in polling stations. Professor Toby James thought that the approach in the Bill “allows flexibility for the evaluation of different systems in the future”.⁴² However, Dr Alistair Clark commented that what is proposed in the Bill was “unacceptably wide” and “a bit of a blank cheque”.⁴³
104. There were also some potential concerns highlighted about electronic voting. The Electoral Reform Society noted that not everyone is comfortable using computers. There might also be issues with systems crashing. SOLACE commented that it is “essential that electoral integrity and voter confidence is at the heart of any developments made and protecting the secrecy of the ballot and data storage will require close assessment”.⁴⁴
105. Electronic voting also has cost implications. There is also the question of transparency, specifically that electronic voting could make it more difficult to follow how votes had been converted into seats.
106. The Committee also heard that electronic voting was not the only innovation which could improve turnout. All-postal voting elections was mentioned. Professor Toby James told the Committee—
 “If you are looking for a single measure that could lead to a major increase in turnout, all-postal elections is it.”⁴⁵
107. Some witnesses were, however, cautious about all-postal voting. Malcolm Burr of SOLACE and the Electoral Management Board commented—
 “It is best to have a mixed system. One benefit of postal voting is that it gives maximum accessibility and convenience to the voter. Inevitably, the one aspect that one cannot be sure of is that the voter is voting in a secure, safe and threat or reward-free environment.”⁴⁶
108. The Electoral Commission noted in written evidence that under current legislation, a local authority running a pilot electronic voting scheme must produce a report on the

scheme within three months of the day on which the election results are declared. The Commission recommended that the Commission should instead be required to carry out an independent evaluation of any future pilots run under these provisions, and provide a report to Scottish Ministers.

Scottish Government position on electronic voting


109. In evidence to the Committee, the Minister clarified the Scottish Government's intentions in relation to electronic voting. The Minister told the Committee—
- ” “The option to move to some sort of electronic voting system is always there, but there are security and other concerns around that, and I think that such a system would be somewhere down the line. Essentially, in the immediate term, the proposal is to work with disability groups to address some of the concerns that they have.”⁴⁷
110. One of the Scottish Government Bill Team officials explained that—
- ” “A member of the elections team is considering possible pilots. The main focus at the moment is on accessibility.”⁴⁸
111. The Committee was told that a pilot could, for example, involve someone with a visual impairment being able to privately register their vote and bring it to a polling station and securely upload it. A Scottish Government Bill Team official confirmed that none of the pilot ideas being discussed would involve electronic transmission of voting information.

Committee view on electronic voting

112. **The Committee notes that the provisions in the Bill take a light-touch approach to the question of electronic voting. They are enabling in nature. This is probably the most appropriate approach. Primary legislation is not the place to set out the details of how electronic voting should take place.**
113. **Having said that, the Committee does think that the enabling nature of the Bill has created a fair amount of confusion as to what the Scottish Government was intending in relation to electronic voting. It is helpful that the Minister has clarified the position, but it would have been better if this had been clearer from the start.**
114. **Nonetheless the Committee welcomes the approach being proposed by the Scottish Government. The Committee considers that electronic voting has the potential to improve the efficiency and accessibility of the electoral system in Scotland. However, there is a need to proceed with caution in relation to relatively untested technology. The proposal to undertake pilots is welcome, as is the focus on smaller scale improvements to enhance the accessibility of the voting process. The Committee believes it is sensible that the Scottish Government has ruled out the prospect of internet voting or any proposals for the electronic transmission of voting information.**

115. **The Committee did not get the impression that any significant resources were being devoted to electronic voting or that a pilot of new measures to improve accessibility was imminent. The Committee suggests the Scottish Government should accelerate its engagement with groups representing disabled people with a view to understanding whether electronic voting and postal ballots could improve access to the electoral system. The Committee recommends that the Scottish Government should publish a timetable for this work.**
116. **The Committee reiterates the point that if the desire is to increase voter turnout and participation, then the Committee is of the view that further consideration should be given to how postal ballots could increase turnout.**

