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Standards, Procedures and Public Appointments Committee

Stage 1 Report on the Scottish Elections (Representation and Reform) Bill



CONTENTS

PART 1

CANDIDACY RIGHTS ETC. OF FOREIGN NATIONALS

- 1 Scottish Parliament elections
- 2 Local government elections

PART 2

DISQUALIFICATION

- 3 Scottish disqualification orders
- 4 Returning officers
- 5 Registration officers
- 6 Counting officers
- 7 Effect of order: Scottish Parliament
- 8 Effect of order: local government
- 9 Power to amend the schedule

Disqualification orders under Elections Act 2022

- 10 Scottish Parliament: disqualification from membership
- 11 Local authorities: disqualifications for nomination, election and holding office
- 12 Persons holding office: temporary relief from effect of disqualification
- 13 Ending ambulatory effect of section 15 of the Scotland Act 1998

PART 3

CAMPAIGN FINANCE

- 14 Expenditure in respect of Scottish Parliament elections
- 15 National and third party expenditure: Scottish Parliament elections
- 16 Third parties capable of giving notification
- 17 Restriction on which third parties may incur controlled expenditure
- 18 Transitional provision: offences relating to third party expenditure

Session 6 (2024)

SP Bill 42

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Contents

Summary of recommendations	1
Membership changes	7
Ministerial changes	8
Introduction	9
The Bill	10
Bill Background	11
Consideration by the Standards, Procedures and Public Appointments Committee	12
Consideration by other committees	14
Consideration by the Delegated Powers and Law Reform Committee	14
Consideration by the Finance and Public Administration Committee	14
Consideration by the Local Government, Housing and Planning Committee	14
Committee Scrutiny of the Provisions in the Bill	16
The extension of candidacy rights at Scottish elections to foreign nationals with limited leave to remain	16
Recommendations	22
Disqualification	22
Recommendations	26
Consideration of the disqualification of MSPs and councillors who appear on the sex offenders register	27
Recommendations	29
Campaign finance at Scottish elections	30
Notional expenditure	30
Third party campaigners	32
Recommendations	37
The rescheduling of elections	38
Recommendations	46
Election pilots and the democratic engagement fund	47
Election pilots	47
Democratic engagement fund	50
Recommendations	52
Digital imprints	53
Recommendations	58
The revision of the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers by 30 April 2031	59
The approvals process and automaticity	60

Recommendations _____	61
The requirement for the Electoral Commission to prepare a five-year plan in respect of its devolved functions, which is to be scrutinised by the Scottish Parliamentary Corporate Body _____	62
Recommendations _____	64
The Electoral Management Board for Scotland as a body corporate and the establishment of the post of deputy convener _____	64
Legal status of the EMB _____	64
Establishment of role of deputy convener _____	66
Funding the EMB _____	67
Recommendations _____	68
Correspondence from the Scottish Government on secondary legislation _____	70
Matters consulted on by the Scottish Government which do not appear in the Bill _____	71
Free mailout _____	71
Emergency proxy voting _____	72
Recommendations _____	73
Additional areas considered during Stage 1 _____	75
Dual Mandate _____	75
Security of elections _____	76
Overseas voters _____	77
Proposed Removal from Office and Recall (Members of the Scottish Parliament) Bill _____	77
Spoiled Ballot and Randomised Ballot Papers _____	78
Delegated powers and accompanying documents _____	80
Delegated powers memorandum _____	80
Policy Memorandum _____	80
Financial Memorandum _____	80
Legal change to the status of the EMB _____	80
Election pilots and democratic engagement fund grants _____	81
The increased potential for by elections _____	81
The rescheduling of elections _____	81
Overall conclusion of the Committee and recommendation on the general principles of the Bill _____	83
Annexe A: Extract from Minutes, Stage 1 _____	84
Annexe B: Correspondence _____	85
Bibliography _____	86

Standards, Procedures and Public Appointments Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) the practice and procedures of the Parliament in relation to its business;
- (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;
- (d) matters relating to public appointments in Scotland;
- (e) matters relating to the regulation of lobbying; and
- (f) matters falling within the responsibility of the Minister for Parliamentary Business.

2. Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion."



SPPA.Committee@parliament.scot



0131 348 5176

Committee Membership



Convener
Martin Whitfield
Scottish Labour



Jackie Dunbar
Scottish National Party



Annie Wells
Scottish Conservative
and Unionist Party



Oliver Mundell
Scottish Conservative
and Unionist Party

Summary of recommendations

The extension of candidacy rights at Scottish elections to foreign nationals with limited leave to remain

1. The Committee supports the extension of candidacy rights to individuals with limited leave to remain.
2. The Committee notes that some concerns were raised in evidence about the potential risk that the extension of candidacy right could be used by foreign players to undermine Scotland's electoral system. The Committee invites the Scottish Government to provide an undertaking to consider potential mitigations against such risks.

Disqualification

3. The Committee is content with the provisions on temporary relief from the effect of disqualification which allow an individual already in elected office to have sufficient time to appeal any conviction and associated disqualification order.
4. In relation to potential vexatious candidacy for Scottish Parliament elections, the Committee notes the reference provided by the Minister that the Elections Order offers sufficient safeguarding. The Committee asks the Scottish Government to keep this issue under review and to consider future amendment via primary legislation should any issues with vexatious candidacy transpire.
5. The Committee also invites the Scottish Government to carry out an evaluation of the impact of the proposed changes in relation to increasing the diversity of those campaigning or standing for elected office and to the levels of abuse and intimidation that women and minority candidates experience. Should the Bill be enacted, the Committee asks that this evaluation is carried out ahead of the Scottish Parliamentary elections that would be scheduled for May 2031.

Consideration of the disqualification of MSPs and councillors who appear on the sex offenders register

6. The Committee notes the support expressed by those who provided evidence for the introduction of provision to provide for disqualification of individuals who are subject to sex offender notification requirements (SONR) from being MSPs and Councillors. The Committee also notes that other legislatures in the UK have brought forward legislation to address this issue. The Committee recommends that it would be appropriate to make provision for disqualification from holding office as an MSP or local councillor in Scotland.
7. While the Committee has been able to take evidence on the principle of such a disqualification, detailed scrutiny of how such provision could or should operate is not possible without sight of specific legislative proposals.
8. Given the range of issues that need to be considered in making this provision within legislation, the Committee considers that it should be a matter for the

Scottish Government to propose amendments to the Bill in this regard. The Committee asks the Scottish Government to confirm that it will provide draft amendments to the Committee at the earliest possible opportunity to enable the Committee to consider whether it wishes to seek additional evidence on specific proposals ahead of Stage 2.

Campaign finance at Scottish elections

9. The Committee agrees with the proposals in the Bill in respect of notional expenditure.
10. The Committee is content that consultation by the Electoral Commission on the code of practice for third party campaigners would be with the Parliament, rather than a designated committee. The Committee notes existing Standing Order provisions set out a process to be followed where an enactment contains provisions in relation to consulting the Parliament.
11. The Committee also recommends
 - that the Electoral Commission should be consulted before Scottish Ministers add a category to the list of third party campaigners required to register with the Commission
 - that the Scottish Government should undertake work with relevant stakeholders to consider how the range of campaign expenses could be increased to support increased diversity in candidates for elected office, such as, but not restricted to, childcare costs
 - that, in relation to restrictions on spending by overseas third party campaigners, the Scottish Government provides further information as to how it intends such restrictions to be enforced
 - that the Scottish Government undertakes further work with stakeholders to bring the reporting regime for Scottish Parliament elections into line with the regime for UK Parliament elections.

The rescheduling of elections

12. The Committee welcomes the consideration that has been given to providing greater flexibility in relation to the rescheduling of Scottish elections.
13. The Committee notes the concerns that have been raised by electoral administrators in relation to the minimum period of postponement for Scotland-wide local authority elections should be increased from two weeks, as set out in the Bill at present, to four weeks.
14. The Committee recognises and emphasises the importance of clarity and transparency in relation to any decisions to reschedule elections. The Committee considers that the provisions in the Bill could be strengthened by the addition of a requirement for a statement of reasons to be published where a decision is taken on rescheduling. The Committee considers that amendments to the Bill in this

regard are important measures to ensure wider understanding and command confidence in relation to any decision to reschedule an election and welcomes the indication in the Minister's letter of 16 May 2024 that the Scottish Government is open to considering whether the Bill should be amended.

Election pilots and the democratic engagement fund

15. The Committee is largely content with the provisions in the Bill in relation to election pilots and the establishment of a democratic engagement fund. The Committee notes that there will be a balance to be struck between the increased opportunity to suggest pilots and having multiple pilots running at a single poll. The Committee understands that the EMB are the experts in this area and they would be consulted prior to any pilot. To add to the provisions in the Bill, the Committee asks the Scottish Government to:

- clarify what mechanisms will be put in place to ensure that clear objectives are set for any election pilots and for evaluation of any pilots (in addition to the evaluation that the Electoral Commission is required to carry out)
- confirm that the Electoral Commission will be added to the list of bodies to be consulted on proposed election pilots
- clarify that voter registration, including automatic voter registration, can be the subject of an election pilot
- consider the evidence from the Electoral Commission in relation to the Commission's plans to establish a fund to support democratic engagement and indicate how it might work with the Commission to ensure best use of each fund
- confirm if the Minister will be making a case for funding to be allocated to the democratic engagement fund in the next budget round and whether the funding requested would be for £300,000,
- further clarify how monies from the democratic engagement fund would be distributed.

Digital imprints

16. The Committee is generally content with the proposal in the Bill around digital imprints and accepts having one regime in place with a 'bolt on' for Scottish elections is likely to be easier for candidates and campaigners to navigate. The Committee are aware of the very complex and evolving nature of digital media and the need for imprints. The Committee highlights the following specific issues and asks the Scottish Government to address them in responding to the Committee's report:

- the Scottish Government's intentions in relation to monitoring use of the 'reasonably practicable' caveat in relation to digital imprints
- how the Scottish Government intends to support the Electoral Commission,

which has enforcement powers only in the UK, in regulating the digital imprint regime in relation to material from overseas

- what the Scottish Government's view is on how the accessibility of digital imprints can be improved for those who use screen readers and whether there is any work underway with stakeholders to consider this issue.

17. The Committee also seeks clarity from the Scottish Government on section 41 of the Bill in light of the concerns raised by Police Scotland and the Electoral Commission regarding any requirement for the police to have to take into account guidance issued by the Electoral Commission when investigating a breach or alleged breach of imprint requirements.
18. In relation to the question posed by the Electoral Commission as to how the statutory guidance on digital imprints it is required to publish under the Bill relates to that which already exists for the Elections Act 2022, the Committee asks the Scottish Government to confirm what further exploration of this issue it has undertaken.

The revision of the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers by 30 April 2031

19. The Committee is content with the proposed revision extend the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers from 31 December 2028 to 30 April 2031.
20. The Committee welcomes the Scottish Government's commitment that automaticity is the way forward and invites them to set out the details of their proposals and timetable in relation to automaticity before Stage 3.

The requirement for the Electoral Commission to prepare a five-year plan in respect of its devolved functions, which is to be scrutinised by the Scottish Parliamentary Corporate Body

21. The Committee is content with the provisions in the Bill in relation to the scrutiny of the five-year plan for the Electoral Commission's devolved functions in Scotland, including that it would be for the Electoral Commission rather than the SPCB to have the final view on what should be included in the plan.

The Electoral Management Board for Scotland as a body corporate and the establishment of the post of deputy convener

22. In principle, the Committee welcomes and supports the establishment of the EMB as a body corporate. However, the Committee regrets that important detail regarding the constitution, accountability and remuneration of the EMB were not included in the Bill as introduced.
23. The Committee notes that work is ongoing in relation to the development of a Schedule to the Bill that will provide information on the constitution of the EMB. It may be the case that that Committee considers that it is necessary to seek

additional evidence on the proposed Schedule to inform its consideration at Stage 2. The Committee considers that the Bill should make provision for there to be two deputy conveners of the EMB.

24. The Committee also has concerns regarding the identification of funding to enable the EMB to carry out its functions. The Committee seeks reassurance that confirmation of the funding arrangements will be set out in full in advance of consideration of any amendments to the Bill at Stage 2.
25. While the Committee expects to receive comprehensive information regarding the establishment of and funding for the EMB in writing, it also asks the Scottish Government to provide an update on these matters during the Stage 1 debate.

Correspondence from the Scottish Government on secondary legislation

26. The number of issues that the Scottish Government plans to take forward via secondary legislation is significant. The Committee notes that some indication was given of matters that the Scottish Government was likely to propose to address via secondary legislation in its response to the independent analysis of the Electoral Reform Consultation, but that the Committee received no further indication of the Scottish Government's thinking on these issues until after its evidence with stakeholders was concluded. As such, the Committee has only been able to hear a limited range of views on some of these matters during Stage 1. It would have been helpful to the Committee to have received the letter in relation to secondary legislation at an earlier point in its scrutiny as this may have afforded us the opportunity to hear views from relevant stakeholders and to make recommendations.
27. The Committee was copied into a letter to the Minister from the Convener of the EMB dated 28 May 2024, on matters the Scottish Government plans to address via secondary legislation. The letter is of concern to the Committee as it appears to reflect that consultation has not been undertaken with key stakeholders.
28. The Committee asks the Scottish Government, at the earliest possible opportunity as a matter of urgency, to provide full details of:
 - previous, current or planned consultation with stakeholders in relation to each matter that it has indicated it intends to take forward by secondary legislation
 - a list of stakeholders consulted on each matter
 - the timeline for analysis of any such consultation to be prepared and final policy decisions reached.
29. The Committee would like to know when it can expect to receive this information, including any consultation analysis and final policy proposals. It should be noted that the Committee, asks for this to be in reasonable advance of any secondary legislation being laid.
30. The Committee would also ask for clarification on when the Scottish Government

anticipates laying relevant secondary legislation (whether that outlined in the Minister's letter or other necessary secondary legislation) in advance of the next Scottish Parliament election. The Committee expects that the Gould principle – that any legislation is in place at least six months prior to the first electoral event to which it applies – will be respected.

Membership changes

31. The following changes to Committee membership occurred during the course of the Committee's scrutiny:
- On 6 March 2024, Jackie Dunbar MSP replaced Evelyn Tweed MSP
 - On 28 March 2024, Oliver Mundell MSP replaced Stephen Kerr MSP
 - On 8 May 2024, Ivan McKee MSP submitted his resignation as a member of the Committee following the announcement of his proposed appointment as a junior Scottish minister. Alasdair Allan MSP, in his capacity as committee substitute, has participated in consideration since.

Ministerial changes

32. On 9 May 2024 Jamie Hepburn MSP replaced George Adam MSP as the Minister for Parliamentary Business. In this report, mentions of the Minister for Parliamentary Business refer to George Adam MSP, unless otherwise indicated.

Introduction

33. The Scottish Elections (Representation and Reform) Bill (“the Bill”) was introduced in the Scottish Parliament by Shona Robison MSP, then Deputy First Minister, on 23 January 2024. The Policy Memorandum accompanying the Bill explains that the purpose of the Bill is “to make a number of improvements to the law affecting Scottish Parliament and Scottish local government elections”¹. Throughout this report elections to the Scottish Parliament and to local government in Scotland are referred to as “Scottish elections”.
34. The Standards, Procedures and Public Appointments Committee (“the Committee”) was designated lead committee on the Bill on 30 January 2024. Under the Parliament’s Standing Orders Rule 9.6.3(a), it is for the lead committee to report to the Parliament on the general principles of the Bill. In doing so, it must take account of views submitted to it by any other committee. The lead committee is also required to report on the Financial Memorandum and Policy Memorandum, which accompany the Bill.

The Bill

35. The Bill makes provision relating to:

- the extension of candidacy rights at Scottish elections to foreign nationals with limited leave to remain
- extending the Elections Act 2022 (an Act of the UK Parliament) 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 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 rescheduling 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.

36. Further detail on the background to the Bill can be found in the [Bill briefing](#) produced by the Scottish Parliament Information Centre (SPICe).

Bill Background

37. The Scottish Government [consulted](#) on possible changes to electoral law from December 2022 to March 2023. The consultation paper discussed whether there should be any change for those currently able to vote but not permitted to stand for election. It highlighted a number of possible changes to assist candidates in local government elections. It also set out proposals for increasing the numbers of those registered to vote and how to improve accessibility in elections, to ensure all people can vote independently and in secret. It also asked questions on campaigning and finance, scheduling of elections, and issues linked to electoral governance.
38. The [Electoral Reform Consultation Analysis](#) was published on 31 July 2023. A total of 517 responses were received, 94% were from individuals, and 6% from organisations.
39. The Scottish Government published [its response](#) to the consultation on 19 October 2023.
40. The Bill does not make provision in relation to all of the matters that were included in the consultation. The Scottish Government has indicated in [a letter to the Committee](#) that it is intending to introduce some of the changes through secondary legislation. Some of the matters consulted on are not currently being taken forward either through the Bill or via secondary legislation. Paragraph 192 of the Policy Memorandum states that the Scottish Government:
 - ” “has sought to follow the convention that changes which can be made using existing secondary legislation powers should not be made by primary legislation. That is why some changes that featured in the consultation are not included in the Bill: because existing secondary legislation powers allow such changes to be pursued separately. This includes issues discussed in the consultation such as a contact address for a council election candidate acting as their own agent, free campaign mailings for candidates and improvements to the requirement for a tactile ballot paper to be provided in polling places to support voters with sight loss.”¹
41. The Committee notes that some of the matters consulted on are not being taken forward through the Bill, nor are they mentioned in the Minister's letter on matters the Scottish Government is planning to legislate on via secondary legislation.
42. Additionally, the Policy Memorandum notes two issues, one included in the consultation and one not, to which the Government continues to give consideration:
 - the process for approving reviews by Boundaries Scotland
 - disqualification of individuals appearing on the sex offenders register from being councillors and/or MSPs (in respect of which the Policy Memorandum states that the Scottish Government “wishes to highlight this issue now to promote debate ahead of the Bill’s Stage 2 (when the issue could be adopted as an amendment).”¹ This issue (in relation to councillors) was [subject to its own consultation](#) which ran from May 2023 to August 2023.
43. The Bill also makes provision for matters that were not directly consulted on or which were suggested by respondents to the Scottish Government consultation

including:

- changing the deadline by which Boundaries Scotland is required to review local government electoral wards
- ending the automatic application of changes to House of Commons eligibility rules to MSPs
- expanding the range of bodies that can propose electoral pilots and the power for Scottish Ministers to allow funding for increased democratic engagement.

