Devolution (Further Powers) Committee

Stage 1 Report on the Scottish Elections (Reduction of Voting Age) Bill
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Devolution (Further Powers) Committee

To consider matters relating to The Scotland Act 1998 (Modification of Schedule 5) Order 2013, the Scottish Independence Referendum Act 2013, its implementation and any associated legislation. Furthermore, (i) until the end of November 2014 or when the final report of the Scotland Devolution Commission has been published, to facilitate engagement of stakeholders with the Scotland Devolution Commission and to engage in an agreed programme of work with the commission as it develops its proposals; and (ii) thereafter, to consider the work of the Scotland Devolution Commission, the proposals it makes for further devolution to the Scottish Parliament, other such proposals for further devolution and any legislation to implement such proposals that may be introduced in the UK Parliament or Scottish Parliament after the commission has published its final report.

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Introduction

1. In November 2014, the Smith Commission reported and made a number of recommendations in relation to elections in Scotland, including calling on the UK Parliament to devolve the relevant powers to the Scottish Parliament to decide whether to extend the franchise to 16 and 17 year olds in time for the 2016 Scottish Parliament election, and for all future elections to the Scottish Parliament and local authority elections in Scotland.¹

2. Since the publication of the Smith Commission’s report, the Scottish and UK Governments agreed that the legislation to transfer powers to extend the franchise to 16 and 17 year olds should be brought forward before other areas recommended for devolution in the Smith Commission Report. The legislative mechanism to achieve this transfer of powers is via an Order made under sections 30 and 63 of the Scotland Act 1998.

Draft Order for the transfer of powers

3. The draft Order was laid before the Scottish Parliament on 20 January 2015 and was referred to the Devolution (Further Powers) Committee for consideration as lead committee. The draft Order provided for the modification of the elections reservation at Section B3 of Part 2 of Schedule 5 of the Scotland Act 1998.

4. The modification enabled legislation to be brought forward to reduce the minimum voting age at elections to the Scottish Parliament and local government elections to 16 years old.

Scrutiny of the draft Order

5. The House of Commons considered the draft Order during a debate on 2 February 2015 and passed the motion without a division. The House of Lords considered and agreed the draft Order on Thursday 26 February, with the Constitution Committee having produced a report, on the Order, on Monday 23 February.

6. Subordinate legislation, such as a draft Order, is scrutinised initially in the Scottish Parliament by the Delegated Powers and Law Reform Committee. This Committee considered the draft Order at its meeting on 17 February 2015.

7. As lead Committee, the Devolution (Further Powers) Committee considered the draft Order at its meeting on 26 February 2015. The Committee took evidence from the Deputy First Minister and relevant officials in the Scottish Government. In addition to the evidence heard during this meeting, the Committee also held a series of informal events with 16 and 17 year old school pupils in Fort William and Levenmouth who had voted for the first time at the Independence Referendum.
8. The Committee also produced an online survey, aimed at 16 and 17 year old voters from across Scotland who had participated in the Independence Referendum, asking for their views on their experience of voting in the Referendum. The Committee received 1,025 responses to this survey, with 85% agreeing that it was right to allow 16 and 17 year-olds to vote in the Referendum and 79% agreeing that 16 and 17 year-olds should be allowed to vote in elections to the UK Parliament (House of Commons), the Scottish Parliament and local authorities.

9. The key finding from the Committee’s discussions with first-time voters was that the pupils believed they had shown they were fully capable of making an informed decision at the Independence Referendum and that a significant majority attending agreed that the franchise should be extended to allow them to vote in future Scottish Parliament elections.

10. The draft Order was unanimously agreed to by the Scottish Parliament on 4 March 2015.

Scottish Government Bill

11. The Scottish Elections (Reduction of Voting Age) Bill (the Bill), and accompanying documents, was introduced in the Scottish Parliament on 2 April 2015 and referred to the Devolution (Further Powers) Committee for consideration as lead committee.

General approach

12. The Bill provides for the lowering of the voting age to 16 for Scottish Parliament and local government elections, including by-elections, and any other poll using the franchise for local government elections in Scotland (for example, elections for membership of a National Park authority). It also puts in place certain specific arrangements in relation to the registration of 14 and 15 year olds to ensure that they are able to vote in those elections as soon as they attain the age of 16.\(^2\)

13. According to the Scottish Government, the proposals underpinning the Bill seek to create broadly the same effect as the arrangements for the Referendum – providing an effective process to register those aged under 16, and protection on the storage and use of data concerning those youngest electors, with specific arrangements in relation to looked after children, young people in secure accommodation, children of those with a service qualification and those registering anonymously.

14. However, in the view of the Scottish Government, many of the specific arrangements made for the Referendum in relation to 16 and 17 year olds were necessitated by the fact that the Scottish Government was unable to adjust local government registration rules, or alter any of the arrangements for those already dealt with by the local government register. The Referendum legislation, therefore, had to provide for a separate Young Voter Registration form to be issued.
alongside the annual canvass form to collect the details of those 15 year olds who would become 16 by the date of the Referendum, and for a separate Register of Young Voters.