The Electoral Commission

117. The Bill contains a number of provisions which affect the Electoral Commission as the independent body which oversees elections and regulates political finance across the UK.
118. The provisions affect the funding and accountability of the Electoral Commission; the Codes of Practice in which the Commission provides guidance to candidates, political parties, campaigners and those involved in electoral administration; and the question of donation controls for local government elections in Scotland.
119. In relation to the new accountability and reporting arrangements, Bob Posner of the Electoral Commission told the Committee—
-  “...we very much welcome the change. We have been working hard with parliamentary and Government officials to make it work and work well. The discussions about how to get the formula and the approach right are advanced.”⁴⁹
120. In some other areas, particularly in relation to the regulation of spending and reporting at local authority elections, the Electoral Commission suggested that the Bill could go further or that the Scottish Government could provide some clarification.
121. For example, the Electoral Commission indicated it would welcome confirmation from the Scottish Government that it intends to provide it with a statutory role to produce guidance for candidates and agents for the Scottish council elections in 2022 and onwards.
122. The Electoral Commission also noted that the Bill does not present a full picture of the changes to the reporting of spending at local authority elections. Other changes will be introduced via secondary legislation. The Commission asked for clarification from the Scottish Government about the full range of legal provisions for candidate spending intended to be in place ahead of the 2022 local government elections.
123. The Committee would like to highlight a couple of other points raised by the Commission.

Maximum fine

124. The maximum fine that the Electoral Commission can impose for each breach of the election spending rules for political parties or registered non-party campaigners at Scottish Parliament elections is set in law at £20,000. The Scottish Government has the power to make regulations to increase the maximum amount.
125. Bob Posner of the Electoral Commission told the Committee—
- ” “The question for you, as parliamentarians, is whether a fine of £20,000 is sufficient in that context. As the regulator, we do not think it is. There needs to be a higher-level fine—you could pitch it at £500,000 or at whatever amount you think is appropriate—that sits there as a deterrent so that people are less tempted to break the rules or so that, if they do break the rules, the sanction means something.”⁵⁰
126. The Referendums (Scotland) Bill was amended at Stage 2 to increase the maximum fine for breach of rules at referendums to £500,000.
127. Dr Alistair Clark felt that “there is an argument for trying to get a degree of consistency in relation to referendums and in Scottish electoral law generally”.⁵¹
128. The Committee asked the Scottish Government for its views. One of the Scottish Government Bill Team officials explained that the Scottish Government was in discussion with the Electoral Commission on the level of fines in the light of the progress of the referendums legislation.

Powers in relation to information

129. The Electoral Commission gave evidence to the Committee explaining the limitations in its powers at present. In particular, it raised the need for a power to require information and an information sharing power. The former would ensure that it is able to get the information it requires and the latter would enable it to share information – primarily with other regulators or law enforcement bodies – where there is a public interest to do so.
130. Bob Posner from the Electoral Commission noted, for example—
- ” “There are two points about getting information more quickly. We need extra power to require information from others in real time. There also needs to be a sufficient deterrent so that people cannot just say, “No, I won't.” We need to be able to require the information and get it or to go to court immediately to require it.”⁵²
131. The Committee raised this subject with the Minister and his officials. A Scottish Government Bill Team official told the Committee—
- ” “The Electoral Commission has existing powers to obtain information, but a number of issues have been raised in relation to which it might be possible for it to go further. However, as I said, they might be outwith the scope of this Parliament.”⁵³

Committee view on the Electoral Commission

132. **The provisions in the Bill affecting the Electoral Commission have been generally welcomed. The Electoral Commission has, however, raised several points on which it would like clarification from the Scottish Government and these are highlighted in this report and in the Electoral Commission's submission to the Committee. The Committee invites the Scottish Government to respond to these points.**
133. **The Committee wishes to comment on two other specific points. First, the Committee supports the case for increasing the maximum fine that the Electoral Commission can impose for each breach of the election spending rules. The Committee awaits further information from the Scottish Government on its plans, but notes that a maximum fine of £500,000 would provide consistency with the approach in the Referendums (Scotland) Bill.**
134. **Second the Commission has requested additional powers in relation to requiring and sharing information, and has raised this as an issue with this Committee. The response from the Scottish Government Bill Team official suggested that these powers might be outwith the responsibilities of the Scottish Parliament. The Committee asks for further information from the Scottish Government on this point. If the powers sought by the Commission cannot be provided via Scottish Parliament legislation, then it is important that the Commission is made aware of this position.**

Subjects consulted on, but not included in the Bill

135. The Committee heard views on several topics which the Scottish Government covered in its consultation on electoral reform – but did not subsequently include in the Bill.