Consideration by the Standards, Procedures and Public Appointments Committee

44. A call for views on the Bill ran from 7 February 2024 to 6 March 2024 and received [24 responses](#). SPICe has produced [a summary](#) of the written submissions. The summary covers 22 submissions as two submissions (from Police Scotland and COSLA) were accepted by the Committee as late submissions.
45. The Committee continued to receive supplementary written submissions and correspondence throughout its Stage 1 scrutiny of the Bill. These are available on the [Committee's correspondence](#) page.
46. The Committee began taking oral evidence on the Bill on 21 March 2024 and continued taking oral evidence throughout April and May 2024. The Committee took oral evidence from:
 - [21 March](#) – Malcolm Burr, Convener of the Electoral Management Board for Scotland (EMB); Andy Hunter, Chair of the Association of Electoral Administrators (AEA) Scotland and Northern Ireland Branch; Robert Nicol, Vice Chair Scottish Assessors Association (SAA) Electoral Registration Committee and Electoral Registration Officer for East Renfrewshire, Inverclyde and Renfrewshire
 - [28 March](#) – Professor Ailsa Henderson, Chair and Colin Wilson, Electoral Boundaries Review Manager, Boundaries Scotland; Dame Susan Bruce, Electoral Commissioner for Scotland, Andy O'Neill, Head of the Electoral Commission in Scotland and Louise Edwards, Director of Regulation and Digital Transformation, Electoral Commission
 - [18 April](#) – Hannah Stevens, Chief Executive Officer, Elect Her; Ahlam Hamoud Al-Bashiri, Peer Education Co-ordinator, Scottish Refugee Council; Alice Kinghorn-Gray, Campaigns Officer, Electoral Reform Society; James Adams, Director, Royal National Institute of Blind People (RNIB) Scotland; Kay Sillars, Regional Manager, UNISON; Professor Alistair Clark, Professor of Political Science, Newcastle University; Professor Toby James, Professor of Politics and Public Policy, University of East Anglia
 - [2 May](#) – George Adam MSP, Minister for Parliamentary Business and Scottish Government Officials.

47. The Committee would like to thank everyone who has contributed to the call for views and the evidence sessions.

Consideration by other committees

Consideration by the Delegated Powers and Law Reform Committee

48. The Delegated Powers and Law Reform (DPLR) Committee is required to report on the delegated powers within the Bill. The Committee considers each of the delegated powers in a Bill and whether they are framed appropriately (for example, the power being conferred is not too broad) and that the Parliament is afforded sufficient scrutiny of the exercise of these powers.
49. The DPLR Committee considered the delegated powers in the Bill on [12 March 2024](#) and [published its report](#) on 18 March 2024. The Bill confers 10 powers which create new or adjust existing delegated powers. The DPLR Committee found the powers acceptable in principle.

Consideration by the Finance and Public Administration Committee

50. The Finance and Public Administration Committee issued [its call for views](#) on the Bill's [Financial Memorandum](#). The call for views closed on 6 March 2024 and received [4 submissions](#).
51. The submissions did not raise substantive issues with the Financial Memorandum. However, the RNIB Scotland highlighted that although the Financial Memorandum gives illustrative costs for pilots (with options including a pilot of electronic poll cards aimed at making these accessible for people with sight loss and a pilot of a new tactile or audio voting aid), no pilots are currently planned² and the Electoral Commission highlighted that “it is [not] possible to estimate a specific amount for evaluating a pilot as it would depend on the nature and scale of any pilot”³.

Consideration by the Local Government, Housing and Planning Committee

52. The Local Government, Housing and Planning (LGHP) Committee considered the Bill on [6 February 2024](#) and agreed to write to Shona Robison MSP, then Deputy First Minister. In [the letter of 14 February 2024](#), the LGHP Committee stated that it did not intend to play an active role in the Stage 1 scrutiny of the Bill. The LGHP Committee also noted “that the Policy Memorandum confirms that the Scottish Government has consulted on a number of options to prevent political influence on the boundary-setting process and is “sympathetic” to the automatic approval of recommendations made by independent boundary commissions but that further consideration on the best way to approach such a reform is required”⁴. The LGHP

Committee also asked for an update on the Scottish Government's intentions in respect of potential reforms to the approval process for Boundary Scotland recommendations and confirmation of when the then Deputy First Minister expected Boundary Scotland to undertake its next set of reviews of arrangements for local government elections.

53. On [15 March 2024](#) the LGHP Committee received a response from the Minister for Parliamentary Business which stated that “the Scottish Government has made a commitment in the policy memorandum for the Scottish Elections (Representation and Reform) Bill to consider further how best to approach any future changes to the boundary approval process”⁵ .
54. **The SPPA Committee notes the Delegated Powers and Law Reform Committee’s report on the Bill, the Finance and Public Administration Committee’s responses to its call for views, and the Local Government, Housing and Planning Committee’s correspondence with the Scottish Government.**

Committee Scrutiny of the Provisions in the Bill

The extension of candidacy rights at Scottish elections to foreign nationals with limited leave to remain

55. Part 1 of the Bill as introduced proposes one change to candidacy rights at Scottish elections 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.
56. The Policy Memorandum accompanying the Bill states that “In principle, the Scottish Government considers that all those able to vote in Scottish Parliament and local government elections should also be able to stand as candidates. It therefore 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.”¹
57. Currently, 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 other candidacy requirements 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. Foreign nationals living in Scotland who have indefinite leave to remain or do not require such leave are able to stand in local government elections in Scotland. Additionally, foreign nationals from a small number of countries¹ who do not have indefinite leave to remain are allowed to stand for election to local government in fulfilment of treaty obligations entered into by the UK.
58. The Committee notes that 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 Financial Memorandum to the Bill states that:
- ” “In terms of assessing the number of people aged 18 or over in Scotland with limited leave to remain, up to date figures are not available. The latest statistics published by National Records of Scotland estimate that there were around 397,000 non-British nationals living in Scotland in the year ending 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 (...).”⁶
59. The Committee further notes that no other legislature in the United Kingdom has enacted legislation to extend candidacy rights to individuals with limited leave to

remain to the extent proposed in the Bill².

60. The Committee has heard a range of views on this proposed change. A number of organisations expressed their support for the provision in their responses to the call for views, such as Just Right Scotland who stated that:

” “Residents in Scotland with LLR [limited leave to remain] are directly impacted by decision by Scottish local and national politicians, and we believe it is right for democratic processes to be extended to include them.”⁷

61. This view was echoed by the Scottish Refugee Council who stated:

” “Guaranteeing the right to stand in elections for people with limited leave to remain is a matter of fairness, equality and democratic principle. It is a recognition of the contribution and the potential of individuals who have become part of society but who may still face barriers to full participation in the political process.”⁸

62. Engender also indicated support for the proposal but noted that the extension of candidacy rights would not automatically lead to greater representation and highlighted the need for safeguarding of candidates affected by this change as they might be at risk of harassment based on ethnicity, race, or nationality.⁹

63. Some individual respondents to the Committee’s call for views questioned the rationale of the proposed extension of candidacy rights. Professor Alistair Clark of Newcastle University noted that the number of people with limited leave to remain who would wish to seek election, and who would be selected by political parties, was likely to be relatively small. Professor Clark also raised concerns around the potential for foreign players to use the candidacy extension as a means to undermine electoral integrity in Scotland and increasing the complexity of electoral law which “is complex enough without clauses that are never going to be used”⁸ by changing candidacy rights in this way and recommended that the Committee:

” “(...) probe the justification for extending candidacy rights to those with limited leave to remain with the responsible minister. In the absence of some more compelling justification which overcomes the various issues, whether or not this particular part of the Bill should be dropped should be considered.”¹⁰

64. Professor Toby James of University of East Anglia commented that arguments in favour of extending candidacy rights to those with limited leave to remain are about consistency with franchise rights (i.e., who can vote). Professor James also stated that it may be “a matter of principle and of making Scotland a strong and inclusive society”⁸. Professor James went on to say that “I agree that, potentially, there will be very few such candidates, for the reasons that Professor Clark set out. It is perhaps more a matter of principle and of where Scotland wants to go on that.”⁸

65. In oral evidence, the Scottish Refugee Council’s Ahlam Hamoud Al-Bashiri told the Committee:

” “I am here to speak not only on behalf of the Scottish Refugee Council but as a refugee from the refugee community in Scotland. (...) I am so happy that, in 2020, the right to vote in Scotland was given to refugees and that I, as a refugee, can vote in national and local elections here. In 2021, when I went to cast my vote for the first time, it was one of the most beautiful moments of my life. (...)

I am so happy that we have the opportunity to give the right to stand in elections to people with limited leave to remain, which includes refugees such as myself.(...) We, at the Scottish Refugee Council, welcome that but, at the same time, we are disappointed, because the bill does not include giving the right to vote to asylum seekers, which is something that we will continue to campaign for. We believe that giving that right is a significant step towards inclusivity and ensuring that everyone, regardless of their status, has a voice in shaping the future of this country. It does not matter where those people come from; what matters is that they choose to make Scotland their country and their home.”⁸

66. The proposal to extend candidacy rights to those with limited leave to remain 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).

67. 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” and that the “possibility of by-elections arising as a result of changes from the Bill are considered to be extremely remote.”⁶

68. A by-election would need to be held if there is no scheduled election within six months and the vacancy relates to a Scottish Parliament constituency or local government ward. Local government by-elections are met from local government funds. No change is proposed in relation to funding by-elections which may occur as a result of the extension of candidacy rights to foreign nationals with limited leave to remain.

69. In their written submission, the Law Society of Scotland commented on the potential for increased electoral costs as a result of the change, alongside other potential challenges, stating:

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

11

70. Malcolm Burr, Convener of the EMB, noted that while the extension of candidacy rights to those with limited leave to remain is a policy matter there are a number of practical issues that arise. Mr Burr commented that “there is the potential for by-

elections that are arguably unnecessary and certainly costly”¹².

71. The EMB¹³ and AEA¹⁴ commented on the potential for individuals with limited leave to remain who were elected not being able to complete their term in office (currently five years for Scottish Parliament and local government). They suggested an alternative approach would be to extend candidacy rights only to those who had, at the point of nomination, leave to remain for the duration of their potential term of office.
72. The EMB also noted that voters might reasonably expect that a candidate would intend to serve a full term. The Committee explored whether candidates with limited leave to remain should be required to make their immigration status a matter of public record, to allow electors to vote in the full knowledge that the candidate, if elected, may not be able to serve the full term. Malcolm Burr, Convener of the EMB, indicated that, at the point of nomination:
- ” “There could be a question asked, such as, ‘Do you have leave to remain for the entire term? If not, state for how long.’ That would be possible.”¹²
73. The Committee understands that questions on eligibility and/or disqualification are matters for individual candidates and not Returning Officers and notes that it is a criminal offence to knowingly make a false statement on nomination papers. As Malcolm Burr, Convener of the EMB, explained “it is not for the returning officer to investigate the claims that are made on a nomination form. If a claim is competent at face value, we accept it.”¹²
74. The Committee explored with witnesses whether this approach was fit for purpose, particularly in light of the proposed extension to candidacy rights. Professor Clark’s view was that “there should be some form of checks”⁸ adding that “Most people would be surprised to learn that all of that is just taken on trust.” Professor Clark suggested that “those who handle the nomination process should be the ones to do some form of checks” but acknowledged that this would place additional burdens on Returning Officers. Professor James suggested that it is a “shared responsibility”, saying:
- ” “There has to be some duty on the individual candidate as well as some duty on the party, if the person is standing on behalf of a party, and the person’s agents. For the electoral authorities, there is a key informational role, because the matter is complicated, and information has to be conveyed clearly so that people can stand if they want to. That potentially involves briefings for political parties. However, as Professor Clark touched on, the key issue is checks. To what extent are checks viable administratively, and to what extent are they necessary as part of that process?”⁸
75. The Committee notes that placing the responsibility for checks on Returning Officers would have resource implications as well as requiring authority to be given to Returning Officers to make such checks.
76. In its written submission, the Law Society of Scotland commented on whether, for individuals with limited leave to remain, there could be a tension between the oath of allegiance required to be taken by all MSPs and the fact that some countries

prevent dual nationality or allegiance to another country.¹¹

77. This was explored in evidence with the Scottish Refugee Council who indicated that:

” “There might be concerns, depending on which perspective someone is coming from. As I said, everyone who chooses to make Scotland their home must be given the same rights. I accept that I am a refugee and that some of you may see me through that label, but I do not see myself as a refugee; I see myself as a human being, and I must be given the same rights as anyone who is living in this country. Why are we treating people on the basis of their immigration status? I think that, by allowing people who live in Scotland but do not have British citizenship to stand for election, we also challenge the status quo and start to build a country where everyone has the same rights”.⁸

78. Other issues raised with the Committee in relation to the proposed extension of candidacy rights to those with limited leave to remain included:

- The need for clear information and guidance on candidacy rights, which explains relevant immigration law issues and what types of visa indicate limited leave to remain for those wishing to stand for election.^{14 15}
- The need for any change in candidacy rights to be made in time for parties and candidates to be clear on the rules prior to any election. An important part of this is guidance which the Electoral Commission issues to help candidates, parties and agents to understand the rules.¹⁶ This guidance would need to be updated to reflect any changes made by the Bill. The Committee also notes the importance of clarity for electoral administrators who, for example, need to prepare nomination forms and accompanying guidance.¹⁴
- The Committee notes the Gould principle, which arose from the [review of the 2007 Scottish elections](#), that major electoral changes should not be made less than six months before an election. This is, however, as the EMB highlighted to the Committee in its evidence “a minimum requirement rather than a target timeframe”.¹²

79. During oral evidence, the Minister for Parliamentary Business was asked for his thoughts on the suggestion made by witnesses that the extension of candidacy rights could be limited to where an individual has sufficient leave to remain to allow them to serve a full term. The Minister stated that:

” “We are talking about a very small number of individuals here, given that most limited leave to remain is for five years or less. The likely suggestion is that it would be practical for a person who has limited leave to remain to stand only for a by-election. (...) On the whole, it would, as I have said, affect a small number of individuals, so I do not think that it will create the difficulty that some people believe that it will.”¹⁷

80. In response to the suggestion that those with limited leave to remain should be required to make the duration of their leave to remain public at the point of nomination, the Scottish Government indicated that people with limited leave to

remain will seek to renew it regularly and that:

” “Quite a few people will have leave to remain of, say, two and a half years, but they will renew that regularly. Such a person who has made their life in the community might expect to be here for longer than the term of their leave, and, if we were to rule that a person would have to declare that their leave would expire during their term of office or that they had been barred, that person might feel disadvantaged by that prohibition.”¹⁷

81. The Scottish Government added that an individual who wished to stand for election but was effectively barred because their current leave to remain would not allow them to serve a full term of office may have their leave to remain extended. This would disadvantage individuals based on their leave to remain at the point of nomination.
82. On the question of whether there is a tension between the oath of allegiance MSPs are required to swear and citizenship of another country, the Minister responded that “There is always debate about that, and everyone has their own opinion on it, but it is up to each individual to consider how they deal with that when they put themselves forward as an elected member”¹⁷.
83. The Committee also explored with the Minister the Scottish Government’s view on whether the proposed extension of candidacy rights could be used by foreign players to undermine electoral integrity in Scotland, the Minister indicated that it is something “We always need to be aware of”, adding that the issue would be considered further, but that a solution other than to be alive to the potential risks was unlikely:
- ” “It is a difficult question and a challenging one to answer. There are lots of risks to the electoral process, and more are coming out of the woodwork in the elections that are being held now. We can consider that issue, but I struggle to think of a solution other than just to look out for it.”¹⁷
84. The Committee discussed with the Minister the need for clarity on the interaction between immigration law (which the Committee notes is a reserved matter under the Scotland Act 1998) and candidacy rights for those with limited leave to remain. The Scottish Government explained that the Home Office updated immigration rules in October 2022 so 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.”¹⁸ The Committee understands this change to immigration rules was required to ensure treaty rights granting reciprocal candidacy rights at local government elections could be fulfilled.
85. The Scottish Government indicated that the Electoral Commission would take account of the Home Office position when developing guidance for candidates and parties prior to an election.
86. In relation to whether checks should be made on an individual’s eligibility to stand for election, including their immigration status, at the point of nomination the Minister stated that:

” “The candidate takes on the responsibility when they make the application to be a candidate and the declaration. They take it upon themselves that they are in that position.”¹⁷

87. The Minister indicated that the issue had been considered within the Scottish Government. The Minister’s view was that:

” “Election law is based on statute that has been effectively unchanged for hundreds of years. During that whole period, there has always been the potential for something like that to happen. (...) on the whole, when people make their application, most of them do so in an honest and forthright manner.”¹⁷

Recommendations

88. The Committee supports the extension of candidacy rights to individuals with limited leave to remain.
89. The Committee notes that some concerns were raised in evidence about the potential risk that the extension of candidacy right could be used by foreign players to undermine Scotland's electoral system. The Committee invites the Scottish Government to provide an undertaking to consider potential mitigations against such risks.

Disqualification

90. Part 2 of the Bill introduces four changes relating to disqualification from elected office:
- creates a new Scottish disqualification order
 - 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
 - provides for temporary relief from the effect of disqualification
 - 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.
91. Currently, as well as meeting qualification criteria, individuals wishing to stand for election must not be disqualified. There are numerous disqualifications which differ for candidacy for the Scottish Parliament and local government in Scotland. For example, certain office holders, including members of the judiciary and civil servants, cannot stand for election to the Parliament.³
92. [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”¹⁹.