15. The Scottish Government’s position is that the powers provided by the section 30/63 Order allow some flexibility in the approach that can be taken and the approach has, therefore, been adjusted to make the arrangements more effective overall and better for electoral administrators and the electorate. In addition, the arrangements reflect the changes arising from the UK-wide transition to Individual Electoral Registration (IER) and that this is intended to be a permanent reduction in the voting age for Scottish Parliament and local government elections, including by-elections.

Key provisions

16. The Scottish Government’s Policy Memorandum states that the Bill lowers the voting age to 16 in Scottish Parliament and local government elections, and any other elections in Scotland using the local government franchise, by adjusting section 2 of the Representation of the People Act 1983. Section 11 of the Scotland Act 1998 provides that people who are entitled to vote as electors at elections for membership of the Scottish Parliament are those who, on the day of the poll, would be entitled to vote as electors at a local government election. Therefore, the amendment to the local government franchise in section 2 will feed through to the franchise at elections for membership of the Scottish Parliament. It will also feed through to the franchise for any other election which uses the local government franchise, for example elections for membership of a National Park authority.

17. The Scottish Government has indicated that many of the changes necessary for the enfranchisement of all 16 and 17 year olds flow through directly from that change, and do not require specific provision in the Bill. In its view, some other changes are dealt with in the Bill by amendment to the processes set out in that Act or regulations made under it, to reflect the needs of a younger age group. Other changes can be dealt with administratively (for example, changes to registration forms), outwith the Bill. In addition, aspects of the electoral administration arrangements may be dealt with in a Scottish Parliament Elections Order or a Scottish Local Government Elections Order, which are made every four or five years to set out the detailed arrangements for those elections.

18. The Bill also provides for restrictions on access to, and disclosure of, information on 14 and 15 year olds and also provides for enhanced arrangements for vulnerable young people.

19. In the Scottish Government’s opinion, the arrangements are intended to balance putting young voters on an equal footing with other voters with a desire to ensure that their data is treated sensitively and responsibly. The Bill’s general approach is therefore to replicate current registration practice for the youngest voters as far as possible. It does this by applying existing electoral legislation and amending that where necessary to take into account the lowering of the voting age. The “cut-off
point” for when data would be treated with greater sensitivity is mostly based on a person being under 16 at the point of submitting an application to register.

20. The Policy Memorandum states that, specifically, the Bill provides for the following—

- A lowering of the voting age to 16 for Scottish Parliament and local government elections and any other elections using the local government franchise in Scotland. For Scottish Parliament elections, that change will take effect on 5 April 2016, to reflect the fact that the date of the Scottish Parliament ordinary general election planned for 5 May 2016 can potentially be varied by up to a month if the Presiding Officer so proposes. For local government elections, and any other relevant poll, the change will take effect from 5 May 2016.

- Consequential alterations to existing procedures in relation to registration to enable existing registration processes to be used to collect information on those who are under 16, or who are 16 or 17 but require to interact with the electoral registration system in a particular way that is not currently adequately provided for, specifically the children of those in the services.

- Electoral Registration Officers (EROs) to be generally prohibited from publishing, supplying or otherwise disclosing information on those who are aged under 16, and permitted to provide such information only to a limited group of people. An exception is provided where the information needs to be disclosed in connection with a poll at which the person will have reached voting age.

- Specific arrangements for those aged under 16 in relation to anonymous registration and making a declaration of local connection (which allows the person to avoid using a current address for registration).

This report

21. This report summarises the Devolution (Further Powers) Committee’s consideration of the Bill at Stage 1. To inform our scrutiny, the Committee issued a call for evidence in April 2015; 16 submissions of evidence were received.

22. The Committee also held two oral evidence sessions on 23 April and 30 April 2015 respectively. A range of electoral bodies, groups representing young people, disabled people, looked-after children, child law practitioners and the Scottish Government attended and gave their views to the Committee.

23. Further details of those who attended our meetings or provided a written submission are set out in the Annexes to this report. The Committee is grateful to all those who took time to provide us with their opinion on the Bill.
Executive Summary

The Scottish Elections (Reduction of Voting Age) Bill was introduced in the Scottish Parliament on 2 April 2015 and referred to the Devolution (Further Powers) Committee for consideration as lead committee. The Bill provides for the lowering of the voting age to 16 for Scottish Parliament and local government elections, including by-elections, and any other poll using the franchise for local government elections in Scotland (for example, elections for membership of a National Park authority). It also puts in place certain specific arrangements in relation to the registration of 14 and 15 year olds to ensure that they are able to vote in those elections as soon as they attain the age of 16.