The list order effect

136. The names of candidates for elections in Scotland (and indeed in the rest of the UK) are listed on the ballot paper alphabetically by surname.
137. It has been suggested that candidates nearer the top of the list are more likely to be selected. This is known as the 'list order effect'.
138. The Scottish Government's consultation paper noted that the list order effect "is particularly noticeable in elections which use the STV voting system, as is the case with Scotland's local government elections".⁵⁴
139. The consultation explained that under STV, instead of just being asked to put an 'X' against one candidate, voters are invited to number the candidates in order of preference (1, 2, 3, 4 etc.). If two or more candidates from one political party are on the same ballot paper, it is often the case that the one higher up the list is more likely to get a '1' (first preference) than their own party colleagues whose names appear lower down the ballot paper.
140. The Scottish Government asked in the consultation whether a change should be made to the way in which candidates are listed on election ballot papers in order to counteract the list order effect.
141. This subject was not, however, subsequently included in the Bill.

Views

142. The Electoral Commission's report on the 2017 local government elections noted that there is an alphabetical 'list effect' where a candidate higher up the ballot paper (due to surname) is more likely to be elected than their party colleague who appears lower down the paper.
143. Dr Alistair Clark told the Committee—
- ” “There are alphabetical advantages on all ballot papers, whether we are talking about first past the post, the single transferable vote or whatever.”⁵⁵
144. Professor Toby James agreed. Willie Sullivan of the Electoral Reform told the Committee—
- ” “There is an effect, although I would not overplay it and say that it is as much as a threat to our democracy. There is a small effect in local government.”⁵⁶

145. The Committee notes that the Scottish Government recently asked the Electoral Commission to assess the impact on voters of any changes to the ordering of candidates on ballot papers for Scottish council elections. The conclusions of this research were that—
- The order of the candidates had no impact on voters’ ability to find and vote for their preferred candidates on the ballot paper
 - Organisations representing disabled people were concerned that any changes would impact on a disabled person’s ability to familiarise themselves with the order and layout of the ballot paper before they come to vote. This might impact on the accessibility of the poll for these voters
 - While electoral administrators were confident that they could manage any processes resulting from differently ordered ballot papers, they wanted clearly prescribed rules for administering any change to the ballot to ensure transparency around the process
 - Electoral administrators also raised concerns about the potential for voter confusion and increased costs resulting from any changes
 - There was no clear consensus amongst political parties about the ordering of names on ballot papers.
146. The Committee took evidence from Dr James Gilmour, who has undertaken research on the list order effect. He told the Committee—
- ” “The list-order effect is very real. There is no question but that, when a party nominates two candidates, the upper candidate on the list receives a greater proportion of that party’s first-preference votes and has greater electoral success.” ⁵⁷
147. Dr Alistair Clark commented—
- ” “There is a clear effect, but it is worth remembering—and it is an important point—that there are other sources of advantage and disadvantage. One of those might be party and another might be incumbency.” ⁵⁸
148. Dr Alistair Clark also noted the potential challenges about dealing with the list order effect—
- ” “Any ballot paper where there has been a reordering or something of that sort needs rigorous testing to ensure that something of that sort does not happen again... There is certainly an effect, but my advice would be to proceed with caution. The last thing that we want to do is increase any voter confusion when the issue really only affects a couple of parties.” ⁵⁹
149. Willie Sullivan from the Electoral Reform Society agreed with this approach arguing that “we have to be careful that the cure is not worse than the problem”. ⁶⁰ He felt that piloting any changes would be a good idea.
150. The Electoral Commission also urged caution. Bob Posner explained—

” “...we should not rush at this, because there is potential for unintended consequences. You talk about unfairness and having a level playing field. If one is going to change a system, one has to think carefully about it.”⁶¹

151. The Electoral Commission noted, for example, that one possible alternative, adopting an alternating A to Z and Z to A ballot, might create difficulties for some people with disabilities who like to learn the order of the ballot paper before going to vote.

152. In a written submission, Dr James Gilmour stated—

” “Counteracting the well-established ballot paper list order effects is a complex issue to which there is a simple answer, but none without complications. All of the suggested possible departures from alphabetical ordering could increase voter confusion if employed only for the Local Government elections in Scotland and some of the possible changes may constitute legally recognised ‘discrimination’.”⁶²

153. Dr Gilmour wrote that it is possible that if the parties nominated more candidates in each ward in local government elections, the effects of alphabetical voting might be significantly reduced.

Scottish Government position

154. The Minister acknowledged that the current system was “not perfect”, however he cautioned that “...we should not change it simply for change's sake”.⁶³ He felt that any change should be made for good reasons, such as to make the system more effective, fairer or less biased. He also noted that detailed work would need to be undertaken into the pros and cons of the various alternatives, some of which he highlighted in this evidence.

