SCOTTISH ELECTIONS (DATES) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Scottish Elections (Dates) Bill introduced in the Scottish Parliament on 17 November 2015. It has been prepared by the Scottish Government to satisfy Rule 9.3.3 of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 84–EN.

POLICY OBJECTIVES OF THE BILL

General overview

2. The Scottish Elections (Dates) Bill (“the Bill”) provides for a change to the date of the Scottish Parliament general election on 7 May 2020 to 6 May 2021, so that it does not clash with the UK Parliament general election scheduled for the same date. It also provides for a change to the date of the Scottish local government elections due on 6 May 2021 to 5 May 2022, which would otherwise clash with the new date of the Scottish Parliament election as a result of the change to the date of that election.

BACKGROUND

3. Currently, the term for the session of the Scottish Parliament following the general election in 2016 will be four years, resulting in a clash between the date of the next Scottish Parliament general election and the next UK Parliament general election on 7 May 2020. The Scottish and UK Governments, therefore, agreed that, firstly, action should be taken to avoid the clash of date and that, secondly, electors should be aware of the terms of the Scottish Parliament to which they are electing members before they go to the polls in May 2016. The First Minister consequently announced to the Parliament in her statement on the Scottish Government’s Programme for Government 2015-16 that a Bill would be introduced proposing a five-year term for the next session of the Scottish Parliament.

4. The general responsibility for changing the date of a Scottish Parliament general election sits with the UK Parliament. However, the Smith Commission report recommended that “the Scottish Parliament will have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland...”[1]. The Scotland Bill, currently under consideration by

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1 Page 13, paragraph 23: 
the UK Parliament, provides for this recommendation to be enacted, however that Bill will not be enacted in sufficient time for the Scottish Parliament to resolve the 2020 clash of dates before voters go to the polls in May 2016. At the request of the Presiding Officer, and with the support of all party leaders in Scotland, the Scottish and UK Governments, therefore, agreed that the power to address this issue should be transferred to the Scottish Parliament ahead of the completion of the Scotland Bill’s passage through the UK Parliament.

5. An Order in Council under section 30(2) and (4) of the Scotland Act 1998, the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015, was laid before both the Scottish and UK Parliaments on 29 June 2015, made by Her Majesty in Privy Council on 8 October 2015 and came into force the following day. The Order extends devolved competence so that the Scottish Parliament can move the date of what would otherwise be the May 2020 Scottish Parliament general election. Full powers over future elections, including future term lengths, will, subject to its enactment, then be transferred to the Scottish Parliament through the Scotland Bill.

6. Changing the date of the Scottish Parliament general election to May 2021 would result in a clash with the scheduled local government elections in Scotland, which is not permitted by the Scotland Act 1998, as amended by the Order in Council. Since the 2007 elections, it has been policy to avoid both ordinary elections coinciding, taking on board one of the recommendations of the Electoral Commission\(^2\). The Bill, therefore, also provides for deferring the local government elections to 5 May 2022. This change will mean a five-year term for local government in Scotland between the scheduled election in 2017 and the proposed date of 2022. The Bill provides that elections for Scottish local government will then revert to every four years after the 2022 election.

7. Both the Northern Ireland Assembly and the National Assembly for Wales have moved to five-year terms and will, therefore, avoid a clash with the 2020 UK Parliament election. The most recent general elections for both Assemblies were in May 2011. The next scheduled elections for both Assemblies will be in May 2016 and the elections after those will be in May 2021. Section 1 of the Wales Act 2014 changed the frequency for National Assembly for Wales elections from four to five years. Section 7 of the Northern Ireland (Miscellaneous Provisions) Act 2014 changed the frequency for Northern Ireland Assembly elections from four to five years.

**PROVISIONS OF THE BILL**

8. The Bill provides for a change to the date of the Scottish Parliament general election on 7 May 2020 so that it does not clash with the UK Parliament general election scheduled for the same day. As a result, the new date of the Scottish Parliament general election would clash with the scheduled Scottish local government elections, so the Bill also provides for a change to the date of those elections.

9. Specifically, the Bill provides for:
   - The deferral of the Scottish Parliament general election due on 7 May 2020 to 6 May 2021;
   - The deferral of the Scottish local government elections due on 6 May 2021 to 5 May 2022 and elections for Scottish local government to revert to being held every four years after the 2022 elections.

