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30 April 2024

Dear Martin

Electoral Reform – Secondary Legislation

I am looking forward to discussing the Scottish Elections (Representation and Reform) Bill with the Committee on 2 May. As you know, the Bill progresses reforms outlined in the Scottish Government's Electoral Reform [Consultation](#) which ran from 14 December 2022 to 15 March 2023. There were however other potential electoral changes discussed in the consultation paper that are not included in the Bill. In some instances, the Government is still actively considering amendments to the law, but in secondary legislation rather than in the Bill.

I therefore thought that it would be helpful to set out where the Government intends or is considering bringing forward secondary legislation on electoral reform. This is expected to be in the first half of 2025 to ensure that the proposed changes will be in place well before the May 2026 Scottish Parliament election.

The Annex to this letter therefore details policy proposals where I would value the views of the Committee on potential changes to legislation. I have highlighted certain measures where thinking is quite well developed and also possible measures where we would be interested in your thoughts.

The Annex does not describe any secondary legislation that might arise directly from the Bill as that is discussed in the Bill's [Delegated Powers Memorandum](#). It does though highlight possible secondary legislation in relation to emergency re-scheduling of elections as highlighted in evidence provided to the Committee.

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While the detail is set out in the Annex, the following list provides an overview of the key secondary legislation changes described:

- Amending the dissolution period before Scottish Parliament elections
- Amending the definition of notional expenditure for Scottish Parliament candidate spending
- Modernising the definition of undue influence
- Allowing candidates to show their ward of residence on local government ballot papers
- Giving election agents the option of providing a correspondence address
- Replacing the requirement for a tactile voting device (TVD) with a general responsibility for Returning Officers to provide appropriate support
- Allowing Boundaries Scotland to access limited electoral register attainer data when conducting reviews.
- Uprating campaign expenditure limits
- Allowing voter registration on local connection grounds for looked after children
- Updating the allowed evidence to support an application for anonymous registration
- Allowing those accompanying people attending medical appointments to apply for an emergency proxy vote
- Allowing prisoners on remand to apply for an emergency proxy vote
- Allowing the appointment of a replacement proxy if a proxy voter is no longer able to vote on someone's behalf
- Limiting campaign free mailings to one per household
- Extending free mailings to local government candidates
- Increase the number of disabled voters who can be assisted by an individual companion
- Standardise dies-non for election and registration purposes
- Next-day counts at Scottish Parliament elections
- Delegate forms design to the Electoral Management Board for Scotland's Forms Working Group
- Changes in the event of a rescheduled election

This letter is not an exhaustive list of all secondary legislation that could be implemented ahead of the next elections in 2026 and 2027, but is an overview of the main areas that the Government is actively considering.

Please note that all these proposals are still under active consideration and will be subject to further consultation with stakeholders. It is highly likely that there will be some changes to the proposals set out in the attached Annex as a result.

I would of course welcome comments on all aspects of this letter and would be very happy to meet with the Committee to discuss further.

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I hope that this information is helpful. I am copying this letter to the Electoral Commission, Scotland and to the Convener of the Electoral Management Board for Scotland.

Kind regards,



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Possible amendments to secondary legislation for elections

Dissolution before Scottish Parliament elections

Currently [article 84](#) of the Scottish Parliament (Elections etc.) Order 2015, taken together with [section 2\(3\)](#) of the Scotland Act 1998, requires that the Scottish Parliament must be dissolved at least 28 “working days” before the date of the poll at a Scottish Parliament General Election (SPGE).

Paragraphs 96 to 98 of the Scottish Elections (Representation and Reform) Bill’s [Policy Memorandum](#) discuss the risk of a UK Parliament General Election (UKGE) being called on the same date as a scheduled SPGE. When the Prime Minister calls a UKGE, the House of Commons will dissolve 25 working days prior to polling date, which means that a snap UKGE could be called for a date on or close to a SPGE, after the Scottish Parliament has been dissolved and is unable to react.

