

SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Scottish Independence Referendum (Franchise) Bill introduced in the Scottish Parliament on 11 March 2013. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) 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 24–EN.

POLICY OBJECTIVES OF THE BILL

General overview

2. The Bill defines eligibility to vote in a referendum on Scottish independence held in pursuance of an Act of the Scottish Parliament, and puts in place the arrangements necessary to enable those who will be at least 16 years old at the date of the referendum, but whose details will not appear on the local government electoral register at that date, to register to vote in such a referendum.

BACKGROUND

3. The Scotland Act 1998 (Modification of Schedule 5) Order 2013 confirms the Scottish Parliament's power to legislate for a single-question referendum on independence, held by 31 December 2014. In March 2013 the Scottish Government intends to introduce to the Parliament a Bill to provide for such a referendum.

4. The Edinburgh Agreement (between the Scottish and UK Governments) confirmed that it is for the Scottish Government to propose - and the Scottish Parliament to determine - what the franchise for a referendum on Scottish independence should be. The Scottish Government proposes that the franchise for the referendum be based on that for Scottish Parliament and local government elections, as the franchise for these elections most closely reflects residency in Scotland. This approach follows the precedent of the 1997 referendum on the establishment and tax-varying powers of a Scottish Parliament held under the Referendums (Scotland and Wales) Act 1997. In addition, the Scottish Government proposes that the voting age for the referendum should be 16, rather than 18 as it is for Scottish Parliament and local government elections. This

is in line with Scottish Government policy that the voting age should be reduced from 18 to 16 for all elections and referendums.

5. In January 2012, the Scottish Government published the consultation paper *Your Scotland, Your Referendum*, which set out proposals for lowering the voting age to 16 for the referendum, and a clear majority of respondents to the consultation who commented on the issue were broadly in favour of this policy.¹

6. However, the proposals set out in *Your Scotland Your Referendum* would not have enabled all 16 year olds to vote. The proposals sought to work within the existing UK-wide electoral registration system, under which a person under the age of 18 can only register to vote if they will become 18 during the twelve months beginning on 1 December after their registration. This means that many young people would not have been entitled to register, even though they would have been old enough to vote (i.e. at least 16) by the date of the referendum.

7. The Bill, therefore, puts in place arrangements to ensure that all 16 and 17 year olds (who are not ineligible on other grounds) can register to vote in the referendum, and ensures that the process for registering them is as straightforward and accessible as possible. This will involve registering young people in conjunction with the last annual canvass before the referendum, which is currently scheduled to run from autumn/winter 2013 to spring 2014.

8. To ensure that Electoral Registration Officers (EROs) have the necessary powers to thoroughly prepare for and conduct the registration of eligible young people as part of the autumn/winter 2013 – spring 2014 canvass, legislation to give them these powers needs to be in place by summer 2013. The Scottish Independence Referendum (Franchise) Bill (“the Franchise Bill”) has therefore been introduced in advance of the main Scottish Independence Referendum Bill (“the Referendum Bill”), to ensure that, if supported by the Parliament, these necessary powers are in place in good time.

PROVISIONS OF THE BILL

9. Both the Franchise Bill and the Referendum Bill contain material relevant to the participation of 16 and 17 year olds in the referendum. The Franchise Bill sets out who is entitled to vote at the referendum, including the requirement that voters be 16 or over; provides for collection of data on eligible young people whose details would not otherwise be collected as part of the next annual household canvass; provides for the compilation of a register from that data to be held separately from the other electoral registers and for the maintenance of that register; and sets out who will have access to it and data held on it. The Referendum Bill will include provision on how that register will be used for the purposes of running the referendum. It will provide for data from the register of young voters to be merged with data from the register of local government voters to create a single polling list for use at the referendum, and will set out who will be able to access that list. These areas will be covered in the Referendum Bill rather than in the Franchise Bill because they are interconnected with other issues dealt with in the Referendum Bill. The arrangements put in place across the two Bills are intended to balance

¹ See *Your Scotland, Your Referendum: An Analysis of Consultation Responses*, pp. 41-44. <http://www.scotland.gov.uk/Publications/2012/10/3849>

putting young voters on an equal footing with other voters with a desire to ensure that their data is treated sensitively and responsibly.