155. The Minister told the Committee—

” “I agree with Bob Posner of the Electoral Commission that we should not rush into changing the system and thereby risk unintended consequences. I do not mean to sit on the fence by saying that. If we are to make changes, we need to get them right.”⁶⁴

View of the Committee

156. **The Committee is clear that there is evidence that a list order effect exists, particularly in relation to STV elections. The Committee believes that this situation is potentially unfair to certain candidates in elections, who may be unfairly penalised simply on the basis that their surname is further down the alphabet.**

157. **The Committee notes, however, that there is no consensus on how the list order effect should be addressed. As many witnesses have said, there is the**

risk of unintended consequences if a new system is introduced without proper research as to its impact. There is no point simply replacing one set of problems with another. Any changes to the ballot paper should be piloted first and these pilots should be properly assessed to determine the impact of ballot design on vote behaviour, accessibility, and fairness to candidates.

158. **The Committee considers that the previous research commissioned by the Scottish Government on the list order effect was fairly narrow in scope. The Committee recommends that the Scottish Government should ask the Electoral Commission to take a wider look at the alternatives to the current alphabetical ordering system, in order to set out the pros and cons of different approaches. The Scottish Government could then consider whether there would be merit in piloting any specific alternatives and report back to the Parliament on the proposed approach.**

Addresses of candidates

159. The Scottish Local Government Elections Order 2011 requires that candidates' addresses appear on electoral notices and ballot papers. The same requirement for UK Parliament candidates has been removed because of security concerns, and in the case of the Scottish Parliament to help with clearer ballot design.
160. The Scottish Government's consultation on electoral reform asked whether respondents agreed that candidates' addresses should not be required to appear on ballot papers for local government elections. Of the 741 respondents, two-thirds (64%) agreed, while a third disagreed (36%). Organisations were more likely than individuals to agree (85% compared to 63%).
161. This matter is not addressed in the Bill. The Committee received several written submissions on this subject from elected councillors who felt that councillors and candidates should not have to provide their addresses, in the interests of safety and security.
162. In his evidence, the Minister offered reassurance. He told the Committee—
- ” ...the Scottish ministers have made a public commitment to amend the requirement to publish candidates' addresses on ballot papers for local government elections. To be clear, that would provide an option for candidates to have such publication continue if they so wished. Such a change would not need to be included in the bill; it could be addressed as part of the conduct order for the local government elections in 2022.”⁶⁵
163. In a letter to the Committee of 20 December 2019, the Minister confirmed that he intends to bring forward an affirmative statutory instrument in the new year to amend the current Conduct Order so that the change can be made as soon as practicable.⁶⁶
164. **The Committee welcomes this commitment from the Minister to remedy this situation as soon as is feasible. The Committee is grateful to those individuals who brought this issue of concern to its attention.**

Remuneration for returning officers

165. The Local Government and Communities Committee published a report on payments to returning officers in January 2017. That report concluded that “the current system of payments to Returning Officers should end”.⁶⁷ One of the concerns highlighted in the report was the scale of the payments involved.
166. The analysis of the Scottish Government's consultation highlighted that respondents felt that there should be more transparency and fairness to the remuneration of returning officers, and that whilst pay should be fair there was also a need to bring down costs.
167. Payments for returning officers is not a matter for primary legislation, and so it was not included in the Bill. It is an issue which could be addressed by secondary legislation ahead of the Scottish Parliament election scheduled for 2021.
168. The Committee asked the Minister for his comments on the payment regime for returning officers—
- ” “There are on-going discussions on that subject, which we hope will come to a satisfactory conclusion relatively soon.”⁶⁸
169. The Minister confirmed that the Scottish Government's intention was that any changes would be in place before the 2021 Scottish Parliament elections. In a letter to the Committee of 20 December 2019, the Minister indicated he expected to make an announcement about a new system in the new year.⁶⁹
170. **The Committee has not examined the issue of payments to returning officers in detail as part of its Bill scrutiny, as these payments are not a matter for primary legislation. However, the Committee notes the view of the Local Government and Communities Committee that the payment regime is in need of reform. On that basis, the Committee welcomes the indication from the Minister that he plans to take action on this subject.**

Accessibility issues

171. The Committee heard from Vonnie Sandlan of the Equality and Human Rights Commission about several specific issues relating to the accessibility of the electoral system.
172. One issue she highlighted is when an individual may be eligible to vote but another person may have power of attorney for them. According to Vonnie Sandlan, the Electoral Commission's guidance is that the person with power of attorney does not have the right to register the individual to vote. She felt that this guidance does not accurately reflect the relevant legislation.
173. Vonnie Sandlan also highlighted potential barriers to registering to vote experienced by trans people. In the run-up to the 2017 general election, an issue with the verification process for registering to vote online meant that some trans people had to register in person in order to vote in their new name. However, understandably,

trans people may not be comfortable talking about their previous name and identity and how that relates to their personality and identity now.