93. The Scottish Parliament withheld [legislative consent for the then Elections Bill](#) and provisions applying such disqualification orders to membership of the Scottish Parliament and to nomination, candidacy and holding office in local government in Scotland were removed from the legislation.
94. Sections 10 and 11 of the Scottish Elections (Representation and Reform) 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.
95. In their responses to the call for views and contributions to the evidence sessions, stakeholders were generally supportive of the proposal to extend disqualification orders under the Elections Act 2022 to holding elected office at the Scottish Parliament and local government in Scotland.
96. Stakeholders also supported the creation of a new Scottish disqualification order which would prevent an individual convicted of certain offences from holding elected office in Scotland for five years. This would be an additional sanction imposed by the Court where it believes ‘beyond reasonable doubt’ that the crime was aggravated by hostility related to election workers.
97. Professor James told the Committee that, in relation to Scottish disqualification orders and hostility towards election workers:
 - ” “I suspect that there are only low-level issues at the moment, but there is potential for significant issues at an important, high-level electoral event in a polarised environment.”⁸
98. The SAA welcomed the proposal in relation to Scottish disqualification orders telling the Committee:
 - ” “Electoral registration staff are in contact with all sorts of members of society throughout the year and, thankfully, abuse of our staff is relatively rare, but we welcome the inclusion of ERO staff in the definition in the bill, because it recognises their status when they are undertaking their work.”¹²
99. Similarly, the AEA were in favour of the provision, which they said in written evidence they:
 - ” “fully support and welcome the adoption of any measures designed to deter the intimidation of election staff or people standing for election.”¹⁴
100. In its written evidence the EMB noted concerns that it had raised previously in relation to the creation of disqualification orders by the Elections Act 2022. The EMB noted that there were already sufficient criminal offences available to deal with such issues. In oral evidence, the EMB was asked whether it felt a disqualification order may act as a deterrent. Malcolm Burr, Convener of the EMB stated:

” “A lot of abusive comments are made off the cuff or are of the moment and probably would not be caught. One would hope that the possibility of a disqualification order would deter anyone with political ambitions who was minded to participate in a campaign of intimidation or a premeditated act of intimidation.”¹²

101. The Electoral Commission²⁰ and Engender⁹ also highlighted that disqualification orders may not impact on the incidence of such offences if the person committing the offence is not planning to stand as a candidate for election.

102. Witnesses also told the Committee that certain groups of people involved in public life are significantly more likely to receive abuse and be subject to intimidatory behaviour. In oral evidence, Elect Her stated that:

” “Women categorically receive a greater amount of abuse, and women of colour receive an even greater amount. Amnesty International research has found that 20 minority ethnic MPs received almost half of all the abusive tweets towards female MPs. That is a social media challenge.”⁸

103. The Electoral Commission referred to research they conducted at recent elections across the UK which they described as “eye-opening horrorific”. The research around the local government elections in Scotland in May 2022 found that:

” “something like 44 per cent of candidates had experienced some kind of abuse or intimidation—44 per cent might be a minority, but it is a pretty big minority. It is apparent that there is more of an impact on people who identify as female, with our research showing that they have a bigger sense of fear and a bigger problem with the abuse and intimidation that they experience.”²⁰

104. The Electoral Commission identified that, this:

” “has two main implications. The first is that those people will not put themselves forward as candidates in the first place; they will self-censor. That will be a silent problem, because we will not see that in any statistics. The second implication is that they will feel that they have to change their behaviour in order to deal with threats and intimidation. It absolutely should not be the case that potential victims should be the people to change their behaviour.”²⁰

105. Engender commented on the increased risk of intimidation that women, black, and other minoritised politicians may experience. In written evidence Engender indicated that:

” “Experiences of toxic levels of abuse and harassment tied to sexist behaviours – both online and offline – are often referenced by women as a reason for leaving public life. Together, this contributes to a chilling effect on diversity, sending a strong signal that electoral politics is not safe for women, particularly for women of colour and other marginalised groups. Action must be taken on all forms of harassment, abuse and intimidation if we wish to see greater diversity in our elected representatives.”⁹

106. Elect Her referenced recommendations made by the Jo Cox Foundation on having clear guidance for elected representatives on reporting abuse to the police and the financial cost of personal safety, saying:
- ” “Another of the Jo Cox Foundation’s recommendations is on the provision of greater financial support for elected representatives to enable them to deal with the costs that are associated with personal safety and handling abuse. Our financial systems are not yet up to speed with those additional needs. If, for example, it is recommended that a member avoids using public transport for a period while they are in receipt of abuse, that comes with increased costs.”⁸
107. UNISON supported the provisions on disqualification orders, saying:
- ” “One of the aims behind the bill is to increase participation in our democratic process. If that is an unpleasant thing to participate in—as a candidate, a member of staff or a member of the public who wants to ask serious questions— people will back out and will think that it is not for them or that they are not interested. We see across all sorts of surveys that people just do not want to participate in political debate in our country.”⁸
108. In relation to the wider issue of intimidation and harassment of those involved in elections, the Electoral Commission suggested:
- ” “a wider piece of work needs to be conducted by regulators, political parties, Police Scotland, the Crown Office and Procurator Fiscal Office to understand and address intimidation and harassment experienced by those involved in the electoral process.”²⁰
109. In practical terms, the Committee heard that any additional disqualifications to those already in place would need to be added to nomination papers. This would ensure that candidates made a declaration stating that they were not disqualified by dint of being the subject of a disqualification order or a Scottish disqualification order.
110. The EMB Convener Malcolm Burr told the Committee that:
- ” “that would have to be another line in the nomination process in that the candidate would have to state that they were not disqualified and did not have a relevant conviction. It is a perfectly competent qualification.”¹²
111. Dumfries and Galloway Council also indicated in its written evidence that guidance for Returning Officers would be required given “the practicalities of Returning Officers knowing that an individual is disqualified are not addressed”¹⁵ in the Bill.
112. The Committee notes that the Bill as introduced provides that a person subject to a disqualification order cannot be nominated for election to nor be a member of a local authority in Scotland. For MSPs the Bill only prevents membership of the Parliament and is silent on nomination and candidacy. The Committee was concerned that this had the potential to give rise to vexatious candidacy in Scottish Parliament elections. (Vexatious candidacy would be an individual subject to a disqualification order standing as a candidate in a Scottish Parliament election.) On the question of the difference between the approaches and vexatious candidacy,

the Minister stated that the issue was sufficiently covered in relevant legislation⁴ :

“(...) the difference seems to be the result of the difference in legislation over the years for councillors, MSPs and parliamentarians in general. That is on-going. Part of the Scottish Parliament Conduct Order states that a person making a false statement on their qualification for membership of the Parliament is guilty of corrupt practice. We consider that offence to be strong enough to put someone off doing that.”¹⁷

113. The Electoral Commission did not have a view on the point in the process at which someone should be disqualified, telling the Committee:

“This is a choice for the Parliament. If someone has been convicted of harassing or abusing people involved in the electoral process and you are going to disqualify them, you will be sending a very clear signal and, indeed, stopping them from taking part in certain aspects of the democratic process. Actually, it is for the Parliament to decide exactly how far it goes in preventing people from getting involved in the democratic process if they have been convicted of such offences. I do not think that we can tell the Parliament how far to go with that, other than to say that it is important that whatever happens has a real impact.”²⁰

114. Section 12 of the Bill provides that rather than vacating their seat immediately, an MSP or councillor has:

- 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).

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

116. On ending the automatic link between disqualification from membership of the House of Commons and membership of the Scottish Parliament⁵, the Minister explained that:

“Before 2016, the law for MSPs was reserved. At this stage, we are bringing it to the Scottish Parliament so that it can set its own rules. The Welsh Senedd has already legislated to set its own rules, and its list of disqualifications is much shorter than the list in the House of Commons legislation. We are using that as the basis to move forward and bring the powers to ourselves.”¹⁷

Recommendations

117. The Committee is content with the provisions on temporary relief from the effect of disqualification which allow an individual already in elected office to have sufficient time to appeal any conviction and associated disqualification order.

118. In relation to potential vexatious candidacy for Scottish Parliament elections, the Committee notes the reference provided by the Minister that the Elections Order offers sufficient safeguarding. The Committee asks the Scottish Government to keep this issue under review and to consider future amendment via primary legislation should any issues with vexatious candidacy transpire.

119. The Committee also invites the Scottish Government to carry out an evaluation of the impact of the proposed changes in relation to increasing the diversity of those campaigning or standing for elected office and to the levels of abuse and intimidation that women and minority candidates experience. Should the Bill be enacted, the Committee asks that this evaluation is carried out ahead of the Scottish Parliamentary elections that would be scheduled for May 2031.

Consideration of the disqualification of MSPs and councillors who appear on the sex offenders register

120. The Bill as introduced does not include provision for disqualification of individuals who have been convicted of a sexual offence and are subject to sex offender notification requirements (SONR) under the Sexual Offences Act 2003 from holding office as MSPs or local councillors. However, the Policy Memorandum to the Bill indicates that consideration is being given to such a provision being introduced at Stage 2. In [a letter to the Committee](#) in February 2024, the Minister for Parliamentary Business said:

” “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.”

121. Existing legislation prevents:

- An individual from standing for or holding elected office as a local authority member in Scotland if they have, within the five years prior to polling day or since being elected, been convicted by a court in the UK, Channel Islands or Isle of Man of any offence for which they have received a custodial sentence of more than three months without the option of a fine
- An individual from holding office as an MSP or being nominated as a candidate where they have been convicted of an offence and sentenced to be imprisoned for more than a year. The nomination of a person who is disqualified because of this is void, and a Returning Officer would reject their nomination.

122. The Scottish Government carried out [a consultation](#) in 2023 on whether individuals subject to SONR under Part 2 of the Sexual Offences Act 2003 should be barred from holding the position of councillor in a local authority. In the consultation paper,

the Scottish Government explained that “some individuals may be subject to Sex Offender Notification Requirements under Part 2 of the Sexual Offences Act 2003 (...) but not receive a custodial sentence of imprisonment which falls within the scope of the existing legislation disqualifying persons from holding office”.²¹

123. The Scottish Government’s analysis of responses to that consultation indicates support for the introduction of such a disqualification, stating that of “81 responses, 76 respondents (94%) agreed with the proposal, three disagreed (4%), and two provided no answer to this question (2%).”²²
124. The analysis of consultation responses states “that the predominant reasons for agreeing with the proposal related to the position and responsibility of an elected councillor and concerns about the safeguarding of vulnerable persons.”²²
125. During its evidence-taking at Stage 1, the Committee sought views on the issue of disqualification of individuals subject to SONR from holding elected office in Scotland. Witnesses were broadly supportive, in principle, of the introduction of such a disqualification. UNISON, Elect Her and the Electoral Management Board for Scotland all supported the proposal with the EMB saying that the “electoral community and the consultation were very much in favour of that disqualification.”¹²
126. The Electoral Commission stated in oral evidence that “It is important that we send a signal about what we expect of candidates who get involved in our democratic processes” adding that they were not suggesting “that there should be some sort of fit and proper person test, as that has a different meaning.”²⁰
127. A suggestion was made by Professor James that there would be value in considering “international best practice on that matter—for example, the Venice commission provides a code of best practice for elections”⁸⁶.
128. The Committee notes the position in Wales where section 20 of the Local Government and Elections (Wales) Act 2021 amended the law to prevent persons subject to the notification requirements or orders under Part 2 of the Sexual Offences Act 2003 from being councillors and the Senedd and Wales Act 2020 provides for disqualification from being a member of or a candidate for election to the Senedd. In England, the Local Government (Disqualification) Act 2022 made similar provision in relation to councillors and mayors.
129. During the oral evidence session, the Minister was asked about what work the Scottish Government has undertaken to establish international best practice with regards to the disqualification of individuals from being MSPs or local councillors who appear on the sex offenders register. The Minister explained that:

” “Comparisons have been made, depending on what sexual offences are being considered. Different countries have different rules on banning someone from office because of criminal convictions. (...) People who are subject to sexual offences notification are banned from membership of the Welsh Senedd. That change came about in 2020. A similar prohibition applies in relation to councils in England and Wales, but not to MPs. We might need to look at that. It would be good for councillors. (...) The committee might want to look at that with regard to MSPs. (...) Perhaps we should look at it when we get to stages 2 and 3 of the bill.”¹⁷

130. In [a letter to the Committee](#), the now Minister for Parliamentary Business, Jamie Hepburn MSP, thanked the Committee for highlighting the [Venice Commission’s 2015 report](#) on Exclusion of Offenders from Parliament, and noted the relevance of paragraph 170 of that report in particular. In more general terms, the Minister stated that:

” “This is not an area where straightforward international comparisons can be made as it depends on the rules in place in each country in relation to registering sex offenders. The situation is also complicated by the existing legal prohibitions on convicted persons serving as MSPs (if sentenced to over 12 months and detained in prison) or councillors (if sentenced to 3 months or more in the previous 5 years).”¹⁷

131. The Policy Memorandum sets out that disqualification would be intended not to apply “until any appeal right had been exhausted and any change would not disqualify serving MSPs and councillors from office at the point at which the law changed (so that a person currently serving as an MSP or councillor and subject to notification requirements or a relevant order would not be disqualified when the law changes but, they would be disqualified from standing for re-election at the next local government election, should they still be subject to the relevant order or the SONR at that time).”²³

132. Asked about their views on an individual becoming subject to the proposed disqualification during their term of office and any electoral consequences, the Electoral Commission stated that:

” “It will come down to how Parliament wants to frame the legislation. (...) That is a difficult thing to overcome in this scenario, which is why, to my mind, prevention is the best way forward. It is about understanding how the earlier steps in the process can be made as robust as possible, because ultimately, nobody, aside from the electorate, can sack an office holder.”²⁰

Recommendations

133. The Committee notes the support expressed by those who provided evidence for the introduction of provision to provide for disqualification of individuals who are subject to SONR from being MSPs and Councillors. The Committee also notes that other legislatures in the UK have brought forward legislation to address this issue. The Committee recommends that it would be appropriate to make

provision for disqualification from holding office as an MSP or local councillor in Scotland.

134. While the Committee has been able to take evidence on the principle of such a disqualification, detailed scrutiny of how such provision could or should operate is not possible without sight of specific legislative proposals.

135. Given the range of issues that need to be considered in making this provision within legislation, the Committee considers that it should be a matter for the Scottish Government to propose amendments to the Bill in this regard. The Committee asks the Scottish Government to confirm that it will provide draft amendments to the Committee at the earliest possible opportunity to enable the Committee to consider whether it wishes to seek additional evidence on specific proposals ahead of Stage 2.

Campaign finance at Scottish elections

136. Part 3 of the Bill relates to campaign finance and contains provisions concerning notional expenditure and third party campaigners⁷. Most of the changes mirror provisions in the UK Elections Act 2022 relating to reserved elections (i.e., in Scotland those to the UK Parliament). This was confirmed by the Minister in oral evidence to the Committee:

” “The bill also makes changes in relation to spending in election campaigns, including the definitions of notional expenditure, overseas spending and third-party campaigning. Those changes broadly match those made by the 2022 act for Westminster elections.”¹⁷

Notional expenditure

137. Notional campaign expenditure is when candidates, parties or other 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. In most cases, the full price of the goods or services has to be declared as an election expense.

138. Following a Supreme Court judgement²⁴ 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 (in Scotland in relation to reserved elections) so that notional expenditure was only incurred where it was authorised by a candidate or their agent.

139. 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. The Policy Memorandum clarifies:

” “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.”²³

140. The Committee notes that the Bill provides for the change in relation to:

- notional spend by political parties at Scottish Parliament general elections
- notional expenditure by third party campaigners at Scottish elections
- notional expenditure at local government elections.

141. The Bill does not, however, make the change in relation to the expenditure of candidates at Scottish Parliament elections. The Scottish Government has stated that this change will be made by secondary legislation.

142. The Committee notes the significance of notional expenditure at Scottish Elections. The Electoral Commission indicated that:

” “We know from the 2021 Scottish Parliament elections that quite a lot of money is bound up in notional spending. Around half of the reported spending by either constituency candidates or regional independent candidates was notional spending, and it came to more than £1.5 million.”²⁰

143. In its written evidence, the Electoral Commission also noted the importance of those involved in campaigning understanding the rules on notional spend, stating:

” “Candidates, agents and party or campaigner staff must understand what should be reported as ‘notional spending’ or ‘election expenses’ as it counts towards their total campaign spend, which must not exceed the specified spending limit. If this provision is enacted, we will monitor the practical impact of the changes in the Bill (and those arising from the UK Elections Act 2022) and share any findings with the Scottish Government. We will continue to provide guidance to support the regulated community to understand and comply with the law. If the law is amended for notional expenditure at Scottish devolved elections, the Commission would also consider whether it could develop a statutory Code of Practice on candidate expenses under our existing powers to provide further clarity about notional spending and spending under local non-party campaigner laws. The Commission would need sufficient time to prepare and consult on any Code, ahead of the laws coming into force.”¹⁶

144. The Electoral Reform Society as well as the AEA also agreed with making campaign finance law for devolved elections consistent with the provisions of the Elections Act 2022. The Electoral Commission also commented that aligning rules for devolved and reserved elections should make it easier for campaigners to

comply with the law.

145. In oral evidence, the Committee discussed with the Electoral Commission the impact of the proposed change on candidates, their agents and other campaigners, and work that may be required to ensure that they are clear about the requirements in relation to notional spend.

146. Professor Clark’s view was that “the clarification that notional spending must be spending that the agent or the candidate is aware of is fairly sensible”⁸.

147. Elect Her commented on the wider implication of funding and campaign expense definitions saying:

” (...) there is a need to provide additional financial support to those who are candidates, in order to balance out that playing field. That concerns the detail in the language, including what are defined as campaign expenses; (...) a whole heap of things that people—specifically, women—have to spend money on as part of a campaign would not traditionally be considered as such.”⁸

Third party campaigners

148. As stated earlier in this report, third party campaigners can be individuals or organisations which campaign at elections but are not political parties and do not stand candidates. Some third party campaigners are required to register with the Electoral Commission and are known as "recognised third party campaigners".