10. Specifically, the Franchise Bill provides for:

- Electoral Registration Officers (EROs) to be given a duty to collect the information necessary to register eligible under-16s who will be at least 16 by the date of the referendum. EROs will be asked to collect this information at the same time as they conduct the next annual household canvass.
- Each ERO to be required to collate this additional information into a Register of Young Voters (RYV) for his or her area, which will contain the details of young people who will be at least 16 at the time of the referendum but will not appear on the local government register
- EROs to be given a duty to maintain the RYV under rolling registration (that is, to allow eligible young people to register to vote in the referendum after the conclusion of the canvass exercise and to take account of changes of address).
- EROs to be prohibited from publishing the RYV, and permitted to provide the material it contains only to a limited group of people as set out the Franchise Bill and other legislation relating to the referendum.

11. The Bill's general approach is to replicate current registration practice for the purposes of the Register of Young Voters as far as possible (in other words, as far as it can do so while balancing the need to treat data on young people sensitively). It does this by applying existing electoral legislation with modifications, and much of this material is contained in schedule 1 of the Bill.

Franchise at the referendum

12. The Bill provides that eligibility to vote in the referendum will be based on that for Scottish Parliament and local government elections. This means that the following groups of people will be entitled to register to vote:

- British citizens resident in Scotland.
- Qualifying Commonwealth citizens resident in Scotland. This means Commonwealth citizens who either have leave to remain in the UK or do not require such leave, and are resident in Scotland.
- Citizens of the Republic of Ireland and other EU countries resident in Scotland.
- Members of the House of Lords resident in Scotland.
- Service/Crown personnel serving in the UK or overseas in the Armed Forces or with Her Majesty's Government who are registered to vote in Scotland.

13. Convicted prisoners detained in a penal institution will not be eligible to vote in the referendum. Prisoners held on remand who have not been convicted will be able to vote, although they will need to do so using a postal or proxy vote. While the franchise at the referendum is a matter for the Scottish Parliament to determine, the franchise at elections in

Scotland (as throughout the UK) is a matter for the UK Parliament. The UK Government announced in November 2012 that it would ask a committee of parliamentarians to consider a range of options set out by the Government in response to successive rulings by the European Court of Human Rights that the UK's current blanket ban on prisoners voting in elections to state legislatures breaches the European Convention on Human Rights. The committee will report later in 2013. The ECHR ruling (and human rights case law) does not relate to referendums, and convicted prisoners will not be able to vote in the referendum irrespective of whether UK electoral law is amended to extend the vote to prisoners for parliamentary elections before the referendum in 2014.

Proposals for the Register of Young Voters

14. The Bill will give EROs a duty to collect the details of young people who are under 16 at the time of the 2013-14 canvass, but will be at least 16 by the date of the referendum on independence. This is in addition to the data EROs already collect on 16 and 17 olds each year as part of the canvass. The details they will need to collect are the same as those they currently collect on 16 and 17 years olds: their name, address, date of birth and nationality.

15. In order to collect these details, a separate, additional form (the "Young Voter Registration form", which is at schedule 2 of the Bill) designed specifically for the registration of eligible under-16s will be distributed to households at the same time as the annual canvass form. Co-ordinating with the existing process in this way, rather than running a separate registration exercise, is intended to keep administration to a minimum and help ensure that the registration of young voters is as streamlined as possible. Each ERO will be responsible for compiling the data from these forms into a "Register of Young Voters" for his or her area. This Register will be separate from the local government register of electors, so that more stringent protections can be placed on the use of the information the Register of Young Voters contains.

