



Law Society  
of Scotland

# Consultation Response

Electoral reform consultation

15 March 2023



## Introduction

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The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Equalities Law, Family and Child Law, and the Mental Health and Disability Law sub-committees welcomes the opportunity to consider and respond to the Scottish Government consultation: Electoral Reform consultation<sup>1</sup>. The sub-committee has the following comments to put forward for consideration.

## Question responses:

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### Chapter 1 – Expansion of Candidacy Rights:

**Question 1: Do you think that 16- and 17-year-olds should be able to stand for election in:**

- **Both Scottish Parliament and Local Government elections**
- **Scottish Parliament elections only**
- **Local Government elections only**
- **Neither Scottish Parliament nor Local Government elections**

It is noted that 16- and 17-year olds can vote in Scottish Government and local government elections. Reducing the age limit for the right to stand as a candidate would bring it into line with the right to vote. Prior to the reduction in the voting age, both the right to vote and the right to stand for election was the same at 18. Whilst it could be argued that it would be fair and consistent to reduce the age limit in line with the voting age, we have reservations about the possibility of a negative impact on the welfare of 16 and 17-year-old candidates, and their ability to effectively represent their constituents especially if they have not completed their education. We suggest that these reservations and others should be considered by the Scottish Government in greater depth to decide whether on balance the right to stand as a candidate for election should be extended. In addition, we consider that this discloses a wider point around the treatment of 16- or 17-year olds, and the consistency of Scots law in the various measures affecting

<sup>1</sup> [Electoral reform consultation - gov.scot \(www.gov.scot\)](http://www.gov.scot/electoral-reform-consultation)

this group. In some areas, such as criminal law, there is a recognition that brain development may take place up to the age of 25; or the area of marriage, where in England and Wales the age has been increased to 18. In other areas, there is a recognition that 16- and 17-year olds ability to make decisions is conditional on their maturity, for instance, there is the power to reverse transactions where seriously prejudicial to a person under 18. There is also a lack of consistency between Scotland and other comparable international jurisdictions. Those aged 16 and 17 with relevant disabilities are adults for the purposes of the Adults with Incapacity (Scotland) Act 2000, but where relevant cross-border issues arise the Hague Convention 34 (the Children's Convention) applies to them, not Hague Convention 35 on the International Protection of Adults. We suggest that there may be a need to consolidate the law in this area, to ensure coherence. Rather than a piecemeal approach, this could be an area for consideration by the Scottish Law Commission.

**Question 2: Do you think that foreign nationals resident in Scotland with limited rights to remain in the UK should be able to stand for election in:**

- **Both Scottish Parliament and Local Government elections**
- **Scottish Parliament elections only**
- **Local Government elections only**
- **Neither Scottish Parliament nor Local Government elections**

We fully support the premise of the Scottish Parliament and Local Government being representative of all demographics within society. There is the potential for discrimination based on race by excluding those seeking asylum from standing for election. However, we have concerns in the overwhelming practical hurdles that this would create, such as:

- The most-common duration of limited leave to remain granted in the UK is 2.5 years, whereas Scottish Parliament and Local Government elections tend to be every 4/5 years. Accordingly, if an elected official was refused further leave to remain whilst holding office, could this lead to an increase in by-elections etc We are concerned that the expense, administration requirements and uncertainty created for constituents could be overwhelming.
- Applicants for further leave to remain are often waiting 6-12 months for a decision from the Home Office. Consideration would need to be given to their elected status whilst waiting a decision. Currently, if an application for leave to remain is lodged timeously, the rights of the foreign national continue as per s3C of the Immigration Act 1971. However, all rights and entitlements fall – even when an application is lodged with the Home Office – if it is lodged late. As such, the above proposal could create a situation whereby a Scottish Parliament or Local Government representative is compelled to stand down by virtue only of a late application. This seems disproportionate, unreasonable, and unfair.

Similar to our answer to question 1, we suggest that consideration be given to whether any potential discrimination can be objectively justified. We suggest that that these reservations noted above, and others should be considered by the Scottish Government in greater depth to decide whether on balance the right to stand as a candidate for election should be extended.

**Question 3: Do you have any additional comments on candidacy rights for 16- and 17-year-olds, or foreign nationals with limited rights to remain in the UK?**

No additional comments

**Disqualification for intimidatory or abusive behaviour**

**Question 4: Do you think that anyone found guilty of an offence involving the harassment or intimidation of politicians, candidates or campaigners should be subject to an additional sanction of losing the right to stand for election for 5 years?**

**Question 5: If not, would you suggest another electoral sanction or approach?**

We have no comments to make on questions 4 and 5

**Sending of free letters or leaflets by candidates and political parties at elections**

**Question 6: Do you think that the option of sending a freepost letter or leaflet should be extended to candidates at Scottish Local Government elections?**

**Question 7: Do you think that the right for candidates to send a free mailing should be limited to one free mailing to each household, rather than to each voter?**

We have no comments to make on questions 6 and 7.

**Question 8: Do you have any other comments on the issue of candidate mailings to voters?**

Consideration should be given to mechanisms to ensure that persons with relevant disabilities receive communications in the most appropriate format for them.

## Publication of home addresses

**Question 9: Should candidates who are acting as their own agents be able to use a correspondence address for communications?**

**How a candidate's location is shown on the ballot paper**

**Question 10: Currently ballot papers show either the candidate's home address or council area. Do you think that the ballot paper should also show the ward in which the candidate lives, if they request it?**

**Question 11: Do you have any further comments on the topic of candidate addresses?**

We have no comments to make on questions 8, 9 and 10.