The Bill raises a number of issues, considered by the Committee, including—

- Public awareness and education-related issues;
- Registration matters;
- Deadlines for registration applications;
- Political donations;
- Impact on 16-17 year olds in independent schools or home-schooled;
- Data protection;
- Looked-after children and the duties on local authorities – continuing care and aftercare;
- Children with Additional Support Needs; and,
- Young offenders and ECHR

The Committee’s consideration of these matters and our conclusions and recommendations at Stage 1 are set out in subsequent sections of this report. At this Stage, the Committee supports the general principles of this Bill.
Key issues during the Committee’s consideration at stage 1

General principles of the Bill

24. In the evidence provided to the Committee, we received no substantive objection to the main objective of the Bill, namely to reduce the voting age to 16 for Scottish Parliament and local government elections, including by-elections, and any other poll using the franchise for local government elections in Scotland (for example, elections for membership of a National Park authority).

25. An example of the typical view we received is that from Louise Cameron, Member of the Scottish Youth Parliament (SYP) and Chair of the Board of Trustees at SYP. She told the Committee that—

On the experience of the Referendum, we at the SYP were so happy that the vote was extended to 16 and 17-year-olds. It is even better that it will be extended to them in all future Scottish elections. The experience of the Referendum was absolutely great. It has helped us to disprove all the arguments against votes at 16, which we have campaigned for 15 years, since the start of our organisation. Their getting the chance to vote in future elections is such a great opportunity, because it really does encourage political participation among young people.

One important thing that will result from the Bill is that more young people will get involved in the political system, and from an earlier age. It is likely that it will create a voter generation because we will be able to engage people younger, and keep them engaged throughout their lives, we hope, in the political system.  

26. Her view was supported by a number of other organisations who gave evidence to the Committee, including YouthLink Scotland, the Scottish Child Law Centre, Inclusion Scotland, Young Scot, the Centre for Excellence for Looked After Children in Scotland (CELCIS) and the National Union of Students (NUS) Scotland.

27. A number of respondents, when commenting in support of the general principles of the Bill that the experience of the franchise being extended to 16 and 17 year olds had resulted in a range of benefits, cited the research findings of Dr Jan Eichhorn of the University of Edinburgh. Dr Eichhorn had found similar levels of political interest amongst 16 and 17 year olds as adults, that 16 and 17 year olds did not simply follow the voting pattern of their parents and had engaged with a wide range of media and information sources and not simply social media.
28. Dr Eichhorn provided a written submission to the Committee which elaborated upon the findings of recent research he has conducted which has found a range of longer-term impacts which would appear to be attributable to the extension of the franchise during the Referendum campaign. Dr Eichhorn stated that—

> The Referendum was a special occasion and several commentators have voiced doubts whether the positive effects would last much beyond the vote on 18 September and in particular would hold for the context of a general election. Our research now shows that indeed, we find a continuation of the positive effects – and particularly strongly pronounced for the youngest age groups.

Voting likelihood proves to be higher in all age groups in Scotland, with 76% saying they were certain to vote in February, compared to other parts of the UK (on average 65%). However, the difference is distinctively most pronounced for younger age groups. While 63% of 18-19 year olds in Scotland say they were certain to vote in the General Election, only 27% of their English peers say the same. In no other age group is the gap as substantial, suggesting that in particular the youngest age group (who were 16-17 at some point during the two-year Referendum campaign) saw a substantial change, implying that there may be more than a general Referendum effect, which we would have seen across all age groups with the same magnitude.

Most crucially, all measures of increased political engagement have outlasted the Referendum itself and apply to the general election context, even for the 16-17 year olds in Scotland. Comparing them with their English counterparts we found that 61% say they had talked about “how the UK is governed” with members of their family in the last three months (roughly mid-November to mid-February at the time of the survey), while only 37% of their English peers report the same. The higher level of engagement with political issues applies not just to concerns about Scottish independence, but UK politics more widely. The gap is even more pronounced when asked whether the 16-17 year old respondents had talked with their friends about this in the same time period, with 62% of Scottish respondents answering positively compared to only 35% in England.6

29. Bill Scott of Inclusion Scotland commented specifically on the rights of young disabled people. He said—

> We think that it is particularly important for young disabled people, because when the great majority of disabled 16 and 17-year-olds are making the transition from school to adult life, they do not have experience of making decisions for themselves. Their parents are often very protective of them and tend to make their decisions for them. We think that making that really important decision—a political decision about who you want to run the
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country—may be an even more important rite of passage for disabled young people than for other young people, because in many ways they are not treated as adults at all when they are young adults. Voting is an opportunity for them to make a stand and say, “I’m an adult—I’m making this choice.”

30. In its written submission to the Committee, the Electoral Commission did not express a view on the general principles of the Bill, noting that the extension of the franchise of future elections in Scotland was a matter for the Scottish Parliament.

Public awareness and education-related issues

31. Should the Bill receive Royal Assent, a key issue for the Committee is the level of public awareness amongst young people of their right to vote, the process for registration as well as of the range of issues to be considered as part of any election campaign, which may influence how they vote. An important element of any public awareness campaign targeted at 16-17 year olds is the extent to which such matters are discussed in school or college. The latter is an issue the Committee has previously commented on in its report on the Electoral Management of the Scottish Independence Referendum.

