

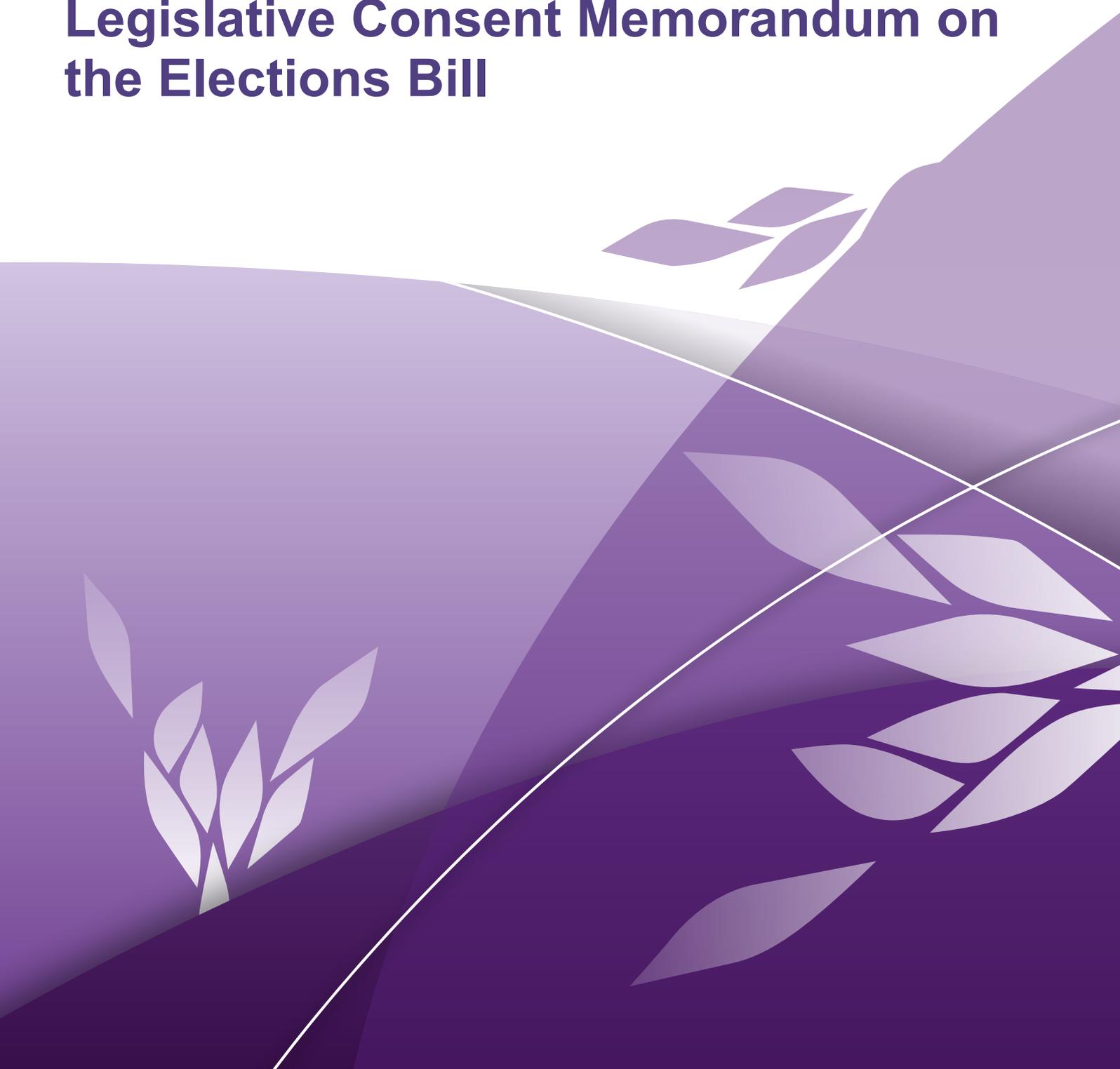


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Pàrlamaid na h-Alba

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## **Standards, Procedures and Public Appointments Committee**

# **Legislative Consent Memorandum on the Elections Bill**



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# 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; and
- (e) matters relating to the regulation of lobbying.
- (f) matters relating to local government elections, Scottish general elections, implementation of the Referendums (Scotland Act) 2020 and Freedom of Information and open government 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 Where the Committee considers it appropriate, it may by motion recommend that a member's rights and privileges be withdrawn to such extent and for such period as are specified in the motion.



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# Introduction

1. At its meetings on 18 and 25 November 2021, the Standards, Procedures and Public Appointments Committee ("the Committee") took evidence and considered a legislative consent memorandum (LCM) from the Scottish Government on the UK Elections Bill ("the Bill").
2. The UK Government introduced the Bill in the House of Commons on 5 July 2021. The LCM was lodged by the Scottish Government on 22 September 2021 and referred to the Committee. Under Rule 9B.3.5 of the Standing Orders it is the role of the lead committee to consider the LCM and report its views to the Scottish Parliament.

# What is a legislative consent memorandum?

3. When the UK Parliament considers a Bill that affects Scotland, the Scottish Government prepares a "legislative consent memorandum". The memorandum explains to the Parliament the ways in which the Bill affects Scotland.
4. As the Elections Bill will impact on areas devolved to the Scottish Parliament and on the executive competence of Scottish Ministers, an LCM has been lodged. Further information on the LCM process and documents relating to the Bill can be found by following the links below:
  - [About legislative consent memorandums](#) - a brief explanation of what a legislative consent memorandum is;
  - The [legislative consent memorandum](#) for the Elections Bill;
  - The [UK Elections Bill](#)

# Purpose of the UK Bill and how it relates to Scotland

5. The UK government states that the main purpose of the Bill is to ensure that UK elections remain secure, fair, modern, inclusive and transparent through making new provisions for and amending existing electoral law.
6. The Elections Bill indicates that the following provisions relate to matters within the legislative competence of the Scottish Parliament:
  - **Clarification in law what constitutes "undue influence"** (section 7 and schedule 4) The Bill clarifies the electoral offence of 'undue influence' which is defined in section 115 of the Representation of the People Act 1983. The Elections Bill proposes updates to include harms like physical violence, damage to a person's property or reputation or inflicting financial loss. Intimidation of electors is explicitly listed as a form of undue influence. The Bill creates a new sanction of 5 years disqualification for anyone found convicted of this behaviour.
  - **The introduction of a Strategy and Policy Statement in respect of the Electoral Commission** (sections 12 and 13) The Bill makes provision for the introduction of a "Strategy and Policy Statement", to be approved by the UK Parliament. This Strategy and Policy Statement will provide the Electoral Commission with guidance it must have regard to in the discharge of its functions. Scottish (and Welsh) Ministers must be consulted on parts of the draft statement that relate to devolved elections. Clause 13 expands the role of the UK Parliament's Speaker's Committee on the Electoral Commission to include a power to examine the performance by the Commission of its duty in relation to the Statement.
  - **Notional expenditure in relation to the application of the rules on campaign expenditure at devolved elections** (sections 16-18) This provision seeks to clarify the law in relation to notional spending (property, goods, services or facilities). The Bill clarifies the law so that benefits in kind only require to be reported where they have actually been used by a candidate/agent or where a candidate/agent has directed someone to use them.
  - **Regulation of expenditure for political purposes** (sections 22-25) These provisions relate to the registration of third parties for elections devolved to the Scottish Parliament and in relation to campaign expenditure for both political parties and third-party campaigners for standalone devolved elections.
  - **Disqualification of offenders for holding elective offices as a result of intimidatory or abusive behaviour**(section 26-34 and schedule 9) insofar as it relates to the qualifications for nomination as a candidate for election to, or holding the office of, a member of the Scottish Parliament or a local government elective office in Scotland.
7. The Scottish Government agrees that these provisions are within the legislative competence of the Scottish Parliament.

8. The LCM additionally states that the Scottish Government considers that the provision within the Elections Bill on information to be included in electronic campaigning material is within the legislative competence of the Scottish Parliament and requires consent. This relates to clauses 35-56 of the Bill which covers **digital imprint**, except for the provision relating to the 'take down' provision which the Scottish Government agrees is reserved.
9. The UK Government's position is that the provisions (section 35-56 of the Bill) are wholly reserved as coming under the "Internet Services" reservation in the Scotland Act 1998 and does not consider consent is required

# Scottish Government position on lodging a Legislative Consent Motion

10. The Scottish Government states its intention in the LCM not to lodge a Legislative Consent Motion and provides the following explanation (paras 57-58):
  - ” Although the Scottish Government agrees that there is merit in consistency across the UK in some aspects of electoral law, it does not accept that alignment is necessary or desirable in all respects. For example, Scotland has its own distinctive franchise expanded to include 16-17 year olds and foreign nationals in Scottish devolved elections, which operated successfully in the May 2021 Scottish Parliament election.
  - ” The Scottish Government is sympathetic to some of the changes proposed in the Bill and considers that aspects of the Elections Bill represent an improvement upon existing law. However, there is a substantial period until the next major Scottish devolved election (7 May 2026) and it considers it preferable to consider adoption of some of the Bill's measures (e.g. in relation to campaign finance) further in separate Scottish legislation, informed by experience in relation to implementation of the Bill in UK reserved elections and after consultation with electoral stakeholders and others. In doing so, the Scottish Government will pay regard to the necessity of providing clear and adequate notice of changes to electoral law and the 'Gould Principle' that changes to electoral law should be made at least six months prior to any election at which they are to take effect." There is no expectation that the Elections Bill will be in force before the May 2022 Scottish local government elections.<sup>1</sup>
11. In addition to the provisions identified as requiring legislative consent, the LCM also covers other provisions in the Bill which, although they relate only to reserved elections, will affect the work required to be undertaken by electoral administrators in Scotland when delivering UK Parliament elections. It is the view of the Scottish Government that these are relevant considerations for inclusion in the LCM.

## Committee Consideration

12. The Committee took evidence from the following witnesses at its meeting on 18 November 2021:
  - Electoral Commission
  - Electoral Management Board for Scotland
  - Scottish Assessors Association
  - Dr Alistair Clark, University of Newcastle
  - Electoral Reform Society
  - Inclusion Scotland
  - Royal National Institute of Blind People
13. Written submissions were also received from others responsible for administering elections and experts in the administration and regulation of elections (see Annexe A).
14. On 25 November 2021 the Committee took evidence from George Adam MSP, Minister for Parliamentary Business, Scottish Government.
15. Kemi Badenoch MP, Minister of State, Department for Levelling Up Communities and Minister of State for Equalities, was invited to provide evidence in person but due to a diary clash could not attend. However written evidence was received from the Minister and is included at Annexe B.

## Provisions set out within the LCM for which the Scottish Government considers legislative consent is required

16. The following sections of the report present the evidence and the Committee's views on provisions for which legislative consent is sought by the UK Government, as well as the provision relating to digital imprints on which the Scottish Government and the UK Government hold differing views in relation to the requirement for legislative consent.

## Clarification in law what constitutes "undue influence" of a voter

17. Undue influence is a corrupt practice in electoral law ([Representation of the People Act 1983](#) section 115). The Bill makes clear that anyone found guilty of a corrupt practice is disqualified from standing at Scottish elections for five years. At present the law in this area refers to outdated and unrecognisable harms such as 'temporal or spiritual injury'. The Elections Bill proposes updates to include harms like physical violence, damage to a person's property or reputation or inflicting financial

loss. Intimidation of electors is explicitly listed as a form of undue influence.

18. In its written evidence to the Committee, the Electoral Management Board for Scotland (EMB) stated that:
  - ” While the EMB would welcome a more clear and simple definition of the offence of undue influence, practically it is for police and prosecutors to take action around this and other electoral offences. Returning Officers and Electoral Registration Officers deliver the election but do not "police" its conduct or enforce campaign rules.<sup>2</sup>
19. In his written submission Professor James, Professor of Politics and Public Policy, University of East Anglia, highlights that although undue influence is thought to be rare, research undertaken with Dr Alistair Clark showed that 7% of poll station workers in 2018/19 reported at least one case of members of political parties intimidating voters at polling stations.
20. The Minister for Levelling Up Communities and Minister for Equalities explained in her letter to the Committee that the legislation would mean that an individual convicted of undue influence anywhere in the UK would be incapable of holding elected office in any part of the UK. The letter continues to set out the UK Government's position, stating:
  - ” I welcome the Scottish Government's indication of interest to legislate in this area prior to the Scottish Parliament election in 2026. However, if there is a delay between the coming into force of the relevant provisions of the Elections Bill and the subsequent Scottish legislation then electors in Scotland will have different levels of protection from undue influence at different elections.<sup>3</sup>
21. In his oral evidence to the Committee, the Minister for Parliamentary Business agreed the law on undue influence is out of date and needs to be modernised. However, he reiterated the position set out in the LCM that the Scottish Government intends to introduce its own legislation in 2023:
  - ” I am not opposed to the moves in the bill on that issue. We have already said that we intend to consult in 2022 and to introduce a bill in 2023, and that we would consider the matter. However, in discussions that we have had, we have found that the issue is not as serious as others have said it is. Nonetheless, we are not opposed to introducing legislation on it. We are happy to consider the matter and, possibly, to make it part of the bill that we will introduce.<sup>4</sup>
22. The Committee asked Mr Adam to respond to the point raised by the UK Government that there could be potentially different levels of protection from undue influence that will be afforded to voters in Scotland and voters in the other parts of the UK if the legislation is not taken forward on a UK-wide basis.
23. In response, Mr Adam suggested there was sufficient time as the next relevant election was not until 2026 and the consultation intended for 2022 would indicate whether undue influence was a "major issue" and whether it should be included in the planned Scottish legislation.
24. Both the Scottish Government's LCM and the UK Government's letter to the Committee the EC note that the Bill change would "help to protect voters against

*exploitation and would make clear what is and what's not acceptable behaviour...[and] also makes it easier for the police and prosecutors to take action where appropriate".*<sup>5</sup>

25. The Committee recognises that the issue of undue influence is a serious one and agrees that the law is outdated and needs to be modernised and welcomes the proposal to include harms like physical violence, damage to a person's property or reputation, undue spiritual pressure and injury, or inflicting financial loss within the definition of undue influence.
26. Some members considered that the law should be updated as soon as possible on a UK-wide basis and were concerned that if this was covered by Scottish legislation rather than being covered by the Elections Bill, it would create an unnecessary delay.
27. Other members of the Committee considered that there would be value in the Scottish Government consulting on the issue of undue influence, taking into account evidence from Scotland and then considering the most appropriate way to update the law in a Scottish context.
28. The Committee agrees with the Scottish Government's position not to recommend legislative consent in relation to this provision. Edward Mountain MSP and Tess White MSP dissented from this decision

## **The introduction of a Strategy and Policy Statement in respect of the Electoral Commission**

29. The proposal in the Elections Bill would see a statement setting out the UK Government's priorities for electoral matters and give the Electoral Commission strategic direction. The statement would be approved by the UK Parliament. Scottish and Welsh Ministers must be consulted on parts of the draft statement that relate to the Electoral Commission's devolved functions.
30. The [Speaker's Committee on the Electoral Commission](#) would have the power to examine the Electoral Commission's compliance with the Strategy and Policy Statement. Although Scottish Ministers would be consulted on the statement in relation to the Electoral Commission's functions so far as they relate to Scottish elections, the Speaker's Committee is made up of MPs and reports to the House of Commons. A number of its members are also Ministers. [The Political Parties, Elections and Referendums Act 2000](#) (section 2) provides for membership of the Committee as:
  - The Speaker of the House of Commons (also Chairman of the Committee)
  - The Chair of the Home Affairs Select Committee
  - The Minister for the Cabinet Office
  - An MP who is a Minister with responsibilities for local government

- Five MPs who are not Ministers.
31. The Bill proposes a change to the membership of the Speaker's Committee. At present, primary legislation provides the named members of the Committee and includes two Ministers – the Minister for the Cabinet Office and another Minister with responsibility for local government. Often the Minister with responsibility for the constitution in the Cabinet Office is someone other than the Minister for the Cabinet Office and therefore unable to be a committee member. The Bill allows for concurrent membership of the Speaker's Committee for the Minister for the Cabinet Office and another Minister of the Crown with responsibility for the constitution. This concurrent membership is already provided for in secondary legislation. The UK Government has stated that an additional Minister will not attend the Speaker's Committee.
  32. The [Scottish Elections \(Reform\) Act 2020](#) changed the funding arrangements for the Electoral Commission in relation to Scottish elections. The Act transferred financial responsibility from Scottish Ministers to the Scottish Parliamentary Corporate Body (SPCB). The Commission is accountable to the Scottish Parliament for the work it carries out in relation to Scottish elections.
  33. The LCM sets out the Scottish Government's position that it *"does not consider that UK Ministers should be able to include material in relation to devolved elections in the Statement. It does not therefore recommend legislative consent in relation to sections 12 and 13 of the Bill."*<sup>6</sup>
  34. The LCM also sets out the Scottish Government's concern with the proposed Strategy and Policy Statement:
    - ” Even with legislative consent not recommended, the proposed Strategy and Policy Statement in relation to the Electoral Commission is likely in practice to influence all aspects of the Commission's work, including in relation to devolved elections. Scottish Ministers consider that it is excessively narrow to restrict the consultation with Scottish and Welsh Ministers to the draft Statement only as it relates to devolved elections and that the Bill should ensure that Scottish and Welsh Ministers are consulted on the Statement in its generality even if the Scottish Parliament does not indicate legislative consent.<sup>7</sup>
  35. In a letter to the Committee dated 18 November 2021, Kemi Badenoch MP, Minister for Levelling Up Communities and Minister for Equalities set out the UK Government's position on the Strategy and Policy statement, writing:
    - ” To improve the parliamentary accountability of the Electoral Commission, the Bill makes provision for a Strategy and Policy Statement that will set out guidance and principles, which the Commission will have to have regard to in the discharge of its functions. The Commission will remain independent, and the Statement will not replace or undermine the Commission's other statutory duties. The Statement will be subject to a statutory consultation before being submitted for the approval of the UK Parliament.