16. This means that all voters for the referendum will be recorded in one of two registers: the local government register (if they would be at least 18 by 30 November 2015, and therefore included on that register as attainers), or the RYV.

17. Only EROs and their staff will have access to the RYV. There will be no edited version of the Register of Young Voters for wider distribution. Neither the RYV nor the completed young voter registration forms will be made available for inspection by members of the public. These restrictions are intended to keep the details of those on the Register as secure as possible. The local government register, which will hold the detail of the majority of voters (i.e. all voters except those on the RYV), will be unaffected and will continue to be available to a wider range of groups.

18. There are several groups who will need to access the names and addresses of all voters, including those on the RYV. These are:

- Returning officers (known as "counting officers" for the purposes of the referendum), who need the information in order to administer polling.
- The organisations that print and distribute poll cards to voters on behalf of counting officers.

- The organisations that prepare and distribute postal voting packs to postal voters on behalf of counting officers.
- The official campaign organisations for the referendum (referred to as the “designated organisations” in the Referendum Bill). The campaign organisations need all voters’ details so that they can each send every voter or household a postal communication in advance of the referendum. These communications will be used to set out the campaign groups’ positions on the referendum, so it is important that we ensure young people receive them so they are provided with the same information available to older voters before casting their vote.
- The Electoral Commission, in their capacity as the independent regulator and monitor of the referendum campaign.

19. In order to provide these groups with the information they need without compromising the security of the details of those on the RYV, before the details of young voters are provided they will be merged with the details of those drawn from the register of local government electors. Thus the groups listed at paragraph 18 will receive a single, merged polling list of all voters, which does not distinguish the details of young voters from the details of other voters. The arrangements for merging the registers and making them available to the groups above will be set out in the Referendum Bill.

Rolling registration

20. The majority of people register during the annual canvass. However, it is possible to apply to the register at any time of year by completing a registration form (available online or from EROs) and returning it to the local electoral registration office. An individual might register on this “rolling” basis when they move into a new area or change their address within an area. Between canvasses, the electoral registers are updated monthly to include the new or updated registration details EROs have received. This latest version of the local government register is the one that will be used in compiling the list of voters to be provided to counting officers for polling purposes.

21. The registration of young people who will be eligible to vote by the date of the referendum will mirror these arrangements. It is anticipated that the majority of young people would register to vote in the referendum through completion of the Young Voter Registration form distributed alongside the annual household canvass form, but they will also be able to register on a “rolling” basis until 11 working days before the referendum. The 11 day cut-off period is standard electoral administration practice and allows the EROs time to carry out any necessary checks and to compile lists of voters for use at polling stations. For the referendum, the applicant’s age will determine whether they are placed on the local government register or on the RYV:

- Applicants who will be at least 18 on 30 November 2015 will be added to the local government register of electors, under current arrangements.
- Applicants who will be 16 on the date of the referendum but will not have turned 18 by 30 November 2015 will be registered in the RYV, under the arrangements in the Franchise Bill.

22. The UK Government is introducing a new approach to registration, called Individual Electoral Registration (IER), from a date or dates to be determined in 2014. Under IER each individual, rather than the householder, will be responsible for registering themselves. They will then go through a verification process before they are added to the register. Once the transition to IER has begun in summer or autumn 2014, rolling applications to the local government electoral register will need to be made under the new system. However, these new arrangements will only apply to registration in the current electoral registers and will not be applied to the RYV. The Scottish Government is discussing with the UK Government how best to frame transitional arrangements for Scotland.

Registration of vulnerable young people

23. As described in paragraphs 17-19, the availability of the data contained in the Register of Young Voters will be restricted to ensure that young voters' details are protected. However, there are still circumstances in which, to ensure utmost security, a young person should be able to register without disclosing their address.