149. The Bill makes one particularly significant change in relation to third party campaigners by proposing a reduction to the amount that overseas third party campaigners can spend at devolved elections. The Bill provides that overseas third party campaigners can only spend up to £700 in a regulated period for a Scottish election. At present the limit is £10,000 for Scottish elections. The proposed change would bring spend by third party campaigners at devolved elections in line with the limit at reserved elections with one notable difference.⁸ As the Policy Memorandum explains:

” 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.”²³

150. Professor Clark commented on this during evidence to the Committee, saying:

” I note that the bill goes further in that regard than the Elections Act 2022 by also including unincorporated associations in the restrictions on spending. That is an important step, because they have been shown to be avenues for money coming into politics. That divergence in the bill is important.”⁸

151. On the proposed reduction in the spending limit for overseas third party campaigners, the Electoral Commission highlighted the enforcement challenge when breaches occur overseas, stating:
- ” “The Government should set out how it intends the restrictions on overseas spending to be enforced. We are not able to take any enforcement action against organisations or individuals outside the UK that don’t follow the law. Criminal law enforcement bodies are also limited in the action they can take against people or organisations based overseas.”¹⁶
152. In oral evidence, the Commission expanded on this point, stating:
- ” “strict enforcement is very challenging. That said, it is a big piece of symbolism and it sends a signal. Broadly speaking, people who are in the regime of political finance in the UK want to comply. The problem is that the actors who are outside that regime—the ones who might not want to comply—are the ones against whom it will be almost impossible to enforce.”²⁰
153. Professor James questioned whether overseas third party campaigners should be able to spend at all at devolved elections, saying:
- ” “I query the spending limit of £700 for overseas-based third parties. If we are concerned about overseas influence in elections, should the limit not be zero? Should we not ban overseas-based third parties from being involved in Scottish elections?”⁸
154. More generally, the Electoral Commission highlighted the challenge in tracking relatively small amounts of money when enforcing campaign spend rules.
155. UNISON and the Electoral Reform Society highlighted the importance of transparency around campaign spending for public confidence in elections. UNISON stated that:
- ” “As a trade union, we are a registered third party campaigner. We fully support maximum transparency. I think that our money is the cleanest and most open money in politics. (...) It is important that everyone else is held to account in the same way that we are. We do not do anything that is not open. (...) Openness is key to our democracy but also to people’s trust in it. (...) We have very low levels of trust in our electoral politics. That comes in part from a lack of ability to trace money, and the fact that money gives people power. We have to be bold on that.”⁸
156. The Electoral Reform Society agreed with UNISON, telling the Committee:
- ” “There is a balance to be struck between accessibility and transparency and (...) the ability to trace money, especially where it is open to abuse by wealthy actors and other foreign states. That is a key area.”⁸
157. The Electoral Commission is responsible for providing guidance to those involved in elections. At present, the Commission publishes a code of practice for the rules on third party campaigning at reserved elections. 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. The code would have to 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.

158. 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.

159. In relation to the amount of time that the Commission considered would be necessary to produce a useful code of practice, the Commission indicated:

” “It would take some months to do that work properly, ensuring that we consulted all the right people. In that respect, six months would not give us a lot of time, and we would probably require at least 10 to 12 months to do a really good job on that.”²⁰

160. Although the Commission was supportive of the requirement for a code of practice on third party campaigning for Scottish elections, it noted that it would be required to consult the Parliament as a whole on the draft. This is different from the process set out in the UK Elections Act 2022 for reserved elections and the process set out in the Elections and Elected Bodies (Wales) Bill being considered at the Senedd Cymru where the Commission is required only to consult a specific committee of the legislature. While not highlighting the difference as a concern in itself, the Commission stated that:

” “(...) it is vital that any legislation is in place in sufficient time for us to consult Parliament and consider any views before laying our Code.”³

161. The Committee notes that the Scottish Parliament’s Standing Orders set out the process to be followed where any enactment contains a requirement to consult the Parliament and that this process involves referral of the consultation to a relevant committee. The relevant Committee would then be required to consider and report on the consultation.

162. The Bill also provides Scottish Ministers with the power to amend the list of categories of organisations able to register as a third party at Scottish Parliament and local government elections in Scotland and therefore incur controlled expenditure. Scottish Ministers would be able to add to the list without a recommendation from the Electoral Commission. The Electoral Commission would, however, 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 Elections Act 2022 gave the Secretary of State a similar power in relation to third party campaigners able to register at reserved elections. The Committee notes the Delegated Powers Memorandum which explains 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.”²⁵
163. The Committee further notes that the DPLR Committee “finds the power acceptable in principle and is content that it is subject to the affirmative procedure”.²⁶
164. The Electoral Commission also noted the possibility for confusion if rules at devolved and reserved elections differ.
165. In oral evidence, the Electoral Commission stated that it may be beneficial for the Commission, as regulator, to also be consulted where Scottish Ministers intend to add a category to the list of third parties which can register with it:
- ” “For us, it comes down to ensuring that the decision is taken on the basis of clear evidence and facts. I will not sit here and say that the minister would not be able to make that decision, but there is a perception point—we are the registrar for political parties and for campaigners; being able to advise on those areas is well within our competence and might well help to avoid that perception.”²⁰
166. Professor Clark highlighted an additional issue to the Committee, explaining that at present there is less transparency around campaign reporting at Scottish elections than there is at reserved elections due to the frequency of reporting on campaign finances required. Professor Clark told the Committee:
- ” “There is a very important thing that is not in the bill in relation to bringing the spending regime for donations, campaign spending rules and so on in Scottish Parliament elections into line with those for Westminster elections. There is weekly reporting during a general election period. It seems slightly odd to me that the Scottish Parliament is less transparent in that regard, reporting on a standard three-monthly schedule, which is outwith the election cycle, so we have no idea what is going on with donations and spending during a Scottish Parliament election.(...)
- My recommendation is that, in order to improve transparency, the bill should go further in that regard, with provisions that bring the regime in Scotland into line with the regime for Westminster elections. One of the things that the policy memorandum focuses on is transparency, so it seems odd that what I have suggested has not been considered in an attempt to improve transparency.”⁸
167. On the difference in reporting on campaign finance between reserved and devolved elections, the Minister told the Committee:

” “(...) I would be happy to see how the debate among committee members goes. Having different regimes and ideas adds complexity. Arguments have been made that such frequency could make it more difficult for a campaign and would increase the onus on a campaign, but it would give people more transparency. I am open to persuasion on that issue.”¹⁷

168. One further issue in relation to campaign regulation the Committee considered was the maximum fine available to the Electoral Commission for breaches of the election spending laws at Scottish elections. At present the maximum fine available to the Electoral Commission in Scotland is set at £10,000²⁷.

169. 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 (the Electoral Commission has indicated that it feels the maximum fine should be £50,000) where people break electoral law²⁷. The issue is not, however, included in the Bill.

170. The Scottish Government indicated to the Committee that it has discussed the matter with the Electoral Commission, explaining:

” “The Government has made it clear that it is sympathetic to increasing the maximum fine and that it thinks that the current level is too low. There are quite a number of challenges in doing anything in that respect because of how electoral law operates. If there was a Scottish Parliament election in one year and a UK Parliament election were to happen within the next 12 months, we would have to retrospectively apply the rules for the UK Parliament election, so we would suddenly be moving from what we think is an appropriate fine to what the UK Government currently thinks is an appropriate fine. We think that that would risk making the situation very confusing and that there should be a change at the UK level.”¹⁷

171. In [a letter to the Committee](#) on 16 May 2024, the now Minister for Parliamentary Business, Jamie Hepburn MSP, further explained the complexity of introducing a change to the maximum fine available to the Electoral Commission in relation to breaches of campaign spending rules at Scottish elections:

” “The spending limits that apply to elections apply during ‘the regulated period’ which is calculated in relation to a particular election according to the rules in Schedule 9 of Political Parties, Elections and Referendums Act (PPERA). A UK Parliamentary general election will have a regulated period of 365 days, ending on the day of the election. A Scottish Parliamentary election will generally have a regulated period of four months ending with the date of the poll. However, where two or more regulated periods overlap, a combined regulated period applies to the Scottish Parliamentary election.

It is generally within the legislative competence of the Scottish Parliament to make provision in relation to campaign finance for elections to the Scottish Parliament and in relation to enforcement sanctions by the Electoral Commission where the regulated period is determined by reference to the Scottish election alone. However, this is not possible when a combined regulated period applies during any period of 12 months prior to a UK Parliament General Election. During a combined regulation period the reserved limits and enforcement sanctions would apply.

There is therefore a risk that pursuing a change in this area could create a confusing and inconsistent approach to enforcement across the UK. Making a change for Scottish Parliament elections would mean different maximum penalties depending on when the Scottish Parliament general election is held. The maximum fine that could be levied by the Electoral Commission for a breach of election spending rules would vary depending on the date of the UK Parliamentary general election. It would also result in a period of uncertainty for 12 months after every Scottish Parliament election, as it would not immediately be known if a UK Parliament general election would be called in that 12 month period.”

Recommendations

172. The Committee agrees with the proposals in the Bill in respect of notional expenditure.

173. The Committee is content that consultation by the Electoral Commission on the code of practice for third party campaigners would be with the Parliament, rather than a designated committee. The Committee notes existing Standing Order provisions set out a process to be followed where an enactment contains provisions in relation to consulting the Parliament.

174. The Committee also recommends:

- that the Electoral Commission should be consulted before Scottish Ministers add a category to the list of third party campaigners required to register with the Commission

- that the Scottish Government should undertake work with relevant stakeholders to consider how the range of campaign expenses could be increased to support increased diversity in candidates for elected office, such as, but not restricted to, childcare costs
- that, in relation to restrictions on spending by overseas third party campaigners, the Scottish Government provides further information as to how it intends such restrictions to be enforced
- that the Scottish Government undertakes further work with stakeholders to bring the reporting regime for Scottish Parliament elections into line with the regime for UK Parliament elections.

The rescheduling of elections

175. Part 4 of the Bill proposes a range of measures intended to improve the arrangements for rescheduling elections, including the deadlines for elections to certain offices following a rescheduled Scottish general election.
176. The Scotland Act 1998 makes provision that allows the Presiding Officer to propose an alternative date for an ordinary Scottish general election either one month before or one month after the election is scheduled to take place. The Scotland Act 1998 also provides that the Presiding Officer must be elected within 14 days of the day on which the election is held and that the First Minister must be nominated within 28 days of that election.
177. In relation to local authority elections, the Policy Memorandum for the Bill sets out that “the date of a Local Government election can only be changed if an order is made by statutory instrument not later than 1st February in the year preceding the year in which the election is to be held, in other words, a minimum of 15 months before the date of poll.”²³
178. The Policy Memorandum indicates that measures on rescheduling of elections are being proposed based on the experience of holding elections during the Covid-19 pandemic. While the Bill does not set out the circumstances in which postponement may be warranted, the Policy Memorandum suggests that public health emergencies, security threats, and the demise of the Crown may be considered as such emergency situations warranting the postponement of an election.
179. In relation to elections to the Scottish Parliament, the measures the Bill proposes are as follows:
- revises the existing power for the Presiding Officer in relation to rescheduling elections to the Scottish Parliament by allowing them 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)
 - allows for the Presiding Officer to propose a further 8-week extension, meaning

a general election could be postponed up to 16 weeks

- requires that the Presiding Officer consult the Electoral Commission and the Convener of the EMB before proposing a date for a postponed general election and before proposing an extension to the alternative date
- provides that when the date of the general election is postponed, or subsequently extended, 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
- 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” rather than within 14 days
- amends section 46 of the Scotland Act 1998 so that the period 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
- amends section 9 of the Scotland Act 1998 to give the Presiding Officer a power to set a new date for a constituency by-election within three months of the original date, provided it is not within 6 months of the next ordinary general election.

180. In relation to Scottish local government elections, the Bill:

- grants the Convener of the EMB the authority to delay ordinary local government elections by up to two weeks, following consultation with the Electoral Commission and Scottish Ministers
- creates a power for Returning Officers to postpone a local election in their area by up to two weeks following consultation with the Electoral Commission, Convener of the EMB, and Scottish Ministers
- amends section 37 of the Local Government (Scotland) Act 1973 to give returning officers the power to set a new date for a by-election within three months of the originally scheduled date provided the new date is not within six months of the next ordinary local election and the number of unfilled vacancies does not exceed one-third of the total council membership.

181. The Policy Memorandum to the Bill indicates that the shorter timeframe proposed for local elections compared to Scottish Parliament elections is to allow time for the Parliament to legislate for a longer delay should it be required.

182. In the call for views on the Bill’s proposals for rescheduling of Scottish elections in emergency situations, five organisations responded to the question on rescheduling of elections, three of which indicated support for the proposals in principle (the remaining organisations did not make a comment of support or opposition). Uncertainty on the emergencies and circumstances that would be covered by the Bill’s proposals was a common theme among organisations. The requirement to consult on the decision and the transparency of the decision-making advice was

another common theme among organisation respondents. Several organisations made comments on the financial and logistical costs of postponing an election.

183. Individual responses varied in their reasons for agreement or disagreement with the proposals, with a few highlighting the need to clarify circumstances which constituted an emergency. Individual respondents against the proposals made comments indicating their uncertainty that the proposals are necessary and that the decision to reschedule an election could be made impartially.

184. Evidence received in relation to the rescheduling of elections broadly fell into two categories: the processes for decision-making on postponements, and the practical implications of postponement.

185. In relation to the processes for making decisions on the postponement of elections, and the circumstances in which such decisions may be taken, a number of those providing evidence expressed a view that there is a need for clarity on the circumstances in which the use of postponement powers should be used – that is to say what constitutes an emergency for the purpose of rescheduling an election – and on the importance of the reasons for decisions on postponement being transparent by being published.

186. The Electoral Commission told the Committee that:

” “It is important to have measures in place to allow for postponement of elections, but clarity is needed on scale. In our view, an event would have to be fairly substantial, and public safety would perhaps need to be at the heart of consideration.”²⁰

187. The Electoral Commission also commented on the reasons for rescheduling a local election in its written submission, which stated:

” “Paragraph 118 of the Policy Memorandum to the Bill envisages that a delay to local elections may take place with ‘two scenarios in mind’ – these include the ‘demise of the Crown or a terrorist attack’. We would welcome confirmation from the Scottish Government that this power is not restricted to the two scenarios listed in the Policy Memorandum and could be used to respond to other major disruptive events such as a cyber-attack or extreme adverse weather conditions. An example to support this measure is the 2018 Clackmannanshire local government by-election in 2018 where the RO was required by law to run the poll on a day in which the government was advising residents not to leave their homes due to the severe snowstorm.”¹⁶

188. In its written submission, the Law Society of Scotland stated that in its view “the Presiding Officer should exercise this power only when it is necessary to do so and provide the reason for exercising this power.”¹¹

189. Andy O’Neill, Head of the Electoral Commission in Scotland, told the Committee:

- ” “we are keen that, whoever the decision maker is—the Presiding Officer, the convener of the EMB or whoever—they have to consult the various people involved. (...) We are also keen that the decision maker should have to make known their decisions and the reasons for them, and to publish them for clarity and transparency. That should be the case when the decision is to postpone, but it should also be the case if the decision is not to postpone. We think that it is necessary, when the decision maker has gone through the process of thinking about it, for them to say why they have decided not to postpone.”²⁰
190. The Committee heard that the list of bodies which must be consulted in respect of any electoral postponements is appropriate but that there may be others, such as public health experts, who could be consulted, depending on the circumstances in which postponement was being considered.
191. In relation to the postponement of a general election, Professor Clark suggested that the Bill could be “strengthened” in this area by the inclusion of a legal test of necessity in the Bill and by the establishment of “some form of cross-party committee or advisory group” to be involved in the decision-making process. On the suggestion of a legal test, Professor Clark suggested that “One approach might be something from the Civil Contingencies Act 2004” or that something “around the necessity for derogations from human rights regimes might be another way of thinking about it.”⁸
192. Regarding the establishment of a cross-party committee or advisory group, Professor Clark explained that:
- ” “We did worldwide research on what happened during the Coronavirus pandemic, and we found that the reasons for postponement were more likely to be successful if there was cross-party agreement, because that reflects societal agreement about what has to be done.”⁸
193. In relation to the composition of such a committee or group, Professors Clark and James were asked for their views on the membership and balance of it and how that make up may affect decision making. Professor James stated that having an “independent body making such decisions would insulate the Parliament and politicians in some regard, but politicians would still need to be included in such conversations, because they have important views and you would want to take everyone along with you.”⁸
194. In relation to a body that was wholly independent of political parties or elected members, Professor Clark commented that such an approach could subvert “the normal role of authority, which is that politicians, not officials, take the decisions”.⁸
195. The Electoral Commission also commented on the context in which postponement decisions might be taken in the future being unknown, but said that they would be keen “to get together with the EMB, the Scottish Assessors Association and the Scottish Government and go through likely scenarios so that we could leave a document on the shelf for people in the future so that they do not have to go through the process again.”²⁰

196. In addition to the decision-making mechanisms for rescheduling elections, the Committee was provided with evidence regarding a range of practical implications arising from the postponement of an election.