” The Commission is a UK-wide body with some functions operating in relation to devolved matters in Scotland. To avoid unnecessary complexity for the Electoral Commission in exercising its regulatory powers, the Government proposed that the Statement should apply to both the Commission's reserved and devolved functions. A UK-wide Statement would ensure consistency across the UK in terms of the Commission's exercise of its functions because the Commission would only be required for its planning to give regard to a single document setting out clearly the expectations of the UK Parliament. This means that the UK Government and the Scottish Government (as one of the statutory consultees on the draft Statement) could provide a clear outline of the expectations of the UK, Scottish and Welsh Governments for the Commission's functions across all four nations for devolved and reserved polls and would reflect their shared interests through consultation on the draft Statement. The Commission will remain independent and the Statement will not replace or undermine the Commission's other statutory duties.<sup>8</sup>

36. At its evidence session on 18 November 2021, the Committee heard from the Electoral Commission (EC) on the matter. Louise Edwards, Director of Regulation at the Electoral Commission stated that, "Having a Strategy and Policy Statement as proposed is not compatible with the independence of the Commission."

37. She went on to say that the Policy and Strategy Statement would *"put one political party...in a privilege position of influence above all others and above all their political competitors as well. And that's really the point where we think it is going to impact on confidence it's going to impact on the integrity of elections because it will impact on our independence."*<sup>9</sup>

38. Ms Edwards explained the position of the Commission, further noting the Commission's two central objections to the Policy and Strategy Statement as set out in the Bill:

” The first is that it is not solely about improving our accountability. The provisions that are set out in the UK bill go much further than that, as they go to the level of giving us guidance on the performance of our functions. That could be any function—it could be how we target voter registration campaigns or how we target enforcement action. The power that is set out in the bill at the moment is broad and sweeping.

” The second and very fundamental challenge is what that means for our independence. We are quite an unusual—probably even a unique—regulator in that the laws that we regulate are set by the people whom we regulate. However, crucially, they are set by only a very small subset of the people whom we regulate. The laws apply to them but also to all their political competitors. That is why it is so important that those who campaign in elections—parties and campaigners—and those who vote in them know that there is an independent regulator that can take independent decisions about interpreting and applying the law. That is at the heart of it for us.<sup>10</sup>

39. In his written submission, Professor James states that in his view the proposal would weaken the Commission's independence:

- ” It proposes to give the government greater power by allowing it to designate a Strategy and Policy Statement. It gives the UK Parliament (but in practice government, assuming that it has a majority) the power to examine the Electoral Commission's compliance with this. This is therefore a direct violation of international best practices and would constitute democratic backsliding because it is giving the government and future governments greater control over the conduct of elections - the process through which citizens are enabled to hold government to account.<sup>11</sup>
40. Dr Clark of Newcastle University stated that *"This proposal has been widely criticised as eroding the independence of the Electoral Commission"*.<sup>12</sup> In oral evidence to the Committee, he explained that Ministers sit on the Speaker's Committee and that, at present, there is a one-party majority on the Committee. Dr Clark suggested lay members be appointed to the Committee to forward the voters' voice. Dr Clark also stated that the Scottish Parliament Corporate Body (SPCB) should be consulted by the Speaker's Committee rather than Scottish Ministers being consulted. This, he argued, would allow for Parliamentary scrutiny.
41. The EMB indicated that it considered the Electoral Commission should remain accountable to all UK legislatures
42. On 12 November the Presiding Officer in her capacity as chair of the SPCB wrote to the Committee on the LCM. The letter explains that:
- ” The SPCB does currently see the Electoral Commission's five-year plan and may recommend modifications to it if it is not "satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their devolved Scottish functions." In terms of oversight the SPCB considers that this will remain the key relevant document for it in terms of resourcing devolved elections.
- ” That Scottish legislation has made it clear that other officeholders which are also funded by the SPCB (e.g. the Scottish Information Commissioner) "are independent regarding their functions and not subject to the direction or control of the Scottish Government or the SPCB.
- ” There is an argument for the SPCB to be a statutory consultee on the Strategy and Policy Statement given the SPCB's funding role but concludes that the appropriate consultee is Scottish Ministers.<sup>13</sup>
43. The letter also states:
- ” We have seen from the illustrative Statement provided to us by the Cabinet Office that it is at a high level and it would be difficult to quantify in monetary terms. Therefore, whilst the SPCB will clearly want to be aware of the content of the Statement in the context of discharging its responsibilities under the 2020 Act, there does not seem to be value in the SPCB seeking to become a statutory consultee on what is a policy focussed Statement.<sup>14</sup>

### Committee conclusion

44. The Committee notes the concerns of the Electoral Commission and other

stakeholders over the potential for the Commission's independence to be undermined by the proposal as it currently stands.

45. The Committee is in strong agreement that the Electoral Commission's independence is crucial in order for it to carry out its duties effectively and ensure the public have confidence in the integrity of all elections. Any changes must, therefore, preserve the impartiality of the Electoral Commission.
46. The Committee considers that the appropriate consultees on the Strategy and Policy Statement are Scottish Ministers and the Scottish Parliament's Corporate Body.
47. The Committee agrees with the Scottish Government's position not to recommend legislative consent in relation to this provision. Edward Mountain MSP and Tess White MSP dissented from this decision.

## **Notional expenditure in relation to the application of the rules on campaign expenditure at devolved elections**

48. Notional spending is a benefit in kind (property, goods, services or facilities) which are made use of on behalf of a candidate. This Bill clarifies the law so that benefits in kind only require to be reported where they have actually been used by a candidate/agent, or where a candidate/agent has directed someone else to use them. It does not hold the candidate/agent responsible for benefits in kind of which they had no knowledge.
49. The LCM notes that:
  - ” The Scottish Government is sympathetic to these changes but intends to legislate in this area prior to the Scottish Parliament election in 2026. This will allow any Scottish legislation to take account of any issues raised in adoption of these provisions. The Scottish Government does not therefore recommend legislative consent in relation to these provisions.<sup>15</sup>
50. The Minister for Levelling Up Communities and Minister for Equalities highlighted in her letter to the Committee the importance of taking forward legislation on a UK-wide basis. She stated that this:
  - ” ...would ensure that the changes to the provisions on notional expenditure for political parties and third-party campaigners are consistent across all reserved and devolved elections. The Bill only contained amendments to primary legislation. In order to have consistent rules on notional expenditure across all reserved and devolved elections, the Scottish Government would also need to make equivalent amendments to the Scottish Parliamentary Elections Order 2015.

- ” The purpose of these amendments are to provide clarity on the rules following the 2018 Supreme Court case (R v Mackinlay and others) to ensure that candidates and election agents understand their legal responsibilities and can perform them with confidence. A lack of consistency across election could in fact increase confusion for candidates and their agents and lead to a lack of compliance.<sup>16</sup>

### **Committee conclusion**

51. The Committee believes that it is important to bring greater clarity in the definition of notional expenditure and agrees this expenditure should be sanctioned by the politician or her/his agent. Furthermore, the Committee is of the view that a clarified definition of notional expenditure should be extended to all elections, including local government elections.
52. While some members of the Committee believed that notional expenditure should be clarified as soon as possible and that the UK Elections Bill represented an opportunity to do this, other members of the Committee preferred the approach proposed by the Scottish Government to consult with a view to Scottish legislation taking into account any issues raised during the consultation process.
53. The Committee agrees with the Scottish Government's position not to recommend legislative consent in relation to this provision. Edward Mountain MSP and Tess White MSP dissented from this decision.

### **About regulation of expenditure for political purposes**

54. The Bill proposes three main changes to the regulation of expenditure for political purposes.
  - The restriction of all third-party campaigning to UK-based entities and eligible overseas electors. This will restrict third-party campaigning during a regulated period to only those groups eligible to register with the Electoral Commission, even those spending below the registration threshold. This will remove the scope for spending by ineligible foreign third-party campaigners.
  - Restrictions on coordinated spending between parties and third parties. At present, where one or more third parties work together on a campaign, they must all account for the costs. This new measure will extend similar principles to third-party campaigners and political parties who work together on a joint campaign, to ensure they cannot expand their spending limits by sharing costs.
  - Third-party campaigner registration. The Bill introduces a new tier of registration with the Electoral Commission for third parties spending above £10,000 across the constituent parts of the UK but less than the current per country registration threshold. Groups in this tier would be subject to basic transparency requirements and would need to be UK-based or otherwise eligible to register (e.g. a registered overseas elector). Third-party campaigners are individuals and organisations that campaign in the run-up to elections but are not political parties and do not stand candidates. The Bill removes the scope for any legal spending by foreign third-party campaigners underneath

the registration threshold but above £700. The existing threshold for both registration and reporting for non-party campaigners in Scotland is already £10,000.

55. The LCM sets out the Scottish Government's position in relation to these proposals:

” The Scottish Government is sympathetic to these changes, but intends to legislate in this area prior to the Scottish Parliament election in 2026. This will allow any Scottish legislation to take account of any issues raised in adoption of these provisions. It is also worth noting that the existing threshold for both registration and reporting for non-party campaigners in Scotland is already £10,000. The Scottish Government does not therefore recommend legislative consent in relation to these provisions. <sup>17</sup>

56. In his evidence to the Committee, the Minister for Parliamentary Business and his officials suggested that, due to the complexity of the proposals, a consultation period in advance of any Scottish legislation would be preferable.

57. In her letter to the Committee, the Minister for Levelling Up Communities and Minister for Equalities, sets out the UK Government's belief that a UK-wide approach to political expenditure would be advantageous:

” While I welcome the Scottish Government's indication of interest to legislate comparably in these areas prior to the Scottish Parliament election in 2026, a delay or divergence in the application of these political finance measures will create a complicated situation for candidates at elections in Scotland, political parties and third-party campaigners, whereby they may need to comply with a different set of rules at different elections. <sup>18</sup>

58. On joint spending by registered parties and third parties, the Minister for Levelling Up Communities and Minister for Equalities highlighted that:

” It would be beneficial for these measures to apply to all elections (both devolved and reserved), as otherwise it may lead to dissatisfaction or confusion amongst campaigners as they would have to account for spending differently at different elections. This could lead to issues of compliance and will mean that level of transparency differs between elections allowing groups to potentially expand their spending limits at devolved elections, which could be seen as undermining the level playing field. <sup>19</sup>

59. In relation to restrictions on which third parties may incur controlled expenditure and recognised third parties, the UK Government's position is that:

” applying these measures on a UK-wide basis would strengthen the transparency and fairness of controls against ineligible third-party spending at devolved and reserved elections alike. Consistency in the rules would mean that political parties and third-party campaigners can be sure of their legal responsibilities, which will support compliance and make it easier for the Electoral Commission to regulate. It will also mean that the public are presented with consistent information about such campaigners at all elections.

” If there are divergences in the rules in this area, regulatory complexities will arise. For example in reference to the creation of a lower tier of third-party campaigner, third party campaigners may campaign in multiple elections at the same time (reserved and devolved) and they will need to attempt to apportion their spending at the registration stage in order to work out whether they meet the thresholds set by the different legislatures. Furthermore, some foreign spending would continue to be legal at devolved elections but would be prohibited at reserved elections. This could lead to challenges in enforcement, a lack of understanding amongst foreign campaigners and criticism that some foreign spending is still allowed at elections in Scotland. <sup>20</sup>

60. At its evidence session on 18 November 2021, Dr Clark made the point that different regimes are an outcome of devolution. The EC similarly commented:

” The fact that different regimes are in place is an inevitability of devolution and is a situation that has existed since devolution. What is fundamental is that we support campaigners, administrators and voters – everybody who is subject to the different regimes – with good public information to help them to understand the differences. <sup>21</sup>

### **Committee conclusion**

61. The Committee agreed that the primary consideration should be clarity around any rules in place in order to enable compliance.
62. The Committee held different views on whether a UK-wide regulatory regime was the best approach. Some members felt that this would be easier to navigate whilst others thought that stakeholders should be consulted before changes are considered in relation to Scottish elections.
63. The Committee agrees with the Scottish Government's position not to recommend legislative consent in relation to this provision. Edward Mountain MSP and Tess White MSP dissented from this decision.

### **About disqualification of offenders for holding elective offices as a result of intimidatory or abusive behaviour order**

64. The Elections Bill introduces a new electoral sanction of a disqualification order imposed by the courts. It aims to protect candidates, future candidates, campaigners and elected officeholders from intimidation and abuse, both online and in person. It creates a new offence of intimidation of candidates and someone convicted of intimidation will face a five-year disqualification from standing for, being elected to and holding elective office. This is in addition to existing criminal sanctions for intimidatory behaviour. UK Ministers would be able to vary or omit offences from the list of criminal offences set out in the Bill in respect of which a disqualification order can be made.
65. In the LCM the Scottish Government notes that this provision:

” ... allows UK Ministers to vary or omit offences from the list of criminal offences in Schedule 8 in respect of which a disqualification order can be made. There is no duty to gain the consent of Scottish or Welsh Ministers, despite the implications for devolved elections.<sup>22</sup>

66. In his evidence to the Committee, the Minister for Parliamentary Business stated that *"anything that interferes with the election process is wrong and that we should ensure that we make it as safe as possible for everyone to fill in their ballot paper"*.<sup>23</sup>

67. The Minister for Parliamentary Business also confirmed that the Scottish Government is sympathetic to the change but *"intends to legislate in this area prior to the Scottish Parliament election in 2026"*<sup>24</sup> and does not therefore recommend consent. The LCM does, however, note that:

” UK-wide application would seem to strengthen the sanction, ensuring that candidates etc. in every part of the UK can benefit equally from the protection of the sanction and mean that the five-year ban, and its deterrent effect, are enforced consistently.<sup>25</sup>

68. Writing to the Committee on 18 November 2021, the Minister for Levelling Up Communities and Minister for Equalities set out the UK Government's position on the provision, stating:

” If legislative consent was given, the five-year disqualification from standing for, being elected to and holding elective office would apply to all UK elective offices. This would make the five-year disqualification order easier to enforce, thereby increasing its deterrent effect. It would send out a clear signal that the intimidation of those who participate in elections and contribute to our public life anywhere and in any election in the UK deserve the same level of additional protection from intimidation.

” I welcome the Scottish Government's indication of interest to legislate comparably in this area prior to the Scottish Parliament election in 2026. However, a delay in the application of the new electoral sanction would substantially weaken the enforcement of the new electoral sanction in Scotland. During this period it would be inconsistent - and would be difficult to justify - that an offender who is disqualified from standing for UK parliamentary elections in Scotland as a result of intimidation is not disqualified from standing at Scottish parliamentary or local government elections.<sup>26</sup>

## Committee conclusion

69. The Committee welcomes the proposal to strengthen the protection of candidates, future candidates, campaigners and elected officeholders from intimidation and abuse, both online and in person.

70. The Committee notes the Scottish Government's intention to legislate on this issue but some members have concerns over the timing of bringing in such legislation and the potential for inconsistent approaches between UK and Scottish elections. Other members were of the view that separate Scottish legislation would be better

placed to capture the views of stakeholders and other interested parties in Scotland.

71. The Committee agrees with the Scottish Government's position not to recommend legislative consent in relation to this provision. Edward Mountain MSP and Tess White MSP dissented from this decision.