## Chapter 2 – Voting Rights:

**Question 12: What do you think could be done nationally or locally to improve registration levels, especially among under-represented groups such as younger people and foreign nationals?**

Consideration should also be given to how to encourage and facilitate registration of disabled persons.

**Question 13: The Scottish Government intends to amend the rule requiring only a specific form of Tactile Voting Device to be provided in polling stations, to allow more flexibility and ensure the accessibility support offered can be adapted to take account of future innovations. It also intends to place a duty on the Electoral Commission to provide guidance that includes minimum standards. Which of the following options would you prefer:**

- **The current legal requirement for a specific Tactile Voting Device is replaced by a general requirement on Returning Officers to provide appropriate support.**
- **The current legal requirement for a specific Tactile Voting Device is replaced with a requirement to provide a non-specific form of tactile support.**
- **No change to current legislation**
- **Other**

We welcome reforms to improve accessibility in the context of voting. Such reforms must recognise the full range and diversity of physical, mental, intellectual or sensory impairments. Compliance with the UN Convention on the Rights of Persons with Disabilities requires that where support is needed to facilitate participation in the same way as people without disabilities, that support must be provided.

**Question 14: Should the limit to the number of times one companion can support voters in casting their votes:**

- **Remain at two people per election**
- **Rise to five people per election**
- **Be changed to another number**

We have no specific comments on the number of voters one companion can support. Whilst we recognise concerns regarding undue influence, the focus should be on ensuring that individual voters are not prevented from exercising their voting rights. Consideration could be given to a requirement upon intending supporters/companions for more than (say) two voters to complete a simple and straightforward form disclosing this, and explaining why it is considered appropriate that they should do so.

**Question 15: Should there be an option in the future to request a digital poll card instead of a paper poll card for Scottish elections?**

We are supportive of the Scottish Government considering development of digital voting cards. We would also suggest considering developing technology to enable voters to cast their vote digitally. It is noted that voters with accessibility needs face barriers in accessing voting stations, but also can lose privacy or their perception of privacy in casting their vote if they require physical assistance to cast their vote.

Development of digital voting cards must recognise the full range and diversity of physical, mental, intellectual or sensory impairments. Compliance with the UN Convention on the Rights of Persons with Disabilities requires that where support is needed to facilitate participation in the same way as people without disabilities, that support must be provided.

**Question 16: What more could be done to improve the voting experience for individuals with particular accessibility needs or requirements?**

As noted above, further consideration should be given to providing different methods of voting to those with accessibility needs.

**Clarification of undue influence of a voter**

**Question 17: Do you agree that the offence of "undue influence" should be made easier to understand and enforce?**

The inclusion of 'spiritual pressure' in the proposed definition is welcome as it recognises potential specific vulnerabilities in a spiritual context, but we would welcome recognition of the full range of vulnerabilities which could render an individual voter susceptible to pressure or intimidation.

## Emergency Proxies

**Question 18: Do you think that we should extend the right to emergency proxies to the companions of anyone who has to attend an unexpected medical appointment or treatment which would prevent them from voting at their normal voting place?**

## Acting as a Proxy

### The proposal

The Scottish Government is proposing that the position will remain that an individual can only act as a proxy for two voters who are not a close relative.

**Question 19: Do you have any comments on changes to proxy voting in Scottish Parliament or Local Government elections?**

There may be arguments in favour of ensuring consistency between provisions for proxies and those for companions (see our response to question 14, above).

### The proposal

The Scottish Government is therefore proposing that we will not place any restrictions on the number of ballot papers which an individual may hand in at a polling station at devolved elections or introduce restrictions on the handling of postal votes by political campaigners.

**Question 20: Do you have any comments on the handing in of postal ballots?**

## Voting rights

**Question 21: Should voting rights in Scottish Parliament and Local Government elections be extended to some or all persons detained on mental health grounds related to criminal justice?**

Persons detained on mental health grounds related to criminal justice should be entitled to vote on the same basis as persons detained on mental health grounds under civil orders. Whilst we recognise that this may lead to a difference in treatment between those detained in prison and those detained in hospital, a forensic order is not intended as a punishment but as a means of providing the effective medical treatment and support the individual requires. A prison sentence, and a restriction of liberty as a result of a forensic order, are not directly comparable.

**Question 22: Do you have any additional comments on voting rights for persons detained on mental health grounds related to criminal justice?**

We have no further comments to make.

**Question 23: Should voting rights in Scottish Parliament and Local Government elections be extended to all people seeking asylum in Scotland?**

Whilst we are supportive of this proposal in theory, there are overwhelming procedural and practical difficulties involved which means that implementation of such a policy may be unworkable. It is noted that asylum law is a matter reserved to the UK Parliament.

**Question 24: What issues do you think that the changes in the Elections Act 2022 to introduce voter ID and change postal vote renewals raise for elections held in Scotland?**

**Question 25: Should there be a presumption against a Scottish devolved election being held on the same day as a UK Parliament election (for example, a UK Parliament by-election on the same day as a national Scottish Parliament election)?**

We have no comments to make on questions 24 and 25



**For further information, please contact:**

Elaine MacGlone  
Education, Training and Qualifications  
Law Society of Scotland  
DD: 0131 226 8887  
[elainemacglone@lawscot.org.uk](mailto:elainemacglone@lawscot.org.uk)