Scottish Government Consultation – Devolution (Further Powers) Committee

Scottish Elections (Reduction of Voting Age) Bill

A response by the Electoral Registration Committee of the SAA and the Electoral Management Board for Scotland

The SAA Electoral Registration Committee and the Electoral Management Board for Scotland welcome the opportunity to contribute to the consultation on the Bill to lower the voting age to allow 16 and 17 year olds to vote in Scottish Parliament and local government elections.

This response refers to the Bill published on 2 April 2015 and is limited to technical considerations surrounding the provisions of the Bill.

Registration of electors

Section 2(2) inserts a provision (paragraph 3A) in regulation 32ZA of the Representation of the People (Scotland) Regulations 2001 so that the household canvass form will require the full name, nationality and date of birth of 14 and 15 year olds who are eligible to register to vote. The SAA and EMB welcome this provision that will enable EROs to apply the correct invitation to register and follow-up procedures, but consider that it would be appropriate to safeguard young electors by amending the effect of regulation 32ZA(5) that requires an ERO to pre-print on the form any information required by the form which the officer already holds, so that the date of birth, if already held by the ERO, is not pre-printed on the form before it is sent to the relevant address.

Section 5(2)(b) inserts a provision (paragraph 9A) in regulation 26 of the 2001 regulations that removes the requirement for an applicant to provide their national insurance number (NINo), the ERO to provide an explanation of what the edited register is and the digital service to request email and phone contact details when an application is made online. The SAA and EMB welcome the first two aspects of this provision as NINos will not be available to the majority of 14 and 15 year olds and an explanation of the edited register is not necessary as 14 and 15 year olds will be automatically excluded from the edited register.

It is understood that the third provision, in dis-applying the requirement for email and phone contact details to be requested by the digital service is a technical point, as essentially 14 and 15 year olds will not be making a registration application to the digital service, however, online requests to apply to register made by 14 and 15 year olds will still use the digital service as a conduit to their local ERO. The SAA and EMB are keen to ensure that email and phone contact details of applicants are obtained whenever possible as these assists EROs to remedy issues around applications quickly (which is particularly important immediately prior to any election) by means of direct contact with the applicant rather than having to resort to the relatively slow and more costly postal communication option.

Section 5(4) removes the requirement for registration applications made by 14 and 15 year olds to be published. The SAA and EMB consider this to be an appropriate measure but remain concerned that the protection provided at the application stage may not be in place for objections, particularly in the case of those made relative to existing entries in the register that relate to 14 and 15 year old attainers. Parallels can be drawn with anonymous electors where objections are not permitted against existing anonymous entries in the register by way of section 10ZE(5) of the Representation of the People Act 1983.
Whilst it may be appropriate to allow objections to existing entries for young attainers, there is concern that the proposed provisions might not prevent a young person's information being disclosed either through the list of objections prepared under regulation 29(2C) of the 2001 regulations or the objection itself which is made available for inspection by way of regulation 28(1). In this regard it is perhaps useful to note that based on the experience gained during the preparation of the register of young voters for the Scottish Independence referendum, disputes amongst estranged parents or guardians can arise over the registration of a young person, particularly when dealing with competing addresses. In this regard, there is a greater potential for objections to arise.

Section 8 amends the provisions for declarations of local connection for looked after children and those being kept in secure accommodation. The SAA and EMB have no issue with Section 8 as a whole but consider that section 7B(2B)(a) to the 1983 Act that is inserted by section 8(2) should be subject to further scrutiny. Section 7B(2B)(a) extends the provisions of the Bill to any person under the age of 16 that is, or has been, a child looked after by a local authority. The SAA and EMB suggest that it might be appropriate to consider qualifying the 'or has been' to a limited period, otherwise the situation may arise where a young person, who might have been looked after for a short period during their very early years of childhood, but have been outside the looked after children protection framework for a significant number of years, and therefore to all intents and purposes should not qualify for this atypical registration route.