### **Information to be included in electronic campaigning material - requiring political campaigners to explicitly declare who they are when promoting campaign content online and on whose behalf they act**

72. Electoral law currently states that printed election material must contain details - known as an imprint – that show who has produced and paid for the material. As alluded to earlier in the report (paras 8 & 9) there is a difference of views between the Scottish Government and the UK Government as to whether legislative consent is required in relation to the proposal on imprints required on digital material of a political nature.
73. Part 6 of the Bill provides for a requirement of imprints on digital political campaign material. Digital imprints would be required on political material all year round, and not just in the run up to an election. Printed material already requires such an imprint. The Bill therefore aligns the imprint requirements for digital and print material.
74. Scottish legislation already requires digital imprints on material for Scottish elections including organic material. Imprints are also required on printed material. The Scottish Government's position is that the Bill is effectively seeking to override an existing regime that focuses on specific elections and all kinds of election material, including both paid and unpaid material from registered and unregistered campaigners.
75. The Scottish Government describes its initial position as being that the existing Scottish regime should remain in place, with any adjustments needed to accommodate the reserved aspects of the Bill in relation to the "takedown" of material on the internet. The LCM also states that the Scottish Government will continue to review this area of the law and assess the impact of the provisions of the Elections Bill as they apply in relation to reserved elections.
76. In her letter to the Committee, the Minister for Levelling Up Communities and Minister for Equalities sets out the UK Government position in relation to digital imprints:

” While devolution means that there are already different arrangements for devolved and reserved elections, in some areas there are clear benefits associated with applying electoral law uniformly UK-wide across all polls as with the UK Government's proposals for digital imprints. "The digital imprint regime set out in these provisions is not an online version of the existing imprint regime for printed documents. It is far wider in scope, requiring an imprint on some types of political electronic material at all times - not limited to specific elections or referendums or particular periods of time. Its purpose, therefore, is to regulate electronic material of a political nature on the internet and behaviour and conduct on the internet by users and internet service providers at all times, not just during elections themselves. A UK wide regime will ensure a coherent and consistent approach for both those enforcing the regime and for campaigners. It will enable voters from across the UK to benefit from the high level of transparency and will avoid the fragmentation of internet regulation.<sup>27</sup>

77. The Committee heard evidence from Louise Edwards that the Electoral Commission agreed on the importance of providing clarity on the definition of what would constitute 'material of a political nature':

” It is absolutely right that the law needs be clear. The intention this is set out in the bill is that the commission will draft some sort of guidance to sit behind it to help campaigners to understand the requirements under the bill. However, no amount of carefully worded guidance will deal with poorly drafted law; the law is the absolutely fundamental thing that needs to be clear.<sup>28</sup>

78. At the same evidence session, Dr Clark suggested this point needed further discussion, citing the potential for charities to be captured by this provision:

” There are some difficulties with what is proposed, however. My understanding of what is being proposed is that the digital imprint would include anything that is paid for and is "political". That is very different to the Scottish version of the digital imprint regime, which is about election material that is either paid for or not paid for. A lot will depend on definitions, because "political" can have a very wide definition. The regime could quite conceivably catch charities, for example.<sup>29</sup>

79. The EC also expressed concern that the proposed Bill hindered transparency on who was financing online campaign material.

” We have no way of knowing how many campaigners there are who spend below the registration thresholds, because they do not need to register. We could be talking about a significant amount of spending on influencing voters not being subject to the requirements for a digital imprint under the UK regime.<sup>30</sup>

### Committee conclusion

80. The Committee welcomes any mechanism that boosts transparency and provides reassurance to voters on how political parties and their material are being funded.

81. However, the Committee agrees there is ambiguity on what specific material will be captured in the digital imprint regime being proposed if this is linked to political

material rather than election material.

82. The Committee welcome the steps already made by the Scottish Government and urges the UK Government to take cognisance of the benefits this has already delivered for devolved elections
83. The Committee agrees with the Scottish Government's position that legislative consent is required in relation to digital imprints in devolved elections and notes that the Scottish Parliament already passed legislation relating to digital imprints.

## Provisions in relation to reserved elections alone and where legislative consent is not sought

84. There are a number of provisions in the Bill which affect reserved elections only. In Scotland this means elections to the UK Parliament.
85. Electoral administrators in Scotland are responsible for the administration of both UK Parliament elections and Scottish elections. As such, these proposals may have an impact on the workload and working practices of electoral administrators – Electoral Registration Officers (EROs) and Returning Officers (ROs) in particular.
86. The Committee explored these provisions with witnesses at its evidence session on 18 November 2021. They include:
  - A requirement to show photographic ID before being issued with a ballot paper.
  - Increasing the frequency with which a voter needs to apply for a postal or proxy vote to every three years (at present there is a process every five years).
  - Removing restrictions on who can act as a companion to a disabled voter at polling stations and removing the requirement of ROs to provide specific support in favour of a requirement to "take all reasonable steps" to provide support.
  - Allowing UK citizens who have lived overseas for longer than 15 years to vote.
87. In a letter to the Committee dated 18 November 2021 the Minister for Levelling Up Communities and Minister for Equalities set out the UK Government's reasoning for the introduction of these measures as twofold, citing both the fulfilment of manifesto commitments and the strengthening of electoral integrity:
  - ” The legislation delivers on a number of manifesto commitments including the introduction of the requirement for voters to show photographic identification to vote at polling stations and increasing the safeguards for postal and proxy voting. The Bill also fulfils the UK Government's manifesto commitment to remove the arbitrary 15- year rule for overseas electors voting in United Kingdom Parliamentary elections..."

- ” A number of the measures in the Bill are designed to strengthen the integrity of the electoral process for UK Parliamentary elections and other reserved polls. This includes the introduction of identification to vote at polling stations and safeguards for postal and proxy voting, as well as changes to improve the support available to voters with disabilities. We will continue to work closely with the Electoral Commission, the wider electoral sector and the devolved administrations to ensure that the proposed changes work well in the interests of electoral administrators, voters and those regulated by electoral law.<sup>31</sup>

## **Introduce a requirement for voters to show an approved form of photographic identification before collecting their ballot paper to vote in a polling station**

88. The Bill introduces a requirement for voters to show photographic ID before being issued with a ballot paper. This provision relates only to reserved electoral events in Scotland (i.e. UK Parliament elections and UK-wide referendums). The provision will have an impact on Scottish voters, on EROs and on the administration of reserved elections.
89. The documents that will be deemed appropriate forms of ID are set out in the Bill ([section 1, para 15](#)) and include:
- a UK, Commonwealth or EEA passport;
  - a UK, Channel Islands, Isle of Man or an EEA driving licence;
  - a biometric immigration document;
  - a concessionary photo travel pass (including those issued by the Scottish Government);
  - a Blue Badge scheme badge;
  - a free voter ID card issued by a person's local electoral registration officer (the new card to be introduced by the Bill).
90. The UK Government has said that the proposal will strengthen the integrity of the electoral process in UK Parliamentary elections and other reserved elections and that "*Showing ID is something that people of all backgrounds already do every day... Proving who we are before we make a decision of huge importance at the ballot box should be no different.*"<sup>32</sup>
91. The Scottish Government's position, set out in the LCM, is that "*there is no evidence of significant electoral fraud to justify voter ID measures in Scotland.*"<sup>33</sup>
92. Evidence of 'personation' (voting as someone else which is a crime under [section 60 of the Representation of the People Act 1983](#) ) at elections is very limited, but thought to be uncommon. A [House of Commons Library briefing on the Bill](#) states that:

- ” In 2019, 33 cases of polling station irregularities were reported (either personation, voting more than once or voting while disqualified from voting). This led to one conviction and one caution for personation.
93. The UK Government conducted five voter ID pilots in English local elections in 2018 and ten in 2019. The Electoral Commission evaluated the pilots and identified three areas which it felt required further consideration before any introduction of voter ID. The Commission's view was that any requirement for voter ID must:
- deliver clear improvements to current security levels
  - improve public confidence in the voting system
  - address the likely impact on the accessibility of the voting process – considering particularly those from lower socio-economic groups, with disabilities, and the unemployed.
94. In a recent blog on the Elections Bill, Dr Clark highlighted that *“evidence from the pilots showed that in some areas over 30% of voters who went to vote but were turned away because they did not have voter ID did not return to vote later.”*
95. In spite of this, the Committee heard evidence from the Electoral Commission of clear concern amongst some voters about the security of elections:
- ” I will throw into the mix a figure from some research that we did after the most recent poll in Scotland, which suggested that something like 47 per cent of voters would feel more confident in the security if there was some kind of photo ID.<sup>34</sup>
96. In his written evidence to the Committee, Professor James argued that personation was not widespread, stating that:
- ” Research shows that only 0.7 per cent of poll workers were concerned that electoral fraud might have happened in their polling stations. Where concerns about ‘fraud’ were raised by poll workers, these were often the result of misunderstandings about the electoral process by voters.<sup>35</sup>
97. The EMB, in its written submission, made the assessment that some of the Bill's provisions *“are out of proportion to the problem they attempt to address”* and that the Bill *“would make a fundamental change to the UK electoral landscape, with a requirement for voter ID, and other proposals would add administrative burdens, changes which we do not believe are in proportion to the scale of the problem.”*<sup>36</sup>
98. The Scottish Assessors Association submission noted the potential administrative burden of the provision on EROs. Applications for an electoral identity document or an anonymous elector's document will be made to EROs and they must determine these applications. Their submission highlighted that at this stage the take up of the two new documents is unknown but stated that *“it will require the ERO to allocate additional resources and it is essential that the ERO receives the necessary additional funding to meet this new duty”*.<sup>37</sup>
99. The EMB submission also highlighted that the requirement would add an extra step

in conducting the poll for UK Parliament elections. It noted in particular that poll staff would need to be familiar with all accepted forms of ID, which it considered could be a challenge. It also noted that the role of poll staff would change given that they would be expected to inspect and verify papers before issuing a ballot paper, stating:

” This is a fundamentally different role and may lead to difficulties in the recruitment of staff. Polling staff will no longer be fellow citizens assisting in the election, but officials checking voters' identity papers. This will be a less attractive job given the likely associated conflict and bureaucracy. There would need to be additional remuneration for polling staff commensurate with their new duties and responsibilities.

” The potential for voter confusion around the requirement was highlighted in a number of submissions received by the Committee. There is also concern that certain groups are less likely to have photo ID, making it harder for them to vote. <sup>38</sup>

100. [An Electoral Reform Society briefing on voter ID from July 2021](#) indicated that 20% of people believe electoral fraud is a problem, stating:

” Perceptions of electoral fraud almost halved between 2020 and 2021, with only 20% thinking this is a problem. 87% of people think voting in general is safe from fraud and abuse, and 90% of respondents said that voting at the polling station is safe.

101. The Committee also heard from the Electoral Commission that 47% of electors at the last Scottish election would have more confidence in security at an election if there was a requirement for voter ID with 44% saying it wouldn't give them more confidence

102. Sight Scotland stated its concerns about the introduction of voter ID, indicating in its written submission that: *"We do not support this move due to the negative impact this could have on those with visual impairments, older people, and disabled people. Our main concerns centre around the ability of those to obtain the accepted forms of ID (including the free voter ID card) and how this requirement will be communicated."* <sup>39</sup>

103. RNIB explained in its written submission that it has raised concerns with the UK Government's proposal. The submission states: *"The requirement to show photo ID to vote will disproportionately and negatively affect blind and partially sighted people who are less likely to own photo ID. RNIB's Tracker Survey suggests 13 per cent of blind and partially sighted people have no acceptable form of ID, meaning that this new requirement could exclude them from casting their ballot."* <sup>40</sup>

104. At the evidence session on 18 November 2021 Inclusion Scotland stated that:

” ...surveys suggest that around one in 10 disabled people would be denied the right to vote because they do not have the necessary ID. That is over 1 million disabled people. A significantly higher proportion of disabled people do not have the necessary ID compared to non-disabled people... <sup>41</sup>

105. Louise Edwards from the EC commented on support for and against voter ID. She

also highlighted the importance of maintaining public confidence in our voting system:

” ...the key thing is that security is partly about genuine security—making the system more secure—and partly about confidence. I will throw into the mix a figure from some research that we did after the most recent poll in Scotland, which suggested that something like 47 per cent of voters would feel more confident in the security if there was some kind of photo ID. However, I balance that by noting that 44 per cent said that they did not think that photo ID would make a difference to security, so the research shows that it is not a very straightforward picture. The number of recorded instances of personation is very low, but we have to think about the impact on confidence.<sup>42</sup>

106. The Scottish Government's position is that *"there is no evidence of significant electoral fraud to justify voter ID measures in Scotland."*<sup>43</sup> The Minister for Parliamentary Business stated in evidence that voter ID *"makes it even more difficult for people to engage."*<sup>44</sup> The Minister was non-committal as to whether the issue of voter ID would be part of the consultation to inform the Scottish Government's planned election bill.

### Committee conclusions

107. The Committee agrees that although voter ID is a reserved matter, there are issues that could impact on Scottish elections. Some members considered that there could be negative, unintended consequences arising from the provisions in the Elections Bill.
108. The Committee agreed that maintaining the public's confidence in the integrity of elections in the country was vital. However, there were differing views within the Committee on whether the prevalence of personation was sufficiently high to require voter ID. Some members were of the view that it was difficult to say with any confidence that personation did not happen on a significant scale as, if it was done effectively, there would be no evidence. However, the majority of the Committee disagreed and considered that there was insufficient evidence to suggest that personation took place on a sufficiently high scale to justify the introduction of voter ID requirements.
109. There was significant concern among Committee members that there could be up to 150,000-200,000 voters in Scotland without the forms of identification that the Bill proposes would be required in order to cast a vote. The Committee is concerned that this will mainly affect those from disadvantaged backgrounds or disabled people and could act as an additional barrier to those voters.
110. While the Committee has no formal role in considering UK legislation, it calls on the Scottish Government to seek assurances from the UK Government that there will be an ongoing monitoring process to identify the impact of this provision.
111. The Committee is concerned that there will be sufficient time in the event of a UK Election for people – particularly disabled people - to plan how they can obtain the voter ID that will allow them to cast their vote. The Committee considers that there is a need for the UK Government to engage early with disability groups to ensure that the necessary measures are put in place to support the participation of disabled people in elections.

112. As voter ID would be a new concept for UK voters, the Committee agrees that an early public information campaign would be required to provide clear information on what constitutes acceptable ID and how to apply for an electoral ID card if required.
113. The Committee notes the change to the role of the EROs and ROs on the introduction of voter ID and urges that all administrative staff are provided with appropriate training and that the UK Government bears all the additional costs that result from any new provisions.
114. The Committee was also concerned about the potential impact on the administration of elections and the changing nature of the relationship between poll workers and the electorate if the former are required to check the latter's ID. The Committee agree that there would be a significant financial cost to the introduction of voter ID cards. The Committee seeks assurances from the UK Government that all related costs, including relevant training for administrative staff, should be borne by them.

## Postal, proxy and overseas voting changes

115. The Bill increases the frequency with which electors at UK Parliament elections will need to re-apply for a postal vote to every three years. At present, there is only a need to provide an updated signature every five years. People will need to re-apply for their postal vote every three years on the third 31st January after the date of their latest application.
116. Those electors who are eligible to vote by post in UK Parliament elections and Scottish elections will need to be a part of both processes – i.e. the three-year renewal (for UK Parliament elections) and the five-year signature update (for Scottish elections). Other voters who are enfranchised only at UK Parliament elections or only at Scottish elections will only need to be part of one process.
117. The Scottish Assessors Association notes in its written evidence to the Committee that the change will require additional funding for EROs and that an online postal vote application service which is fully integrated with existing systems would be beneficial. It also highlighted that *"a re-application every three years will require more ERO resource than a signature refresh every five years and running two processes will be more complex than running a single complex."*<sup>45</sup>
118. The EMB also focused on the additional burden on EROs in its submission.
119. Both Professor James and Dr Clark noted the impact on voters and the need for changes to be clearly communicated. Professor James states that, if not communicated effectively, the change is *"high risk"* with voters assuming they still have a postal vote and missing a postal vote deadline. He argued that *"a requirement to notify electors that their postal/proxy vote has expired should be set out in law."*<sup>46</sup>
120. The Bill also proposes to ban political campaigners from handling postal votes and introduces a limit on the number of electors on behalf of whom a person may hand in postal votes to a returning officer or at a polling station (a maximum of four). The Bill proposes limits on the number of people for whom a person can be appointed

as a proxy and extends the secrecy of the ballot requirements in polling stations to absent voting.

121. The Bill introduces new limits on the number of electors a proxy can be appointed for which differs between different categories of electors (e.g. a maximum of four for overseas electors, but two for UK based electors). Louise Edwards from the Electoral Commission stated:

” The proposal would tie eligibility to vote to the person who is a proxy and not to the person who wants to vote .... not sure that the benefits of reducing the number of proxies so severely would outweigh the potential disadvantages. There are a lot of accessibility issues that need to be worked through. <sup>47</sup>

122. The Bill will allow UK citizens living abroad to vote for life. At present electors living overseas can vote for up to 15 years and the Bill proposes to remove this limit. Dr Clark and Professor James highlighted the issues which already exist for overseas voters, with Professor James writing:

” It should be noted that the existing practice for overseas electors relies on overseas electors being sent their vote via the international post, and the elector being able to return it in time for the count. An evaluation of the EU Referendum showed that this was not possible within the narrow electoral timetable. Electoral officials reported many instances of voters receiving their ballot too late to be returned. <sup>48</sup>

123. In evidence to the Committee, Pete Wildman from the SSA, indicated that there were several administrative challenges with removing the 15-year cap. This included ascertaining where individuals were previously registered, what evidence would be required to prove you were previously registered and how to communicate timeously with voters overseas.

124. Professor James also indicated that the proposed change would expand the number of people who could contribute towards political parties in the UK, despite not being physically present. He considered that this might *"raise concerns about whether they would have a disproportionate political interference in a country in which they are not resident."* <sup>49</sup>

125. The Minister for Parliamentary Business told the Committee that he had *"concerns about allowing someone who has not been involved in the electoral process or even lived in the country for 14 years being able to engage and spend money in a UK election."* <sup>50</sup>

### Committee conclusions

126. The Committee acknowledges the additional administrative burdens of the proposed change to registering for a postal vote from every five to every three years. However, it also recognises there may be benefits from a more up-to-date register as this would make it easier to keep more accurate records for those who regularly move address. The Committee would like to see assurances from the UK Government that sufficient resources would be made available to ensure administrators can implement the proposed changes effectively.
127. In relation to proxy voting, the Committee's view is that it is crucial that any voter

who is eligible to vote, and who wants to vote, must be able to.

