

Written evidence from the Electoral Management Board for Scotland (TEB 15)

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

SUMMARY

1. The UK Government has introduced [an Elections Bill](#), which covers a wide range of areas in relation to the administration and conduct of elections, including: provisions on voter ID; the Electoral Commission ; membership of the Speaker’s Committee on the Electoral Commission ; undue influence and electoral intimidation; the regulation of expenditure for political purposes; information to be included in digital election material; overseas voting ; voting and candidacy rights of EU citizens; and changes to postal and proxy voting.
2. To support its consideration of the Bill, the Public Administration and Constitutional Affairs Committee of the House of Commons has invited evidence that is directly related to the provisions of the Bill or tangential matters on which the Bill is silent.
3. This paper advises the Committee of the views of the Electoral Management Board for Scotland (EMB) regarding these provisions. 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 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 assist the Committee in its review of the Bill.
4. 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.
5. 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 the Committee, UK Ministers and those who are supporting them.

BACKGROUND

The Electoral Management Board for Scotland

6. 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

7. 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.

The UK Elections Bill 2021

8. An [Elections Bill](#) was introduced to the House of Commons on 5 July 2021. While the 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 to the Committee which reflect the Board's own consideration of the topics and its engagement with ROs and EROs across Scotland. The EMB has already made comment on the Bill to the Scottish Government as they consider which provisions may be adopted, through the Legislative Consent process.
10. Comments offered by the EMB address practical issues around 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 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 are making their own response to the Committee's call for evidence. 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 are responding 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 are responding 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 remains of high importance that independence of political control is preserved and also that the Electoral Commission’s current role in supporting and regulating elections across the all of 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 Public Administration and Constitutional Affairs Committee's call for evidence to support its consideration of the [Elections Bill](#) introduced to Parliament in summer 2021.
33. The EMB's position is that some of the Bill's wide range of measures are supported, there being sound rationale and good evidence for them; others are neither evidenced or supported. Several proposals are welcome and address important issues such as the accessibility of the voting process. Others, such as the introduction of 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 problems 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. The Committee will wish to reflect on the reality of devolution and note that the regulations for some elections are in the remit of the Scottish Parliament. In general 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. However, in considering whether to adopt the measures in the Bill Scottish Ministers will need to consider whether the consequences of any inconsistency of approach are outweighed by the disadvantages and challenges that introduction of some of these proposals would bring.

35. It is understood that a separate response to the Committee's call for evidence is being provided by the Electoral Registration Committee of the SAA giving a detailed set of comments from the EROs on those matters directly affecting electoral registration. 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" - "that electoral legislation cannot be applied to any election held within six months of the new provision coming into force." This was a key finding of Ron Gould who was appointed to conduct an independent review into electoral events in Scotland following the combined local authority and Scottish Parliament elections on 3 May 2007 and published [his report in October 2007](#). 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. This principle has been widely accepted and applied since 2007 and mimics a practice a practice found in the electoral laws in several other countries.

Offer of further consultation and advice

37. The Board trusts that these comments are of assistance and is always be happy to meet members of the Committee or Ministers to discuss any of these comments more fully and to engage in broader conversations around the practical delivery of all electoral activity, especially within the context of Scotland.

August 2021