In order to allow the Parliament to pass emergency legislation to move the SPGE date, should such a situation arise, the Government is considering if the 28 working day period could be reduced to 20 working days. This would be achieved by an amendment to article 84 of the Scottish Parliament (Elections etc.) Order 2015.

Clarify definition of notional expenditure for candidates at Scottish Parliament elections

The Scottish Elections (Representation and Reform) Bill includes provisions which update the definition of notional expenditure at local government elections, and of notional expenditure by political parties and third parties at Scottish Parliament elections.

The same definition of notional expenditure relating to candidate spending at Scottish Parliament elections can be made in secondary legislation, and the Scottish Government intends to make secondary legislation to this effect if the Bill provisions are agreed by the Scottish Parliament.

The UK Elections Act 2022 updated the definition of notional expenditure in relation to UK Parliamentary elections in Scotland ([section 90\(c\)\(1A\)](#) of the Representation of the People Act 1983 (“ROPA 1983”)). Applying the same definition to devolved Scottish elections will help ensure the rules are clear and consistent for campaigners and candidates across all elections in Scotland.

Modernise definition of undue influence

The existing offence of “undue influence” has been in place since the 19th century, and the language requires revising and updating. The Scottish Government intends to clarify what constitutes undue influence in order to make the legislation easier to interpret and enforce. It will do so by using modern terminology, and by clearly separating out the types of conduct that can cause undue influence.

It is proposed that the following activities should be considered undue influence, when carried out for the purpose of forcing a person to vote in a particular way, forcing them not to vote at all, or otherwise interfering with their free exercise of their vote:

- a) The use or threat of physical violence;
- b) Damage or destruction to property (or the threat of such damage or destruction);
- c) Reputational damage (or the threat of such damage);
- d) Causing or threatening to cause financial loss;
- e) Causing spiritual injury or exerting undue spiritual pressure. 'Undue spiritual pressure' refers to a level of improper or inappropriate pressure which goes beyond the free expression of opinions on political or other matters that have implications for the principles of a religion;
- f) Any other act or omission designed to intimidate a person which is not already covered above;
- g) Any act or omission designed to deceive a person in relation to the running of an election

It is intended that this provision will be similar to the revised definition included in the UK Elections Act 2022 at UK Parliamentary elections (set out in [section 114A](#) of ROPA 1983).

Candidate ward of residence shown on ballot paper

Candidates standing at local government elections have a choice of what form of address appears on ballot papers. Currently, they can choose to show their whole home address; their local council area; or their country of residence, if they reside outside Scotland. The requirement for candidates' home addresses to be printed on the ballot paper was removed prior to the May 2022 local government elections.

Following the 2022 local government elections, the Scottish Government received feedback that only allowing for the local government area where the candidate is resident on the ballot paper did not allow voters to easily identify candidates who lived in the same locality. This was a particular issue in relation to islands and more remote areas, where a candidate may live in the same local government area but may be based a significant distance from the ward where they are standing.

The Scottish Government intends to add an additional option of allowing candidates to choose to include the ward where they reside on the ballot paper as an alternative to their home address, local government area or country of residence.

This policy change was discussed in the Scottish Government's Electoral Reform [Consultation](#), and was [supported](#) by 90% of respondents, including 100% of organisations.

Candidate agents having option of providing a correspondence address

Currently an agent for a candidate must provide an address at which they can be contacted for election purposes. Concern has been expressed that in the situation where a candidate or a member of their immediate family is acting as their agent that, if the address they have to provide is their home address, this could lead to a security risk for the candidate or their family.

The Scottish Government is therefore proposing to allow any individual acting as an agent, either for themselves or another person, to provide a correspondence address, should they wish to do so. This will allow anyone to act as an agent without having to publicise their home address, unless they specifically choose to do so. The Electoral Commission will provide guidance for candidates and agents on the options available around providing a correspondence address for election purposes.

This policy change was discussed in the Scottish Government's Electoral Reform [Consultation](#), and was supported by 75% of respondents, including 90% of organisations.