128. The Committee notes the administrative challenges highlighted by the SAA on administering all eligible overseas voters. There are differing views within the Committee on removing the 15-year limit on overseas voters. Some members agree with the UK Government position that all UK nationals should have the opportunity to vote in UK elections and that, with time, the administrative burdens would wane. However, other Members were uncomfortable with individuals who lived abroad for over 15 years being able to vote and fund political parties.

## Accessibility of Polls

129. The Bill requires ROs to consider a wider range of support for voters with disabilities in polling stations and removes restrictions on who can act as a companion to support voters with disabilities to cast their vote in a polling station.
130. At present, ROs are required to provide specific forms of support to voters with disabilities at polling stations, such as a sample large print ballot paper for people with sight loss. The support they must provide is set out in law. The proposals in the Bill would replace this list, instead requiring ROs to take *"all reasonable steps"*<sup>51</sup> to provide support to people with disabilities at polling stations.
131. This provision relates only to reserved electoral events and will not change the position for Scottish elections. The Scottish Government indicates in the LCM that it *"agrees that there is a need to improve the law in this area and intends to make a full assessment of possible improvements for devolved elections in order to bring forward its own changes in time for the 2026 Scottish Parliament election."*<sup>52</sup>
132. The EMB states in its written submission that assessing what *"all reasonable steps"* would need some expert guidance for ROs to ensure that voters are adequately supported and that ROs understand what they must do."
133. In its written submission, Sight Scotland expressed concerns over the proposal to remove the provision in the Representation of the People Act 1983 relating to 'prescribed equipment' such as tactile voting devices, stating:
- ” While the effectiveness of the tactile voting devices is subject to debate, it is our view that reference to 'reasonable adjustments' risks creating an inconsistency in what equipment will be available in each local authority. While we understand this section seeks to make support mandatory it has the effect of potentially weakening the support available and gives a great degree of discretion to individual electoral officers to decide what is 'reasonable'. For those with sight loss, this could result in a person having access to a device in one local authority but not in another.<sup>53</sup>
134. The RNIB stated in its submission that it welcomes the move to broaden who can accompany a voter to help them vote if they wish to have help but has "significant concerns" over the proposed changes in relation to the provision of equipment for blind and partially sighted people. It argues that the change relating to prescribed equipment will weaken the current position in two ways:

- ” Individual Returning Officers, instead of the Government, will make the decision as to what to provide, creating a postcode lottery of provision. This will introduce uncertainty and anxiety amongst blind and partially sighted voters as they won't know what to expect at polling stations or what they are entitled to.
- ” The introduction of the word "reasonable" means that a Returning Officer could decide they don't think the provision of a tactile voting device, or other such equipment to enable an independent vote, is reasonable.<sup>54</sup>

135. The RNIB also expressed concern in its submission around the fact that many blind and partially sighted people cannot vote secretly and independently. Its May 2021 survey of elections in England, Wales, and Scotland in May 2021, "Turned Out 2021", found four in five blind people felt they were unable to vote both independently and in secret.

136. In evidence to the Committee, the Minister for Parliamentary Business agreed with the need to maintain consistency across constituencies and resolved to ensure this outcome was achieved. He stated:

- ” I am all for trying to find easier ways for people to engage with the process but I am also all too aware how difficult it can be for people with physical disabilities, such as sight loss, to do so. A lot of that has to do with training of staff in the polling stations. I will make one commitment: we will endeavour to ensure that this is not an issue.<sup>55</sup>

### **Committee conclusion**

137. The Committee welcomes all of the proposals in the UK measures which make the process of voting easier for all voters. However, the Committee shares the concerns raised in evidence over the ambiguity over the phrase "all reasonable steps". The Committee considers that this requires greater clarity and that there is a need for the UK Government to define this phrase with more clarity and work with disability groups in drawing up the guidance for local authorities.

# Delegated Powers and Law Reform Committee Consideration

138. The Delegated Powers and Law Reform Committee (DPLRC) considered the LCM at its meeting on 9 November 2021.
139. The Committee drew a number of issues to the attention of the SPPA Committee in its [report](#) on the LCM.
140. The Committee recognises the concerns highlighted by the SPLRC and agrees that the Scottish Parliament should have the opportunity to scrutinise the exercise of all powers within devolved competence.

## Conclusion

141. The Committee notes that the Scottish Government does not intend to lodge a Legislative Consent Motion in relation to the UK Elections Bill.
142. The majority of the Committee considered that legislative consent should not be provided to the provisions in the UK Elections Bill.
143. The Committee welcomed the Scottish Government's commitment to consult on provisions for a Scottish Elections Bill which would take into account the views of relevant stakeholders in shaping the legislation.

# Annexe A: Written Submissions

## Electoral Management Board for Scotland

### Summary

The Scottish Government has asked the Electoral Management Board for Scotland (EMB) to comment on the UK Elections Bill recently introduced to Westminster. Some of the provisions in the Bill will apply to UK Parliamentary General Elections which are administered in Scotland by Returning Officers (ROs) and Electoral Registration officers (EROs) whom the EMB supports and assists in the discharge of their duties. Other provisions would apply to Scottish Parliament and Local Government elections only following an agreed legislative consent motion in the Scottish Parliament.

This paper advises Scottish Ministers on the views of the EMB regarding these provisions as they consider whether to apply them in Scotland. To give some context a background is given on the history and work of the EMB and an outline of the Elections Bill is provided. The paper then gives a brief general assessment of the Elections Bill from the perspective of the EMB: some elements make welcome changes to legislation; some changes are out of proportion to the scale of the problems they attempt to solve and some potential areas for change are left unaddressed. The various provisions of the Bill are then considered, and comment is made on each area to advise the Scottish Ministers on their possible application to Scottish Elections.

It is concluded that the Bill does offer an improvement in some areas in which the EMB and others have been pressing for revisions to the framework of electoral legislation but that some changes are unnecessary and could be unhelpful.

Finally it is noted that, in line with the "Gould Principle", any legislative changes must be made well in advance of the event to which they will apply and that the EMB stands ready to discuss these matters further with Scottish Ministers and Scottish Government.

### Background

#### The Electoral Management Board for Scotland

The Electoral Management Board for Scotland (EMB) was created by the Local Electoral Administration (Scotland) Act 2011. This gave the Board "the general function of co-ordinating the administration of Local Government elections in Scotland." The Scottish Elections Reform Act 2020 formally extended the Board's remit to cover Scottish Parliament Elections, recognising the Board's role in the successful delivery of all major electoral events in Scotland

The EMB's prime focus is ensuring that the interests of the voter are kept at the centre of all electoral planning and administration. To achieve this, it focusses on supporting a consistency of approach, promoting resilience and offering guidance and advice. Leading and supporting Returning Officer (RO) and Electoral Registration Officer (ERO) colleagues, the EMB is a source of expertise to give a consistent and robust context for electoral events in Scotland. Discrete from both the regulator and legislator the EMB represents those who are legally responsible for the delivery of elections; the aim is always to deliver elections with results in which the voter can have full confidence.

## UK Elections Bill – Scottish Government letter to interested stakeholders

On 13 July the Scottish Government wrote to the Convener of the EMB seeking comment on [an Elections Bill](#) that had been introduced by the UK Government to the House of Commons on 5 July 2021. The Bill contains provisions relating to Scottish Parliament and Local Government Elections and accordingly would require the consent of the Scottish Parliament under the Legislative Consent Memorandum (LCM) process.

Before lodging an LCM in relation to the Bill Scottish Ministers wish to consider the proposals fully, informed by the views of interested stakeholders. To support this consideration the EMB has been asked to comment on the Bill, in particular the provisions applicable to devolved elections. While the Elections Bill makes changes in areas that would apply to elections within the devolved responsibility of the Scottish Parliament, many changes would apply only to reserved elections (for example, the proposals around the need for voter identification), with implications for electoral administrators in Scotland when delivering UK parliamentary elections.

The EMB welcomes the opportunity to provide these comments which reflect the Board's own consideration of the topics and its engagement with ROs and EROs.

The comments offered address practical issues with respect to the delivery of elections, particularly how these proposed changes would be implemented by ROs and EROs and, importantly, how they would impact on voters. Policy considerations are outwith the remit of the EMB, so comment in that area is limited.

### Summary of the Elections Bill

The Explanatory Notes of the Bill state that the Bill "makes new provision for and amends existing electoral law to ensure that UK elections remain secure, fair, modern, inclusive and transparent." It is intended to meet some of the UK Government's 2019 manifesto commitments, including to "protect the integrity of the UK's democracy, by introducing identification to vote at polling stations, stopping postal vote harvesting and measures to prevent any foreign interference in elections" and to "make it easier for British expats to vote in Parliamentary elections, and get rid of the arbitrary 15-year limit on their voting rights."

The Bill is very much framed as resolving integrity concerns around elections and the various parts address the introduction of voter ID at polling places, safeguarding postal and proxy votes from interference and clarification of electoral offences including undue influence and intimidation. In addition to these integrity elements other provisions address the accessibility of voting to those with disabilities, overseas voters, candidacy rules for EU citizens, the role and responsibilities of the Electoral Commission. There are also various revisions to the rules around campaign spending and party finance.

### An overall assessment of the Elections Bill

Comment is made below on each of the areas of change that are proposed by the Bill. As a general assessment the EMB would observe that:

- **Some measures are out of proportion to the problem they attempt to address.** The focus and context of the Bill is electoral integrity. The Bill flows from a manifesto commitment to address concerns about electoral integrity arising from some high profile cases of electoral fraud over the last decade. Many of the proposals were recommended in Sir Eric Pickles' 2016 report [Securing the Ballot](#). The view of the

EMB is that electoral integrity is not a significant issue across the UK and especially not in Scotland. There have been some issues in the UK but these have been few and concentrated in a small number of areas. Reports by the Electoral Commission into the conduct of elections in Scotland over the last decade have indicated sound and robust elections, with outstanding integrity matched by voter confidence. This Bill would make a fundamental change to the UK electoral landscape, with a requirement for voter ID, and other proposals would add administrative burdens, changes which we do not believe are in proportion to the scale of the problem.

- **Some changes are welcome and address real concerns** – the EMB supports measures to ensure that elections are accessible and that voters do not face barriers to taking part. The proposals to improve the voting process for those with disabilities are important and appropriate.
- **Some opportunities for improvement to the legislative framework are ignored:** the EMB and others have noted in previous consultations various elements of electoral law that could be addressed to give a more robust, consistent, understandable and effective framework for elections. For example the timetables of elections are generally tight and introduce risks to the delivery of elections. [The Law Commission/Scottish Law Commission report on Electoral Law](#), published on 16 March 2020 made many recommendations that would be supported by the EMB but which are yet to be taken forward. These included a proposal that existing electoral offences should be updated and made easier for the electorate, officials and prosecutors to understand, all of which this Bill addresses. It also recommended that the standard legislative timetable at all elections in Great Britain should be 28 days in length, an omission in this Bill.

With those observations in view the various elements of the Bill are now considered, looking initially at those in relation to reserved elections and then those in relation also to Scottish Parliament and Local Government elections. For each a summary comment is provided.

## **UK Elections Bill: Provisions in relation to reserved Elections that are administered in Scotland**

### **Voter identification**

**The Bill introduces a requirement for voters to show an approved form of photographic identification before collecting their ballot paper to vote in a polling station for UK parliamentary elections in Great Britain. A broad range of documents will be accepted including passports, driving licences, various concessionary travel passes and photocard parking permits issued as part of the Blue Badge scheme. Any voter who does not have an approved form of identification will be able to apply for a free, local Voter Card from the ERO.**

Personation is a crime that undermines the integrity of the electoral process and can seriously erode the confidence that the voter has in the results of elections. It is therefore essential that there are controls in place to prevent personation and appropriate sanctions to discourage it. There are already such measures and punishments in place. For example, voters are required to state their name which must be called out in the polling place and polling agents are able to attend polling stations to detect personation.

In this response the EMB is not offering comment on whether Voter ID is justified or

whether it may have impacts on the suppression of parts of the electorate. These are policy issues. There are however practical issues to be considered if the Bill's proposals are enacted. These include the following.

- Voter confusion – there would need to be clear communication as to which forms of ID are acceptable, how these can be obtained and how they are to be presented. Deadlines for application for ERO issued ID cards will need to be clear and sequenced appropriately with registration deadlines so that no one who is newly-registered is effectively disenfranchised through lack of acceptable ID. Voters would need to understand that ID would be required at some elections but not others. Voter education would be essential and would need to be adequately resourced.
- Production of the new Voter Card – it is assumed that voter ID will be produced by the ERO in Scotland not the local authority. EROs are already stretched to their limits in the pre-election period. An additional duty to produce a free Voter ID card would add to their responsibilities and would again need to be adequately resourced.
- Pandemic contingency - There is a need to ensure that voters could obtain the voter ID if an election again required to be conducted under Covid restrictions. EROs may not always have a Covid secure meeting space. EROs in such circumstances would need to provide a means or premises to carry out a face to face check to then issue a new photo ID, although it should be noted that the Home Office actually removed the requirement for such face to face checks for right to work purposes during Covid.
- The broad range of ID documents to be accepted – there are many forms of ID that could be accepted. Polling staff are likely to be unfamiliar with many of these. Extensive additional staff training will be needed to allow polling staff to recognise each different document. Staff inexperience offers a real risk of a genuine ID being rejected or of an out of scope or fake ID being accepted.
- A changed role for the Presiding Officer – polling staff would be expected to inspect and verify identity "papers" before issuing a ballot paper. This is a fundamentally different role and may lead to difficulties in the recruitment of staff. Polling staff will no longer be fellow citizens assisting in the election, but officials checking voters' identity papers. This will be a less attractive job given the likely associated conflict and bureaucracy. There would need to be additional remuneration for polling staff commensurate with their new duties and responsibilities.
- Impact on the voting procedure – the checking of ID will be a new step in the voting procedure that will add significant time to the process. During busy polls, ROs are likely to require additional staff and polling stations to prevent queues and congestion, with the inevitable additional costs.
- Planning and preparation – there will need to be sufficient time for ROs to plan for the introduction of this new measure. This is a fundamental change to the voting process and will need significant revision to staff recruitment, training and operations on polling day.
- Potential for dispute – where electors are denied a ballot paper due to invalid or missing ID documents then there is the potential for conflict and disruption at the polling station. There is a concern for the safety of staff in such cases. There is also a risk of subsequent challenge to the result through election petition where legitimate voters are prevented from taking part. ROs will need to consider the potential risk to

the staff from such challenging interactions.

- Revised EMS software – it is assumed that the Cabinet Office will cover the costs of Voter ID cards but this must include Electoral Management Software (EMS) development which will be required for the provisions relating to EROs issuing and holding records relating to Voter ID cards.

The Scottish Government has already indicated that it has no intention of introducing this measure for devolved elections in Scotland. If enacted this control would only apply to UK Parliamentary Elections.

For clarity it needs to be explicit who would issue Voter ID in Scotland. The legislation references local authority but with the structures in Scotland it is expected that this would fall to the ERO.

### **EMB Comment**

While this is a policy matter, the EMB has identified practical challenges to the implementation of Voter ID and would not support its introduction for Scottish Elections. It purports to solve what is not a significant issue in any election held in Scotland with measures that are considered to be far out of proportion to that problem. It risks voter discouragement and suppression and would add administrative cost and time to the voting process. The difference in practice as regards Scottish Parliament and Local Government Elections would offer a potentially confusing contrast with UK elections which would require to be addressed with a programme of voter education.

### **Postal and proxy voting measures**

The new measures would require those using a postal vote on a long term basis to re-apply every three years. The Bill seeks to ban political campaigners from handling postal votes and introduces a limit on the number of electors on behalf of whom a person may hand in postal votes to a returning officer or at a polling station. There are limits proposed on the number of people for whom a person can be appointed as a proxy and extends the secrecy of the ballot requirements in polling stations to absent voting.

### **Postal Voting**

Additional Pressure on EROs - Reapplying for a postal vote every three years rather than five would bring additional burdens to EROs, with more frequent regular peaks of demand. The Electoral Registration Committee of the SAA have made their own response to the Scottish Government's letter's to interested stakeholders. The EMB endorses the position taken in their response.

Ban on handling postal votes – prohibiting campaigners from handling, or assisting with the completion of, postal ballot papers is welcomed to support the secrecy of the ballot and the integrity of the electoral process. Generally, administrators and EROs in Scotland have only encountered relatively minor issues such as the handing in of multiple postal vote applications very close to the deadline, duplicate applications being made prompted by party campaigning and the incorrect formatting/wording of forms produced by the political parties. There has been no experience of obvious fraudulent practices or suspicious activity. It should be noted that the Bill only covers postal vote packs and does not cover postal vote application forms. For consistency of protection, this ban should be extended to postal vote applications to prevent political parties and candidates collecting forms from electors. It does need to be recognised however that such measures may limit the

accessibility of elections. Occasionally a canvasser might be the only person able to hand in a postal vote or application for an elector.