32. Dr Jan Eichhorn, in written evidence to the Committee, considered the importance of schools as a forum for discussion for young people and commented that his research findings found that—

"There are multiple pathways through which positive attitudes towards political participation and engagement more widely are achieved in young people. The family for example, still is a strong provider of the notion that voting is the right thing to do, establishing voting as a positive norm. Having a civics-style class (even if it is mandatory) helps to increase factual knowledge and the self-confidence of young people in politics. But neither has as extensive and comprehensive an effect as actively discussing politics in the classroom. When we cannot observe the negative effects feared, but do observe the many positive effects outlined, we need to conclude that discussing politics in the classroom setting should become part of every school student’s experience."

33. Significantly, Dr Eichhorn found that where school pupils did not have the opportunity to discuss political issues in the classroom, this resulted in lower levels of future political engagement amongst such pupils as compared to those who had this opportunity. Dr Eichhorn stated—

"Based on our findings, those who did not get to discuss political issues in the classroom lost out. They have a lag compared to peers whose political socialisation, knowledge, confidence and engagement have increased more speedily. If this is allowed to continue, the lowering of the voting age to 16 will ultimately result in an increased stratification in politically better
educated and equipped young voters in some places compared to others who do not get the same experience.

If higher political participation and stronger civic attitudes in young people are deemed desirable, an equity principle for Scotland has to imply that all young people should get the same level of support in reaching these goals to avoid new forms of stratification. If this goal applies to Scotland a decision has to be made that schools should not only be allowed to discuss political issues in the classroom, but have to create space for students to do so. Crucially, this cannot be constrained to only Modern Studies, as not all schools offer it, and it cannot be taken as equivalent to saying that young people need to simply learn about the functioning of politics. In order for this lowering of the voting age to have the desired effects, it requires a policy change that would see all young people in schools being given the chance to have discussions about political issues in the classroom with the moderation of a teacher.¹¹

34. Giving evidence to the Committee, Andy O’Neill of the Electoral Commission said—

> We have talked with the EROs [Electoral Registration Officers] and we are making plans to undertake a public awareness campaign to ensure that we make all 14 to 18-year-olds aware of the new legislative provisions and that as many of them as possible register. We will be doing a directed public awareness campaign. It is not yet finalised, but we have learned from the Referendum experience and we are also learning from the experience of our public awareness campaign for the forthcoming UK parliamentary general election.¹²

35. Commenting on the specifics, Mr O’Neill referred to a greater emphasis on awareness-raising through social media and through partnership working with a range of organisations as being the most effective means of targeting information to voters in this age group.¹³

36. For a significant majority of young people, a key forum for discussions of such matters is the school or college environment. This, however, is not the case for all possible voters in this age group, as some will be home-schooled and some will have left school altogether.

37. The discussion of political matters in schools and colleges in Scotland is, of course, a sensitive issue and one which also touches significantly on the competences of local authorities and education bodies. Nevertheless, some of those who gave evidence to the Committee stressed the importance of having guidance available at the national level for local authorities and for teaching staff.

38. Bruce Adamson, Chair of the Board of the Scottish Child Law Centre said—
We absolutely support the idea of national guidance. The primary duty is on the state to provide education for children. That is encapsulated in, among other places, article 28 of the United Nations Convention on the Rights of the Child, which mentions the obligation of the state to educate children in things such as human rights and democracy, and in understanding the world and the environment where they live. The primary duty sits on the state, but we need consistency across the country, because things are quite different in different areas.  

39. This potential for a lack of consistency across schools and colleges in Scotland was echoed by Louise Cameron MYSP. She told the Committee that, “From our work at the SYP we have found that some local authorities had great opportunities to engage with young people through schools but others did not.”

40. Philip Whyte of NUS Scotland commented in more detail about what he would like to see by way of activity in schools. He said—

We are not simply talking about a class or a subject; this is about providing the space and opportunity for people to come together to engage, discuss and debate. That is why I fully back the notion of national guidance. It is important that schools do not see that just as a political education class as we might traditionally have thought of it—as a subject-based or discipline-based discussion in which we simply learn about how political parties work, how the legislature works and how the executive works. It is fundamentally about issues: as NUS Scotland said in our evidence, it seems that there is a lower level of identification with political parties among young people, but they are very much more engaged around issue-based politics and identity. If our schools and local authorities have the confidence, knowledge and understanding to allow space and opportunity outwith formal classes, that will cut through to young people and ensure that they are fully aware of and engaged in the process.

41. The Electoral Commission has previously told the Committee that this issue is not a matter for them and is the responsibility of local authorities and education bodies. This was reaffirmed during their most recent appearance; Andy O'Neill—

We are not educationists, so we cannot say where the information should go, how it should be accommodated in school and what should be displaced. We are aware of the limits of our power and we think that the best people to make those decisions on how the information is accommodated locally are the educationists.