Replacing the requirement for a tactile voting device (TVD) with a general responsibility for Returning Officers to provide appropriate support

The Scottish Government is proposing to remove the detailed description of the Tactile Voting Device (TVD) and replace it with a broader requirement for ROs to provide appropriate support to aid accessibility at polling stations and for the EC to provide guidance. This is broadly in line with what the UK Government did in the Elections Act and the Welsh Government's proposed changes¹.

The intention is to standardise the provisions at both Scottish Parliament and local government elections in a way which allows for more flexibility and ensures that the accessibility support offered can be adapted and evolve to take account of future innovations.

It is expected that the proposed provisions for Scottish Parliament and local government elections will broadly follow those which have already been put in place for UK Parliament elections. These revised provisions can be found in [rule 29](#) of schedule 1 to ROPA 1983.

The Government is considering any need to amend the Bill to ensure that Ministers will in future be able to require the Electoral Commission to provide guidance to ROs on accessibility at local government elections. The Scottish Ministers already have the necessary powers to require the Electoral Commission to provide such guidance for Scottish Parliament elections and the proposed amendment will bring the position for local government election into line with existing position for Scottish Parliament elections.

¹ See paragraph 3.57 of the [Explanatory Memorandum](#) to the Elections and Elected Bodies (Wales) Bill

Boundaries Scotland including attainer electoral data for Scottish Parliament and local government reviews

Boundaries Scotland are required to conduct reviews of Scottish Parliament constituencies and regions, and reviews of electoral arrangements for local government.

Attainers (pre-registered voters aged 14-15) are considered names on the register for the purposes of conducting reviews of Scottish Parliament constituencies and regions (although are not considered electors until they reach voting age), and should therefore be included in Scottish Parliament reviews. Having access to attainer data would also aid with the five-year forecasting required for reviews of electoral arrangements for local government.

The Scottish Government proposes bringing forward legislation which will amend the relevant legislation to make clear that Boundaries Scotland should receive relevant attainer information when receiving the electoral register for conducting reviews. They currently are not listed in the [Scottish Elections \(Reduction of Voting Age\) Act 2015](#) as an organisation that can receive attainer information, despite there being legislation which suggests they should access this. This information will likely be restricted to addresses (including post codes) and numbers of attainers in each individual address for the purposes of carrying out their reviews under schedule 1 of the Scotland Act and part 2 of the 1973 Act. The names and ages of individual attainers will not be provided to Boundaries Scotland as they are not required for electoral quota purposes.

Uprate limits for campaign expenditure

Expenditure limits for candidates, political parties and third parties at Scottish Parliament elections and for candidates at local government elections have not changed for some time.

Increases in line with inflation were recently made for UK Parliamentary elections by the [Representation of the People \(Variation of Election Expenses, Expenditure Limits and Donation etc. Thresholds\) Order 2023](#). The Government intends to consult the Scottish Parties Political Panel on a possible change.

Voter registration on local connection grounds for looked after children

Currently certain individuals who do not have a fixed or permanent address, such as those that are homeless or in prison, may register at the place where they spend most of their time, or to which they have a connection, by making a declaration of local connection.

In Wales, an additional ground to make a declaration of local connection was added to [section 7B\(2\)](#) of ROPA 1983 by [paragraph 2 of schedule 2](#) to the Local Government and Elections (Wales) Act 2021. This allows for those under 18 years old if they are, or have been, looked after children or are currently being kept in secure accommodation to apply to vote using a declaration of local connection.

The Scottish Government is considering amending [section 7B\(2\)](#) of ROPA 1983 to specifically allow looked after children under the age of 18 to register to vote at Scottish Parliament and local government elections using a declaration of local connection. This amendment will be along similar lines to the similar change already made for Wales.

Evidence to support an application for anonymous registration

If someone is concerned that having their name and address publicly available on the electoral register could endanger their safety, or the safety of someone in their household, they can register to vote anonymously. This means that they are still able to vote, but only their voter number, not their name and address, will appear on the electoral register. In addition, their electoral registration office will not disclose their details to anyone, unless they are legally required to.