174. **The Committee considers it is very important that any barriers which might exist to registering to vote should be removed. The Equality and Human Rights Commission has raised some specific examples of barriers which some individuals have faced. The Committee asks the Scottish Government to address these points in its response to this report with a view to resolving the concerns which have been highlighted.**

Other electoral reform issues

175. The Committee also heard some views suggesting that the scope of the provisions in the Bill could have been wider.
176. Some witnesses raised ideas for improving electoral practice and administration which were not included in the Bill.
177. Professor Toby James suggested, for example, that there should be a complaints mechanism for elections. He told the Committee—
- ” “A citizen can go through a judicial process to overturn an election result but, in most cases, that is not what they are after. Usually, they just want to flag up an issue or provide useful information for electoral services, so that the election can perhaps be run better next time.” ⁷⁰
178. Professor James suggested that the Electoral Management Board for Scotland could run such a process, or the Electoral Commission could have a single point on its website where someone can flag up an issue.
179. Professor Toby James also argued that the Bill does not address the problem of under-registration. He noted the research by the Electoral Commission which has identified that between 630,000 and 890,000 Scottish citizens who are eligible to vote are missing from the electoral register.

Review of multi-member wards

180. The Local Government and Communities Committee considered that “the Bill and the consultation that has preceded it, to have been something of a missed opportunity”. ⁷¹ In particular, the LGC Committee would have welcomed there being, prior to the introduction of the Bill, a comprehensive audit of the system of multi-member wards for Scottish local government and associated matters.
181. The LGC Committee highlighted a number of issues which it felt should be included in such an audit, such as whether the public feel better represented under the multi-member ward system than the previous one.
182. The Electoral Reform Society indicated that it would “caution against viewing these proposed reforms [in the Bill] as in any way enough to achieve a democracy fit for 21st Century Scotland”. ⁷² The Electoral Reform Society considered it is vital that the reform of elections proposed in the Bill is closely coordinated with the Scottish Government's Local Governance Review and future legislation.
183. The Minister was asked whether there would be scope for reviewing how effectively the multi-member system for local government elections is working. The Minister commented—

” “There is certainly no time in this parliamentary session to do that, but I am sympathetic to Mr Ruskell's point. The system has been in place for some time, and there is a range of views on how effectively it works. I will not express a view either way. It is reasonable to ask whether a review of its effectiveness might be taken forward in the next parliamentary session. That would be appropriate.” ⁷³

184. The Minister was also asked about the need for consolidation of electoral law. The Committee heard from the Electoral Commission, for example, that the outdated language used to describe criminal electoral offences can make prosecution difficult. An interim report was published jointly in February 2016 by the Scottish Law Commission, the Law Commission for England and Wales and the Northern Ireland Law Commission, which noted that “electoral law is complex, voluminous and fragmented”.

185. The Minister told the Committee—

” “...it is clear that there is a case for further consolidation work to be done, particularly given the fact that the bill that we are discussing today is, in essence, a series of amendments to other pieces of legislation. We recognise that there is a need to consider, over the coming years, the consolidation of Scottish electoral law.” ⁷⁴

View of the Committee

186. **The Committee has highlighted several suggestions for the improvements to the electoral system which are not featured in the Bill. The Committee notes that there will continue to be scope to reform the electoral system in the future including the important issue of addressing under-registration.**

187. **The Committee notes that the Local Government and Communities Committee and others have argued that there should be a wide-ranging review of the multi-member system for local government elections. The Minister appeared to be open minded to such a proposal, but that this would be something for the next session of the Scottish Parliament to consider. The Committee would be supportive of such a review taking place. This would allow an assessment to be made of how well the STV electoral system is working and whether there is any scope for improvements.**

Delegated powers and accompanying documents

Delegated powers

188. The Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers in the Bill. The DPLR Committee raised some technical points with the Scottish Government on two of the provisions. The DPLR Committee was content with the Scottish Government's response.
189. The Committee thanks the DPLR Committee for its report on the Bill.

Policy Memorandum

190. The Committee is satisfied that the Policy Memorandum accurately describes the policy objectives of the Bill.

Equality Impact Assessment

191. The Committee is also content with the Equality Impact Assessment for the Bill.

Financial memorandum

192. The Committee has two comments to make which relate to the Financial Memorandum. These relate to the Scottish Parliamentary Corporate Body and the funding of the Electoral Management Board.