42. Louise Cameron MYSP was critical of the Electoral Commission in this respect, agreeing that she perceived them as too cautious on this matter. She advised the Committee that—
Young people are not silly. We are viewed as being easily convinced, but we are not. We can make our own decisions. The independence Referendum has proved that, as 16 and 17 year olds made their own decisions; they did not vote the same way as their parents and were not forced into voting any way. They can make their own choices. The system needs to have more faith in young people making their own minds up. If schools had three no campaigners in or three yes campaigners in and did not have the other side in, maybe that would be biased, but if we can do this in an unbiased way that is not party political and which promotes political engagement, there is no harm in that within the system.¹⁸

43. In a joint written submission from Young Scot, the Scottish Youth Parliament and Youthlink Scotland, they elaborated on their earlier oral evidence to the Committee in the following terms—

You will be aware that in our evidence to the Committee, we put forward the proposal to develop national guidance for political education and literacy. We believe that such guidance, developed in partnership between young people, practitioners and policy-makers, would assist local authorities, schools, youth work services and others with facilitating this type of engagement and providing this type of education. Guidance of this nature would provide national standards and guidelines which would ensure practitioners were protected, while creating the safe space and conditions in which young people’s relationship with civic society and democratic processes is nurtured and encouraged.¹⁹

44. Children in Scotland also highlighted the importance of national guidance, stating that—

Given the central role that local authority employees will have in ensuring that children and young people are politically literate and registered to vote, it is essential that local authorities and schools are properly supported by national guidance so that they may carry out their duties with confidence and without fear of reproach.²⁰

45. The Deputy First Minister set out his views on the issue of guidance to schools when he gave evidence to the Committee. He said—

My general view is that there should be absolutely nothing within the education system that prevents young people from reaching a fair and dispassionate understanding of the political process and choices. It is absurd that there should be any practical impediment to that.

During the Referendum, I picked up anecdotal experience that there was a sensitivity about the Referendum debate coming into schools and the feeling that somehow that was not desirable. In my experience of interacting with young people, particularly the 16 and 17-year-olds who
were eligible to vote, and the very frustrated 15-year-olds who were not able to vote, I found that there was a real appetite and zeal to be involved in the discussion.

If there is unease about that within the education community, it is unfounded, because that debate is part of the education process. If we look at the foundations of curriculum for excellence, we can see that citizenship education is at the heart of it, enabling our young people to fulfil their potential within our society. Part of that involves fulfilling their potential in the democratic process.

The absolute stipulation must be that it must all be fair and dispassionate; it must give young people the opportunity to participate equally and to understand all the choices fairly and squarely and without prejudice. That is the crucial characteristic of what should be being done, and there should be no impediment to that within the schools of Scotland.

Guidance and educational resources for teachers on political literacy are available on the Education Scotland website. That guidance emphasises the importance of young people receiving information on political events such as elections, in the balanced and impartial way that I have just talked about. The provision is all there, but we must ensure that it is delivered in that fair and balanced way.²¹

46. Later in evidence to the Committee, the Deputy First Minister commented further on the guidance which was available to education authorities by observing that—

The guidance seems to be absolutely comprehensible and crystal clear about what can be done. However, I concede that, on occasions, there will be nervousness among those in the school system that they may be somehow transgressing the guidelines. Clearly, members of the teaching profession want to operate in the correct statutory framework.

We will give further consideration to the issue, and the committee may want to deliberate on that point into the bargain. However, the issue is about the distinction that Mr Gibson makes between the guidance and the ethos. The resolution of the issue is all about the ethos, not the guidance.²²

Registration matters

47. In addition to the main objective of lowering the voting age for elections in Scotland, the Bill provides for consequential alterations to existing procedures in relation to registration to enable existing registration processes to be used to collect information on those who are under 16, or who are 16 or 17 but require to interact with the electoral registration system in a particular way that is not currently adequately provided for in legislation. Additionally, the Bill covers a range of matters relating to other aspects of registration.
Deadline for registration applications

48. In its written submission to the Committee, the Electoral Commission highlighted 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. Additionally, the requirements for a registration application are that once it is received it must be listed on the following day for five working days.\(^{23}\)

49. The Electoral Commission notes that removing this period for applications from persons under 16 will effectively mean that the registration deadline for those electors will be later, and invited the Committee to consider this matter. In a subsequent submission to the Committee, the Electoral Commission said—

> 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.\(^{24}\)

Political donations

50. In evidence to the Committee, the Electoral Commission indicated that—

> It is important that the Scottish Government and Parliament are clear about the implications of how the wider PPERA (Political Parties, Elections and Referendums Act) 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.\(^{25}\)

51. As the Commission highlights, 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.
52. The Commission suggests 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 their status to the potential donor. They point out that, given the number of 14 and 15 year olds attainers involved is likely to be very low, they “do not anticipate this being a significant administrative burden for EROs”.26

53. The Deputy First Minister was questioned on this matter when he gave evidence to the Committee. He said—

> The Bill proposals mean that 14 and 15 year-olds will be entitled to be registered as attainers on the local government register and will therefore be permissible donors.