197. The Electoral Commission set out in evidence that:

” “The logistics of rearranging an election are enormous, even in respect of simple things such as venues, count staff and all the other things that one would expect. Time would be needed to give clarity to the electorate, candidates and agents about the new arrangements.”²⁰

198. The Committee asked witnesses about the practical impacts of postponement, including the possibility of ‘double postponement’ of a period up to 16 weeks for Scottish Parliamentary elections. The AEA explained:

” “(...) it depends on the timing of the postponement. If it comes really early and you are not far down the road with the project, for want of a better word, it is much easier to make changes. If you have already started to engage with your printer and you have things printed with dates and so on, all of that goes to waste. The same applies to booking premises and staff to work during the election. All of that is bad enough if the date changes once, but, if you extend it again, you double that difficulty. (...) In the case of a postponement, which ultimately needs to happen—obviously, the circumstances require that—we just look to make the transition to deal with it as smooth as possible. A double step makes that more difficult.”¹²

199. The EMB highlighted in its written submission that the two week postponement of the local government elections period might be insufficient, for example, to rebook the venues for the “complex [electronic] count operations” adding:

” “The EMB would be happy to engage further to develop a more effective and achievable timescale but would suggest that a maximum postponement period of four weeks be substituted”.¹³

200. The Committee explored the impact of a two week postponement further in oral evidence. The AEA commented on what postponement may mean in relation to voting, and the need to be clear on whether a postponed election is being effectively ‘frozen’ or re-run, saying:

” “Are we talking about postponing or freezing an election, or cancelling it and redoing it from scratch, in which case all the postal packs would have to be scrapped? You are right to say that such a short period of postponement would make that process very difficult, because some people could hold on to their postal votes, while other people might not have been issued with them. That could give rise to all sorts of integrity questions.”¹²

201. Overall, the views of those involved in administration of elections was that a minimum period of four weeks would be necessary for postponement of local government elections. This was in large part due to electronic counting being a feature of local government elections. In the [letter to the Committee](#), the Scottish Assessors Association addressed the issue:

” “The EMB and the AEA within their evidence stated that a postponement period of two weeks would be impractical in terms of booking polling places and, where an electronic count was involved, in making arrangements with the eCount supplier. It is noted that the Bill at Sections 25 and 26 makes reference to a maximum period of two weeks whereas at section 27 there is provision to postpone for up to 3 months for a by-election. Any regulations would need to ensure that the Registration and other timetables can be shown to be reasonable and put the elector first within the possible range of postponement periods that the Bill will allow.”

202. The Scottish Assessors Association also highlighted the potential impact that any postponement may have on electoral registration, telling the Committee:

” “In relation to postponement, we need to look at how that would interact with the timetable for registration and suchlike. Let me pick some random dates. Let us say that an election for 1 May was postponed until 1 June. During that period, there would be churn in the electoral register, with people becoming eligible to vote because of their age, for example. We need to see how such aspects would interact with the timetable to ensure that whatever we put into place is in line with the law. It is not uncomplicated, but, equally, it is doable.”¹²

203. In a [letter to the Committee](#), the Scottish Assessors Association explained the impact of postponement of an election on registration in significant detail, writing:

” “At this point in time there are no Regulations that cover this eventuality, however the Schedule 1 of the Scottish Local Government Order 2011, which lays out the Rules for Scottish Local Government Elections, may provide an appropriate model, in particular Part VI Rule 65 which covers the instance of a death of a party candidate after the close of nominations. In this instance the poll is countermanded and a completely fresh election is run at a future date.

This may provide a suitable model as the registration and absent vote application timetable is tied to the date of the poll, for example the last date for registration is midnight on polling day minus 12 days and the deadline for new postal vote applications is 5pm on polling day minus 11 days.

If an election was postponed for a period and the timetable frozen after day minus 11 or 12 then the register would not be able to be updated to reflect new electors who would normally be eligible to be added, such as attainers (those who have reached the qualifying age) nor would electors who would no longer be eligible be able to be removed. It is also not unreasonable to assume that some electors who would have intended to vote in person on the original polling day may now require an absent vote for the rescheduled date and with a timetable being ‘frozen’ after day minus 12 this option would not be available to them. Indeed a timetable that was ‘frozen’ close any of these deadlines may not allow much time for an elector to act to either register or apply for an absent vote when the timetable resumed.

The lodging of nomination papers at day -19 may provide a suitable cut off point between a paused, or frozen election timetable and one where a fresh election is required as no postal votes will have been issued at this point and the registration timetable has not reached any significant milestones.

The electoral register is updated on a monthly basis, outwith an election period, to reflect the changes within area. A lengthy postponement which extended to several weeks with a ‘frozen’ timetable after day minus 12 would mean that any electors that had been added to the register in subsequent monthly updates would require to be informed that they were not eligible to take part in the poll, potentially leading to voter confusion.”

204. The Electoral Commission also gave its view on the practical effect of rescheduling elections, saying in relation to registration:

” “If a postponement was shorter, we would probably look to freeze the register at that point in time. If it was longer, for whatever reason, we would probably have to reopen the register so that anybody who would become eligible to vote would be entitled and able to vote at the time. On who would take that decision, we would hope that the Government or the Parliament of the time would consult the EMB and the Electoral Commission to discuss the impact of the postponement and the practical arrangements that would surround it, and come to a sensible conclusion on that. Anything less than four weeks would be chaotic at the point of delivery.”²⁰

205. The Electoral Commission also told the Committee that any rescheduling would require consideration of campaign spending rules, saying:

” “You would need to think about how scenarios would impact on spending limits—in particular, on the lower limits that are in place for candidates. That would depend on the length of the postponement, to be honest.

It also needs to be considered whether—and how—you would put people back into the situation that they would have been in if the postponement had not happened, or whether the decision would simply be that because postponement has happened you will just increase the spending limit and it will be what it is from there. That would be a principled decision that the Parliament would need to take. The latter would be easier; the former would be a challenge and I am not quite sure how it would work in practice. However, as has been mentioned, at the point of making such a decision it will be really important to seek appropriate advice and input from campaigners about the impact on them.”²⁰

206. The Committee explored the points raised on these provisions in its evidence session with the Minister. On the question of the EMB’s suggestion that a minimum of four weeks should be provided for any electoral delay, especially at local elections, where e-counting is used, the Minister said:

” “From what the EMB has said, it looks as if that provision would be one of the things on which a further look would be positive.”¹⁷

207. The Minister was asked about the suggestion made by some witnesses that there should be a requirement for a statement of reasons to be published to provide information about any decision regarding the rescheduling of the Scottish Parliament general elections. The Minister indicated:

” “Obviously, during the last election, in 2021, we experienced things being quite difficult as we were actually in the middle of Covid. The provisions were created with that experience in mind. As we move forward, there will probably be other ideas and options, but what we have in the bill covers what we need in order to get things done—for the Parliament, anyway.”¹⁷

208. Scottish Government officials then confirmed:

” “We considered the idea when we were preparing the bill, but were slightly concerned that it might create grounds for challenging a decision. However, we can consider it further.”¹⁷

209. In relation to the suggestion of a cross-party committee or advisory group being formed to make decisions on electoral postponements, the Minister said:

” “I am open to listening to what other people have to say, but I do not want to overcomplicate things. Sometimes a decision needs to be made and things need to move forward; however, I am willing to listen to what others have to say, although I do not want to paint myself into a corner for stage 2.”¹⁷

210. In response to the suggestion to introduce the legal test in the Bill for the postponement of an election, the Scottish Government stated that there may be

“concern that we cannot foresee all possible scenarios”¹⁷ and noted that a number of scenarios had arisen over recent years that had not previously been envisaged. The Scottish Government indicated it would reflect further and provide information to the Committee.

211. In a [letter to the Committee](#) on 16 May 2024, the now Minister for Parliamentary Business, Jamie Hepburn MSP, set out the Scottish Government’s further consideration of a legal test. The letter referred to the provisions of the Bill in respect of postponement of ordinary local elections and Scottish Parliament by-elections which provide for the relevant decision maker to fix a new date if it is considered “necessary or appropriate for any reason to do so”. This wording is not included in relation to the Presiding Officer rescheduling an ordinary Scottish Parliament general election, given existing provision in section 2 of the Scotland Act 1998, and the Scottish Government indicated it:

” (...) is open to considering changes in this area and one option – if the Parliament considered it appropriate - could be to adopt a variant of the “necessary or appropriate for any reason to do so” stipulation to the Presiding Officer’s decision to propose a new date for a Scottish Parliament ordinary general election.”

212. The letter also commented on the suggestion of a statement of reasons when rescheduling a Scottish Parliament general election: “Another option, raised by witnesses to the Committee and which the Government will consider further, is to require any decision maker to provide a statement of reasons when making a decision.”

Recommendations

213. The Committee welcomes the consideration that has been given to providing greater flexibility in relation to the rescheduling of Scottish elections.

214. The Committee notes the concerns that have been raised by electoral administrators in relation to the minimum period of postponement for Scotland-wide local authority elections should be increased from two weeks, as set out in the Bill at present, to four weeks.

215. The Committee recognises and emphasises the importance of clarity and transparency in relation to any decisions to reschedule elections. The Committee considers that the provisions in the Bill could be strengthened by the addition of a requirement for a statement of reasons to be published where a decision is taken on rescheduling. The Committee considers that amendments to the Bill in this regard are important measures to ensure wider understanding and command confidence in relation to any decision to reschedule an election and welcomes the indication in the Minister’s letter of 16 May 2024 that the Scottish Government is open to considering whether the Bill should be amended.

Election pilots and the democratic engagement fund

216. The Scottish Local Government (Elections) Act 2002 [“the 2002 Act”] permits local authorities to propose to Scottish Ministers that a pilot scheme for local government elections is held in their area. Section 5 of the 2002 Act provides that Scottish Ministers can approve and make an order to initiate the proposed pilot scheme.
217. Part 5 of the Bill proposes amendments to the 2002 Act to include Scottish Ministers, the EMB, and Electoral Registration Officers as persons who can propose election pilots. Consequentially, the Bill updates the list of who must be consulted with on an order to initiate an electoral pilot.
218. The existing provisions (those in the 2002 Act) allow for election pilots on voting methods, locations, vote counting, and candidate election communications. The Bill seeks to amend the provisions of the 2002 Act by removing the requirement for the pilot to differ from the Representation of the People Acts. The provisions apply to pilots that require election rules to be suspended in order for them to be held at an election poll. Work to devise and develop voting interventions, such as accessibility aids, can still be undertaken without amending legislation. The requirement in the 2002 Act for election pilots to be likely to facilitate voting or encourage more voting is unaffected by the changes proposed by the Bill.
219. After an election pilot has taken place, the Electoral Commission is required under the 2002 Act 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. Consequential amendments are made in the Bill to ensure that the EMB, the local authority in which an electoral pilot took place and the Electoral Registration Officer where they proposed the pilot, receive the Electoral Commission's review of that pilot.

Election pilots

220. In their responses to the call for views, individual responses were split on the issue of running election pilots. Nine organisations responded to the question on running and funding election pilots.
221. Several organisations made comments on the lists of consultees for when an election pilot is proposed under the process set out in the Bill, including the Electoral Commission and the AEA who suggested that the Electoral Commission should be included in the list of statutory consultees.
222. The Electoral Commission is required to evaluate and report on election pilots. In oral evidence to the Committee, the Electoral Commission stated its reasons for wanting to be consulted on the proposal for a pilot:

” “It is important that the commission be consulted on pilots because we would look at the issue from the point of view of whether the pilot would deliver anything that was meaningfully beneficial to voters, administrators and campaigners, and we would comment on whether the design of the pilot was likely to be capable of being evaluated and, therefore, of having benefit derived from it.”²⁰

223. The EMB stated that the consultation and reporting requirements on the election pilots are satisfactory.

224. Engender⁹ and RNIB²⁸ noted the position in the Policy Memorandum to the Bill that no election pilots are currently planned.

225. During its oral evidence sessions, the Committee asked witnesses on their views on how pilots may be used to increase accessibility of the electoral process and priority areas of future pilots.

226. The Electoral Reform Society said:

” “Rather than proposing suggestions (...) I would make a point about the need to ensure that these things are transparent and are being evaluated. It is also important not to focus only on elections, but to think about the opportunities to strengthen our democracy in the periods between elections, too.”⁸

227. Professor Clark emphasised the importance of independent evaluation stating:

” “With regard to pilots, it is important that a clear objective is set for them—rather than simply doing pilots for the sake of it—and that they are properly independently evaluated, so that it is not just the Government marking its own homework.”⁸

228. Malcolm Burr, Convener of the EMB told the Committee:

” “We are always trying to increase the accessibility of the whole electoral process. We would like to try different means of making the ballot paper available—for example, someone could phone a number and have their ballot read out to them. I think that that is very good idea, and it was recently trialled in the north of Ireland. However, you need the ability to suspend elements of the rules that relate to that, and that is what the provision seeks to do.”¹²

229. James Adams of RNIB emphasised that “it is still not the case that all blind or partially sighted people feel that they can vote in confidence and in secret” also stating that:

- ” “we recognise the excellent work that is being done by the Scottish Government in evaluating and working out the options for accessible voting, which is not straightforward. It is easy for me to say that we need to work that out, but it is not straightforward. They have to be able to test it. They are doing lots of testing and we and other sight-loss organisations are working with the Electoral Commission, the Electoral Management Board for Scotland and Scottish Government to identify ways to make voting more accessible. At some point, we have to bite the bullet and try that out in the wild, in a real election.”⁸
230. The RNIB also suggested that digital polling cards would be useful, explaining to the Committee:
- ” “there is a large cohort of blind and partially sighted people who, if they could register with the local authority to receive their voting card by email or whatever electronic method, would be able to use screen readers on their phones. In that way, they could read those emails and know about the election. That would increase the likelihood that they would notice that there was an election, whereas, if they got something through the post, there is clearly a chance that they would miss it if they were not able to read it.”⁸
231. Professor James also commented on this, saying that:
- ” “In terms of pilot ideas, in addition to voter registration, one idea might include the use of digital poll cards, which the committee has heard about previously. It could make a difference if someone receives a personalised email on the day of the election, reminding them to vote.”⁸
232. A number of witnesses commented on a potential role for election pilots in relation to voter registration. Professor James suggested that assisted voter registration could be considered as an election pilot. Other witnesses suggested that automatic voter registration was an issue that could be considered.
233. The Committee notes that a degree of uncertainty was expressed as to whether an election pilot could include a pilot on voter registration. The Electoral Commission suggested that the Bill should make this unambiguous.
234. Both UNISON and the Electoral Reform Society said that pilots need to be about more than just the technicalities of voting and must also look at participation and power in the process, for example, automatic voter registration.
235. Professor James pointed out that voter registration in the UK is an area of weakness which could be addressed through automatic voter registration and further explained: “It is unrealistic to think that we can move to fully automatic voter registration. It would have to involve adding particular groups at particular times.”⁸ The SAA pointed out that from the administrative point of view, there would be real difficulties that would need to be overcome.
236. In the [follow-up correspondence](#), the Electoral Reform Society re-emphasised the points made on the automatic voter registration (AVR) during the evidence session to the Committee, stating:

” “Not only would AVR ensure that all eligible voters are on the registers, but it would help to deal with inaccurate registrations, for instance where entries have become redundant due to home movement. (...) AVR would ensure that a significant barrier to taking part in the democratic process is removed, improving the completeness of the register and ensuring under-registered groups are on the electoral rolls. AVR would also reduce the pressure on Electoral Registration Officers in the run up to elections.”

237. During the oral evidence session on the question of the automatic voter registration, the Minister said it was an area of interest adding:

” “If we need an amendment at stage 2 to make the intention clear in the pilot section of the bill, I would consider lodging one. I am getting to the stage at which I think that that might be something that we should consider. (...) We might make that one of the pilots, so making that clear in the pilot provisions in the bill could be a way forward.”¹⁷

238. With regards to any pilots actively under Scottish Government’s consideration, the Minister confirmed working with the RNIB on improving accessibility of the electoral process to visually impaired or blind people and piloting an idea proposed during the engagement with members and activists at the Forth Valley Sensory Centre.

239. The Scottish Government’s consultation on electoral reform included a proposal to amend the rule requiring only a specific form of Tactile Voting Device to be provided in polling stations in favour of a general responsibility on Returning Officers to provide appropriate support (the Elections Act 2022 made this change for reserved elections). On the question of the lack of any proposal on this in the Bill, the Minister explained that the matter was given consideration because it may make voting more accessible generally. The Minister stated:

” “(...) having looked at it, we saw that the idea was to give us more flexibility to be able to do different things. We still expect people who work at polling stations to be trained on the tactile voting device. There will be tactile voting devices at stations, but there might be other ways of doing it. We have various ideas, including for pilots.”¹⁷

240. The Minister’s [letter to the Committee](#) dated 30 April 2024, includes reference to the issue being pursued through secondary legislation.

241. The Financial Memorandum to the Bill sets out that no funding has been identified for election pilots. When questioned on the funding for pilots, the Minister said this would vary given that “there will be more pilots and years when there will be fewer pilots” and that funding would be allocated “in a budget-by-budget” process. The Minister offered to provide more detail on the thinking around funding to the Committee in future.

Democratic engagement fund

242. The Bill provides a new funding power for Scottish Ministers to offer financial support, including grants, loans, guarantees, and indemnities, with the goal of

promoting democratic engagement through a democratic engagement fund. Any support from the fund 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. At present, however, no funding has been identified or allocated to the fund. 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 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.”⁶

243. In relation to the allocation of monies from the democratic engagement fund, the Policy Memorandum states:

” “Where a grant or assistance scheme is put in place, this is expected to be focussed on local organisations which work with harder to reach groups and which have clear objectives to improve democratic participation, such as through encouraging registration.”²³

244. In response to the Committee’s call for views, most organisations made comments supporting the introduction of measures that have the intention of increasing voter turnout and democratic engagement, with individuals more split on any increased funding for democratic engagement.

245. Similarly, during evidence sessions, witnesses have expressed their overall support for the proposed democratic engagement fund, with some of them, for example the AEA and Professor Clark, noting the need for a clear objective to allow for the money to be used efficiently.

246. The Electoral Commission indicated¹⁶ that it would engage with any future recipients of the proposed Scottish Government democratic engagement funding in a similar way to the recipients of the Welsh Government Democratic Engagement Grant.

247. Both the EMB and the Scottish Assessors Association highlighted that the democratic engagement fund might allow engagement with hard-to-reach groups and therefore increase electoral registration.