Scottish Parliamentary Corporate Body

193. On 12 November 2019, the Committee received a letter from the Scottish Parliamentary Corporate Body (SPCB). The letter set out some of its concerns about taking on certain responsibilities for the Electoral Commission, specifically with regard to its budget, the potential for overspend and auditing arrangements.
194. The Committee asked the Minister whether the Scottish Government had reached agreement with the SPCB to resolve its outstanding concerns. The Minister explained—
- ” “The situation has not been sorted yet, but I can say with confidence that it will be sorted to the satisfaction of the SPCB and anyone else with a relevant interest. As soon as we get to that point, I will advise committee of that.”⁷⁵
195. **The Committee welcomes this reassurance and asks for an update when agreement has been reached with the SPCB.**

Funding of the Electoral Management Board

196. The Bill proposes extending the remit of the Electoral Management Board to cover the coordination and administration of Scottish Parliament as well as local government elections.
197. The Scottish Government would fund the Electoral Management Board's expanded role from its elections programme budget. Some of this money had already been agreed so as to allow time for work ahead of the scheduled 2021 Scottish Parliament election. The Financial Memorandum lists a grant in 2018/19 of £78,700. A grant of £100,600 for 2019/20 has been agreed and an estimate of £115,600 has been made for 2020/21.
198. The Committee asked the Convener of the Electoral Management Board, Malcolm Burr, whether any other resources were required. He commented—
- ” “All that I would be looking for is an open ear to requests for financial support for, say, the backfilling of posts in councils or other bodies so that we can undertake the work of the board. That is all.” ⁷⁶
199. The Minister responded on this point—
- ” “The dialogue on that sort of thing will always be on-going. We have actually increased the funding, as the board requested... We remain open to any valid approaches from the board.” ⁷⁷
200. **The Committee notes this offer and hopes that the Minister will be receptive to any valid request from the Electoral Management Board.**

The general principles of the Bill

201. **At Stage 1, the lead committee's role is to consider and report to the Parliament on the general principles of the Bill – that is, on the principal purposes of the Bill, rather than the fine detail.**
202. **The Committee's view is that the principal purpose of the Scottish Elections (Reform) Bill is to make a range of changes to electoral law covering Scottish Parliament and local government elections in Scotland. As this report sets out, these proposed changes in the Bill have been broadly welcomed. On that basis, the Committee is content to recommend that the general principles of the Bill be agreed to.**

Annex A: Extract from minutes

15th Meeting, 2019 (Session 5), Thursday 26 September 2019

Scottish Elections (Reform) Bill (in private): The Committee agreed its approach to the scrutiny of the Bill at Stage 1. The Committee also agreed a schedule for taking evidence; to delegate any further decisions on witnesses to the Convener in consultation with the clerks; to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry; and that any consideration of the evidence heard and of the draft report should be taken in private.

20th Meeting, 2019 (Session 5), Thursday 14 November 2019

Scottish Elections (Reform) Bill: The Committee took evidence on the Bill at Stage 1 from—

Willie Sullivan, Senior Director (Campaigns and Scotland), Electoral Reform Society;

Dr Alistair Clark, Reader in Politics, Newcastle University;

Professor Toby James, Professor of Politics and Public Policy, and Head of Politics, School of Politics, Philosophy, Language and Communication Studies at the University of East Anglia;

Vonnie Sandlan, Public Affairs Manager, Equality and Human Rights Commission;

Revati Campbell MYSP, Convener of Scottish Youth Parliament's Equalities and Human Rights Committee.

Toms Mason declared an interest as a local government councillor.

Scottish Elections (Reform) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

21st Meeting, 2019 (Session 5), Thursday 21 November 2019

Scottish Elections (Reform) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dame Sue Bruce, Electoral Commissioner, Scotland, Andy O'Neill, Head of Electoral Commission, Scotland, and Bob Posner, Chief Executive, Electoral Commission;

Isabel Drummond-Murray, Secretary, Ailsa Henderson, Deputy Chair, and Ronnie Hinds, Chair, Local Government Boundary Commission for Scotland.

Scottish Elections (Reform) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

22nd Meeting, 2019 (Session 5), Thursday 28 November 2019

Scottish Elections (Reform) Bill: The Committee took evidence on the Bill at Stage 1 from—

Malcolm Burr, Chief Executive of Comhairle nan Eilean Siar, Society of Local Authority Chief Executives and Senior Managers (SOLACE) Scotland and Convener of the Electoral Management Board for Scotland;

Pete Wildman, Chair, Electoral Registration Committee, Scottish Assessors Association.