24. Young people in these circumstances will, therefore, be able to make a "declaration of local connection" (which is made using a form available from EROs) to register as if they are resident at an address at which they have previously been resident, although it is not their current address. For example, a young person living with a foster family at an address they do not wish to disclose could register the declaration using their birth parents' address. They could then be issued with a postal vote, which could be routed to them at their current residence or through an addressee of their choice (for example, the local authority responsible for their care). EROs will be expected to engage actively with local authorities and other bodies with responsibilities of care to promote awareness of these arrangements.

25. Declarations of local connection can also be used to enable young people without fixed addresses, for example travellers, to register. This is the arrangement already used for the registration of those 16 and over without fixed addresses.

26. Some young people will be able to apply to register to vote anonymously, as some local government electors are entitled to do. They would, however, need to satisfy the same requirements as applicants for anonymous voting currently do, which require evidence that there is a good reason for allowing anonymity.

Postal and proxy voting

27. Other registration and voting arrangements will be the same for 16 and 17 year old voters as they currently are for voters aged 18 and over. Those who will be at least 16 years old by the date of the referendum will be able to apply to vote by post. They will also be able to be designated as, and act as, proxy voters for other voters, and will be able to designate other voters to act as a proxy for them. These arrangements will only apply for the purposes of the referendum – young people will not be able to act as proxy voters at elections until they are of voting age for those elections (i.e. 18).

Electoral offences

28. The standard electoral registration offences set out in the Representation of the People Act 1983 will apply to the registration of those on the RYV. These include:

- providing false registration details;
- registering when not entitled to do so;
- making a false or fraudulent postal or proxy voting application.

29. It is already possible for a young person under 16 to commit, and be prosecuted for, any of these offences in relation to the parliamentary or local government electoral registers. Extending the franchise for the referendum, therefore, does not create new registration offences which a young person could not already commit.

30. Further voting offences relating to the conduct of the referendum will be covered in the Referendum Bill, but will not apply differently to voters of different ages.

ALTERNATIVE APPROACHES

31. It would be possible to compile a register of most voters under 18 years old who will be eligible to vote in the referendum by using the details of electors already collected through the annual household canvass. The annual canvass form collects the details of 16 and 17 year olds. The last household canvass before the anticipated referendum on independence is planned to commence in autumn/winter 2013/14. This means that the details of young people who were not at least 16 when the canvass was carried out, but who would be 16 by the date of the referendum, would not be captured by the canvass exercise.

32. The details of the majority of under-16s who will be eligible to vote in the referendum are held in local authorities' education records. As an alternative to sending a Young Voter Registration form to every household in Scotland, EROs could have used the education records (to which they are being given access in the Bill, under schedule 1's application of regulation 35 of the Representation of the People (Scotland) Regulations 2001) to identify which households were home to individuals in the target age group. The Young Voter Registration form could then have been sent to only these households. However, this approach could potentially have risked missing some households where an eligible young person was resident. It would also not have captured those eligible young people who do not appear on the local authority education records, for example those who have consistently been home-schooled. In order to ensure maximum coverage, and provide every opportunity for eligible people to register wherever they are resident, a Young Voter Registration form will need to be sent to every household (as the main canvass form is currently) to ensure that it reaches all electors.

33. Primary legislation is necessary to ensure that all 16 and 17 year olds are able to vote in the referendum. The annual canvass is the most convenient means for people to apply to the

register, and over 90% of households apply in this way², so registering young electors in conjunction with the annual canvass is felt to be the most straightforward approach.

CONSULTATION

34. The Scottish Government's consultation paper *Your Scotland, Your Referendum*, published in January 2012, consulted on the principle of extending the franchise to 16 and 17 year olds for the referendum. 24,777 respondents to the consultation commented specifically on this issue, and the majority of these respondents were broadly in favour of the policy. The independent analysis of consultation responses can be found at <http://www.scotland.gov.uk/Publications/2012/10/3849>.