An applicant for anonymous registration must provide evidence that there is a risk to safety, if their details were to be made public. The Scottish Government is intending to amend [regulation 31](#) of the Representation of the People (Scotland) Regulations 2001, as amended by subsequent legislation, to add Domestic Abuse Protection Orders to the list of relevant evidence for anonymous registration. We will also consider, in consultation with other UK legislatures, if there are any further changes that need to be made to take account of similar orders granted in other parts of the UK.

Emergency proxies for companions of individuals who have to attend for medical treatment

The Electoral Commission has asked the Scottish Government to consider expanding the categories of voters who are entitled to apply for an emergency proxy to include those who find themselves unable to vote because they are in a position of acting as a companion for someone who needs to be accompanied to an unplanned medical appointment. In particular this would affect those who care for young or older people.

Under the existing provisions, the person with the medical appointment would be entitled to apply for a proxy vote, if they are registered to vote, however their companion is not able to apply for a proxy vote.

The Scottish Government intends to legislate for emergency proxies to be made available to the companions of those who are required to travel for medical appointments or treatment at short notice, where that travel would stop them being able to vote at their normal polling place. This will require an amendment to [paragraph 4 of schedule 4](#) to the Representation of the People Act 2000.

This policy change was discussed in the Electoral Reform [Consultation](#), and was supported by 61% of respondents, including 100% of organisations.

Emergency proxies for persons remanded in custody

The [schedule](#) to the Scottish Elections (Franchise and Representation) Act 2020 made a number of amendments as a consequence of the granting of the right to vote to a person to whom [section 3\(1A\)](#) of ROPA 1983 (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies. One of these amendments allowed for offenders who are sentenced to term not exceeding 12 months shortly before the day of poll to apply for an emergency proxy vote. The intention of this provision was to ensure that someone who had not already applied for an absent vote would not be disenfranchised if they were sentenced to detention after the six-day deadline for applying for an ordinary proxy vote.

The introduction of this provision highlighted that individuals who are remanded in custody, who are still entitled to vote as they have not been found guilty of an offence, currently do not have the same ability to apply for an emergency proxy, if they are remanded after the six day deadline for applying for an ordinary proxy vote.

The option being considered would be to change the law to allow those remanded in custody shortly before the day of poll to apply for an emergency proxy vote.

Appointment of replacement proxies if a proxy voter is no longer able to vote on someone's behalf

[Article 2\(4\)](#) of the Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021 allowed for a voter who had appointed a proxy to change their proxy if the proxy would not be able to vote in person, due to having to follow Scottish Government advice or the advice of a registered medical practitioner in relation to coronavirus. This article was covered by a sunset provision and subsequently ceased to have effect on 10 December 2022. The intention was to ensure that the voter would not lose their vote if their proxy was unable to vote due to coronavirus restrictions.

The Scottish Government is now considering provisions which will allow a voter, who has already appointed a proxy, to change their proxy if the proxy will no longer be able to vote on their behalf. The provision will be similar to [Article 2\(4\)](#) of the Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021. It is likely that any provisions will include a deadline of requesting a replacement proxy due to the practical arrangements that EROs are required to make, such as informing the proxy of their appointment and informing the Returning Officer and the relevant polling station staff of the updated proxy's details.

Limiting campaign free mailings to one per household

The Scottish Government's electoral reform consultation sought views on restricting the current right to send a letter or leaflet free of postage costs to the sending of unaddressed leaflets only. This would mean that parties and candidates would only be allowed to send an unaddressed leaflet to every household.

78% of individuals and 70% of organisations were in favour of the proposal to limit mailings to one per household.

Extend free mailings to local government candidates

Whilst allowing candidates at UK and Scottish Parliamentary elections to send a free mailing has been normal practice for many years, this facility has never been extended to candidates at local government elections. Over recent years, there has been a number of calls for local government candidates to be allowed to send a communication free of postage costs to voters.