248. With regards to the question of priorities for the proposed democratic engagement fund, some witnesses, including UNISON, Elect Her, and the Scottish Refugee Council stated that any money from the fund should be distributed to local authorities or the third sector so that they could decide how best to work with communities in order to increase participation and strengthen democracy. UNISON added that it is necessary “to localise that spend and the decision making and the trials to allow people to participate”⁸.

249. The Electoral Commission told the Committee that it supports the idea of a

democratic engagement fund, and highlighted that it is also looking at the establishment of its own fund. The Commission stated that its research could help to identify where any funding from the Scottish Government would be best used, telling the Committee:

” “The process to go through is to look at the research, of which we hold quite a lot, then have a discussion with us—we can advise Government, because we are Government advisers, after all—then come up with proposals that might add benefit, which relates to my earlier points.

Given that the Scottish Government is developing grant funding and that we are also doing so, we want to ensure that we are not duplicating its work or standing on someone’s toes.”²⁰

250. In relation to the question of no funding being identified for the democratic engagement fund, the Minister confirmed he was unable to provide further information as this will be determined during budget considerations. The Minister added he will be looking for an amount in the region of £300,000 which is the amount of a similar democratic engagement initiative by the Welsh Government.

Recommendations

251. The Committee is largely content with the provisions in the Bill in relation to election pilots and the establishment of a democratic engagement fund. The Committee notes that there will be a balance to be struck between the increased opportunity to suggest pilots and having multiple pilots running at a single poll. The Committee understands that the EMB are the experts in this area and they they would be consulted prior to any pilot. To add to the provisions in the Bill, the Committee asks the Scottish Government to:

- clarify what mechanisms will be put in place to ensure that clear objectives are set for any election pilots and for evaluation of any pilots (in addition to the evaluation that the Electoral Commission is required to carry out)
- confirm that the Electoral Commission will be added to the list of bodies to be consulted on proposed election pilots
- clarify that voter registration, including automatic voter registration, can be the subject of an election pilot
- consider the evidence from the Electoral Commission in relation to the Commission’s plans to establish a fund to support democratic engagement and indicate how it might work with the Commission to ensure best use of each fund
- confirm if the Minister will be making a case for funding to be allocated to the democratic engagement fund in the next budget round and whether the funding requested would be for £300,000,
- further clarify how monies from the democratic engagement fund would be

distributed.

Digital imprints

252. A digital imprint is “an identifier providing names and addresses of the promoter and on whose behalf the material is being published for online campaign material.”⁶
253. At present, two different digital imprint regimes apply to devolved Scottish elections because of the provisions in the Elections Act 2022 and those in Scottish legislation. The Bill seeks to revoke the Scottish regime in place at present, whilst reinstating one element of it related to unpaid for digital campaigning material by relevant third party organisations. The regime established by the Elections Act 2022 is unaffected and would remain in place (including in Scotland for Scottish elections).
254. Part 6 of the Bill requires, for Scottish elections, a digital imprint on unpaid for electronic campaigning material which is published on behalf of or promoted by a relevant third party organisation. This requirement is in addition to those under the Elections Act 2022 and is often referred to by the Scottish Government as a ‘bolt-on’ provision.
255. The Electoral Commission’s written submission explained the digital imprint regime created by the Bill when taken with the Elections Act 2022, highlighting the benefits of each:

” “The Proposals in this Bill would revoke the existing Scottish devolved legislation in digital imprints but apply an additional ‘bolt on’ provision on top of the UK Elections Act to capture more campaigners publishing unpaid or ‘organic’ digital election material relating to Scottish devolved elections. (...) As the Committee is aware, the Scottish Government introduced new digital imprint requirements ahead of the 2021 Scottish Parliament election which apply to all devolved Scottish elections. The UK Government’s Elections Act introduced digital imprints requirements for all UK elections and campaign activity which came into force in November 2023. The UK Government regime is broader than the existing Scottish law in two ways:

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

The existing Scottish law covers only ‘election material’ that promotes success at Scottish Parliament or Scottish council elections. In these two ways, the UK Elections Act provisions to extend imprint rules could offer more transparency than the current Scottish approach. However, the existing Scottish law is wider and provides greater transparency in one specific aspect, in that a digital imprint is required on all kinds of election material, including both paid and unpaid material from registered and unregistered campaigners, with some limited exceptions for personal opinion.”¹⁶

256. Part 6 of the Bill also provides for, amongst other things:

- 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.
- 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.
- The Electoral Commission to use its investigatory powers and to impose civil sanctions to enforce the digital imprint rules.

257. Overall, evidence to the Committee supported the proposal on digital imprints. There was a general view that digital imprints were necessary for transparency in the age of digital campaigning, and that having two regimes on imprints, as is presently the case, had the potential to confuse.

258. UNISON, for example, told the Committee that, as a campaigner, they supported digital imprint requirements, saying:

” “In an age of disinformation, it is important that people can be clear about who is participating in our democracy and that what those participants say can be tracked back. I get that there are costs and all sorts of other things, but it is so worth fighting for a participative democracy that is fair and open that we have to take all that into account.”⁸

259. The Electoral Reform Society (ERS) highlighted to the Committee the importance of digital imprints given the scale of campaign spend on digital materials, saying:

” “For example, between the 2015 and 2017 general elections, there was a doubling of the amount that was spent on Facebook adverts. It is a big issue for the ERS.”⁸

260. The Committee notes that the Elections Act 2022 and the Bill only require digital imprints on material where it is “reasonably practicable”. If an imprint is not “reasonably practicable” then the Bill provides that the information must be displayed in text form in a location directly accessible from the digital material.

261. ERS highlighted to the Committee concern around this “potential loophole” saying:

” “As things stand, it is stated that ‘The imprint must be included as a part of the material, unless it is not reasonably practicable to do so’. If that is not ‘reasonably practicable’—that is the issue—the imprint must be included ‘somewhere directly accessible from the material’. We would like very thorough monitoring to ensure that the scheme works as intended, that imprints appear on the material itself as much as possible, and that there is no exploitation of the loophole. That is our key message.”⁸

262. Professor Clark made a similar observation, telling the Committee:

” “The negative thing is that there seems to be a loophole—to my mind, at least—in the bill, because it says that imprints are required only if it is ‘reasonably’ possible to include them and that, if they are not included, a link must be provided to where the information is.

What can be done about that? That seems to me to provide a loophole, because people will just say, ‘Well, it’s not reasonably possible in this post,’ or whatever the publication is. The difficulty is that, as far as I can see, the bill replicates the wording in the 2022 act. If we are going to go down that road and replicate that, I do not see that much can be done. If we want to tighten that loophole, I think that there might be divergence from the 2022 act regime.”⁸

263. The Committee notes, however, the view of the Electoral Commission which told the Committee that most campaigners want to comply with digital imprint rules, saying:

” “We saw in Scotland in 2021 that the majority of people who want to campaign want to comply. Even before there was a digital imprints regime, many parties and campaigners used them anyway. The consistent approach of people actually having to do it has been really helpful: it means that we can talk to social media companies and tell people how to do it. We think that that will add an awful lot of transparency, because it provides a base level of knowledge about whom an advert or campaign material is from.”⁸

264. The Electoral Commission also brought to the Committee’s attention two enforcement challenges – first in relation to campaign material originating outside of the UK and second to the potential volume of digital material requiring imprints, stating:

” “(...) two things will cause challenges for us. One is—again—the overseas angle. (...) it is difficult if an organisation is outside the UK. In that situation (...) we could call it out and talk to the relevant electoral commission outside the UK.

The other challenge in enforcement of the digital imprints regime is volume. We do not yet know what the volume of them will be, but we will have to see that the regime is enforced at the next election, which is likely to be a UK Parliament general election. We will have to look at what sort of volume we get.”⁸

265. Professor James supported the provisions on digital imprints but noted that they are not an answer to the wider challenge of misinformation at elections. Professor James told the Committee:

” “I welcome the bill’s provisions but (...) they do not address the main problem. For example, problems with misinformation are very serious and they pose a serious threat. Existing studies point to the importance of supporting fact-checking mechanisms, journalism and the deployment of technological tools to detect misinformation and pre-bunking mechanisms. Those things have been shown to work. Digital imprints help with transparency, but it is still a big ocean and more needs to be done.”⁸

266. 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.

267. There was a general view that clear guidance was important so that campaigners and candidates are clear on the rules. The Association of Electoral Administrators in its response to the Committee’s call for views, for example, indicated support for the proposals on digital imprints but noted the need for clear guidance on the rules for candidates and campaigners.¹⁴

268. The Electoral Commission raised a specific concern with how the statutory guidance on digital imprints it is required to publish under the Bill relates to that which already exists for the Elections Act 2022, saying:
- ” It is unclear how guidance issued under this Bill will interrelate with the statutory guidance already approved by the UK Parliament, and we will work with Scottish Government officials to further explore the implications of this requirement.”¹⁶
269. [Police Scotland](#) has raised a significant point of concern with the Committee about section 41 of the Bill (Electoral Commission Guidance on Part 5 of the Act) stating in written evidence:
- ” Subsection 41(1)(b) makes provision for the Electoral Commission to draft guidance for Part 6 of the draft Bill, about the exercise of functions by a constable in relation to a breach or suspected breach of that Part. Subsection 41(2) provides that a constable must have regard to that guidance in exercising his or her functions and powers under the Bill. These provisions appear to cut across, and to potentially conflict with, the provisions of the Police and Fire Reform (Scotland) Act 2012 (...) that set out the Chief Constables statutory duties and responsibilities.”
270. In its written evidence the Electoral Commission also noted section 41 of the Bill saying:
- ” While we have some reservations about whether it is appropriate for the Commission to give guidance to police forces about how they should discharge their enforcement responsibilities, we have already consulted on and issued statutory guidance under the equivalent duty in the UK Elections Act 2022.”¹⁶
271. RNIB raised one further point with the Committee, noting the importance of accessibility of digital imprints for blind and partially sighted people by ensuring the use of alt text, saying:
- ” If it is deemed important to have an imprint so that any given voter or citizen can track where an advert is generated from, who is paying for it and so on, which are important things in society, unless the people who put material out for social media, such as Twitter, or X—whether they be in a political party, an individual candidate or the beneficiary of the reason for the imprint— put alt text on their social media images, the imprint becomes redundant for blind and partially sighted people.”⁸
272. The Committee asked the Minister about the concern on a potential loophole by requiring a digital imprint on unpaid for material published by a relevant third party during a Scottish election period when ‘reasonably practicable’, the Minister acknowledged the challenge, but added that:
- ” (...) that is an issue only for someone who goes out of their way not to work within the process and system. (...) I am working within the constraints of the UK elections regime and I am trying to get to the same requirements.”¹⁷
273. The Scottish Government further explained:

” “The law on this is, largely, the Elections Act 2022, and we have no control over that. The regime is structured in that way and people have identified a loophole in that aspect. Although the bill has quite a few sections on that, they just add a bolt-on for that one circumstance and then replicate the 2022 act for that bolt-on circumstance. For us to diverge would, potentially, cause some confusion.”¹⁷

274. When asked whose responsibility it is to make an assessment on whether an imprint is “reasonably practicable”, the Scottish Government told the Committee:

” “It would be for the people who create the material to make the assessment, but they would be informed by Electoral Commission guidance and, if they strayed from the path, the commission would police that.”¹⁷

275. With regards to the monitoring and enforcement of the ‘bolt-on’ provision and any challenges this may present for the Electoral Commission as regulator the Minister stated:

” “We talk to the Electoral Commission all the time and our discussions have noted the fact that we see this as the way forward and that it gives us the opportunity to make sure that no difficulty comes from different regimes doing different things. (...) As with most things that we have discussed today, there is a small concern, but it is tiny.”¹⁷

Recommendations

276. The Committee is generally content with the proposal in the Bill around digital imprints and accepts having one regime in place with a ‘bolt on’ for Scottish elections is likely to be easier for candidates and campaigners to navigate. The Committee are aware of the very complex and evolving nature of digital media and the need for imprints. The Committee highlights the following specific issues and asks the Scottish Government to address them in responding to the Committee’s report:

- the Scottish Government's intentions in relation to monitoring use of the 'reasonably practicable' caveat in relation to digital imprints
- how the Scottish Government intends to support the Electoral Commission, which has enforcement powers only in the UK, in regulating the digital imprint regime in relation to material from overseas
- what the Scottish Government's view is on how the accessibility of digital imprints can be improved for those who use screen readers and whether there is any work underway with stakeholders to consider this issue.

277. The Committee also seeks clarity from the Scottish Government on section 41 of the Bill in light of the concerns raised by Police Scotland and the Electoral Commission regarding any requirement for the police to have to take into account

guidance issued by the Electoral Commission when investigating a breach or alleged breach of imprint requirements.

278. In relation to the question posed by the Electoral Commission as to how the statutory guidance on digital imprints it is required to publish under the Bill relates to that which already exists for the Elections Act 2022, the Committee asks the Scottish Government to confirm what further exploration of this issue it has undertaken.

The revision of the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers by 30 April 2031

279. 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.
280. There were limited responses to the call for views on this provision. Boundaries Scotland expressed its agreement noting the provision as helpful. Other organisations generally refrained from providing views, but some organisations indicated that the timely issuing of the report was desirable so that those involved in the administration of elections can plan for potential changes proposed by Boundaries Scotland.
281. During its oral evidence session, Boundaries Scotland confirmed that it is confident it will be able to meet the review deadline. The Chair of Boundaries Scotland, Professor Ailsa Henderson, suggested that in addition to the proposed change reflecting electoral cycles there were two other benefits arising:
- ” “One is that we avoid having a live review during the 2027 local elections. It would be very confusing for people if we were asking them to vote in one set of wards while suggesting that those wards were possibly problematic and were about to change. The other benefit is that moving from 2028 to 2031 means we that we will not have a review that is done on much older electorate data and then put into action for the 2032 election. That means that the review will be conducted on more recent information and will therefore be fairer.”²⁰
282. In relation to its plans to move to a series of rolling reviews rather than review all Scottish local authorities at once, Professor Henderson explained that “rolling reviews allow us a deeper amount of engagement with the public and organisations in council areas” but that:

” “The only hiccup about moving to 2031 is that we will be commencing a review in 2028, at exactly the time when the Boundaries Scotland and Boundary Commission for Scotland secretariat is supposed to be commencing a Westminster constituency boundary review. There is not a problem with the dates as such, but if the approvals process remains uncertain, we feel that we cannot really begin with rolling reviews and get started from the moment that we are done with the Holyrood reviews in May 2025. If we can get started sooner, managing the workload will absolutely not be a problem.”²⁰

283. During the oral evidence session, Boundaries Scotland noted the four week consultation period which follows the publication of its proposals is quite short and that this period could be lengthened to enhance engagement.

284. Boundaries Scotland also highlighted that its status as an independent body could be strengthened, for example by statutory recognition of its independence.

The approvals process and automaticity

285. The Scottish Elections (Reform) Act 2020 gives the Scottish Parliament the power to accept or reject proposals put forward by Boundaries Scotland. If the Parliament rejects the proposals, it can request further review. Options for changing the process through which proposed boundary changes are approved were included in the Scottish Government’s electoral reform consultation but the Bill itself does not propose any changes.

286. One of the options proposed in the consultation was to move to a process of “automaticity”. The Policy Memorandum describes automaticity as a process “where legislation implementing the proposals made by Boundaries Scotland comes into effect automatically; without Parliament or Ministers having the final say over being able to reject or modify the reports.”²³

287. The introduction of automaticity was addressed in both written and oral evidence from Boundaries Scotland.

288. In its written submission, Boundaries Scotland stated that automaticity “is both widely employed in other jurisdictions and is also the direction of travel to protect against partisan/political interference in the drawing of electoral boundaries. It is now accepted practice at Westminster for UK electoral boundaries. Further, the Senedd Cymru (Members and Elections) Bill recently introduced in the Welsh Senedd includes provisions to switch to a process of automaticity. (...) Given the history of rejecting boundary recommendations in Scotland we are particularly keen that Scotland also adopts this change so as to avoid future partisan or political interference. The Committee will know that in each of our last two reviews of local authority boundaries, proposals were rejected either by the Minister or, more recently, by Parliament.”²⁰

289. In her oral evidence to the Committee, Professor Henderson set out that:

” “Automaticity is seen as important, because it partly protects the perceived legitimacy of the electoral process. Boundaries Scotland, along with the Electoral Commission and the Electoral Management Board for Scotland, is concerned with making sure that elections are run freely and fairly, and with preserving a sense of democratic legitimacy. Concerns arise when people start questioning—or, I should say, rejecting; questioning is something that we welcome—the recommendations of a body that has undertaken its statutory responsibilities.”²⁰

290. In his opening statement during the oral evidence session, the Minister for Parliamentary Business made the following comments on the question of automaticity:

” “The committee is aware of the Government’s view that, ultimately, automaticity is the right way to make changes to electoral boundaries; it underlines the independence of Boundaries Scotland and is informed by experiences elsewhere in the UK and internationally.

Automaticity would, of course, be a significant change to how boundary changes are implemented, and it could take a variety of forms. As a result, such a change needs to be looked at in the round, so I intend to write to the committee as soon as possible to set out my plans for future work on the process by which changes to electoral boundaries for Scottish Parliament and local government elections are implemented. I believe that that ought to be done separately from this bill.”¹⁷

291. During the evidence session, the Minister reiterated that “automaticity is the way forward” and confirmed he:

” “will write to the Committee with my plans on how we take that forward. On the whole, I do not believe that automaticity should be part of the bill at this stage—we need to look at further data and further detail—but it is our chosen direction and, inevitably, it is where we will end up.”¹⁷

Recommendations

292. The Committee is content with the proposed revision extend the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers from 31 December 2028 to 30 April 2031.

293. The Committee welcomes the Scottish Government’s commitment that automaticity is the way forward and invites them to set out the details of their proposals and timetable in relation to automaticity before Stage 3.