35. In December 2012 the Scottish Government carried out a targeted engagement exercise with key stakeholders on the technicalities of extending the franchise to 16 and 17 year olds. Electoral administrators, the Electoral Commission and child protection groups were invited to comment on the Government's proposed approach to implementing the extension of the franchise, and on an initial draft Bill.

36. The responses received from these stakeholders were largely positive. In particular, most respondents welcomed the Government's proposals to ensure that data on young people is treated sensitively and responsibly while placing young voters on an equal footing to other voters and working within the existing electoral registration process as far as possible. EROs suggested a number of ways in which the legislation could facilitate the carrying out of their duties under the Bill. The majority of these suggestions either did not require legislation (for example, because they could be addressed administratively) or were reflected as the Bill was developed further. The Electoral Commission suggested several technical amendments to the draft Bill, which were taken into consideration in finalising the Bill. Another stakeholder noted that young voters would need to be able to verify whether they had successfully been registered on the RYV, and provision for this was incorporated into the Bill.

² Based on the Electoral Commission's figure of 92.1% for the canvass response rate for Scotland in 2008. See *The completeness and accuracy of electoral registers in Great Britain*, March 2010: http://www.electoralcommission.org.uk/__data/assets/pdf_file/0018/87111/The-completeness-and-accuracy-of-electoral-registers-in-Great-Britain.pdf

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

Equal opportunities

37. The Bill extends the franchise to 16 and 17 year olds for the first time in a national poll, reflecting the Scottish Government's policy that young adults should be able to participate in the democratic process. The Bill's provisions are intended to ensure equality of opportunity for these young people in having their say in the referendum. Schedule 1 of the Bill extends standard electoral registration practice to the RYV, keeping registration arrangements for young people consistent with those for voters on the local government register as far as possible while making modifications to reflect the need to treat data on young people sensitively.

38. The arrangements that section 7 of the Bill puts in place to enable vulnerable young people to register (see paragraphs 23 to 26) are intended to ensure that registration is accessible to all young people, regardless of their living circumstances, and taking into account requirements for additional security of their addresses.

39. The Bill's provisions do not impact on voters by virtue of their gender, race, disability, marital status, religion or sexual orientation.

Human rights

40. The Scottish Government is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights (ECHR). The publicly available register of local government electors is used, in line with election law and subject to the necessary safeguards to prevent impersonation and ensure a fair referendum. The Bill also applies existing criminal offences for the purposes of the RYV, where necessary, none of which are incompatible with Convention rights.

41. The Bill prohibits convicted prisoners who are detained in pursuance of their sentence from voting in the referendum. As discussed in paragraph 13, the Scottish Government is satisfied that this approach is compatible with the ECHR. Article 3 of Protocol 1 to that Convention, the right to free elections, does not create rights that would apply to an independence referendum.

42. Sharing electoral registers can engage Article 8 of the ECHR (the right to respect for private and family life). However, the Bill places greater restrictions on the availability and use of the RYV than is placed on other electoral registers. (For example, section 9 provides that only EROs and their staff will have access to the RYV, and it will not be published). Such data disclosure as is enabled by the Bill pursues legitimate aims under Article 8(2), principally to protect the rights of others by ensuring fairness at a referendum that uses the data. By allowing only certain persons access to the register, under safeguards, the provisions strike the right balance between the private life of the young individuals on the register and the public interest in running the poll.

Island communities

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

Local government

44. The Bill requires EROs to carry out functions necessary to register under-16s who will be at least 16 years old by the date of the referendum, in addition to the registration activities they already undertake for other electors.

45. EROs' costs are normally met through local authority budgets. The Scottish Government will reimburse EROs for the extra costs associated with extending the franchise to 16- and 17-year olds by virtue of the provisions in the Bill. The accompanying Financial Memorandum sets out these costs and the arrangements for reimbursing EROs.

Sustainable development

46. The Bill will have no impact on sustainable development.

This document relates to the Scottish Independence Referendum (Franchise) Bill (SP Bill 24) as introduced in the Scottish Parliament on 11 March 2013

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