In the Electoral Reform [Consultation](#), the Scottish Government sought views on whether free mailings should be extended to local government elections. Two specific questions were asked:

- Should free mailings be extended to candidates at local government elections? and
- Should any free mailing be limited to one leaflet per household?

All organisations who answered the first question supported the option of extending freepost communications to local election candidates. However, only one third (37%) of individuals were in favour. There was more consensus on the proposal to limit mailings to one per household, with 78% of individuals and 70% of organisations in favour.

Respondents were also asked for any comments on the general proposal and two broad themes were evident; opposition to freepost mailings as a waste of time and money, and debate around who should bear the cost of freepost mailings.

Increase the number of disabled voters who can be assisted by an individual companion

Under the existing rules, [rule 48](#) of schedule 2 to the Scottish Parliament (Elections etc.) Order 2015 and [rule 35](#) of schedule 1 to the Scottish local government Elections Order 2011, an eligible individual can assist up to 2 people, who are disabled or unable to read to vote.

Individuals who help voters needing additional support in the polling station when casting their vote, are an important option for those who face such barriers. Help from a friend, relative or carer can be essential in overcoming issues like navigating the polling station or understanding a ballot paper.

The historical reasons for the restriction of only assisting 2 people, relates to concerns over the potential influence any one person might have on multiple voters. However, there may be circumstances where this restriction impedes the needs of voters themselves - for example multiple members of one family might need support but have only one relative available to assist. Professional carers may also be best placed to support their clients at the polling station, because of their understanding of their clients' individual needs, but would be prevented from supporting more than 2 clients and/or members of their own family under the current system.

The electoral reform [Consultation](#) asked if the number of voters a companion can support at Scottish Parliament and local government elections should be increased to 5.

Over three quarters (77%) of individual consultation respondents felt there should be no change to the two people per election who can be assisted by a companion. Among organisations, however, views were more mixed, with one third (33%) supporting an increase to five people, two fifths (42%) another number, and one quarter (25%) favouring the current guidelines.

The Scottish Government would also welcome thoughts on whether an individual, such as a registered care worker, who, as part of their employment at a particular care home, should be allowed to assist a higher or unlimited number of voters who are resident at the care home where they are employed.

Standardise Dies-Non

When calculating periods of time at both elections and for registration purposes, some days, such as Christmas Day, Good Friday and bank holidays are disregarded for timetable purposes. However, there is a disparity between those days which are disregarded, with Maundy Thursday being disregarded for registration purposes but not election purposes and Easter Monday being disregarded for election purposes but not registration purposes.

The Scottish Government would like to consider aligning the non-counting days so that they are the same for both election and registration purposes. However, we appreciate that changing the disregarded days for registration purposes for devolved elections will introduce a mismatch with the disregarded days for registration for UK Parliament elections.

Our intention is to have further talks with electoral administrators over any consequences such a change may have for both Returning Officers and Electoral Registration Officers before coming to a final decision on whether or not to bring forward proposals for the Parliament's consideration. However, we would welcome any comments that the Committee may have.

Next day counts at Scottish Parliament elections

Electoral Administrators have raised concerns about the requirement in [rule 54 of schedule 2](#) to the Scottish Parliament (Elections etc.) Order 2015 that “The CRO shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll”.

Electoral Administrators are concerned that, under the existing legislation, Returning Officers are effectively required to count the votes cast at Scottish Parliament elections overnight. This means that staff at the count start work shortly before the close of polls at 10pm and in some areas don't finish until after 7am the next morning, over a 9-hour shift. Returning Officers are concerned that it is difficult to recruit staff for long overnight counts and that tiredness can be a factor at counts with an increased risk of errors occurring. In particular this can affect senior election staff as they will have started work early on the Thursday morning, to ensure that the polling proceeds smoothly, and they may have little chance to rest and recover before the close of an overnight count, some 48 hours later.