Scottish Elections (Reform) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

23rd Meeting, 2019 (Session 5), Thursday 5 December 2019

Scottish Elections (Reform) Bill: The Committee took evidence on the Bill at Stage 1 from—

Dr James Gilmour;

Graeme Dey, Minister for Parliamentary Business and Veterans; Alison Fraser, Legal Directorate, Iain Hockenhull, Elections Team, and Maria McCann, Elections Team, Scottish Government.

Scottish Elections (Reform) Bill (in private): The Committee considered the evidence heard earlier in the meeting.

1st Meeting, 2020 (Session 5), Thursday 9 January 2020

Scottish Elections (Reform) Bill (in private): The Committee agreed a Stage 1 report.

Annex B: Evidence

Oral evidence

- [Meeting on Thursday 14 November 2019](#)
- [Meeting on Thursday 21 November 2019](#)
- [Meeting on Thursday 28 November 2019](#)
- [Meeting on Thursday 5 December 2019](#)

Written evidence

- [Association of Electoral Administrators \(100KB pdf\)](#)
- [Audit Scotland \(84KB pdf\)](#)
- [Councillor Caroline Bamforth \(93KB pdf\)](#)
- [Dr Alistair Clark \(183KB pdf\)](#)
- [R Coleman 35KB pdf\)](#)
- [Comhairle nan Eilean Siar \(109KB pdf\)](#)
- [Ian Davidson \(134KB pdf\)](#)
- [East Renfrewshire Council \(96KB pdf\)](#)
- [Electoral Commission Scotland \(253KB pdf\)](#)
- [Electoral Reform Society \(307KB pdf\)](#)
- [Electoral Management Board \(338KB pdf\)](#)
- [Grant Fergusson \(114KB pdf\)](#)
- [Dr James Gilmour \(77KB pdf\)](#)
- [Dr James Gilmour - supplementary evidence 14 November 2019 \(85KB pdf\)](#)
- [Dr James Gilmour - supplementary evidence 21 November 2019 \(84KB pdf\)](#)
- [Brian Griffiths \(33KB pdf\)](#)
- [Professor Toby James](#)
- [Local Government Boundary Commission for Scotland \(128KB pdf\)](#)
- [Councillor Bailie Norman MacLeod \(109KB pdf\)](#)

- [Councillor Laura Murtagh \(106KB pdf\)](#)
- [North Lanarkshire Council \(140KB pdf\)](#)
- [Scottish Assessors Association \(169KB pdf\)](#)
- [Scottish Youth Parliament \(638KB pdf\)](#)
- [Solace Scotland \(98KB pdf\)](#)

- 1 [Scottish Elections \(Reform\) Bill](#), as introduced (SP Bill 53, Session 5 (2019)).
- 2 Scottish Parliament Information Centre. (2019) [Scottish Elections \(Reform\) Bill](#). SPICe Briefing SB 19/66.
- 3 Standards, Procedures and Public Appointments (SPPA) Committee. *Official Report, 5 December 2019*, Col 11
- 4 Professor Toby James. Written submission.
- 5 Electoral Management Board. Written submission.
- 6 Professor Toby James. Written submission.
- 7 SPPA Committee. *Official Report, 28 November 2019*, Col 3
- 8 SPPA Committee. *Official Report, 14 November 2019*, Col 1
- 9 SPPA Committee. *Official Report, 14 November 2019*, Col 5
- 10 [Letter to SPPA Committee from the Local Government and Communities \(LGC\) Committee](#), 28 November 2019
- 11 SPPA Committee. *Official Report, 21 November 2019*, Col 24
- 12 SPPA Committee. *Official Report, 21 November 2019*, Col 31
- 13 SPPA Committee. *Official Report, 5 December 2019*, Col 11
- 14 SPPA Committee. *Official Report, 5 December 2019*, Col 11
- 15 SPPA Committee. *Official Report, 5 December 2019*, Col 18
- 16 [Letter to SPPA Committee from the Minister for Parliamentary Business and Veterans](#) 20 December 2019
- 17 [Local Government \(Scotland\) Act 1973](#), schedule 6.
- 18 [Scottish Elections \(Reform\) Bill. Policy Memorandum](#) (SP Bill 53-PM, Session 5 (2019)). Paragraph 35.
- 19 East Renfrewshire Council. Written submission.
- 20 Local Government Boundary Commission for Scotland. Written submission.
- 21 Dr Alistair Clark. Written submission.
- 22 SPPA Committee. *Official Report, 14 November 2019*, Col 9
- 23 Association of Electoral Administrators. Written submission.
- 24 Electoral Management Board. Written submission.
- 25 Electoral Commission. Written submission.
- 26 [Letter to SPPA Committee from the LGC Committee](#), 28 November 2019