ALTERNATIVE APPROACHES

Do nothing

10. Allowing the Scottish Parliament and UK Parliament elections both to take place on 7 May 2020 is not considered appropriate. The Fixed-term Parliaments Act 2011 moved the May 2015 Scottish Parliament poll to 2016 to prevent the two polls coinciding, and the Smith Commission recommended that the Scottish Parliament should not be able to hold its general elections on the same day as UK Parliament general elections, European Parliament elections, or ordinary local government elections in Scotland. In relation to local government elections, this follows the experience of the 2007 Scottish Parliament and local government ordinary elections taking place on the same date, when there was an unusually high number of rejected ballot papers. The Electoral Commission recommended separating the Scottish Parliament and local government ordinary elections, a recommendation that received unanimous political, and widespread public, support.

Scotland Bill

11. The Scotland Bill currently under consideration by the UK Parliament will, if enacted, give effect to the Smith Commission’s recommendation that the Scottish Parliament will have all powers in relation to elections to the Scottish Parliament and local government elections in Scotland. It would, therefore, have been possible to leave the issue of the 2020 clash of dates to be resolved by the Scottish Parliament once the Scotland Bill has been enacted. However, the Scotland Bill will not be enacted in sufficient time for the Scottish Parliament to resolve the 2020 clash of dates before voters go to the polls in May 2016. At the request of the Presiding Officer, and with the support of all party leaders in Scotland, the Scottish and UK Governments, therefore, agreed that the power to address this issue should be transferred to the Scottish Parliament ahead of the completion of the Scotland Bill’s passage through the UK Parliament.

Three-year parliamentary term

12. It would have been possible to bring forward the Scottish Parliament election to 2019 instead of deferring it in order to avoid the 2020 clash, resulting in a three-year parliamentary session from the 2016 election. However, the proposed five-year term will mirror the current session of the Scottish Parliament, which was extended to five years by the Fixed-term Parliaments Act 2011. A five-year parliamentary session will also mirror the extended terms of the Northern Ireland Assembly, the National Assembly for Wales and the UK Parliament.
Leave the UK Parliament to legislate

13. The responsibility for changing the date of a Scottish Parliament general election currently sits with the UK Parliament, therefore it would be possible for it to legislate to resolve the clash of date. However, given the intended transfer of responsibility for this power to the Scottish Parliament through the Scotland Bill, it would be against the spirit of both the Smith Commission recommendations and the Scotland Bill under consideration for the issue of the 2020 election date clash to be resolved by the UK Parliament and not the Scottish Parliament. Furthermore, the Presiding Officer, with the support of all party leaders in Scotland, requested that the power to address this issue be transferred to the Scottish Parliament.

CONSULTATION

14. The Scottish Government consulted the following organisations, all of whom have an interest in the proposed date changes: Convention of Scottish Local Authorities (COSLA), Electoral Commission, Electoral Management Board, Electoral Reform Society, Scottish Council for Voluntary Organisations (SCVO), and Society of Local Authority Chief Executives (SOLACE). All were supportive of the proposed changes that now make up the provisions of the Bill, recognising that they present a pragmatic and straightforward solution to the problem of a clash of dates.

15. The Bill is being brought forward to avert the clash of dates but giving the Scottish Parliament the power to make the change accords with the recommendations made by the Smith Commission. The Smith Commission, which was made up of representatives from all of the parties represented in the Scottish Parliament, invited submissions from a wide range of business and civic organisations and the wider public, and attended a number of public events, to help guide its considerations of what further powers should be devolved to the Scottish Parliament. The Commission published its report, detailing Heads of Agreement on further devolution of powers to the Scottish Parliament, on 27 November 2014. The report includes a description of the consultation process undertaken by the Commission at paragraphs 8 to 123.

16. If the Scotland Bill is enacted, the Scottish Government will consult with relevant stakeholders on whether or not there should be any permanent change to the timing of both the Scottish Parliament and local government elections in order to prevent future clashes of polls.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

17. The Bill will have no effect on equal opportunities.

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Human rights

18. Article 3 of the First Protocol to the European Convention on Human Rights (ECHR) requires free elections to be held at reasonable intervals in the choice of the legislature. That is relevant to Scottish Parliament general elections, though not to local government elections.

19. Nothing in the Bill affects how elections are conducted, so the only consideration can be whether a five-year gap between elections is a reasonable interval. Given the established precedent of five-year parliamentary sessions in the UK, the Scottish Government does not see any basis to doubt that it is reasonable and is therefore satisfied that the provisions of the Bill are compatible with the ECHR.

Island communities

20. The Bill has no disproportionate effect on island communities.

Local government

21. The Bill defers the Scottish local government elections due on 6 May 2021 to 5 May 2022 and means that, following the May 2017 elections, the term for local government in Scotland will be five years, rather than the usual four years. The Bill also provides that the elections for Scottish local government will revert to being held every four years after the 2022 elections.

Sustainable development

22. The Bill has no disproportionate effect on sustainable development.
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