> [...] I think that a practical issue arises here, in that the information would not be readily available to political parties to allow them to check whether an individual was on the register. The way around that would be to give young people the ability to obtain a letter from the electoral registration officer to confirm that they were on the register. The young person could then make that letter available to the political party to satisfy the political party’s obligations under the Political Parties, Elections and Referendums Act 2000, which specifies the basis of the obligation on political parties to ensure that donations are compliant.27

Possible implications for the selection of juries in Scotland

54. The Scottish Courts and tribunals Service (SCTS), in its written submission to the Committee, advised that there are a number of requirements that have to be met in order for a person to be eligible for jury service. The two main qualifiers being that they have to be 18 years of age and registered as a parliamentary or local government elector. In order for SCTS to select potential jurors, use is made of electoral registers which are sent to SCTS by local authorities.

At present, a qualifying date is shown against 16 and 17 year olds details on the register. This allows these results to be weeded from the list of potential jurors. The Bill, however, proposes to no longer collect dates of birth for 16 and 17 year olds, and as such this will impact on SCTS jury selection and citation process.

SCTS stated that—

> SCTS would potentially be sending out documentation regarding jury service to those aged 16 or 17 requiring them to return a form stating they are ineligible for jury service as they are under the age of 18. If they fail to do so they may be liable for a fine of up to £200. To ensure that SCTS maintains a sufficient number of eligible potential jurors, we would need to send out an increased number of notices of selection for potential jury service and additional time will be taken in dealing with responses to these.
There will therefore be cost and resource implications for SCTS.

**Independent schools and home-schooling**

55. In his submission to the Committee, Ken MacDonald, Assistant Information Commissioner for Scotland and Northern Ireland, stated that his—

…understanding is that, for independent schools, there is no local authority link. I am less clear on home education, so maybe you are right that local authorities have a duty to satisfy themselves that that is being undertaken. Our concern is that there is a potential gap in the ability of EROs to find evidence on 14 and 15-year-olds. The number is small, but the issue nevertheless has to be covered in some way.

56. Ian Milton, representing the Electoral Management Board for Scotland was able to provide reassurance on this matter. He said—

As well as regulation 35 of the Representation of the People (Scotland) Regulations 2001, there is regulation 23, which gives EROs the power to ask anybody for information, and that can be an individual or a corporate body. As long as the information is required in connection with an ERO’s duties, that statutory provision is already in place. For example, at the time of the Referendum, it was possible to get information from sources that were not local authorities, and it is still possible to do so.

[...] Home-educated people are registered with the local authority, so that information is available to us.

**Data protection**

57. The inclusion of young people aged 16-17 years old as voters and also of a younger age as attainers brings with it issues of data and child protection matters.

58. At present, the Local Government Electoral Register is a public document which contains the details of all of those aged 18 or over who are entitled to vote in local government elections and, as a consequence of that, in elections to the Scottish Parliament. It also contains the details of 16 and 17 year old attainers. These attainers are included in any version of the register which is published or otherwise made available. The local government register is normally published on 1 December every year.28

59. Under the Bill’s proposals, and unlike the Scottish Independence Referendum, there will not be a separate Register of Young Voters. As the terms of the section 30/63 order allow changes to be made to the local government register, the Scottish Government has indicated that information on older 14 year olds and on 15 year olds (i.e. those who will attain the age of 16 during the life of the upcoming register) will therefore be added to the electronic databases that are used to hold the local government register. This will also assist where the voting age is reduced.
in consequence of the change in the local government age. That will apply to some other elections which use the local government register (e.g. National Parks Authority elections, and polls under some local Acts, and may apply to community council elections depending on local schemes).  

60. Two versions of the local government register will be in existence:

- The full electoral register, which contains the names and addresses of all those registered to vote in public elections (apart from those registered anonymously), and is a public document that can be made available to any member of the public who wishes to consult it. A copy of that register can be made available or sold to a range of other individuals or groups, including (for example) for credit references.

- The open register is an extract of the electoral register. It is not used for the administration of elections, and can be bought by any person, company or organisation. An elector’s name and address is included in the open register unless the elector asks not to be included in it (individuals generally do that through the annual household canvass form).

61. The Scottish Government has indicated that the relevant information on older 14 year olds and on 15 year olds (i.e. the new Scottish Parliament and local government attainers) will be held in the electronic databases that are used to hold the local government register, along with the information that is currently kept on those databases on 16 and 17 year olds and all those aged 18 and over who are eligible to register (and have done so).

62. The Policy Memorandum also sets out the general rules that will apply to the data on 14 and 15 year-olds, namely that:

- Only EROs and their staff will be able to access and use the data on under 16s. However, the data may be disclosed to the individual themselves or for the purposes of a criminal investigation or criminal proceedings relating to an electoral offence.

- Those aged under 16 will not appear on any published version of the register, other than in tightly defined circumstances.

