

Standards, Procedures and Public Appointments Committee

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

Elections Bill (UK Parliament legislation – written submissions

The following written submissions, in relation to this meeting, have been received—

- Electoral Management Board for Scotland;
- Electoral Registration Committee, Scottish Assessors Association
- Royal National Institute for Blind People
- Prof Toby Jones, Professor of Politics and Public Policy, University of East Anglia
- Dr Alistair Clarke, University of Newcastle [The Elections Bill: putting Scottish voters' interests first? – SPICe Spotlight | Solas air SPICe \(spice-spotlight.scot\)](#)

<https://cspl.blog.gov.uk/2021/10/27/review-of-the-uk-governments-draft-electoral-commission-strategy-and-policy-statement/>

Clerks
Standards, Procedures and Public Appointments Committee
November 2021

Written Submission from Electoral Management Board for Scotland

Summary

1. 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.

2. 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.

3. 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.

4. 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

5. 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

6. 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

7. 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.

8. 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.

9. 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.

10. 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

11. 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.”

12. 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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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

19. 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.

20. 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.

21. 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.

22. 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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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

32. 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.

33. 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.

34. 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.

35. 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

36. 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

37. 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

Written submission from 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 31st 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 31st 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.

Written submission from the 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.

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

1. 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.¹ 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.

2. This submission recommends that the committee:

- a) 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.
- b) 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.
- c) Does *not* give legal consent to some aspects such as the proposal to give the government greater control over the Electoral Commission.
- d) 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

3. 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

¹ 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>.

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.

4. 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

5. 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 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.

6. 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.² 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.

7. 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

² 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

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)

8. 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 2019.³ 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.

9. 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)

10. 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.⁴

11. 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.

12. 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.

³ 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>

⁴ Toby S. James (2020) *Comparative Electoral Management* (London and New York: Routledge)

13. 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.⁵

14. 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

15. 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.⁶ 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

16. 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.

17. Research has consistently shown that personation is not a widespread problem at polling 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.⁷ 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 inadvertently registered on a register where they might not be eligible.⁸

⁵ VDEM (2021) *Autocratization Turns Viral: Democracy Report 2021*.

⁶ 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.

⁷ 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>

⁸ Alistair Clark and Toby S. James (2017) 'Poll Workers' in Pippa Norris and Alessandro Nai (eds), *Watchdog Elections: Transparency, Accountability, Compliance and Integrity*. Oxford and New York: Oxford University Press.

18. 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.

19. 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.

20. 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.⁹

Options for amending voter identification requirements

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

- a) 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

⁹ 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>

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.¹⁰ 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.

- b) 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.¹¹ 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.
- c) 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.

22. 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.

¹⁰ <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).

¹¹ <https://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx>

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

23. The Bill proposes abolishing the 15-year limitation on eligible British citizens living overseas to be registered to vote in UK parliamentary elections.

24. 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.¹² 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.

25. 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.

26. 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

27. 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.¹³ 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.

28. 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.¹⁴

29. 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

¹² Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016.

¹³ Toby S. James and Holly Ann Garnett (eds) (2020) *Building Inclusive Elections* (Routledge: London and New York).

¹⁴ 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>

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.

30. 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.

31. 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

32. 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

33. 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.¹⁵ This has led to some compromises in service. For example, voter outreach work has been reduced because of limited funds.¹⁶

34. 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.¹⁷ In addition, there has been concern

¹⁵ 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.

¹⁶ 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

¹⁷ Scottish Parliament Local Government and Communities Committee (2017) [Payments to Returning Officers in Scotland](#).

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.¹⁸ 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.

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

35. Complex electoral law makes elections difficult to administer and adds to the risk that errors might be made.¹⁹ There has been a growing concern about the need for legal consolidation.²⁰ 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

36. 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.²¹ 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.²² In Scotland, 630,000 and 890,000 people who were eligible to be on the local government registers were estimated to not be registered.²³

37. A recent report commissioned by the Joseph Rowntree Reform Trust set out measures that could introduce this long-term accuracy.²⁴ These include:

¹⁸ Scottish Parliament (2017) Payments to Returning Officers in Scotland, SP Paper 65

¹⁹ Toby S. James (2014) 'Electoral Management in Britain' in Pippa Norris, Richard Frank and Ferran Martinez I Coma (eds) *Advancing Electoral Integrity* (New York: Oxford University Press).

²⁰ House of Commons Public Administration and Constitutional Affairs Committee. *Electoral law: The Urgent Need for Review*.

²¹ Toby S. James (2020), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York)

²² <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>

²³ <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>

²⁴ https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf

- 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.

38. More recent research shows that automatic voter registration increases the completeness of electoral registers and does not compromise completeness.²⁵

39. 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

40. 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.

41. 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.²⁶ There has been disagreement between campaign groups such as the3million and electoral officials about how widespread these problems were, however.

42. 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

²⁵ Toby S. James and Holly Ann Garnett (2021) 'The Determinants of Electoral Register Quality', *Political Studies Association Annual Conference*, April 2021.

²⁶ Toby S. James (2019) ['#DeniedMyVote – why many EU citizens were unable to vote in the European Parliament elections'](#) *Democratic Audit*, 30th May 2019.

many other countries.²⁷ 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.

43. 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.

²⁷ Toby S. James (2020), [*Comparative Electoral Management: Performance, Networks and Instruments*](#) (Routledge: London and New York).