Exemptions for care home staff - A care home manager might be given a bulk set of postal votes to hand in, but the volume might exceed the limits in law. By potentially denying care home staff (or indeed other care related staff) the opportunity of handing in postal votes, this could give rise to potential age and disability discrimination. Indeed, there may be an argument for Government to subject this particular proposal to equality impact assessment. There could be an exemption for workers in these sectors to submit packs collectively for residents.

Administrative burden around the limits on the handing in of postal votes – the Bill introduces a limit on the number of electors on behalf of whom a person may hand in postal votes to a RO or at a polling station. The process that is outlined by the Bill implies additional tasks to be undertaken by polling staff, requiring a form to be filled in at the polling station and a limit, yet to be fixed, on the number of postal votes that can be handed in. These additional tasks could mean that more staff resources are needed in polling stations. These are new procedures for polling station staff who would potentially also be having to check Voter ID. The measures could see people wanting to hand in volumes of postal votes being turned away, potentially creating additional opportunities for conflict at polling places. A broader concern is that there would continue to be nothing to prevent anyone from simply posting unlimited volumes of postal packs and having them collected via the Royal Mail sweep on polling day.

### **EMB Comment**

The Electoral Registration Committee of the SAA representing EROs has commented separately and the EMB endorses their position on this proposal. In addition, the EMB would note that:

1. The proposals around the handling of postal votes are sensible but for consistency and completeness should also extend to application forms.
2. The proposals for limiting the numbers of postal votes that can be handed in add administrative complexity and do not solve the perceived problem as volumes of packs could simply be posted and then delivered by Royal Mail.

### **Proxy Voting**

Additional administrative tasks for EROs - Under the new rules, voters would be limited to acting as a proxy for two people, regardless of their relationship. Anyone voting on behalf of UK voters who live overseas could act as a proxy for up to four people. There would need to be greater clarity over how this would be monitored and enforced and the resulting administrative burden for EROs would need to be resourced adequately.

### **EMB Comment**

The Electoral Registration Committee of the SAA representing EROs has commented separately and the EMB endorses their position on this proposal.

### **Overseas Electors**

The Bill would allow UK citizens who have lived abroad for longer than 15 years to vote in UK Parliamentary Elections. These measures will enfranchise all British citizens overseas

who were previously registered or resident in the UK.

Pressures on postal votes – overseas electors would need to understand the different ways in which they can cast their ballot. A reliance on postal votes has led to some electors being disenfranchised by the system at previous general elections, with insufficient time in the election timetable for them to receive and return ballot papers. An expansion of the number of overseas voters would likely lead to this problem being magnified with an increase in the volume of complaints to the RO about votes not arriving in time. An earlier postal vote deadline for overseas electors, potentially on day -16 rather than day -11, would ensure that at their postal votes are dispatched sooner and would be helpful in resolving these timetable pressures.

New proxy voters - if these voters choose to vote by appointing a proxy then staff guidance and training will have to be very clear in terms of the register use and connection with former addresses as this already often causes confusion during an UK Parliamentary General Election.

### **EMB Comment**

Whether or not the franchise is extended in this way is a policy matter. Practically however the EMB notes that there would be implementation challenges. It would be likely to increase the volume of overseas postal voters and the current timetables are such that it is difficult for overseas voters to receive and return their postal votes in time for them to reach the count. If this approach is implemented, then further consideration would be needed to promote or introduce alternative ways of voting or to extend the timetable to ensure that these newly enfranchised voters can participate.

### **Role of the Electoral Commission**

The Bill makes provision for the introduction of a 'Strategy and Policy Statement', to be approved by the UK Parliament (with an affirmative vote). This Strategy and Policy Statement will provide the Electoral Commission with guidance they must have regard to in the discharge of their functions. The Bill also seeks to amend the function of the Speaker's Committee beyond its current limited remit to give it the power to examine the Commission's compliance with their duty to have regard to the Strategy and Policy Statement.

### **EMB Comment**

The EMB has no comment on the proposals that are made in the Bill regarding the role of the Electoral Commission and its accountability. These are outwith the remit of the EMB and there are no direct impacts on the practical delivery of elections. The EMB works closely with the Electoral Commission and values the guidance, advice and regulation that they deliver. It is important that independence of political control is preserved and also that their current role in supporting and regulating elections across the different devolved governments is recognised.

### **UK Elections Bill: provisions in relation to Scottish Parliament and Local Government Elections (in addition to reserved Elections)**

Clarification of "undue influence"

It is already an offence to unduly influence an elector, but the Bill clarifies and updates the offence so that: it encompasses a wide range of harms; deceiving an elector about the

conduct or administration of an election or referendum can also amount to undue influence; and the intimidation of electors is explicitly listed as a form of undue influence.

While the EMB would welcome a more clear and simple definition of the offence of undue influence, practically it is for police and prosecutors to take action around this and other electoral offences. ROs and EROs deliver the election but do not "police" its conduct or enforce campaign rules.

It is vital and appropriate for there to be measures against the intimidation of voters but there is also scope to consider what may be done to prevent the intimidation of polling staff who can be subject to threat and abuse in some circumstances. They have an important role in the delivery of sound electoral events and must be protected and supported.

### **EMB Comment**

The EMB has no comment on the proposals that are made in the Bill regarding the clarification of the offence of undue influence. This is outwith the remit of the EMB as it is for it is for police and prosecutors to act around this and other electoral offences. That being said, the EMB supports the recommendation of the Law Commission's report of 2020 that "a single set of electoral offences should be set out in primary legislation which should apply to all elections" and that some such as treating, bribery and undue influence need to be reconsidered.

### **Accessibility of polls**

The Bill would place a new requirement on ROs to consider a wider range of support for voters with disabilities in polling stations. The Bill also proposes removal of restrictions on who can act as a 'companion' to support voters with disabilities to cast their vote in the polling station.

Giving voters more choice when selecting someone to accompany them in the polling station would be welcomed and could increase the accessibility of the polling process to voters with disabilities. It is assumed that the companion would still need to complete a declaration and therefore this form will need to be updated to reflect the removal of restrictions on who can act as a companion.

ROs are responsible for running elections in their area and are currently required to provide specific forms of support to voters with disabilities at polling stations, such as a sample large print ballot paper for people with sight loss. The support they must provide is set out in law. These proposals would replace this list, instead requiring Returning Officers to take "all reasonable steps" to provide support to people with disabilities at polling stations. Assessing what "all reasonable steps" would include will need some expert guidance for ROs to ensure that voters are adequately supported and that ROs understand what they must do.

### **EMB Comment**

The EMB welcomes and supports measures to ensure that voting is accessible to all. There will however need to be a clarification of, and guidance around, what will constitute "reasonable steps" to support people with disabilities. Any new equipment or facilities would need to be adequately funded.

### **Intimidation: new electoral sanction**

The Bill introduces a new electoral sanction to protect candidates, future candidates, campaigners and elected officeholders from intimidation and abuse, both online and in person. Under this new electoral sanction, someone convicted of intimidating a candidate, future candidate, campaigner or elected officeholder will face a five-year disqualification from standing for, being elected to and holding elective office.

As noted above it is for police and prosecutors to act around electoral offences. ROs and EROs deliver the election but do not "police" its conduct or enforce campaign rules. In terms of a candidate's qualification to stand the RO does not assess this; it is for the candidate to satisfy themselves that they are not disqualified.

If such an additional sanction is deemed necessary then there may be an argument for extending the list of those intimidated to include ROs, EROs and their staff as they may also be subject to intimidation and efforts to undermine the electoral process.

### **EMB Comment**

The EMB has already made comment to the Cabinet Office that there does not seem to be a need for this measure. Sufficiently serious offences would already be addressed through other laws. If it were to be introduced however for completeness it should also include protection of electoral officials as they are also at risk of intimidation and threat

### **Notional Expenditure**

The Bill will amend the law to make it clear that candidates only need to report benefits in kind which they have actually used, or which they or their election agent have directed, authorised or encouraged someone else to use on the candidate's behalf and do not need to fear being responsible for benefits in kind, of which they had no knowledge.

### **EMB Comment**

The EMB has no comment with respect to issues of campaign expenditure. This is outwith the remit of ROs and EROs.

### **Political finance**

A range of measures are proposed to improve and tighten three components of the political finance framework: fairness, transparency and controls against foreign spending. These include measures relating to third-party campaigner registration; the restriction of all third-party campaigning to UK-based entities and eligible overseas electors; a ban on registering as both a political party and a third-party campaigner; restrictions on coordinated spending between parties and third parties: and an asset and liabilities declaration for the registration of new political parties.

### **EMB Comment**

The EMB has no comment with respect to issues of campaign expenditure. This is outwith the remit of ROs and EROs.

### **Digital imprints**

This measure introduces a new digital imprints regime, requiring political campaigners to explicitly show who they are and on behalf of whom they are promoting digital campaigning material.

## **EMB Comment**

The EMB has no comment with respect to the proposals around Digital Imprints. The conduct of the campaign is outwith the remit of ROs and EROs.

## **Conclusion**

### **Partial Support**

This paper has been drafted in response to the Scottish Government's request for comments to help Ministers consider which elements of the Elections Bill should apply to elections to the Scottish Parliament and local government.

The EMB's position is that the Bill includes a wide variety of measures: some can be supported while others are not. Several proposals are welcome and address important issues such as the accessibility of the voting process. Others, such as voter ID, or measures with respect to the handling in of postal packs, add administrative burdens, complexities and pressures which are out of proportion to the problem that they aim to solve. Various of the proposals around campaign finance and the governance of the Electoral Commission are not commented on as they lie outwith the remit of the EMB.

In any assessment of which of these measures should be adopted in Scotland through the LCM process the Scottish Government will want to consider both the value of the measures themselves but also the potential consequences of adopting a different approach for Scottish elections from those that are reserved. Where possible the EMB has supported a consistency of approach to promote easier messaging to voters and to minimise the need for variance in training and administration at different polls. Scottish Ministers will need to consider whether the consequences of inconsistency of approach are outweighed by the disadvantages and challenges that introduction of some of these proposals would bring.

A separate response has been provided by the Electoral Registration Committee of the SAA giving a detailed set of comments from the EROs. The EMB is aware of their paper endorses the points that are made.

### **The Gould Principle**

As a general comment on all proposed measures in the Bill, the EMB strongly supports the application of the "Gould Principle". There must be legislative clarity about the rules under which elections are delivered at least six months in advance of the polls. Elections are complex operations with a range of concurrent workstreams and fixed deadlines all to be delivered with limited resource. Clarity about the rules well in advance of the event is an absolute requirement for sound elections.

Offer of further consultation and advice

The Board trusts that these comments are of assistance and is always be happy to meet Scottish Government officials or Ministers to discuss any of these comments more fully and to engage in broader conversations around the practical delivery of all electoral activity in Scotland.

### **Malcolm Burr**

Convener of the Electoral Management Board for Scotland

6 August 2021

## Royal National Institute for Blind People

RNIB Scotland works on behalf of and with blind and partially sighted people to create a fairer world for people with sight loss. We have a strong interest in the accessibility of the electoral process and have been working with the Scottish Government to trial accessible voting solutions for blind and partially sighted voters. We campaign across a wide variety of areas that are the responsibility of the Scottish Government including transport, active travel, the devolved aspects of social security, health and social care, and education.

### Consultation on the UK Government Elections Bill

UK Government officials consulted Scottish Government officials in preparing the Bill and shared draft provisions on most of the Bill's content. Following the Bill's introduction, the Scottish Government invited views on the Bill from interested stakeholders by 6 August 2021. Responses were received from the Association of Electoral Administrators, the Electoral Commission, Scotland, the Electoral Management Board for Scotland, RNIB Scotland, the Scottish Assessors Association and the Scottish Parliamentary Corporate Body.

The Legislative Consent Memorandum on the Elections Bill lodged with the Scottish Parliament in September 2021 stated that:

'RNIB Scotland has questioned the voter ID proposal as negatively impacting blind and partially sighted people; and consider that the Bill's removal of the clause to provide equipment to assist blind and partially sighted people to vote "without any need for assistance" would downgrade the legal protection afforded to people who are blind or partially sighted to ensure that they can vote independently and in secret.'

This written statement underlines our concerns about existing barriers faced by blind and partially sighted voters, the voter ID proposal, and the removal of the clause to provide equipment to assist visually impaired voters to vote "without any need of assistance".

### Existing barriers

Nearly 150 years since the Secret Ballot Act guaranteed the right to vote in secret, three quarters of blind and partially sighted people are unable to exercise this right. RNIB's survey of elections in England, Wales, and Scotland in May 2021, "Turned Out 2021", found four in five blind people felt they were unable to vote both independently and in secret.

Hurdles to their voting independently and in secret included:

- Having the tactile voting device (TVD) placed correctly on the ballot paper to make their mark beside their preferred candidate;
- Finding out the order of the candidates in advance so that they know how many TVD boxes to trace down, and;
- Relying on polling station staff to be adequately trained to know what a TVD is and how to use it.

Frequently, one or more of these hurdles becomes a barrier to voting privately and the blind and partially sighted voter is forced to share their voting intention with someone else to ensure that they vote correctly. Otherwise, as one blind voter told us, "How do people know?" The need to say to someone else how they mean to vote can put voters with sight loss off voting for their preferred candidate or casting their vote at all.

## Photo identification

We appreciate the work the Scottish Government are carrying out with us to find an accessible voting solution. However, whilst this will remove one barrier the Elections Bill could replace it with another.

RNIB at a UK level has raised concerns with the UK Government's proposal to introduce photo identification to vote in UK general elections, local government elections in England and UK referenda. The requirement to show photo ID to vote will disproportionately and negatively affect blind and partially sighted people who are less likely to own photo ID. RNIB's Tracker Survey suggests 13 per cent of blind and partially sighted people have no acceptable form of ID, meaning that this new requirement could exclude them from casting their ballot.

The Scottish Parliament Legislative Consent Memorandum states that "this measure is wholly reserved and will not apply in relation to devolved elections". However, it points out there is concern about the impact of this provision on voters and electoral administrators in Scotland in relation to UK Parliament elections. We agree that "there appears to be considerable scope for confusion in the event of a UK poll occurring on the same day as a Scottish poll (e.g., where a by-election for one Parliament occurred on the same day as a general election to the other Parliament). In such a case ID would only be required for one ballot paper, which is likely to confuse voters and will place a great deal of responsibility on the Presiding Officer at each polling station in policing the ID requirement."

We strongly urge the UK Government to rethink its plans to introduce photo ID to the UK electoral process.

Removal of the clause to provide equipment to assist visually impaired voters to vote "without any need of assistance"

We welcome provision in the Bill broadening who can accompany a voter to help them vote if they wish to have help.

However, we have significant concerns over the proposed changes in relation to the provision of equipment for blind and partially sighted people.

Schedule 1, Clause 29 3(b) of the Representation of the People Act 1983) sub-paragraph (b) currently says that:

"(3A) The returning officer shall also provide each polling station with-

"(b) a device of such description **as may be prescribed** for enabling voters who are blind or partially-sighted to vote **without any need for assistance** from the presiding officer or any companion."

Current wording of the Elections Bill replaces sub-paragraph (b) as below:

"(b) such equipment **as it is reasonable to provide** for the purposes of enabling, or

making it easier for, relevant persons to vote in the manner directed by rule 37."

"Relevant persons" here are voters who are disabled or blind or partially sighted. The new wording weakens the guarantees for blind and partially sighted people in two ways:

Individual Returning Officers, instead of the Government, will now make the decision as to what to provide, creating a postcode lottery of provision. This will introduce uncertainty and anxiety amongst blind and partially sighted voters as they won't know what to expect at polling stations or what they are entitled to.

- The introduction of the word "reasonable" means that a Returning Officer could decide they don't think the provision of a tactile voting device, or other such equipment to enable an independent vote, is reasonable.
- In addition, the loss of the words "without any need for assistance" means there is less clarity that the right to an independent and secret vote is afforded to blind and partially sighted people.

We see no reason why wording to allow blind or partially sighted people to "to vote without any need for assistance" using adaptations prescribed by Government should not be maintained given the fundamental and unique challenges blind and partially sighted people face in voting.

Returning Officers must already offer reasonable adjustments to disabled voters under the Equality Act. If the new clause is to be included in legislation, it should be introduced as an addition, not a replacement at the expense of guarantees for blind and partially sighted people.

## **Conclusion**

RNIB Scotland opposes the introduction of voter ID and will continue to press the UK Government to rethink its plans. Wording to allow blind or partially sighted people to "to vote without any need for assistance" using adaptations prescribed by Government should be maintained in the UK Elections Bill.

# **Electoral Registration Committee, Scottish Assessors Association**

## **Introduction**

This paper is the Scottish Assessors Association's (SAA) Electoral Registration Committee's response to the letter from Penny Curtis dated 13 July 2021 on behalf of the Scottish Government. The SAA welcomes this engagement with stakeholders as it is important that legislation can be implemented efficiently. The SAA does not comment on policy matters directly and the comments in this response are limited to technical matters around policy implementation.

The Bill introduces a number of policy measures including those that only affect reserved elections in Scotland e.g Voter Identification at UK Parliamentary Elections, renewal of postal vote applications for electors on the parliamentary register every three years and changes to the franchise requirements for Overseas Electors. Whilst these matters relate

only to reserved matters, comment has been provided to highlight the interaction between reserved and devolved matters with regard to electoral registration that these changes will introduce.