- The exception to that general principle will be that, before a relevant electoral event, returning officers, the Electoral Commission and certain other groups will be entitled to a copy of the register that will contain details of all those entitled to vote at the electoral event. That will include not just those who are already aged 16 or over, but also those who will become 16 on or before the date of the electoral event, but will not contain dates of birth, or anything else that would identify a voter as under the age of 16. Since that process happens around 6 weeks before the electoral event, that means that only those aged around 15 years and 46 weeks upwards are likely to appear on that version of the register.
• Arrangements for the marked register – the version of the register used by polling clerks, marked to indicate who has voted – will be as usual, as all individuals listed on the register should have turned 16 by that point. That means it will be available to the public to view and to others on payment of a fee.

63. Ken MacDonald, Information Commissioner’s Office, welcomed the provisions in the Bill relating to the protection of data and privacy more generally. He said—

> We encouraged the Scottish Government to undertake a privacy impact assessment—we encourage that for all policy and legislative initiatives. As we note in our written evidence, it has undertaken one and we are satisfied with its contents.\(^{31}\)

64. He indicated, however, that the Information Commissioner’s Office, advocated the retention of a young persons’ register as had been the case under the arrangements for the Scottish Independence Referendum.

65. The views of the Electoral Commission on this matter mirror that of the Scottish Government. It said that there was “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.”\(^{32}\)

### Looked-after children and the duties on local authorities – continuing care and aftercare

66. In its written submission, CELCIS stated that “the local authority’s responsibilities to promote awareness and provide assistance should extend to those young people who were formerly looked after by the authority and are now either continuing in the care placement or are receiving aftercare services (Sections 66 and 67 of the Children and Young People (Scotland) Act 2014)”\(^{33}\).

67. CELCIS’s views is that, in both cases, the young people are in receipt of services and have live contacts with officers of the local authority and it would seem appropriate that they should also receive assistance to vote.

68. They concluded that consideration is given to amending the Bill to extend the responsibilities of local authorities to promote awareness and provide assistance to young people who were formerly looked after by the authority and who are in receipt of aftercare services, or who are in continuing care.

69. The Deputy First Minister was questioned on this matter when he gave evidence to the Committee. He said—

> A number of approaches will be taken. The first general remark that I would make is that the approach that has been taken is broadly consistent with what was undertaken in the run-up to the Referendum last September. In relation to anonymous registration, which was particularly relevant in this
area, existing electoral law requires proof in the form of a listed court order, interdict or attestation by the chief social worker or police officer of superintendent rank or above that the safety of an individual or someone living with them would be at risk if the register disclosed their name and address. That is fully reflected in the proposals that we have brought forward. There is also provision for the declaration of local connection, where there can be a necessity to ensure that there is awareness among local authorities of the necessity to consider that factor in undertaking any registration.

On the encouragement to local authorities to extend awareness of the provisions that can be taken forward to enable the registration of looked-after children in particular, we will work with local government to support it in ensuring that there is the widest possible awareness that those provisions exist and can be deployed so that the option is available to individuals. The Bill requires each local authority to promote awareness of the registration arrangements among looked-after children, and local authorities will have to determine what action is necessary to do that. We will work with relevant organisations to provide the necessary guidance and support to local authorities; that fits into the wider corporate parenting responsibilities, for which local authorities carry that obligation.34

Children with Additional Support Needs

70. In its written evidence, Children in Scotland suggested that specific measures should be put in place to ensure that children with additional support needs are not disenfranchised. The importance of ensuring that registration and election information is available in a variety of formats that are accessible, clear in content and that can be understood was particularly emphasised. Children in Scotland suggested that—

> Discussions should be held in advance with young people over any adaptations or accommodations that they may need to facilitate their involvement in the electoral process. This could include help with appointing a proxy or information on how to act as a proxy if a young person has caring responsibilities. Likewise, support in arranging a postal vote for young people who would be unable to get to a polling station, and assistance for young people attending polling stations should also be considered.35

71. The Deputy First Minister commented, in response to a question on this issue from Alison Johnstone MSP, on the need for accessible registration and electoral information that—

> Alison Johnstone makes a fair point about the need for materials and messages to be available in a format that is accessible to all. For our part, in registration and participation campaigns, we ensure that all our
approaches are structured in such a way as to make that possible and practical.\textsuperscript{36}

\section*{Young offenders and ECHR}

72. As currently drafted, the Bill does not amend section 3 of the Representation of the People Act (ROPA) 1983. This means “convicted persons in penal institutions”, including those under 18 (i.e. young offenders) will not be able to vote in future Scottish Parliament elections under the Bill.

73. The Committee received two submissions of written evidence that commented on this matter; from the Howard League for Penal Reform Scotland (Howard League Scotland) and the Law Society of Scotland.

74. The Howard League Scotland indicated that it “opposes the current UK blanket ban on voting by all convicted prisoners as a matter of principle.”\textsuperscript{37} It argues that strengthening the connection by young offenders to society and encouraging a sense of wider civic responsibility is as important for this group of young people as for older prisoners and for young people more generally, and that, arguably, it matters even more.