- 27 SPPA Committee. *Official Report, 5 December 2019*, Col 19
- 28 SPPA Committee. *Official Report, 5 December 2019*, Col 19
- 29 Electoral Commission. Written submission.
- 30 SPPA Committee. *Official Report, 28 November 2019*, Col 4
- 31 [Letter to SPPA Committee from the LGC Committee](#), 28 November 2019
- 32 SPPA Committee. *Official Report, 14 November 2019*, Col 17
- 33 SPPA Committee. *Official Report, 21 November 2019*, Col 15
- 34 SPPA Committee. *Official Report, 28 November 2019*, Col 6
- 35 SPPA Committee. *Official Report, 5 December 2019*, Col 13
- 36 Scottish Assessors Association. Written submission.
- 37 SPPA Committee. *Official Report, 14 November 2019*, Col 23
- 38 SPPA Committee. *Official Report, 14 November 2019*, Col 22
- 39 SPPA Committee. *Official Report, 5 December 2019*, Col 16
- 40 Dr Alistair Clark. Written submission.
- 41 SPPA Committee. *Official Report, 14 November 2019*, Col 21
- 42 SPPA Committee. *Official Report, 14 November 2019*, Col 12
- 43 SPPA Committee. *Official Report, 14 November 2019*, Col 13
- 44 SOLACE Scotland. Written submission.
- 45 SPPA Committee. *Official Report, 14 November 2019*, Col 13
- 46 SPPA Committee. *Official Report, 28 November 2019*, Col 9
- 47 SPPA Committee. *Official Report, 5 December 2019*, Col 16
- 48 SPPA Committee. *Official Report, 5 December 2019*, Col 16
- 49 SPPA Committee. *Official Report, 21 November 2019*, Col 1
- 50 SPPA Committee. *Official Report, 21 November 2019*, Col 16
- 51 SPPA Committee. *Official Report, 14 November 2019*, Col 19
- 52 SPPA Committee. *Official Report, 21 November 2019*, Col 20
- 53 SPPA Committee. *Official Report, 5 December 2019*, Col 22
- 54 Scottish Government. (2017) [Electoral Reform consultation](#).
- 55 SPPA Committee. *Official Report, 14 November 2019*, Col 14

- 56 SPPA Committee. *Official Report*, 14 November 2019, Col 15
- 57 SPPA Committee. *Official Report*, 5 December 2019, Col 2
- 58 SPPA Committee. *Official Report*, 14 November 2019, Col 16
- 59 SPPA Committee. *Official Report*, 14 November 2019, Col 14
- 60 SPPA Committee. *Official Report*, 14 November 2019, Col 15
- 61 SPPA Committee. *Official Report*, 21 November 2019, Col 11
- 62 Dr James Gilmour. Second written submission.
- 63 SPPA Committee. *Official Report*, 5 December 2019, Col 20
- 64 SPPA Committee. *Official Report*, 5 December 2019, Col 21
- 65 SPPA Committee. *Official Report*, 5 December 2019, Col 20
- 66 [Letter to SPPA Committee from the Minister for Parliamentary Business and Veterans](#)
20 December 2019
- 67 Local Government and Communities Committee, 1st Report 2017 (Session 5).
[Payments to Returning Officers in Scotland](#).
- 68 SPPA Committee. *Official Report*, 5 December 2019, Col 22
- 69 [Letter to SPPA Committee from the Minister for Parliamentary Business and Veterans](#)
20 December 2019
- 70 SPPA Committee. *Official Report*, 14 November 2019, Col 18
- 71 [Letter to SPPA Committee from the LGC Committee](#), 28 November 2019
- 72 Electoral Reform Society. Written submission.
- 73 SPPA Committee. *Official Report*, 5 December 2019, Col 20
- 74 SPPA Committee. *Official Report*, 5 December 2019, Col 24
- 75 SPPA Committee. *Official Report*, 5 December 2019, Col 23
- 76 SPPA Committee. *Official Report*, 28 November 2019, Col 11
- 77 SPPA Committee. *Official Report*, 28 November 2019, Col 18