The requirement for the Electoral Commission to prepare a five-year plan in respect of its devolved functions, which is to be scrutinised by the Scottish Parliamentary Corporate Body

294. The Bill proposes to change the reporting requirements for the Electoral Commission in relation to devolved elections and referendums in Scotland⁹. The Bill proposes changes to bring oversight arrangements of the Electoral Commission's work in Scotland broadly in line with that of the Llywydd's Committee in Wales and the Speaker's Committee on the Electoral Commission at the UK Parliament.
295. 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.¹⁰
296. The Scottish Government's [consultation on electoral reform](#) asked whether the Scottish Parliament should "take a greater role in oversight of the Electoral Commission's devolved activities". The Electoral Commission stated in its [response to the consultation](#) that:
- ” 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 (...).”
297. In [the response](#) to the same [consultation](#), the SPCB provided the following response on the question of oversight of the Electoral Commission's devolved activities:
- ” We consider that the oversight role for the Commission should mirror as far as is possible the other governance arrangements in place for all other officeholders, that is that the SPCB is responsible for governance issues, with committees being responsible for oversight of functions.
- We see no difference here and would be concerned if a committee took on, for example, scrutiny of spending plans when the funding is provided by the SPCB. It is, of course a matter for the Parliament to determine how it scrutinises any body that is accountable to it and we could therefore see a role for committees in scrutinising the activities of the Commission in relation to devolved activities.”
298. The Bill as introduced requires that the Electoral Commission:
- prepares, for every financial year, an estimate of its income and expenditure in relation to its devolved functions and that it sends this estimate to the Scottish Parliamentary Corporate Body (SPCB) for approval no later than six months before the start of the financial year

- 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.

299. In its response to the call for views, the Electoral Commission¹⁶ indicated support for “the proposals in this Bill which would make the Electoral Commission fully accountable to the Parliament which has legislative responsibility for the work set out in the five-year plan.” Other organisations emphasised that any oversight by the Parliament must not compromise the impartiality and independence of the Electoral Commission.
300. The Bill also provides that the SPCB considers the Electoral Commission’s plans as set out above and decides “whether it is satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their devolved Scottish functions”²³. If the SPCB is not satisfied it can recommend modifications of the plan to the Electoral Commission. The Bill also provides that the SPCB, before deciding whether it is satisfied with the plan or recommending modifications to the plan, may invite a committee of the Parliament and other persons it considers appropriate to make comments on the plan. The SPCB is then to consider any comments that are given.
301. After receiving the report of the SPCB the Commission must make “whatever modifications”²³ it considers necessary to the plan “in light of the SPCB’s findings and recommendations”²³; 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.
302. The Committee notes that where the Electoral Commission submits similar plans to the UK Parliament and at the Senedd Cymru it is the legislature, and not the Commission, which takes any final decision on the plan. The Bill departs from this, giving the Commission the responsibility to finalise the plan.
303. During oral evidence, the Committee explored with the Electoral Commission, whether the SPCB or the Commission should take final decisions on the plan. Andy O’Neill, Head of the Electoral Commission in Scotland, stated that:
- ” “The proposal is that we give the five-year plan to the Scottish Parliamentary Corporate Body, which will give us back some comments, if it so chooses. The corporate body might well ask you to comment, too, and we hope that it will. If they do not like the plan, they will tell us so. The difference is that the corporate body will not be able to change it, as can happen in Wales or in the UK Parliament. That is also perfectly fine by us. If we choose not to take on the SPCB’s comments, we will have to justify that decision, which we think is only right, proper and transparent. Essentially, we are quite content with what has been proposed.”²⁰
304. Professor Clark’s view was that the process was likely to be “largely by consensus to begin with” and did not have a concern about the involvement of the Parliament in considering the Commission’s five-year plan. Professor Clark said:

” “The Electoral Commission is, basically, a body of statute. It is responsible to the UK Parliament, it is now responsible to the Senedd, and it is also responsible to the Scottish Parliament. I have less concern about there being a role for the Parliament. (...) The commission itself says that it is generally welcoming of scrutiny.”⁸

305. The Committee also heard from Professor James who emphasised the importance of the principles of independent electoral authorities adding that “in many countries, the electoral authorities have much greater independence than they potentially do in the UK”⁸ and in light of this Professor James would support the Electoral Commission having a final say on its five-year plan.

Recommendations

306. The Committee is content with the provisions in the Bill in relation to the scrutiny of the five-year plan for the Electoral Commission's devolved functions in Scotland, including that it would be for the Electoral Commission rather than the SPCB to have the final view on what should be included in the plan.

The Electoral Management Board for Scotland as a body corporate and the establishment of the post of deputy convener

Legal status of the EMB

307. The Electoral Management Board for Scotland (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.
308. The Bill provides for changes to the legal status of the EMB from a statutory body to a body corporate.
309. The change of status of the EMB to a body corporate means that it would have its own legal personality, be able to enter into contracts, and would be required to prepare its own accounts. In their responses to the call for views, organisations indicated their support of the establishment of the EMB as a body corporate. Both the EMB¹³ and the Electoral Commission¹⁶ emphasised the need to maintain the EMB's independence both during and after the transition from a statutory committee to a body corporate.
310. During its oral evidence sessions, the Committee heard from the Convener of the EMB who explained that, to date, the EMB has depended on voluntary activity with Scottish Government funding, and that its role has increased substantially. These were both given as reasons to support a change in the EMB's legal status so that it

could, for example, employ staff should it need to.

311. The EMB is comprised of eight members. Five members are Returning Officers or Deputy Returning Officers and three are Electoral Registration Officers. The Convener of the EMB must be a returning officer and is appointed by Scottish Ministers. The Convener is then responsible for appointing other members of the EMB.
312. Both Professors James and Clark indicated their support for the establishment of the EMB as a body corporate. Professor James said:
- ” It is quite troubling, in a way, that the organisation that has played such an important role in the past and that has been so important in delivering Scottish elections is reliant on in-kind contributions from other organisations and individuals. Putting it on to a firmer statutory and financial basis is really important.”⁸
313. Professor Clark noted:
- ” “the Electoral Management Board has been a positive development with regard to administering Scotland’s elections. It has brought a consistency that was probably not in evidence before, if we think about the difficulties that we saw in 2007.”⁸
314. In relation to the proposed new structure for the EMB and maintaining the independence of the EMB, the Electoral Commission commented that:
- ” “It is important that, as the legal persona of the EMB and the accountability arrangements that sit around it are developed, there is overt acknowledgement of the fact that the EMB must remain independent. In addition to such an acknowledgement, behaviours and measures need to be implemented that ensure that the EMB remains independent and can therefore provide the best advice and take action to ensure the continued integrity of the electoral process.”²⁰
315. The Committee asked the EMB what progress had been made on finalising its future constitution. Malcolm Burr, the Convener of the EMB said:
- ” “The EMB will work very closely with the Scottish Government to draft a potential schedule to the bill, which will set out in clear terms how the EMB will be constituted, how it will go about its work, what its line of accountability will be and from where its funding support is to come. (...) That will be a priority over the next three months.”¹²
316. Following the oral evidence session, the EMB [wrote](#) to the Committee providing further information on the work undertaken with the Scottish Government to develop the constitution of the EMB which would cover:

- ” “The status of the EMB and its property;
- The powers of the EMB;
 - Term of office etc. of Board Members;
 - Term of office etc. of the Convener;
 - Remuneration of the Convener and Board;
 - The appointment of Depute Conveners;
 - The delegation of work to subcommittees and their status;
 - Procedures and proceedings of meetings;
 - The employment and remuneration of staff; and
 - Political restrictions on staff.”

Establishment of role of deputy convener

317. At present the Convener of the EMB appoints two deputies – one Returning Officer and one Electoral Registration Officer. These are, however, practical appointments, and those in the roles are unable to exercise the statutory functions of the Convener. This means that there is no person able to exercise 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).
318. The Bill proposes to establish the role of Deputy Convener to which a member of the EMB may be appointed. The Deputy Convener could, should it be necessary, exercise the functions of the Convener. An example would be issuing directions under the Local Electoral Administration (Scotland) Act 2011 to Returning Officers and Electoral Registration Officers during Scottish elections.
319. The Bill makes provision for the establishment of one Deputy Convener. However, the EMB have proposed in evidence that there should be two Deputy Conveners: one on the Returning Officer side and one on the Electoral Registration Officer side, although it was intimated that only one Deputy would be given authority to carry out the functions of the Convener, likely because this would need to be a Returning Officer. The EMB states:
- ” “Scotland has a fairly unique system of returning officers and electoral registration officers, and the board brings those two professions together. I think that that recognises, rightly with regard to the current establishment, that the convener must be a returning officer. However, it is right that there is a statutory position that recognises the electoral registration officer part of the electoral process as well as the returning officer side—hence the recommendation”.¹²
320. The Committee heard from the Scottish Government that the discussion on the

constitution of the EMB is ongoing. The Scottish Government further explained:

” “One suggestion that we are considering is that we move to a structure in which the Parliament would have a bigger role in oversight of the EMB, similar to its role in relation to the Electoral Commission. The constitution for the EMB is already on the statute books in the Local Electoral Administration (Scotland) Act 2011, but we are looking at expanding those rules and setting out more requirements.”¹⁷

321. The Minister added that the Scottish Government is working with stakeholders and partner organisations to agree the process and will provide the Committee with more information, for example, on the timescales, once these have been agreed.

322. In reference to the proposal that there should be two deputy convener posts within the EMB, the Minister stated:

” “Currently, only one deputy convener is specified. Whether to appoint another deputy convener will be up to the board when it is up and running. There is nothing to prevent it from doing that; it will have the power to do it. That would be a purely practical way for it to get on with business.”¹⁷

Funding the EMB

323. The issue of funding for the EMB, both currently and once established as a body corporate has also been considered by the Committee. 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.”⁶

324. In relation to its funding arrangements, the EMB explained that the Secretary to the EMB is the only paid position at present¹¹. The rest of the work of the EMB is undertaken on a voluntary basis. The EMB set out the position regarding support for its work:

” “We are hosted and supported by the City of Edinburgh Council, with Scottish Government funding support, which I want to acknowledge. When we have asked for things, funding has been made available to us. However, there is fragility in the structure; it all flows from members’ roles as returning officers or deputy returning officers, which are linked to our other jobs.”¹²

325. The Financial Memorandum sets out that:

” “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 (...).”⁶

326. The question of additional costs arising from the establishment of the EMB as a body corporate was put to the Minister, with the response to the Committee being:

” “It is envisaged that the change will take a number of years and will be dependent on funding being available. There is already funding, to an extent, but we anticipate that more will be needed for salaries and, no doubt, other costs. The roll-out of the change—which seems to have been fairly universally welcomed—is dependent on that funding becoming available. That is not guaranteed at the moment.”¹⁷

Recommendations

327. In principle, the Committee welcomes and supports the establishment of the EMB as a body corporate. However, the Committee regrets that important detail regarding the constitution, accountability and remuneration of the EMB were not included in the Bill as introduced.

328. The Committee notes that work is ongoing in relation to the development of a Schedule to the Bill that will provide information on the constitution of the EMB. It may be the case that that Committee considers that it is necessary to seek additional evidence on the proposed Schedule to inform its consideration at Stage 2. The Committee considers that the Bill should make provision for there to be two deputy conveners of the EMB.

329. The Committee also has concerns regarding the identification of funding to enable the EMB to carry out its functions. The Committee seeks reassurance that confirmation of the funding arrangements will be set out in full in advance of consideration of any amendments to the Bill at Stage 2.

330. While the Committee expects to receive comprehensive information regarding the establishment of and funding for the EMB in writing, it also asks the Scottish Government to provide an update on these matters during the Stage 1 debate.

Correspondence from the Scottish Government on secondary legislation

331. On 30 April 2024 the Minister for Parliamentary Business [wrote](#) to the Committee in relation to the Bill and electoral reform in Scotland. The Minister appeared before the Committee to give evidence on the Bill on Thursday 2 May 2024.
332. The Minister explained that the letter covered:
- ” “other potential electoral changes discussed in the consultation paper that are not included in the Bill. In some instances, the Government is still actively considering amendments to the law, but in secondary legislation rather than in the Bill.”
333. The Annex to the Minister’s letter provided details on policy proposals on which the Committee’s view is sought.
334. During the evidence sessions with witnesses the Committee took limited evidence on some of the issues raised in the Scottish Government’s consultation but not in the Bill. In particular, the Committee asked witnesses for their views on free mailouts for candidates at local government elections and the extension of emergency proxy votes to certain individuals. These were measures which were commented on by respondents to the Scottish Government’s consultation and were also raised in responses to the Committee’s call for views and were not issues which were picked up elsewhere as was the case, for example, in relation to accessibility of elections. Our consideration of these issues is discussed in more detail in the next section of this report.
335. Whilst the Minister’s letter confirms the Scottish Government’s position on secondary legislation in relation to a number of issues, the letter arrived after the Committee’s sessions with witnesses. As such, the Committee was not able to explore the areas mentioned in the letter to their full extent.
336. On 28 May 2024, the Convener of the EMB [wrote to the Minister for Parliamentary Business](#), in relation to the Minister’s letter. The Committee was copied into the correspondence from the EMB.
337. The EMB’s letter sets out concerns in relation to three proposals included in the Minister’s letter. In summary, the concerns highlighted by the EMB are:
- Proposed changes to the period of dissolution before Scottish Parliament elections from 28 working days to 20 working day. The letter sets out that “in the view of the EMB, this would be an unacceptable change which would place the delivery of elections at severe risk. (...) To limit the timetable to 20 days would leave insufficient time for postal ballot papers to be produced, dispatched and returned.”
 - The timing of the counting of votes at Scottish Parliament Elections (next day rather than overnight counts). This issue is noted in relation to Rule 54 of schedule 2 to the Scottish Parliament (Elections) Order 2015 and concerns that it effectively requires overnight counts for Scottish Parliamentary elections. The

Convener of the EMB sets out that “it is my view and that of Returning Officer colleagues that a count commencing on the day following the poll is appropriate and meets the requirement of this rule” and that “the safe and efficient provision of a count for an event as complex as a Scottish Parliament election is best served by the use of staff who are well rested with access to all support and resources. That is not the case with an overnight count.”

- That the design of forms should be delegated to the EMB’s Forms Working Group: “Given the developing role and remit of the EMB this new responsibility would be wholly appropriate but the EMB would require sufficient funding to allow this work to be professionally resourced.”

Matters consulted on by the Scottish Government which do not appear in the Bill

338. As stated above, the Committee took evidence on two issues which were included in the Scottish Government’s consultation on electoral reform, but which do not appear in the Bill. The following sections briefly consider the evidence the Committee heard on these matters.

Free mailout

339. The issue of whether to provide a free mailout for candidates at local government elections (as is the case for Scottish Parliament elections) was consulted on but is not included in the Bill. The Committee noted that the consultation indicated that 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.

340. The Committee further noted that responses to that consultation indicated a split between organisations and individuals with all organisations which responded to the question supporting extension, but only 37% of individual respondents favouring it. The Committee also notes that the proposal to limit mailings to one per household was more widely supported with 78% of individuals and 70% of organisations in favour.

341. The Committee is aware that any cost associated with free mailouts at local government elections would be required to be met from local government funds. The Scottish Government suggested in its consultation that local authorities could therefore be provided with a right to choose whether or not to adopt a free mailout scheme.

342. In written and oral evidence to the Committee, a number of stakeholders have expressed their support for free mailouts at local government elections.

343. The Electoral Commission highlighted that free mailouts offered the opportunity for voters to access more information and acknowledged the financial impact on local authorities and added:

” “Whether limited to councils who opted-in or in place for all councils, if free candidate mailings were to proceed through secondary legislation then wider consideration would need to be given to the considerable logistical, environmental and financial implications of managing the review, printing and distribution of election addresses. This work would need to commence immediately in order for councils to deliver this policy at the 2027 Scottish council elections.”¹⁶

344. Engender indicated its support for the proposal on a free mailout, saying: “We ask the Committee to consider the positive impact its introduction could have on campaign participation for women and other underrepresented groups and overall electoral outcomes in terms of increasing diversity.”⁹

345. Elect Her highlighted high cost of standing for election, stating:

” “We strongly support free mailings as another opportunity that people can take up in exercising their democratic right and standing for election without having to rely on additional financing to support the simple messages that they will want to get out to people.”⁸

346. UNISON agreed with Elect Her adding:

” “(...) standing for office is high risk, and it is very expensive as regards someone’s actual life rather than just the costs of standing. It is already hard for people on lower incomes to become candidates, and it is hard for people to do it if they do not have flexible employers who will give them time off. It is incredibly difficult. I think that we need to do more than what has been proposed, but the measures in the bill are a basic step that could level the playing field to some extent. (...) We need to take some serious steps to ensure that more people have the chance to stand up and get elected.”⁸

347. On the question of free mailouts in local government elections and the potential to increase the diversity of candidates, the Minister confirmed that the Scottish Government has discussed the issue with COSLA and the main barriers to introducing the measure are the high cost and the complexity. The Minister added that he is open to discussing it further.

348. In its correspondence to the Committee, the Scottish Government has indicated it is planning to use secondary legislation to introduce a free mailout for local government candidates in the future. The letter also indicated that the Scottish Government would seek to limit free campaign mailouts to one per household. At present, at Scottish Parliament elections, constituency candidates are entitled to send one free mailout to each elector or to all homes. Independent regional candidates and political parties standing in a region are also entitled to send a free mailout to each elector.

Emergency proxy voting

349. 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 Scottish Government consulted on widening who is able to apply for an emergency proxy vote to include additional categories of people. For example, a person who acts as a companion to an individual who needs to attend an unexpected medical appointment. At present, an individual attending a medical appointment would be eligible for an emergency proxy vote, but an individual who needed to accompany them would not be.