## Background

The Scottish Assessors Association (SAA) is a voluntary non-statutory body that represents the 14 lands valuation Assessors appointed in terms of section 27(2) of the Local Government etc. (Scotland) Act 1994. The SAA has been in existence in one form or another since 1855, and has as its purpose:

"to encourage amongst its members the exchange of ideas regarding their statutory duties; to record results of discussions on all subjects brought before its meetings; to promote consistency in the operation of the Valuation, Council Tax and Electoral Registration legislation; to act as a consultative and advisory body; engage in partnership work both internally and externally with organisations and public bodies; and to represent the collective interests of its members in carrying out their duties"

Thirteen Assessors are also appointed Electoral Registration Officers (EROs) for 30 local authorities. However the SAA Electoral Registration Committee's membership includes all 15 Scottish EROs appointed in terms of section 8 of the Representation of the People Act 1983 by the 32 local authorities in Scotland and their senior staff. The Electoral Registration Committee therefore comprises the fifteen individuals who are personally responsible and accountable for the delivery of electoral registration in Scotland.

The Electoral Registration Committee (ERC) meets approximately every two months. Representatives from the Electoral Commission, Scottish Government, Boundary Commission and Cabinet Office attend the committee meetings although they are not committee members. The Committee therefore facilitates dialogue between Scottish EROs and partner organisations. It also acts as the principle forum to share good practice, agree timetabling, and a common approach to registration amongst Scottish EROs which in turn provides a consistent registration experience for the elector. Examples of this are as follows.

- The ERC has agreed a single date to be used across Scotland for Second Interim Updates to the Registers ahead of Elections.
- The ERC has worked together to ensure that rejected postal vote notification letters are issued across Scotland at the same time.
- The ERC has agreed a common timetable across Scotland for the refresh requests for Absent Vote Identifiers
- The ERC has organised national campaigns across Scotland to promote awareness of the Annual Canvass, the extension of the franchise to foreign nationals and most recently the deadline for applying for a postal vote at the Scottish Parliamentary Election in May 2021.
- The ERC has developed a common Data Sharing Agreement for Scottish EROs to facilitate the exchange of information in connection with the registration of young electors.

## Consideration of the particular aspects of the Bill

The main items covered in this response are as follows;

- Voter Identification
- Changes to postal voting arrangements for UK parliamentary elections
- Changes to proxy voting arrangements for UK parliamentary elections
- Changes affecting the Electoral Commission
- Clarification of "undue influence"
- Accessibility of Polls
- Intimidation – new electoral sanction
- Notional Expenditure
- Political Finance
- Digital Imprints

## **Dealing with these in turn**

### **Voter Identification**

The Bill provides for applications to be made to EROs for an electoral identity document or an anonymous elector's document, the ERO must determine these applications. This is important as it is necessary to maintain the link between an electoral identity document and a person's registration status. The precise requirements around this process and the format of the documents themselves are to be set out in secondary legislation. The Bill also sets out existing forms of identification that can be used to prove an elector's identity when voting in person at a UK Parliamentary election.

It is unknown at this stage what the actual take up of the two new documents will be but it will require the ERO to allocate additional resources and it is essential that the ERO receives the necessary additional funding to meet this new duty. It will also be important that the electorate are alerted to these changes as soon as possible and that there is enough notice given to allow sufficient time for them to apply for the new documents and the ERO to determine the applications ahead of an election.

As these changes will only affect electors in Scotland who are eligible to vote in UK Parliamentary elections, there will need to be clear publicity of this fact to avoid elector confusion. This will be particularly important if another electoral event is taking place on the same day based on the local government franchise e.g. local authority by-election.

### **Changes to Postal Voting Arrangements for UK Parliamentary Elections**

The Bill proposes that electors in Scotland who are currently registered for a postal vote for a UK Parliamentary election for an indefinite period or a particular period will need to reapply for their postal vote every three years on the third 31<sup>st</sup> January after the date of their latest application. Transitional arrangements are proposed that will require all existing postal votes for UK Parliamentary elections to be moved to the new system by the third 31<sup>st</sup> January after a date to be specified in secondary legislation. At the present time the

requirement is that electors with a postal vote refresh their postal vote signature every five years. There are no corresponding provisions in the Bill relating to devolved elections in Scotland. It is also noted that the Bill proposes measures around the handling of postal vote packs but that there are no corresponding measures in respect of postal vote applications.

For those electors who are only enfranchised for UK Parliamentary elections i.e. overseas electors they will only be affected by one process i.e. re-applying every three years. For those electors who are only enfranchised for devolved elections in Scotland e.g. European Union Citizens, relevant foreign nationals they too will only be affected by one process i.e. a signature refresh every five years. For those electors enfranchised for both UK Parliamentary elections and devolved elections i.e. British, Irish and Commonwealth citizens they will be affected by both processes.

The SAA does not offer a view on which policy is to be preferred but notes that creating differing processes carries the real risk of elector confusion, particularly for those electors having to deal with both processes and a government information campaign is needed, if the processes are not harmonised.

A re-application every three years will require more ERO resource than a signature refresh every five years and running two processes will be more complex than running a single complex. Therefore it is again important that EROs receive the additional funding needed to meet the changes brought about by this legislation. An online postal vote application service that is fully integrated with EROs' Electoral Management Systems would assist with the processing of large scale renewals.

### **Changes to Proxy Voting Arrangements for UK Parliamentary Elections**

The Bill proposes changes that only affect electors with a proxy vote for UK Parliamentary elections. It removes the ability for a person to act as a proxy for an unlimited amount of close family members. It introduces new limits on the number of electors a proxy can be appointed for which differ between overseas electors & service electors and other electors. It also introduces transitional arrangements which will require affected electors to reapply for their proxy vote

The SAA's comments are similar to those for the changes proposed for postal voting. The SAA does not offer a view on the policy itself but notes that the Bill introduces differing requirements for UK Parliamentary election proxy vote applications to those for devolved elections. This creates a more complex situation which will need clear government communication to the electorate to avoid any confusion. It is also important that the ERO is fully funded for any additional work arising from these changes.

### **Overseas Electors**

As overseas electors cannot participate in devolved elections the proposed changes have no immediate impact on the Scottish Government's areas of responsibility. The widening of the franchise will create additional work for Scottish EROs and it is important that they are fully funded for this additional work. Consideration should be given to setting an earlier deadline for postal vote applications from Overseas Electors to allow postal packs to be issued earlier, thus giving them sufficient time to receive and return their ballot papers.

### **Changes affecting the Electoral Commission**

The SAA has no comment on the changes affecting the Electoral Commission. The SAA

values the guidance and support currently provided to electoral administrators by the Commission. It is important given their role as regulator and their administrative role in UK wide referendums that they are seen to be independent.

### **Clarification of "undue influence"**

This is a matter outwith the remit of the SAA and therefore no comment is provided.

### **Accessibility of Polls**

The SAA has no specific comment on the proposals that relate to the duties of the Returning Officer but it is supportive of any measures that will improve the accessibility of elections to the electorate.

### **Intimidation – new electoral sanction**

This is a matter outwith the remit of the SAA and therefore no comment is provided.

### **Notional Expenditure**

This is a matter outwith the remit of the SAA and therefore no comment is provided.

### **Political Finance**

This is a matter outwith the remit of the SAA and therefore no comment is provided.

### **Digital Imprints**

This is a matter outwith the remit of the SAA and therefore no comment is provided.

### **Conclusion**

The Bill proposes several changes that will impact UK Parliamentary elections and electors only. There have also been recent changes by the Scottish Government that affect devolved elections only. The differences between the various elections means that it is important that wherever possible elections with different rules and franchises are held on differing days to avoid elector confusion. Where it is not possible to avoid this situation arising it is critical that the public/electorate is fully informed of what they need to do to participate in the democratic process for each election.

To ensure that elections are accessible as possible any difference in absent vote arrangements must be clearly signposted and communicated to avoid elector confusion. The changes proposed by this Bill will create additional duties and work for EROs and it is important that they are fully funded in this regard.

## **Professor Toby S. James, Professor of Politics and Public Policy, University of East Anglia and Co-Director of the Electoral Integrity Project**

I am the Co-Director of the Electoral Integrity Project. The Electoral Integrity Project collects and publishes data on the quality of national elections held around the world and

evidence-based policy solutions.<sup>i</sup> My individual/co-authored research also focuses on the management and administration of elections. The Elections Bill, introduced to the House of Commons on 5th July 2021, stands to be one of the most significant pieces of legislation on electoral law for decades which will have major consequences for both reserved and devolved elections. I am writing to provide evidence based on academic research – although this submission does not cover all aspects of the Bill.

This submission recommends that the committee:

- Encourages the UK government to pause the Election Bill to undertake a more collaborative, inclusive and cross-party approach to developing electoral law. The Bill is currently rushed and it should provide further opportunities for discussion with the Scottish Parliament about solutions that improve rather than undermine democracy in Scotland. The single-party, single-nation approach taken so far risks damaging public confidence in democratic institutions.
- Gives legal consent to some aspects of the bill, such as changes to the meaning of 'undue influence' and the information included on electronic campaign material.
- Does *not* give legal consent to some aspects such as the proposal to give the government greater control over the Electoral Commission.
- Explores whether the UK government could amend the bill in collaboration with the Scottish Parliament to address problems such as low levels of voter registration and the absence of a complaints procedure.

### **The problem of dual systems**

The UK parliament retains legal power to alter law relating to UK parliamentary elections. However, elections for the Scottish Parliament and Scottish local elections are devolved to the Scottish Parliament. Although the Elections Bill is aimed at changing the law for UK parliamentary elections, there will be consequences for other elections in Scotland. The Election Bill's proposals to make major changes to some elections in which Scottish voters can participate, but not others, is likely to lead to considerable confusion amongst the public which could affect their confidence in the process, or the probability that they will cast their vote. It will also mean that administrators will be faced with the burden of running dual systems, which will lead to additional training costs and greater propensity for error. These in turn, could affect the public confidence further.

Where possible, it therefore makes sense that there is some continuity in the technicality of laws and practices for running elections across the UK. Although devolution enables important variations on issue such as whether citizens should be allowed to vote at 16 or the electoral system, *technical* continuity will benefit voters, administrators, parties, judicial cases and therefore democracy.

### **The importance of consultation and consensus**

It vitally important that major pieces of legislation such as the Election Bill are developed on the basis of close consultation between the governments across the UK to ensure that

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<sup>i</sup> The Perceptions of Electoral Integrity Index dataset is based on a survey of academic experts and provides a useful overview of the areas of the electoral cycle where there are strengths and weaknesses. For data, please see: <https://www.electoralintegrityproject.com/data-1>.

all nations are considered. It should also be developed on a cross-party basis and include all stakeholders with the aim of forging consensus and confidence. This will enable some commonality in practices on technical aspects of electoral law. A cross-party approach also helps to prevent electoral laws becoming a 'political football' in which one party accuse the other of trying to change the rules for partisan advantage, and one party is tempted to do so. Broad consultation also enables many voices to be heard, such as those from civil society groups, who are representing vulnerable individuals.

A cross-party approach therefore has traditionally been adopted in reforming electoral laws in the UK. During the twentieth century, the Prime Minister of the day would ask the Speaker of the House of Commons to initiate a Speakers Commission in order to invite opinions from civil society and broker compromises between parties.<sup>ii</sup> Sadly, the government has not taken this approach and there is no cross-party consensus and no widespread consultation. A Speaker's Conference or a similar form of would be an important opportunity to help to build consensus and reduce partisan rhetoric with a more evidence-based form of decision making.

*Recommendation #1: The Scottish Parliament could encourage the UK Government to undertake wider consultations on the Elections Bill before proceeding further, with the aim of reaching consensus between stakeholders, across parties, governments and civil society.*

There are, however, areas of the Elections Bill which could undermine the quality of democracy and elections. It would not make sense to introduce these areas to Scottish parliamentary and local elections and the Committee should raise concerns where Scottish citizens' democratic rights and voting experience could be negatively affected. These areas are outlined in more detail below.

#### **k) to make it clearer in law what constitutes 'undue influence' of a voter (section 7)**

Cases of undue influence are thought to be uncommon in the UK. However, there have been some high profile cases and a study that I undertook with Dr. Alistair Clark found that 7.3 per cent of poll workers reported at least one case of members of political parties intimidating the public at polling stations at elections in 2018 and 2019.<sup>iii</sup> Measures to modernise the terminology and forms of intimidation therefore seem proportionate and necessary. It would be advantageous to have the same definitions across the UK.

It would be advantageous, however, to ensure that the changes have no unexpected effects on campaigning. The Committee may wish to consider requiring the UK government to evaluate the effects of the changes.

*Recommendation #2: It is recommended that legal consent is granted*

#### **l) for the designation of a strategy and policy statement in respect of the Electoral Commission (sections 12 and 13)**

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ii Toby S. James (2021). 'Who decides how to run elections? The electoral governance theory approach', *Paper presented at the Political Studies Association Conference, April 2021*

iii Toby S. James & Alistair Clark (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections, *Policy Studies*, 41:2-3, 190-209, <https://www.tandfonline.com/doi/pdf/10.1080/01442872.2019.1694656>

Independent electoral authorities are essential components of democracy and this is widely established in international best practices and by academic research. Independence from the government of the day is important because it prevents an incumbent changing laws or practices to suit their political interests. It can also strengthen public trust in the political process. Just as the judiciary should be independent, electoral officials should be non-partisan.<sup>iv</sup>

The Bill, in contrast, proposes to weaken the Commission's independence. It proposes to give the government greater power by allowing it to designate a Strategy and Policy Statement. It gives the UK Parliament (but in practice government, assuming that it has a majority) the power to examine the Electoral Commission's compliance with this.

This is therefore a direct violation of international best practices and would constitute democratic backsliding because it is giving the government and future governments greater control over the conduct of elections - the process through which citizens are enabled to hold government to account.

It should be noted that democratic backsliding is an important theme in many other countries as governments have sought to exert control over the electoral process, even countries which were once beacons for democracy.<sup>v</sup>

It is therefore recommended that the proposed changes to the Electoral Commission are not granted in the strongest possible terms. The Electoral Commission and conduct of elections is highly regarded and the Bill would only jeopardise this needlessly.

*Recommendation #3: It is recommended that legal consent is not be granted*

#### **p) about information to be included in electronic campaigning material**

The rapid transformation in the development of technology has meant that electoral laws are often in need of updating. The regulation of political advertising is one such area, where there are insufficient safeguards for i) misinformation and ii) some political parties to be able to outspend their opponents.<sup>vi</sup> The introduction of digital imprints is well overdue and it is essential that it is included in the Bill. It is recommended that this is taken forward for other elections in Scotland too.

*Recommendation #4: it is recommended that legal consent is granted.*

#### **Provisions on voter ID**

The Bill will introduce a new requirement for voters across the whole of the UK to provide photographic identification at polling stations when voting at UK Parliamentary elections. The government has frequently advocated this on the basis that it wishes to reduce personation in polling stations.

Research has consistently shown that personation is not a widespread problem at polling

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iv Toby S. James (2020) Comparative Electoral Management (London and New York: Routledge)

v VDEM (2021) *Autocratization Turns Viral: Democracy Report 2021*.

vi Holly Ann Garnett and Toby S. James (2020) 'Cyber elections: the threats and opportunities of using technology for electoral integrity', *Election Law Journal*, 19(2), p.111-126.

stations, however. Research shows that only 0.7 per cent of poll workers were concerned that electoral fraud might have happened in their polling stations.<sup>vii</sup> Where concerns about 'fraud' were raised by poll workers, these were often the result of misunderstandings about the electoral process by voters. For example, some citizens were confused about the differences in eligibility between parliamentary and local registers and had in inadvertently registered on a register where they might not be eligible.<sup>viii</sup>

The Electoral Integrity Project has produced an index of electoral integrity worldwide based on expert perceptions 2012-8. This also finds that problems with the completeness and accuracy of the electoral register are much more common than those with electoral fraud. There is therefore no need for voter identification requirements either across the UK or in Scotland.

Voter identification requirements will also lead to a decline in citizens exercising their right to vote. A study of the voter identification pilots in 2018 and 2019 demonstrated that many citizens were unable to vote because of the requirements. Table 1 shows that over half of poll workers experienced an issue with a voter who was unable to vote because they did not have the appropriate identification. However, many citizens also declined to provide identification because they did not want to. This represents a major problem with the voter identification requirements.

There are no plans to introduce voter identification requirements in Scotland and Wales. The different identification requirements for different elections is likely to lead to considerable confusion amongst the public, which may also affect turnout and confidence in the process.

