Scottish Parliament – Devolution (Further Powers) Committee

Electoral Commission – additional written evidence

28 April 2015

The role of the Electoral Commission

The Electoral Commission is an independent body set up by the UK Parliament. Our aim is integrity and public confidence in the democratic process. Our objectives are:

- Transparency in party and election finance, with high levels of compliance.
- Well-run elections, referendums and electoral registration.

Our principles for free elections that support a healthy democracy are:

- **Trust**: people should be able to trust the way our elections work.
- **Participation**: it should be straightforward for people to participate in our elections, whether campaigning or voting; and people should be confident that their voice counts.
- **No undue influence**: there should be no undue influence in the way our elections work.

This written evidence is in addition to written evidence submitted to the Devolution (Further Powers) Committee on 20 April 2015 and addresses further points raised during the oral evidence given by the Electoral Commission to the Committee on 23 April.

Publication of the Register

We do not take a view on the principle of extending the franchise to 16 and 17 year olds for Scottish Parliament and local government elections – it is for the Scottish Parliament to determine who should be entitled to vote in these elections. It is,
however, it is important that all enfranchised electors should be treated equally and any departure from this principle would require strong justification.

The Bill provides for 16 and 17 year olds to be included in the local government electoral register, which is also used for elections to the Scottish Parliament. We note that some 14 and 15 year olds will also be included in the local government electoral register as attainers (attainers are people who will turn 16 and therefore be entitled to vote during the life of the published register). There would, therefore, be no need to create a separate Register of Young Voters, as was required to enable 16 and 17 year olds to vote in the 2014 Scottish Independence Referendum.

We are aware that the collection and publication of information about people under 16 may raise some sensitivities and concerns about child safety and data protection. We note that the Bill therefore makes provision for the protection of such information (i.e. name, address and the date on which those currently aged under 16 will turn 16) by the ERO, and only allows the information to be disclosed in specific circumstances connected with electoral registration and the conduct of elections.

This includes specific requirements for supplying a copy of the electoral register to candidates standing at a Scottish Parliament or local government election in the period immediately before the election, which would include entries for attainers who would be eligible to vote in that election, for electoral purposes (e.g. campaigning), or to comply with the rules on political donations only. The Bill also provides for EROs to supply a copy of the electoral register to the Electoral Commission, local authority Returning Officers for the purposes of an election to a National Park Authority, and Returning Officers for the purposes of Scottish Parliament or local government elections. In these cases, the copy of the electoral register supplied would not contain dates of birth or anything else that would identify a voter as under the age of 16.

We are content with the approach as set out in the Bill from the perspective of supporting effective participation and the administration of elections. It will ensure that election campaigners will be able to communicate with all electors and that the electoral register retains necessary levels of transparency. However, given the potential sensitivities and concerns about child safety and data protection, the Committee may wish to seek specific views and evidence from child protection professionals to ensure their concerns are addressed. If any changes are proposed as a result of these discussions we would comment on their practical implications at that point.
Political donations

It is important that the Scottish Government and Parliament are clear about the implications of how the wider PPERA regulatory framework for donations to political parties and other regulated campaigners would apply to 14-17 year olds when the franchise is extended.

It is necessary to consider whether extending the franchise in Scotland would mean that these people additionally included on the register of local government electors (including attainers) will become permissible donors and lenders, including across the UK. A concluded view needs to be reached whether the law as currently set out in legislation would permit this. We are considering this and will keep the Committee informed. If it does, then there will need to be a mechanism in place to enable regulated organisations and individuals to check the permissibility of donations or loans received from these electors – currently regulated organisations and individuals use the copies of the electoral registers which they are entitled to receive, which contain the name and address details of all those who are registered as electors and are therefore permissible donors or lenders. The restrictions currently set out in the Bill on the supply of information about 14 and 15 year olds who are included in the electoral register as attainers would mean that regulated organisations and individuals would not be able to check donations or loans received from otherwise permissible donors or lenders.

The Committee may therefore wish to consider alternative options which would enable all regulated organisations and individuals (across the UK, and not only in Scotland) who may receive donations and loans to check the permissibility of donations or loans received from attainers in Scotland. These could include, for example, asking the potential donor to obtain a letter from the ERO confirming their registration, or requiring the ERO to make a check of the person’s registration status and then confirm to the campaigner. Given that the numbers of 14 and 15 year olds attainers involved is likely to be very low, we do not anticipate this being a significant administrative burden for EROs.

Timing of changes to the franchise

We note that the Bill currently provides for the reduction of the voting age provisions to have effect for Scottish Parliament elections held on or after 5 April 2016 and for Scottish local government elections held on or after 5 May 2016. We understand that this is to accommodate the Presiding Officer’s ability to move the Scottish Parliament election in certain circumstances.
The Committee may wish to consider the implications of any local government by-election being held between 5 April and 5 May 2016 – this could potentially mean that different franchises would be used for two sets of polls held close together (or even on the same day if the date of the Scottish Parliament elections were brought forward). This could cause confusion for electors and we therefore recommend that the Scottish Government and the Scottish Parliament explore alternative options for limiting the potential for such confusion.

Deadline for registration applications

In our written evidence submitted to the Devolution (Further Powers) Committee on 20 April 2015 we commented that section 5(4) of the Bill removes the requirement for an application to register and any objection to such an application to be made available for inspection, where that application has been made by someone under the age of 16.

The requirements for an ordinary registration application are that once it is received it must be listed on the following day for five working days for any objections to be made, before the application may be allowed.

We suggested that removing the inspection requirement period for applications from persons under 16 will effectively mean that the registration deadline for those electors will be later. We are aware that there is an alternative reading of the draft provisions in the Bill, which suggests that they would not have the effect of changing the registration deadline for persons under 16. We therefore think it would be best to clarify the drafting so that it is clear if the intention is for under-16 applications to be determined on the same timescale as ordinary applications.