350. In its response to the Committee's call for views on the Bill, the Electoral Commission stated that it:

” “has consistently recommended that the qualifying circumstances for appointing an emergency proxy should be extended, so that those who have unforeseen caring responsibilities or who have experienced the death of a close relative would also be eligible for an emergency proxy. Under current law, where a voter is incapacitated by ill health or an accident after the deadline to apply for a normal proxy vote, the individual would qualify for an emergency proxy on medical grounds but anyone caring for them, or accompanying them for medical treatment, would not. This is of particular concern in island and rural communities where a person may have to travel a considerable distance for medical treatment elsewhere in Scotland.”¹⁶

351. The Committee also heard from the Scottish Assessors Association who indicated that processing high volumes of information would be a resource-intensive exercise, especially on the polling day.¹²

352. In [the Minister's letter of 30 April 2024](#) to the Committee, the Scottish Government has indicated it is planning to:

- allow those accompanying people attending medical appointments to apply for an emergency proxy vote
- allow prisoners on remand to apply for an emergency proxy vote
- allow the appointment of a replacement proxy if a proxy voter is no longer able to vote on someone's behalf.

Recommendations

353. The number of issues that the Scottish Government plans to take forward via secondary legislation is significant. The Committee notes that some indication was given of matters that the Scottish Government was likely to propose to address via secondary legislation in its response to the independent analysis of the Electoral Reform Consultation, but that the Committee received no further indication of the Scottish Government's thinking on these issues until after its evidence with stakeholders was concluded. As such, the Committee has only been able to hear a limited range of views on some of these matters during Stage 1. It would have been helpful to the Committee to have received the letter in relation to secondary legislation at an earlier point in its scrutiny as this may have afforded us the opportunity to hear views from relevant stakeholders and to make

recommendations.

354. The Committee was copied into a letter to the Minister from the Convener of the EMB dated 28 May 2024, on matters the Scottish Government plans to address via secondary legislation. The letter is of concern to the Committee as it appears to reflect that consultation has not been undertaken with key stakeholders.

355. The Committee asks the Scottish Government, at the earliest possible opportunity as a matter of urgency, to provide full details of:

- previous, current or planned consultation with stakeholders in relation to each matter that it has indicated it intends to take forward by secondary legislation
- a list of stakeholders consulted on each matter
- the timeline for analysis of any such consultation to be prepared and final policy decisions reached.

356. The Committee would like to know when it can expect to receive this information, including any consultation analysis and final policy proposals. It should be noted that the Committee, asks for this to be in reasonable advance of any secondary legislation being laid.

357. The Committee would also ask for clarification on when the Scottish Government anticipates laying relevant secondary legislation (whether that outlined in the Minister's letter or other necessary secondary legislation) in advance of the next Scottish Parliament election. The Committee expects that the Gould principle – that any legislation is in place at least six months prior to the first electoral event to which it applies – will be respected.

Additional areas considered during Stage 1

358. During its scrutiny of the Bill at Stage 1, the Committee also considered issues of dual mandates, the security of elections and overseas voters. Other MSPs also sought an opportunity to raise issues of interest with the Ministers. Evidence heard on these matters is discussed in this section. The Committee does not make any recommendations on these matters.

Dual Mandate

359. The Committee is 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.

360. 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).

361. During the Committee's evidence sessions, several witnesses, including the Electoral Commission and the Electoral Reform Society, commented on the issue of dual mandate. The Electoral Commission indicated that:

“ (...) that is down to the Scottish Parliament (...) If you wanted to act in that regard, we could advise you and provide guidance. You would need to align the timing to ensure that candidates, agents and parties are aware of that.”²⁰

362. The majority of witnesses the Committee heard from are not in favour of dual mandate. Both the Electoral Reform Society and UNISON agreed that there is no benefit of dual mandate for voters or democratic institutions. The Electoral Reform Society told the Committee:

“We would like to see legislation brought in that is in line with that in the Welsh Senedd. In line with that, we think that a newly elected MSP who is a sitting MP should have eight days in which to resign their seat in the House of Commons and that, if they are a councillor, they should have 375 days to resign from the council, so there is a bit more leniency there.”⁸

363. UNISON agreed with the Electoral Reform Society stating:

“Some of the things that we are looking at in Scotland, such as getting more people to stand and making it easier to be a candidate, will contribute to getting rid of the need for parties to, for example, end up with their councillors standing as MSPs. We need to make more fundamental changes to make it easier to be a candidate, although, obviously, it is always going to be high risk, because it is a win-or-lose situation.”⁸

364. When asked, the Minister for Parliamentary Business suggested that it is up to the

Scottish Parliament to decide on whether or not dual mandate should be allowed.

Security of elections

365. 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. 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.
366. Nevertheless, in recent years, the security of elections has been threatened globally by the risk of foreign players interfering in elections through digital means, such as cyber-attacks on systems – for example, the Electoral Commission announced in August 2023 that it was the subject of a complex cyber-attack.
367. The cyber-security of 'high risk' elected officials and candidates has also been identified as a central challenge during elections by the National Cyber Security Centre.²⁹
368. Disinformation from AI-generated content also poses a challenge, particularly around elections, and the Committee is aware of the potential scale of this challenge as detailed elsewhere in this report.
369. In evidence to the Committee, the Electoral Commission stressed that, in spite of the challenges, there are high levels of confidence in how elections are run in the UK.
370. The Committee notes, however, three central issues which has been raised by witnesses during the course of its evidence on the Bill:
- systemic issues, such as foreign influence, cybersecurity and disinformation, intimidation as potential issues in Scottish elections as identified by Professor Clark
 - misinformation or disinformation as a potential primary threat, including increasingly hostile overseas actors who want to interfere in elections as raised by Professor James. The Committee notes the view of Professor James that these challenges could be tackled through education, not necessarily legislation. The Committee was also encouraged by Professor James to think about closing the open electoral register because keeping it open “allows the sale of the location of where citizens in Scotland live. That can be bought by anyone for any purpose, and it allows for the micro-targeting”⁸
 - that every election is dependent on AI to some extent as explained by the Electoral Commission. The Committee notes that there is no legislation on the use of AI in campaigning and no legal framework which covers the contents of campaigning.
371. On the question of security of elections, the risks, and the action that the Scottish Government has taken to mitigate these, the Minister said that the Scottish

Government has worked closely with the UK Government on these issues.

Overseas voters

372. The Committee considered some evidence on the issue of whether overseas voters (UK citizens living abroad) should be able to vote. The franchise for devolved Scottish elections does not include overseas voters. For reserved elections (to the UK Parliament) overseas voters are enfranchised.
373. A UK citizen living abroad was able to vote if they had been registered to vote in the UK in the past 15 years. Registration required to be renewed annually. The Elections Act 2022 removed the 15-year limit on overseas voting, meaning British citizens living abroad for more than 15 years are now allowed to vote at reserved elections. The registration period was also extended for up to three years meaning UK citizens living abroad are no longer required to re-register each year¹².
374. During the evidence sessions, witnesses highlighted the logistical challenges of overseas voters to the Committee:
- Professor Clark stated that in non-devolved elections the issue is sending ballot papers to remote places all around the world to tight deadlines, adding that for Scottish elections “there is a need to think about the mechanics of how that would be done if voting from overseas.”⁸
 - Professor James agreed that the issue is logistical adding: “There have been some experiments around the world with online voting, but they have largely been unsuccessful. Postal voting does not work because of the timescales involved”⁸.

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

375. 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. 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.
376. The Committee heard that the structure of the Parliament in having regional MSPs presented a challenge for a recall system. Professor Clark suggested that “there should be a fairly high bar for an MSP to be recalled to begin with—I would be worried if it just became part of normal political debate”⁸.
377. Professor James agreed with the proposal stating:

” “Recall is a really important accountability check on office holders. In an era of low political engagement and distrust of public office holders across the board, enabling citizens to realise that they can recall someone can only be strong for democracy. It would be impossible to measure, but it will hopefully encourage better conduct in office if office holders know that they are not untouchable.”⁸

378. Graham Simpson MSP attended the oral evidence session with the Minister for Parliamentary Business to raise his Member’s Bill proposal. While Graham Simpson MSP indicated he wasn’t going to talk about recall during the evidence session due to its complexity, the Minister said:

” “In relation to recall, Mr Simpson, I put on the record that I think it is for the Parliament to make that decision, probably using your bill as a vehicle. It is important that we have that discussion and, in my view, it is probably better coming from a member as opposed to the Government.”¹⁷

379. Graham Simpson MSP also raised a difference in law for MSPs and councillors if they fail to attend meetings of the Parliament or local authority. Section 35 of the Local Government (Scotland) Act 1973 provides that a member of a local authority ceases to be a member of that local authority if they fail to attend council meetings for a period of six consecutive months (unless the reason is approved by the local authority – for example in the case of illness or maternity leave). There is no equivalent legislation for MSPs.

380. MSPs effectively vacate office if they are imprisoned for a period of 12 months or more because they are disqualified. This is provided for in the [Representation of the People Act 1981](#) in relation to MPs. Section 15 of the Scotland Act means that those disqualified from holding office as an MP are also prevented from holding office as an MSP. However, the Bill before the Committee proposes ending this automatic link between disqualification from the House of Commons and disqualification from membership of the Scottish Parliament. This is explained earlier in this report in the section ‘ending the automatic application of changes to House of Commons eligibility rules to MSPs.’

381. The Minister gave his view on the situation at present, saying:

” “On criminal convictions, I have asked officials about people not being able to do their work and why there are those different time periods of three months and 12 months. I have learned that it all developed in a pretty arbitrary way over the years. The 12-month period came in after the IRA hunger strikes of the 1980s. The UK Government decided to bring that in because of that specific issue. With that in mind, the whole process has been pretty arbitrary as to months, times and dates. I would be quite happy to work with you, Mr Simpson, to find some kind of accommodation and balance to make it more uniform.”¹⁷

Spoiled Ballot and Randomised Ballot Papers

382. During the evidence session with the Minister for Parliamentary Business, Bob

Doris MSP raised the issue of spoiled ballot papers which has been prevalent in his constituency, asking the Minister if the Bill could be a vehicle for introducing a statutory duty for the Electoral Commission to carry out targeted voter educational.

383. The Minister indicated that he would be happy to work with Bob Doris MSP to find a solution during Stage 2.
384. Bob Doris MSP also raised the issue of randomised ballot papers to prevent alphabetical bias in voting which can in elections using the single transferable vote system (such as local government elections in Scotland).
385. In response, the Minister stated that he was not convinced by the idea of randomised ballot papers due to practical implications, for example, accessibility for disabled people who rely on memorising the ballot paper, or on it being in a known order.

Delegated powers and accompanying documents

Delegated powers memorandum

386. The Committee notes the report of the Delegated Powers and Law Reform Committee and is content with the delegated powers memorandum.

Policy Memorandum

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

Financial Memorandum

388. The Financial Memorandum provides information on the cost implications of the Bill. It states that:

” “This Bill will not directly have financial implications, but there are five areas where indirect costs may arise. These concern changes to the legal personality of the EMB, enabling powers in relation to grants and pilots, the increased potential for Scottish Parliament by-elections to arise and the emergency re-scheduling of Scottish Parliament elections”.⁶

389. The Committee notes the following in relation to the changes proposed by the Bill which may incur indirect costs:

Legal change to the status of the EMB

390. The Financial Memorandum recognises that the establishment of the EMB as a body corporate has the potential to increase its running costs. However, estimates of cost are only provided on the basis of increased costs if EMB officeholders were to become paid officeholders. 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 (...).”⁶

Election pilots and democratic engagement fund grants

391. The Financial Memorandum sets out that electoral pilots proposed by the Scottish Government (and the EMB) will be met from Scottish Government funds when funding is available. The Financial Memorandum also notes that local government will be responsible for funding its election pilots and could also fund pilots initiated by Electoral Registration Officers (EROs).
392. The Financial Memorandum notes that the Bill only enables Scottish Ministers to fund democratic engagement activity once funds and a business case have been approved and does not commit funding. Any financial support for the democratic engagement fund will also be subject to approval through the Scottish Budget process. The Financial Memorandum estimates that the Scottish Government may provide up to £300,000 for democratic engagement activity, but that this is subject to availability of funds in any financial year.

The increased potential for by elections

393. By-elections may arise as a consequence of the proposal to extend candidacy rights to foreign nationals with limited leave to remain. 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. 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.

The rescheduling of elections

394. The Scottish Government states that the provisions in the Bill do not increase the likelihood of an election being rescheduled. It is the view of the Scottish Government that:

” “The financial implications of an election being postponed are difficult to assess and largely hinge upon how far ahead of any election the postponement occurs. The cost of a postponed election is tied to the point at which it is postponed. Some election expenditure arranged prior to postponement is unlikely to be repeated for a new polling day (e.g. in voter registration or for re-using ballot papers despite being printed with the original date) but other costs may have to be incurred anew. (...)

The overall conclusion is that the Bill’s provisions on emergency re-scheduling of elections are not considered to bear direct cost implications for the Scottish administration or local government.”⁶

Overall conclusion of the Committee and recommendation on the general principles of the Bill

395. The Committee is content to recommend that the general principles of the Bill be agreed.

Annexe A: Extract from Minutes, Stage 1

[2nd Meeting, 2024 \(Session 6\) Thursday, 1 February 2024](#)

Scottish Elections (Representation and Reform) Bill (In Private): The Committee considered and agreed its approach to the scrutiny of the Bill at Stage 1. The Committee agreed that any consideration of the evidence heard and of the draft Stage 1 report should be taken in private.

[7th Meeting, 2024 \(Session 6\) Thursday, 21 March 2024](#)

Scottish Elections (Representation and Reform) Bill: The Committee took evidence on the Bill at Stage 1 from— Malcolm Burr, Convener of the Electoral Management Board for Scotland; Andy Hunter, Chair of the Association of Electoral Administrators Scotland and Northern Ireland Branch; Robert Nicol, Vice Chair Scottish Assessors Association Electoral Registration Committee and Electoral Registration Officer for East Renfrewshire, Inverclyde and Renfrewshire. [Official Report](#)

[8th Meeting, 2024 \(Session 6\) Thursday, 28 March 2024](#)

Scottish Elections (Representation and Reform) Bill: The Committee took evidence on the Bill at Stage 1 from— Professor Ailsa Henderson, Chair and Colin Wilson, Electoral Boundaries Review Manager, Boundaries Scotland; and then from— Dame Susan Bruce, Electoral Commissioner for Scotland, Andy O'Neill, Head of the Electoral Commission in Scotland and Louise Edwards, Director of Regulation and Digital Transformation, Electoral Commission. [Official Report](#)

[9th Meeting, 2024 \(Session 6\) Thursday, 18 April 2024](#)

Scottish Elections (Representation and Reform) Bill: The Committee took evidence on the Bill at Stage 1 from— Hannah Stevens, Chief Executive Officer, Elect Her; Ahlam Hamoud Al-Bashiri, Peer Education Co-ordinator, Scottish Refugee Council; Alice Kinghorn-Gray, Campaigns Officer, Electoral Reform Society; James Adams, Director, RNIB Scotland; Kay Sillars, Regional Manager, UNISON; and then from— Professor Alistair Clark, Professor of Political Science, Newcastle University; Professor Toby James, Professor of Politics and Public Policy, University of East Anglia. [Official Report](#)

[11th Meeting, 2024 \(Session 6\) Thursday, 2 May 2024](#)

The Committee took evidence on the Bill at Stage 1 from— George Adam, Minister for Parliamentary Business and his officials. [Official Report](#)

[16th Meeting, 2024 \(Session 6\) Thursday, 6 June 2024](#)

Scottish Elections (Representation and Reform) Bill (In Private): The Committee considered a draft Stage 1 report.

[17th Meeting, 2024 \(Session 6\) Thursday, 13 June 2024](#)

Scottish Elections (Representation and Reform) Bill: The Committee considered and agreed a draft Stage 1 report.

Annexe B: Correspondence

Letter from the Minister for Parliamentary Business 2 February 2024

Written submission from Professor Clark dated 27 March 2024

Letter from the Electoral Management Board dated 28 March 2024

Letter from the Scottish Assessors Association dated 3 April 2024

Written submission from Professor James and Dr Garnett dated 10 April 2024

Letter from the Electoral Commission dated 12 April 2024

Letter from James Adams, Director at the RNIB Scotland dated 26 April 2024

Letter from the Minister for Parliamentary Business dated 30 April 2024

Letter from the Boundaries Scotland dated 7 May 2024

Letter from the Electoral Reform Society Scotland dated 9 May 2024

Letter from the Minister for Parliamentary Business dated 16 May 2024

Letter from Electoral Management Board to Minister for Parliamentary Business dated 28 May 2024

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- [2] Royal National Institute of Blind People Scotland. (2024). Response to the call for views on the Financial Memorandum of the Scottish Elections (Representation and Reform) Bill. Retrieved from https://yourviews.parliament.scot/finance/scottish-elections-fm/consultation/view_respondent?uuld=461338423
- [3] Electoral Commission Scotland. (2024). Response to the call for views on the Financial Memorandum of the Scottish Elections (Representation and Reform) Bill. Retrieved from https://yourviews.parliament.scot/finance/scottish-elections-fm/consultation/view_respondent?uuld=545889006
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- 1 Currently Denmark, Luxembourg, Poland, Portugal, and Spain.
- 2 Citizens of some countries are able to stand for local election to fulfil treaty rights as detailed at para 24.
- 3 The full list of disqualifications can be found by reference to the Scotland Act 1998, the House of Commons Disqualification Act 1975 and the Scottish Parliament (Disqualification) Order 2020.
- 4 See [The Scottish Parliament \(Elections etc.\) Order 2015 \(legislation.gov.uk\)](#)
- 5 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. The Bill proposes to end the ambulatory effect of section 15 of the Scotland Act 1998.
- 6 The Venice Commission is a shorthand reference to the European Commission for Democracy through Law which is an advisory body to the Council of Europe.
- 7 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).
- 8 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. 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.
- 9 Scottish Parliament general elections, Scottish Parliament by-elections, and local government elections and any referendum held under the Referendums (Scotland) Act 2020.
- 10 The [Scottish Elections \(Reform\) Act 2020](#) changed the funding arrangements for the Electoral Commission in relation to its devolved functions in Scotland so that the SPCB, rather than the Scottish Government, became financially responsible for it.
- 11 The Secretary works for the EMB for four days a week, on secondment from the City of Edinburgh Council.
- 12 Service voters and Crown Servants stationed overseas can vote in all elections.