**Recommendation #5: Voter identification requirements should not be introduced in Scotland**

Potential problem	Percentage of poll workers reporting at least one problem in their polling station
People being turned away because they did not have the appropriate identification	52.4
People coming to the polling station but deciding not to vote as they did not want to comply with the ID verification requirements	23.3

Table 2: Source: author, based on research by James and Clark.<sup>ix</sup>

**Options for amending voter identification requirements**

Despite this, there is still a case for a UK-wide solution to the voter identification issue which could be reached through a compromise with the UK government so that citizens have a uniform experience. If this was undertaken, then there are three options for a

vii Toby S. James & Alistair Clark (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections, *Policy Studies*, 41:2-3, 190-209, <https://www.tandfonline.com/doi/pdf/10.1080/01442872.2019.1694656>

viii Alistair Clark and Toby S. James (2017) 'Poll Workers' in Pippa Norris and Alesandro Nai (eds), *Watchdog Elections: Transparency, Accountability, Compliance and Integrity*. Oxford and New York: Oxford University Press.

ix Toby S. James & Alistair Clark (2020) Electoral integrity, voter fraud and voter ID in polling stations: lessons from English local elections, *Policy Studies*, 41:2-3, 190-209, <https://www.tandfonline.com/doi/pdf/10.1080/01442872.2019.1694656>

model of voter identification which would be less likely to influence turnout. These are as follows:

- Vouching. Elections in Canada have commonly used a 'vouching system.' Voter identification is required, but if a citizen does not have their identification available then they can still vote if they declare their identity and address in writing and have someone who knows them (and who is assigned to their polling station) vouch for them. The person who vouches for the citizen is required to provide their identity and address and can only vouch for one other person.<sup>x</sup> This was previously repealed in Canada but reinstated. This would be a simple and effective way of preventing citizens who do not have voter identification on the day still being able to vote but retains security measures.
- Provisional ballots. Citizens could be allowed to cast 'provisional ballots' if they do not have suitable identification at hand at polling stations. These ballots could then be put aside and not included in the provisional count. Citizens could then be provided with the opportunity to present identification at a later point for their vote to still be included. This process is used in many states within the US to ensure that citizens are still able to have their vote cast.<sup>xi</sup> Given that a large volume of citizens do not vote because their name is not on the electoral register, as noted above, the Bill could also be revised to enable citizens who are not registered to cast a provisional ballot. Electoral registration officers could then be given a short period of time to verify their registration status before including the vote into the final vote tally. The downside of introducing provisional ballots is that there would be an additional administrative investment needed. It may also mean that final results would be slower, as has been the experience in the USA. However, it would ensure that the election is more inclusive and more citizens would have their vote included.
- Poll cards. One way to reduce the number of citizens who are unable to vote is to increase the range of forms of identification that could be presented. Given that all registered electors are provided with poll cards, electors could be allowed to present these as an acceptable form of identification. Alternatively, a longer list of acceptable forms of identification could be required.

On balance, the 'vouching' system would be easiest to administer, is likely to be the least costly and the most inclusive.

*Recommendation #6: if the Scottish Parliament decides to introduce a form of voter identification in order to ensure a uniform experience for Scottish voters, although this is not advised, then a Canadian system of vouching would be the most inclusive way of doing this. Under this system, citizens who do not have identification should be able to vote if another registered elector can verify their identity in a polling station.*

### **Removing the 15 year threshold for being allowed a vote in UK elections.**

The Bill proposes abolishing the 15-year limitation on eligible British citizens living

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x <https://www.elections.ca/content2.aspx?section=id&document=index&lang=e>. Also See: Toby S. James (2020) Comparative Electoral Management (London and New York: Routledge).

xi <https://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx>

overseas to be registered to vote in UK parliamentary elections.

It should be noted that the existing practice for overseas electors casting their vote is already problematic. This relies on overseas electors being sent their vote via the international post, and the elector being able to return it in time for the count. An evaluation of the EU Referendum showed that this was not possible within the narrow electoral timetable. Electoral officials reported many instances of voters receiving their ballot too late to be returned.<sup>xii</sup> The Bill will substantially increase the number of electors living overseas who are eligible. The case for a mix of telephone/internet voting should therefore be considered in the long term.

These changes would also expand the number of people who could contribute towards political parties in the UK, despite not being physically present. This may raise concerns about whether they would have a disproportionate political interference in a country in which they are not resident.

There are equally many people resident in Scotland without voting rights in some elections. A residency-based approach to voting rights is therefore the more democratic approach.

### **Changes to Postal and Proxy Voting**

The Bill proposes abolishing permanent postal and proxy votes, requiring them to be re-applied for every three years. Postal voting and proxy voting are important measures for ensuring inclusive elections. They particularly help citizens with disabilities which means that attending polling stations are difficult.<sup>xiii</sup> Many citizens who request them are likely to permanently need them and asking them to reapply frequently may cause them to not take part in the electoral process.

They have been vitally important during the covid pandemic and it has been recommended that all countries ensure that they have postal/proxy facilities place as a risk management solution should an election take place during an emergency situation.<sup>xiv</sup>

If citizens are required to reapply for the postal and proxy vote then this needs to be clearly communicated to the elector ahead of the expiry of their postal/proxy vote. There is a high risk that they would otherwise assume that they still had this in place and might miss a later postal vote deadline. A requirement to notify electors that their postal/proxy vote has expired should be set out in law.

Given that so many citizens will need them on a permanent basis it is recommend that postal and proxy votes are in place for a period of five years rather than three. Five years is the length of a full parliamentary cycle and would still mean that they would be reapplying sufficiently regularly, but would lessen the administrative burden on the voter and Electoral Registration Officers.

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xii Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016.

xiii Toby S. James and Holly Ann Garnett (eds) (2020) *Building Inclusive Elections* (Routledge: London and New York).

xiv Toby S. James and Sead Alihodzic (2020) 'When is it democratic to postpone an election? Elections during natural disasters, COVID-19 and emergency situations', *Election Law Journal*, 19(3), pp. 344-362. Also see: <https://www.electoralintegrityproject.com/elections-and-covid19>

It should be noted that indefinite postal and proxy votes will be possible in Wales and Scotland for elections other than UK parliamentary elections. A citizen may therefore be registered for a postal vote for a Scottish Parliament election, but need to reapply for a UK election. This will lead to considerable confusion for the voter and a headache for the administrator. On balance, a UK wide solution should be found.

*Recommendation #7: A UK-wide approach for postal/proxy votes should be encouraged.*

*Recommendation #8: Postal and proxy votes should remain valid for five years.*

### **Further amendments**

The Bill does not cover all areas where problems have been identified in the electoral process. Some of these have been identified by previous committees in the Scottish Parliament, but it has not been feasible for the Scottish government to resolve these without collaboration with the UK government. It may therefore be an opportunity for the Scottish Parliament to explore solutions in this Bill.

#### Funding elections

There has been an increasing strain on the funding of the electoral process in recent years, with many Electoral Registration Officers ('EROs') and Returning Officers ('Ros') reporting a lack of funding to run elections or compile the electoral register effectively.<sup>xv</sup> This has led to some compromises in service. For example, voter outreach work has been reduced because of limited funds.<sup>xvi</sup>

The transparent and timely reporting of the expenditure of elections could help to ensure cost efficiency and enable best practices to be identified. There is currently no obligation, however, for EROs and ROs to publish their accounts. There have also been (not necessarily justified) concerns raised that ROs have received excessively high fees for running elections.<sup>xvii</sup> In addition, there has been concern that EROs and ROs may not be covered by Freedom of Information requests like many public bodies are. Concerns were therefore raised and discussed by the Scottish Parliament's Local Government and Communities Committee.<sup>xviii</sup> To ensure greater transparency it is therefore recommended that:

*Recommendation #9: The Bill is amended to clarify that EROs and ROs should be subject to Freedom of Information Requests.*

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<sup>xv</sup> See: Toby S. James and Tyrone Jervier (2017) *The Cost of Elections: Funding Electoral Services in England and Wales*, ClearView Research: London. Toby S. James and Alistair Clark (2020) 'Delivering Electoral Integrity Under Pressure: Local Government, Electoral Administration and the 2016 EU Referendum in the UK', *Local Government Studies*, 47(2), 186-207.

<sup>xvi</sup> Toby S. James and Tyrone Jervier (2017) 'The cost of elections: The effects of public sector austerity on electoral integrity and voter engagement,' *Public Money and Management*, volume 37(7), pp. 461-468

<sup>xvii</sup> Scottish Parliament Local Government and Communities Committee (2017) [Payments to Returning Officers in Scotland](#).

<sup>xviii</sup> Scottish Parliament (2017) *Payments to Returning Officers in Scotland*, SP Paper 65

*Recommendation #10: EROs and ROs should be required to publish annual accounts and expenditure in a standard reporting format specified by the Electoral Commission.*

### Consolidating electoral law

Complex electoral law makes elections difficult to administer and adds to the risk that errors might be made.<sup>xix</sup> There has been a growing concern about the need for legal consolidation.<sup>xx</sup> The Elections Bill would be another layer of legislation which would add to the complexity of electoral law. The long-overdue consolidation of electoral law should therefore be a priority for the UK government.

*Recommendation #11: The government should therefore pursue the long-overdue consolidation of electoral law.*

Voter registration The electoral register has seen a long-term decline in levels of completeness in the UK. My research has shown that this was accelerated by the introduction of individual electoral registration. This had a particularly negative effect on the completeness of the register of young people and students who would have previously had their parents or university register them on their behalf.<sup>xxi</sup> The latest estimates from the Electoral Commission were that there was between 8.3 and 9.4 million people in Great Britain who were eligible to be on the local government registers were not correctly registered on the December 2018 registers.<sup>xxii</sup> In Scotland, 630,000 and 890,000 people who were eligible to be on the local government registers were estimated to not be registered.<sup>xxiii</sup>

A recent report commissioned by the Joseph Rowntree Reform Trust set out measures that could introduce this long-term accuracy.<sup>xxiv</sup> These include:

- The automatic registration of citizens when they receive their National Insurance Number ahead of their 16th birthday
- Providing citizens opportunities to register to vote when they access other government services – such as the DVLA, Universal Credit or the Student Loan Company.

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xix Toby S. James (2014) 'Electoral Management in Britain' in Pippa Norris, Richard Frank and Ferran Matinez I Coma (eds) *Advancing Electoral Integrity* (New York: Oxford University Press).

xx House of Commons Public Administration and Constitutional Affairs Committee. *Electoral law: The Urgent Need for Review*.

xxi Toby S. James (2020), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York)

xxii <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/accuracy-and-completeness-electoral-registers/2019-report-2018-electoral-registers-great-britain/completeness-great-britain>

xxiii <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/accuracy-and-completeness-electoral-registers/2019-report-2018-electoral-registers-great-britain/national-estimates-accuracy-and-completeness>

xxiv [https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is\\_it\\_time\\_for\\_AVR\\_in\\_the\\_UK.pdf](https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf)

More recent research shows that automatic voter registration increases the completeness of electoral registers and does not compromise completeness.<sup>xxv</sup>

The JRRT report also recommended that the open/edited electoral register (which can be bought by anyone) should be abolished. This register is not used for electoral purposes, but by commercial organisations.

*Recommendation #12: The Scottish Parliament could explore the automatic registration of citizens when they receive their National Insurance Number ahead of their 16th birthday.*

*Recommendation #13 The Scottish Parliament could explore providing citizens opportunities to register to vote when they access other government service – such as the DVLA, Universal Credit or the Student Loan Company.*

*Recommendation #14: The Scottish Parliament could explore abolishing the open/edited electoral register.*

#### The need for a complaints procedure

If a citizen experiences a problem at an election, such as a wheelchair user not being able to access a polling station, then there is currently no effective way of them making a complaint. Elections are run by Returning Officers who are statutorily responsible for the election. Citizens could raise an elections petition to overturn an election, but this is an extremely expensive option and few would be inclined or would require this. They could instead write to their Returning Officer, but they are exempt from Freedom of Information requests so it is impossible to know how many complaints are made and what the outcome of these complaints are. Many citizens will not know who their Returning Officer is.

At recent electoral contests across the UK, there has been some suggestions of problems on election day. Many EU citizens were reported to have not been able to vote at the 2019 European elections.<sup>xxvi</sup> There has been disagreement between campaign groups such as the 3million and electoral officials about how widespread these problems were, however.

It is therefore proposed that the Bill is amended to include a single, central complaints process. The presence of a simple, centralised complaints process would provide citizens with a straight-forward method of redress which is available in many other countries.<sup>xxvii</sup> It would allow problems to be identified and resolved ahead of future elections. The Electoral Commission could be statutorily required to publish a report on the volume and nature of complaints following an election.

An additional measure could include a requirement for poll workers to complete 'incident reports' when they experience problems.

*Recommendation #15: The Scottish Parliament explores establishing a complaints procedure for in the Bill with the UK government.*

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xxv Toby S. James and Holly Ann Garnett (2021) 'The Determinants of Electoral Register Quality', *Political Studies Association Annual Conference*, April 2021.

xxvi Toby S. James (2019) '[#DeniedMyVote – why many EU citizens were unable to vote in the European Parliament elections](#)' *Democratic Audit*, 30th May 2019.

xxvii Toby S. James (2020), [Comparative Electoral Management: Performance, Networks and Instruments](#) (Routledge: London and New York).

# Annexe B: Letter from Kemi Badenoch MP, Minister of State for Equalities and Levelling Up Communities, UK Government

I am writing regarding the Elections Bill which was introduced to the House of Commons on 5 July 2021. The Bill delivers on the UK Government's manifesto commitments to strengthen the integrity of our elections and ensure that our democracy remains secure, fair, modern and transparent.

The legislation delivers on a number of manifesto commitments including the introduction of the requirement for voters to show photographic identification to vote at polling stations and increasing the safeguards for postal and proxy voting. The Bill also fulfils the UK Government's manifesto commitment to remove the arbitrary 15-year rule for overseas electors voting in United Kingdom Parliamentary elections. In addition to the above, the Bill also introduces measures which will:

- Improve the voting experience of voters with disabilities;
- Tackle the rising level of intimidation in public life;
- Modernise and clarify our laws surrounding political finance;
- Introduce a new digital imprint regime for political campaigning material shared online;
- Make the law associated with undue influence crimes clearer;
- Increase the Parliamentary oversight and accountability of the Electoral Commission;
- Amend the local franchise in England and Northern Ireland so that future local voting and candidacy rights will rest on the principle of a mutual grant of rights, through voting and candidacy rights agreements with EU Member States. The existing rights of EU citizens who were resident in the UK before 1 January 2021 will be preserved; and
- Bring greater consistency across the electoral system and reduce complexity for the voter and administrator by changing the voting system to First Past the Post for mayoral and local authority mayor elections in England, and Police and Crime Commissioner in England and Wales.

The Bill is a product of a wide range of views and engagement with the electoral sector, civil society organisations, parliamentarians and the UK's Parliamentary Parties Panel. Many elements have stemmed directly from reports and reviews conducted by Parliamentarians, such as the 2016 Pickles report on electoral fraud. The digital imprints, overseas electors, intimidation and accessibility measures are all a product of Government consultation.

The UK Government has, and continues to work with a number of charities and Civil Society Organisations including, Scottish Youth Parliament, Young Scot, Deaf Scotland,

Inclusion Scotland, LGBT Youth Scotland, Equality Network, Scottish Trans Alliance and Women's Aid, to ensure that the voter identification proposals are implemented in a way that is inclusive for all eligible voters across the UK. The accessibility measures were developed through consultation with the Government's Accessibility of Elections Working Group which includes UK-wide organisations such as the Royal Mencap Society, RNIB, United Response, NHS and the

Association of Electoral Administrators (AEA). The intimidation (new electoral sanction) and undue influence proposals have benefited from close engagement with organisations including but not limited to, the Crown Office and Procurator Fiscal Service, Police Scotland and the Electoral Management Board for Scotland. The Government has and will continue to engage closely on proposals with the Electoral Commission and representative bodies such as the AEA, Scottish Assessors Association and SOLACE.

The UK Government remains committed to the Sewel Convention and the associated practices for seeking legislative consent as well as to working closely with the devolved administrations to ensure that wherever possible we can provide consistency for electoral administrators, voters and those regulated by electoral law. There has been open and positive engagement between officials in both Governments in the preparation of the policies for drafting into legislation to ensure that the clauses as drafted would work effectively across devolved and reserved polls.

## **Legislative Consent Memorandum**

The measures set out above will considerably strengthen the delivery of UK Parliament General elections and other reserved polls. For a number of the measures contained in the Bill, coherence and consistency across both devolved and reserved polls was considered beneficial to providing voters with clarity and ensuring operability for electoral administrators and those regulated by electoral law. In order to deliver these benefits, the UK Government sought legislative consent from the Scottish Parliament for certain measures which engaged the legislative consent process as set out below.

### **Intimidation**

The Bill introduces a new electoral sanction to protect candidates, future candidates, campaigners and elected officeholders from intimidation and abuse, both online and in person. It is reserved insofar as it relates to the qualifications of persons elected to office at reserved elections in Scotland, but the legislative consent process is expected to be engaged insofar as it relates to the qualifications of persons elected to office at devolved elections. If legislative consent was given, the five-year disqualification from standing for, being elected to and holding elective office would apply to all UK elective offices. This would make the five-year disqualification order easier to enforce, thereby increasing its deterrent effect. It would send out a clear signal that the intimidation of those who participate in elections and contribute to our public life anywhere and in any election in the UK deserve the same level of additional protection from intimidation.

I welcome the Scottish Government's indication of interest to legislate comparably in this area prior to the Scottish Parliament election in 2026. However, a delay in the application of the new electoral sanction would substantially weaken the enforcement of the new electoral sanction in Scotland. During this period it would be inconsistent - and would be difficult to justify - that an offender who is disqualified from standing for UK parliamentary elections in Scotland as a result of intimidation is not disqualified from standing at Scottish parliamentary or local government elections.