Publication etc. of the register

Section 12 prohibits the publication, supply or disclosure of a young person’s information which is defined as any entry in the register of local government electors relating to a person who, at the time of the publication, supply or other disclosure, is under the age of 16.

Section 13 sets out the three principal exceptions to the prohibition on publication, supply or disclosure of a young person’s information. This is limited to three circumstances, electoral purposes, criminal investigation of registration or electoral offences and to the young person concerned.

The electoral purposes exceptions are provided in section 13(1) – (3) that allow supply/disclosure to EROs or ROs and their staff where it is necessary for the carrying out of functions relating to electoral registration or the conduct of an election. In addition, supply/disclosure of a young person’s information is allowed (albeit with age information removed) in a version of the register of local government electors provided in connection with an election where the young person is entitled to vote, but only where specific supply enactments prevail. These supply enactments permit the supply of local government registers to specific individuals or bodies, such as candidates in an election or the Electoral Commission, and restrict the use of the registers to purposes in connection with their entitlement only.

The SAA and EMB welcome these measures and the fact that the Bill seeks to extend the franchise by way of allowing young persons to be added to the register of local government electors rather than relying on a separate register of young voters for under 18 year olds who would not qualify as attainers but for the provisions of this Bill.

The Scottish Independence Referendum (Franchise) Act 2013 required EROs to compile and maintain a separate register of young voters who were not entitled to be treated as attainers to the local government register at that time but were nevertheless entitled to register to vote in the referendum on 18 September 2014. Whilst that arrangement was satisfactory for a single national electoral event, it was not necessary for the 2013 Act to integrate the register of young voters into the wider electoral registration framework or deal with such circumstances as regular annual canvasses and the transition of electors from the register of young voters to the electoral register.
In contrast, the Bill currently under consideration seeks to introduce a permanent change to the franchise that requires a resilient and transparent registration framework. The SAA and EMB consider that the resultant framework should reflect not only the permanence of the provisions, but also strike a balance between the protection of the personal information of any individual (including specific provision to protect the details of young and or vulnerable electors), and the transparency that the electoral process requires. By adding young persons to the local government register of electors, this Bill essentially provides full integration of the electoral registration process from a 14 year old attainer onwards and therefore allows the young person, subject to the proposed specific safeguards, to be subject to a consistent and uniform registration framework that includes online applications and regular annual canvasses.

The SAA and EMB consider that the provisions for the protection of young persons (like those for anonymous electors) proposed by this Bill are, subject to this consultation response, sufficient from the viewpoint of electoral administrators. Integration of young persons’ details in the local government register will provide the necessary resilience to deal with local and national electoral events that will include local government elections & by-elections, Scottish parliamentary elections & by-elections, and national park authority elections (where appropriate).

One technical area of consideration that may require further scrutiny relates to the interplay between attainers for the UK parliamentary franchise and local government electors who are 16 years old but as such not of an age to be treated as attainers in terms of the UK parliamentary franchise. The former would be included with the date that they become 18 years old, whereas the latter would appear on the register as full electors.

The SAA and EMB also consider that further consideration of the provisions surrounding the supply and/or disclosure of absent voter records and list kept under schedule 4 of the Political Parties, Elections and Referendums Act 2000 by way of regulations 61, 61A and 61B of the 2001 regulations might be required in terms of safeguarding young persons’ information. In particular, the entitlement provision (regulation 61(1)) does not correspond precisely with those provided in section 13(3) of the Bill but could nevertheless relate to absent voter records supplied in advance of a local government election and thus include young persons’ information. The provisions of 61B allow the possibility of a young person’s information held in the personal identifiers record to be disclosed to a candidate or agent who attends proceedings on receipt of postal ballot papers in advance of the date of the relevant poll.

In addition to the foregoing, the SAA and EMB make reference to the issues of timing and risk that were made to the Committee by letter dated 20 April and endorse the views submitted.

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