



Stage 1 Briefing

Scottish Elections (Representation & Reform) Bill

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Introduction

The Law Society of Scotland is the professional body for over 13,000 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.

The Scottish Elections (Representation and Reform) Bill¹ (“the Bill”) was introduced by the then Deputy First Minister and Cabinet Secretary for Finance, Shona Robison MSP, on 23 January 2024. We submitted written evidence to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament (“the lead Committee”) in February 2024.² The Standards, Procedures and Public Appointments Committee’s stage 1 report on the Scottish Elections (Representation and Reform) Bill³ (“the Stage 1 Report”) was published on 18 June 2024.

We welcome the opportunity to consider and provide comment on the Bill ahead of the Stage 1 debate scheduled for 27 June 2024.

General Remarks

We note the lead Committee’s comments in the Stage 1 Report regarding the significant number of issues which the Scottish Government plans to take forward via secondary legislation.⁴

It is important that all potential electoral changes are subject to suitable consultation and appropriate scrutiny. We therefore welcome the lead committee’s request for the Scottish Government to provide full details of:

- previous, current or planned consultation with stakeholders in relation to each matter that it has indicated it intends to take forward by secondary legislation
- a list of stakeholders consulted on each matter

¹ <https://www.parliament.scot/bills-and-laws/bills/scottish-elections-representation-and-reform-bill>

² <https://www.lawscot.org.uk/media/oiabjj5s/scottish-elections-representation-and-reform-bill-002-002-002.pdf>

³ <https://bprcdn.parliament.scot/published/SPPAC/2024/6/18/cd992e36-6dce-411e-bb9c-21ebd4880798-1/SPPAS062024R03.pdf>

⁴ Stage 1 Report, para 26



- the timeline for analysis of any such consultation to be prepared and final policy decisions reached.⁵

We consider that this information is essential to support effective scrutiny.

We have the following comments on specific provisions of the Bill.

Part 1- Candidacy rights etc of foreign nationals

Scottish Parliament elections (Section 1)

We support the premise of the Scottish Parliament and Local Government being representative of all demographics within society.

However, we have concerns in the practical hurdles which enabling those with limited right to remain to become elected 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 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, administrative requirements and uncertainty created for constituents may undermine democratic engagement.
- 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 under section 3C 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.

There is also the issue which arises from the Scotland Act 1998 section 84 which provides “84 Oaths. (1) A person who is returned as a member of the Parliament shall take the oath of allegiance...”. This is re-enforced by the Standing Orders of the Parliament which state in Rule 2. “Every person who is returned as a member shall take the oath of allegiance or shall make a solemn affirmation at a meeting of the Parliament before the Clerk. A member shall not take part in any other proceedings of the Parliament until that member has done so.”. This could have an impact on citizens of more than 50 counties who do not accept dual citizenship.

For those who have no dual citizenship or allegiance issue we would draw attention to the fact that under immigration law standing for an elected post in devolved government is not considered to be “employment” and conditions restricting employment do not affect the ability to undertake such activities.

⁵ Stage 1 Report, para 28



Local government elections (Section 2)

See our comments, above, regarding section 1.

Part 2- Disqualifications

We have no comments on this Part of the Bill.

Part 3- Campaign Finance

We have no comments on this Part of the Bill.

Part 4- Rescheduling of elections etc.

Scottish Parliament Elections

Power of Presiding Officer to postpone ordinary election (Section 20)

The Bill makes changes to the time frame within which the Presiding Officer may postpone elections. Currently the Presiding Officer can propose an alternative date for an election a month either side of when it would otherwise be due to occur.

Section 20 changes that by amending Section 2 of the Scotland Act 1998 so that the Presiding Officer may propose a date that is up to 4 weeks earlier, or 8 weeks later from when an ordinary general election would otherwise be scheduled. There is no requirement for the Presiding Officer to provide a reason for proposing a change of date. We take the view that the Presiding Officer should exercise this power only when it is necessary to do so and provide the reason for exercising this power. We therefore welcome the lead Committee's view that the Bill could be strengthened by the addition of a requirement for a statement of reasons to be published where a decision is taken on rescheduling.⁶

Power of Presiding Officer to schedule extraordinary general elections (Section 21)

We have no comments to make.

Election of new Presiding Officer: extension of period (Section 22)

This provision follows the pattern for election of a new Presiding Officer in Section 10 of the Scottish General Election (Coronavirus) Act 2021. We agree with this provision

⁶ Stage 1 Report, para 14



Sections 23-27

We have no comments to make on these sections.

Part 5- Election pilots and democratic engagement

Pilot schemes under the Scottish Local Government (Elections) Act 2002 (Section 28)

We have no comment to make on section 28.

Funding to increase democratic engagement (Section 29)

We agree with the objectives of Section 29. Increasing democratic engagement is a key aspect of ensuring that electors and the population at large play their part in the proper functioning of our democracy.

Part 6- Information to be included within certain electronic materials at Scottish elections

We have no comments on this Part of the Bill.

Part 7- Boundaries

We have no comments on this Part of the Bill.

Part 8- Electoral Commission

We have no comments on this Part of the Bill.

Part 9- Electoral management board for Scotland

We note the lead Committee's comments in the Stage 1 Report highlighting the absence of important detail regarding the constitution, accountability and remuneration of the Electoral Management Board for Scotland (EMB) in the Bill as introduced. We would welcome further clarity on the objectives of the EMB and how it will be funded.

Part 10- General provisions

We have no comments on this Part of the Bill.



For further information, please contact:

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