## Clarification of undue influence

Although it is already an offence to unduly influence an elector, there is general agreement that the current legislation is in need of modernising. <sup>xxviii</sup> Updating the corrupt practice, by building on recommendations from the joint report by the Scottish Law Commission and the Law Commission England and Wales (2020) will improve this clarity and reduce confusion, providing electors with the protection they deserve.

Amending and clarifying the existing corrupt practice of undue influence is reserved insofar as it relates to reserved electoral events. The UK Government sought legislative consent to make the equivalent amendment to section 115 of the Representation of the People Act 1983 for local government elections in Scotland. The legislative consent process was also engaged to ensure that electoral incapacities arising from the corrupt practice of undue influence apply uniformly across the UK. This would provide electors in Scotland with the same level of protection from malicious interference and intimidation at all electoral events. Legislative consent would also mean that someone convicted, or reported personally guilty, of undue influence anywhere in the UK is incapable of holding elective office in all parts of the UK. The Electoral Commission highlighted that these changes will 'help to protect voters against exploitation' and also 'make it easier for the police and prosecutors to take action where appropriate'.

I welcome the Scottish Government's indication of interest to legislate in this area prior to the Scottish Parliament election in 2026. However, if there is a delay between the coming into force of the relevant provisions of the Elections Bill and the subsequent Scottish legislation then electors in Scotland will have different levels of protection from undue influence at different elections. This would make it harder for Scottish electors, police, prosecutors and electoral administrators to identify and enforce the corrupt practice of undue influence. This would be especially problematic in a scenario where the election periods for UK parliamentary elections and Scottish local government elections overlap. If an elector was subjected to, for example, intimidatory behaviour during the election period, it could be very ambiguous whether the elector should benefit from the improved protection against intimidation in the updated corrupt practice or not. Ultimately, it would leave some citizens without the full protection this measure seeks to provide.

## Electoral Commission accountability

To improve the parliamentary accountability of the Electoral Commission, the Bill makes provision for a Strategy and Policy Statement that will set out guidance and principles, which the Commission will have to have regard to in the discharge of its functions. The Commission will remain independent, and the Statement will not replace or undermine the Commission's other statutory duties. The Statement will be subject to a statutory consultation before being submitted for the approval of the UK Parliament.

The Commission is a UK-wide body with some functions operating in relation to devolved matters in Scotland. To avoid unnecessary complexity for the Electoral Commission in exercising its regulatory powers, the Government proposed that the Statement should apply to both the Commission's reserved and devolved functions. A UK-wide Statement would ensure consistency across the UK in terms of the Commission's exercise of its functions because the Commission would only be required for its planning to give regard to

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xxviii In 2018, the UK Government launched the Protecting the debate consultation to seek input on clarifying the existing corrupt practice of undue influence. The consultation received 41 formal responses and numerous pieces of correspondence from a wide range of individuals and organisations from all parts of the UK. 100% of respondents to the consultation agreed that the law of undue influence required greater clarity.

a single document setting out clearly the expectations of the UK Parliament. This means that the UK Government and the Scottish Government (as one of the statutory consultees on the draft Statement) could provide a clear outline of the expectations of the UK, Scottish and Welsh Governments for the Commission's 'functions across all four nations for devolved and reserved polls and would reflect their shared interests through consultation on the draft Statement. The Commission will remain independent and the Statement will not replace or undermine the Commission's other statutory duties.

## **Political finance**

### *Notional expenditure*

The Bill amends the law on notional expenditure, enabling campaigners and agents to understand with confidence their legal responsibilities. Clauses 16 to 18 contain provisions within the legislative competence of the Scottish Parliament in relation to the application of the rules on campaign expenditure at devolved elections. This would ensure that the changes to the provisions on notional expenditure for political parties and third-party campaigners are consistent across all reserved and devolved elections. The Bill only contained amendments to primary legislation. In order to have consistent rules on notional expenditure across all reserved and devolved elections, the Scottish Government would also need to make equivalent amendments to the Scottish Parliamentary Elections Order 2015.

The purpose of these amendments are to provide clarity on the rules following the 2018 Supreme Court case (*R v Mackinlay and others*) to ensure that candidates and election agents understand their legal responsibilities and can perform them with confidence. A lack of consistency across elections could in fact increase confusion for candidates and their agents and lead to a lack of compliance.

Restriction on which third parties may incur controlled expenditure and Recognised third parties: changes to existing limits etc (new tier of third-party campaigner registration)

Clauses 22 to 24 contain provisions within the legislative competence of the Scottish Parliament in relation to third-party campaigning rules and the notification of third parties for elections devolved to the Scottish Parliament. In practice, applying these measures on a UK-wide basis would strengthen the transparency and fairness of controls against ineligible third-party spending at devolved and reserved elections alike. Consistency in the rules would mean that political parties and third-party campaigners can be sure of their legal responsibilities, which will support compliance and make it easier for the Electoral Commission to regulate. It will also mean that the public are presented with consistent information about such campaigners at all elections.

If there are divergences in the rules in this area, regulatory complexities will arise. For example in reference to the creation of a lower tier of third-party campaigner, third party campaigners may campaign in multiple elections at the same time (reserved and devolved) and they will need to attempt to apportion their spending at the registration stage in order to work out whether they meet the thresholds set by the different legislatures. Furthermore, some foreign spending would continue to be legal at devolved elections but would be prohibited at reserved elections. This could lead to challenges in enforcement, a lack of understanding amongst foreign campaigners and criticism that some foreign spending is still allowed at elections in Scotland.

## **Joint campaigning by registered parties and third parties**

Clause 25 contains provisions within the legislative competence of the Scottish Parliament in relation to campaign expenditure for both political parties and third-party campaigners for stand-alone devolved elections. It would be beneficial for these measures to apply to all elections (both devolved and reserved), as otherwise it may lead to dissatisfaction or confusion amongst campaigners as they would have to account for spending differently at different elections. This could lead to issues of compliance and will mean that level of transparency differs between elections allowing groups to potentially expand their spending limits at devolved elections, which could be seen as undermining the level playing field.

While I welcome the Scottish Government's indication of interest to legislate comparably in these areas prior to the Scottish Parliament election in 2026, a delay or divergence in the application of these political finance measures will create a complicated situation for candidates at elections in Scotland, political parties and third-party campaigners, whereby they may need to comply with a different set of rules at different elections.

### **Wider Bill measures**

While devolution means that there are already different arrangements for devolved and reserved elections, in some areas there are clear benefits associated with applying electoral law uniformly UK-wide across all polls as with the UK Government's proposals for digital imprints.

The digital imprint regime set out in these provisions is not an online version of the existing imprint regime for printed documents. It is far wider in scope, requiring an imprint on some types of political electronic material at all times - not limited to specific elections or referendums or particular periods of time. Its purpose, therefore, is to regulate electronic material of a political nature on the internet and behaviour and conduct on the internet by users and internet service providers at all times, not just during elections themselves. A UK wide regime will ensure a coherent and consistent approach for both those enforcing the regime and for campaigners. It will enable voters from across the UK to benefit from the high level of transparency and will avoid the fragmentation of internet regulation.

A number of the measures in the Bill are designed to strengthen the integrity of the electoral process for UK Parliamentary elections and other reserved polls. This includes the introduction of identification to vote at polling stations and safeguards for postal and proxy voting, as well as changes to improve the support available to voters with disabilities. We will continue to work closely with the Electoral Commission, the wider electoral sector and the devolved administrations to ensure that the proposed changes work well in the interests of electoral administrators, voters and those regulated by electoral law.

### **Future Scottish legislation**

Given that the Scottish Government have expressed sympathies for a number of areas within the Elections Bill in their Legislative Consent Memorandum, I am disappointed by the request to be removed from all aspects of the Bill which relate to devolved matters in Scotland. We are currently in the process of evaluating the implications of carving out Scotland from the devolved measures in the Bill.

While divergence is a potential consequence of devolution, where the UK Government and Scottish Government are principally in agreement, it is our two Governments' responsibility to legislate in such a way that provides the best outcomes, not only in terms of clarity for

voters, operability for electoral administrators but critically our legislation must be functional for those who are regulated by electoral law.

To this end, I welcome the Scottish Government's indication in their Legislative Consent Memorandum that they will consider legislating comparably on a number of areas. UK Ministers remain committed to continuing working closely with colleagues in the Scottish Government as they develop their legislative proposals to ensure where possible, that clarity and coherence is achieved for voters, the electoral sector and those regulated by electoral law.

Yours sincerely,

**KEMI BADENOCH MP**

# Annexe C: Letter from the Scottish Parliament Corporate Body (SPCB) to the Committee

Thank you for your letter of 3 November 2021 seeking views from the SPCB to assist your Committee in its consideration of the Legislative Consent Motion for the UK Elections Bill. As you point out in your letter, we have also shared our views with the Cabinet Office and the Scottish Government as part of its focussed consultation on the Bill.

As you will appreciate, my comments only relate to the provisions as they impact on the Scottish Parliamentary Corporate Body (SPCB). The SPCB has had the opportunity to consider provisions as they relate to its responsibilities.

As you say in your letter, the SPCB has responsibility for funding the Electoral Commission in respect of its devolved electoral functions in Scotland. Specifically of interest to the SPCB are two proposals relating to the Electoral Commission. These are:

1. The proposal to make provision for the introduction of a Strategy and Policy Statement prepared by the Cabinet Office that will provide the Electoral Commission guidance on the exercise of its functions. Under the Bill, the UK Government would be required to consult with Scottish Ministers on the Statement.
2. The proposal to amend the role and powers of the Speaker's Committee on the Electoral Commission to give it the power to examine the Commission's compliance with its duty to have regard to the Strategy and Policy Statement.

While funding is the primary role of the SPCB regarding the Commission, to support this funding activity the Scottish Elections (Reform) Act 2020 also provides that the Commission must present its five-year plan to the SPCB at the same time as it presents the plan to the Speaker's Committee on the Electoral Commission. The SPCB must decide whether it is satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their devolved Scottish functions, and if it is not so satisfied, may recommend such modifications to the plan as it considers appropriate for the purpose of achieving such consistency.

In respect of the Statement on Strategy and Policy for the Commission, the SPCB supports and provides funding for a number of other officeholders on behalf of the Parliament - for example, the Scottish Public Services Ombudsman and Scottish Information Commissioner. The Scottish Parliament has made it clear by way of the legislation relating to these officeholders that they are independent regarding their functions and not subject to the direction or control of the Scottish Government or the SPCB.

This Statement is therefore new territory, especially given the Commission's regulatory role regarding political parties. There is an argument that the SPCB should also be a statutory consultee, given the SPCB provides the funding for the Commission's devolved activity in Scotland.

In saying this, the primary function of the SPCB is to provide the Parliament with the property, staff and services it requires. The SPCB has no locus regarding the policy of the

Commission and other organisations it provides support for and, importantly, it cannot speak on behalf of the Parliament on issues outside its remit. Even when considering the strategic plans of the officeholders it supports, any comment on the plans is limited to financial implications.

We have seen from the illustrative Statement provided to us by the Cabinet Office that it is at a high level and it would be difficult to quantify in monetary terms. Therefore, whilst the SPCB will clearly want to be aware of the content of the Statement in the context of discharging its responsibilities under the 2020 Act, there does not seem to be value in the SPCB seeking to become a statutory consultee on what is a policy-focused Statement. We, therefore, consider that consultation should be left - as proposed in the Bill - with the Scottish Ministers, while making the point that funding is provided by the SPCB.

On the second proposal regarding oversight of the Statement, this does to an extent impact on the role of the SPCB in scrutinising the Commission's five-year plan. This is because the plan will, in future, be based around the Statement and so it is possible that any comments the SPCB would make on the plan could be negated if they impact on the Statement.

In practice, however, we consider that the relevant part of the five-year plan for the SPCB (covering devolved Scottish functions) is more likely to set out how the Commission in Scotland will meet its requirements relating to elections and the resourcing of these and will thus remain the key document for the SPCB. Again, we noted the proposals, and we reflected back to the Cabinet Office the role of the SPCB regarding the five-year plans.

I hope these comments are helpful.

Yours sincerely

Alison Johnstone MSP

Presiding Officer

## Annexe D: Extract from minutes

### 4th Meeting, 2021 (Session 6), Thursday 7 October 2021

**Elections Bill (UK Parliament legislation) (in private):** The Committee agreed its approach to the legislative consent memorandum on the Elections Bill.

### 8th Meeting, 2021 (Session 6), Thursday 18 November 2021

**Elections Bill (UK Parliament legislation):** The Committee took evidence on legislative consent memorandum LCM(S6) 8 from—

Louise Edwards, Director of Regulation , Electoral Commission, Scotland;

Chris Highcock, Elections Manger and Secretary, Electoral Management Board for Scotland;

Dr Alistair Clark, Reader in Politics, Newcastle University;

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

*and then from—*

Jess Garland, Director of Research, Electoral Reform Society;

Ethan Young, Civic Participation Manager, Inclusion Scotland;

Dr Catriona Burness, Parliamentary and Policy Manager , RNIB Scotland.

**Elections Bill (UK Parliament legislation) (in private):** The Committee considered the evidence heard earlier in the meeting.

### 9th Meeting, 2021 (Session 6), Thursday 25 November 2021

**Elections Bill (UK Parliament legislation):** The Committee took evidence on legislative consent memorandum LCM(S6) 8 from—

George Adam, Minister for Parliamentary Business, Iain Hockenhull, Elections Bill Team Leader and Penny Curtis, Deputy Director, Elections and Freedom of Information Division, Scottish Government .

**Elections Bill (UK Parliament legislation)(In Private):** The Committee considered the evidence heard earlier in the meeting.

### 11th Meeting, 2021 (Session 6), Thursday 9 December 2021

**Elections Bill (UK Parliament legislation) (In Private):** The Committee considered its draft report.

### 12th Meeting, 2021 (Session 6), Thursday 16 December 2021

**Elections Bill (UK Parliament legislation) (In Private):** The Committee considered its draft report and agreed to finalise by correspondence.

- 1 [Para 57-58 of the Scottish Government LCM](#)
- 2 Professor Toby James Written Submission – Annexe A
- 3 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 4 [Page 7, Col 6 Official Report 25 November 2021](#)
- 5 [Para 32 of the Scottish Government's LCM](#)
- 6 [Para 36, Scottish Governments LCM](#)
- 7 [Para 37, Scottish Governments LCM](#)
- 8 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 9 [Page 10, Col 11 Official Report 18 November 2021](#)
- 10 [Page 10, Col 11 Official Report 18 November 2021](#)
- 11 Professor Toby Jones Written Submission – Annexe A
- 12 Dr Alistair Clark Written Submission - Annexe A
- 13 Letter from the Presiding Office of the Scottish Parliament to the Committee – Annexe C
- 14 Letter from the Presiding Office of the Scottish Parliament to the Committee – Annexe C
- 15 [Para 41, Scottish Government LCM](#)
- 16 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 17 [Para 44, Scottish Government LCM](#)
- 18 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 19 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 20 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 21 [Page 12, Col 15 Official Report 18 November 2021](#)
- 22 [Para 46, Scottish Government LCM](#)
- 23 [Page 10, Col 11 Official Report 25 November 2021](#)
- 24 [Para 49, Scottish Government LCM](#)
- 25 [Para 48, Scottish Government LCM](#)
- 26 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 27 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 28 [Page 11, Col 14 Official Report 18 November 2021](#)

- 29 [Page 11, Col 13 Official Report 18 November 2021](#)
- 30 [Page 12, Col 16 Official Report 18 November 2021](#)
- 31 UK Minister of State Kemi Badenoch's Letter to Committee – Annexe B
- 32 [Former UK Minister of State, Chloe Smith in April 2019](#)
- 33 [Para 8 Scottish Government LCM](#)
- 34 [Page 8, Col 8 Official Report 18 November 2021](#)
- 35 Professor Toby James Written Submission – Annexe A
- 36 Electoral Management Board for Scotland Written Submission – Annexe A
- 37 Scottish Assessors Association Written Submission – Annexe A
- 38 Electoral Management Board for Scotland Written Submission – Annexe A
- 39 Sight Scotland Written Submission – Annexe A
- 40 Royal National Institute of Blind People Scotland Written Submission – Annexe A
- 41 [Page 19, Col 29 Official Report 18 November 2021](#)
- 42 [Page 8, Col 8 Official Report 18 November 2021](#)
- 43 [Para 8 Scottish Government LCM](#)
- 44 [Page 15, Col 22 Official Report 25 November 2021](#)
- 45 Scottish Assessors Association Written Submission – Annexe A
- 46 Professor Toby Jones Written Submission – Annexe A
- 47 [Page 14, Col 19 Official Report 18 November 2021](#)
- 48 Professor Toby James Written Submission – Annexe A
- 49 Professor Toby James Written Submission – Annexe A
- 50 [Page 13, Col 17 Official Report 25 November 2021](#)
- 51 [Page 56, para 44 \(3\) \(b\) UK Elections Bill](#)
- 52 [Para 11 Scottish Government LCM](#)
- 53 Sight Scotland Written Submission – Annexe A
- 54 Royal National Institute for Blind People Scotland Written Submission – Annexe A
- 55 [Page 18, Col 28 Official Report 25 November 2021](#)