Electoral administrators have suggested that if the count were to start on the Friday morning, after a Thursday poll, then it would be easier to employ staff who would be well rested and less likely to make mistakes. It would also allow senior staff the opportunity to get some rest and sleep between the close of poll and the start of the count.

Were the count to start on the Friday morning, it would be likely that the final result would be available mid-afternoon on the Friday, in time to catch the early evening news programmes, as there would be no delays in waiting for ballot boxes to be delivered and some preliminary preparation work could be completed following the close of poll. It is possible that if there were to be no overall majority for a single political party, the delay in the announcement of the result could delay the formation of a government, however it is not thought that the additional delay from a next day count would be significant.

The count at Scottish local government elections starts on the Friday morning with the result being available on the Friday afternoon.

The Scottish Government does not have a settled view on this issue and would welcome the Committee's thoughts.

Delegate forms design to the Electoral Management Board's Forms Working Group

Currently, the legislation for elections sets out what information must be included in forms, in addition, often, but not in all cases, templates for the forms are also included in an appendix. However, although templates are provided, [article 86\(1\)](#) of the Scottish Parliament (Elections etc.) Order 2015 specifically states “The forms set out in the Appendix may be used with such variations as the circumstances may require.”

Having templates for forms set out in legislation can lead to delays if there is a need to update a form or to clarify some aspect. An example of this is [form 15](#) (Declaration by the companion of a voter with disabilities) in the Scottish Local Government Elections Order 2011, which contains a long standing error. The declaration on the template form requires the companion to certify that they have not helped any other elector with disabilities to vote, whilst rule 35(2)(b)(ii) clearly states that a companion can assist up to 2 voters.

The Scottish Government is considering removing some templates from the legislation to allow additional flexibility around their design and contents. It is expected that this flexibility will be used to include information which will be helpful to voters, such as additional information in poll cards on accessibility and what will be available at polling stations to assist voters.

Responsibility for designing forms for use by electoral administrators could then become the responsibility of the [Electoral Management Board's Forms Working Group](#) who already have a role in developing consistent and quality non-statutory forms. The Forms Working Group has been providing example forms for returning Officers for many years and the Scottish Government would view this as an extension of their existing role.

The intention is that templates for some forms would remain in legislation, such as ballot paper designs and nomination papers, but responsibility for others, such as Certificates of employment and information and guidance notices, would transfer to the Forms Working Group. The Scottish Government's view is that transferring the responsibility for designing templates for the forms used by Returning Officers to the Electoral Management Board's Forms Working Group would allow for more agile design and the opportunity for ROs to quickly adapt them for changing circumstances.

Discussions around this proposal are still ongoing with the Electoral Management Board and the Electoral Commission but the Scottish Government would welcome any views that the Committee may have on this proposal.

Changes in the event of a rescheduled election: spending limits and implications for postal votes, electoral register etc.

The Bill makes a range of provisions in relation to emergency re-scheduling of elections. The Government intends to discuss further with the Electoral Commission and political parties on the merits of rules adjusting spending limits in the event of a postponement to an election. It is also considering possible other secondary legislation that might be needed in the event of a postponement (e.g. on the status of postal votes or implications of a delay for the electoral register), noting comments by the [Scottish Assessors Association](#).

Use of electoral registers for the setting up of Community Councils

Under [regulation 106](#) of the Representation of the People (Scotland) Regulations 2001, local councils are entitled to receive a copy of electoral registers for their area. However, use of those registers is restricted to the discharge of a statutory function of the council relating to security, law enforcement, crime prevention, the holding of local referendums or for statistical purposes. In addition, under this regulation, once established, local Community Councils are also entitled to receive a copy of the electoral register.

It has been raised with the Scottish Government that where a new Community Council is proposed, Councils are not allowed to use the electoral register to identify which electors are resident in the proposed Community Council area, in order to establish a Community Council in the first place. This is because the setting up of community councils is not one of the permitted uses allowed by [regulation 106](#).

The Scottish Government is therefore considering amending regulation 106 in order to specifically permit the use of the electoral register for the purposes of establishing a Community Council.