75. The Howard League Scotland also argues that the European Court on Human Rights has found that section 3 of ROPA represents a violation of Article 3 of Protocol No. 1 to the European Convention on Human Rights in relation to elections for Westminster. In its view, Protocol No. 1 enshrines the individual’s capacity to influence the composition of the law-making power and therefore appears to apply to elections to the Scottish Parliament as well as to Westminster. Additionally, Section 29(2)(d) of the Scotland Act 1998 places limits on the Parliament’s legislative competence, intended to ensure that legislation passed by the Parliament is compliant with ECHR.

76. Therefore, the Howard League Scotland concludes that—

These points strongly suggest that any legislation enabling 16 and 17 year olds to vote at Scottish Parliament elections, but having the practical effect of applying section 3 of ROPA, will need to be considered carefully in the context of ECHR compliance and, in consequence, legislative competence.\textsuperscript{38}

77. The Law Society of Scotland also comments on this issue. Its submission to the Committee concludes as follows—

The issue of prisoner voting in the context of the independence Referendum was dealt with in the Scottish Independence Referendum (Franchise) Act 2013. The case law on that matter was relatively straightforward. However, the complexity of electoral law, the European Court of Human Rights case law and the competence provisions of the Scotland Act mean that adherence to the disenfranchisement for offenders...
of 16 years old may result in challenges on the basis that the Bill in this respect applies an incapacity which is incompatible with convention rights.

However, any such challenges may, of course, be met by the argument that, as the Section 30 Order which provides the competence for the Bill and the Bill only make provision for reducing the voting age of electors; the Bill therefore it is not in itself incompatible with Convention rights.

Ultimately, of course, the interpretation of the law on this matter is for the courts.39

78. The Deputy First Minister was questioned on this matter when he gave evidence to the Committee. He stated that—

The issue of prisoner voting is determined, defined and constrained by the contents of the Representation of the People Act 1983, section 3 of which contains a ban on prisoner voting across the United Kingdom. Because that is reserved legislation, we have no ability to vary it.40
Policy and Financial Memorandums

Policy memorandum

79. The lead committee is required under Rule 9.6.3 of Standing Orders to report on the Policy Memorandum which accompanies the Bill. The Committee considers that the level of detail provided in the Policy Memorandum on the policy intention behind the provisions in the Bill was sufficient and assisted the Committee in its scrutiny of the Bill.

Financial memorandum

80. The same rule requires the lead committee to report on the Financial Memorandum. The Committee notes the letter issued by the Finance Committee to this Committee (see Annexe A), which states that in light of the “truncated timescales it will not be possible for the Finance Committee to meaningfully scrutinise the FM” and that “the Finance Committee does not intend to submit any views on the FM” to this Committee.

81. This being the case, the Committee made efforts to ensure that questions about the FM and the Scottish Government’s proposals for the likely budgets required to deliver on the provisions in the Bill were raised with relevant witnesses. In particular, the Electoral Commission and the Electoral Management Board were asked whether they were content with the financial support that had been allocated to them.

82. Ian Milton of the Electoral Management Board said—

"In short, yes. The Scottish Government approached EROs to ask us what we thought the costs were likely to be and we gave our best estimate."\(^41\)

83. Andy O’Neill of the Electoral Commission said—

"Similarly, the Scottish Government sought our advice on estimates, and we gave it. Those estimates appear in the financial memorandum so we are content."\(^42\)

Delegated Powers

84. In its 23rd Report to Parliament, the Delegated Powers and Law Reform Committee commented on the proposed powers to make subordinate legislation in the Bill (see Annexe A).

85. The relevant provisions are:
Section 4(1) of the Bill confers power on the Scottish Ministers to make provision about invitations to be given to persons under the age of 16 in relation to the registration of local government electors. Subsection (2) provides a non-exclusive list of examples of how the power might be used. The power may be used to modify any enactment and to make ancillary provision. Before making regulations the Scottish Ministers must consult the Electoral Commission. The regulations may confer functions on the Electoral Commission. The regulations are subject to the affirmative procedure.

Sections 12, 13 and 14 of the Bill set out the limited circumstances in which details of entries in the local government electoral register relating to under 16 year olds may be published, disclosed or shared. Disclosure (etc.) of information is only permitted in the circumstances set out in section 13 or in regulations which are made under section 14. Unauthorised disclosure is a criminal offence punishable by a fine up to £5000.

Section 17 permits regulations to make the full range of ancillary provision: incidental, supplemental, consequential, transitional, transitory or saving provision. Ministers may make such provision if they consider it necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the Bill. The power may make different provision for different purposes and may modify any enactment. Where the power is used to amend primary legislation it is subject to the affirmative procedure. Otherwise it is subject to the negative procedure.

The Delegated Powers and Law Reform Committee found these powers acceptable in principle, and was content that they were subject to the affirmative procedure.

The Devolution (Further Powers) Committee endorses this view.

Conclusions, recommendations and the general principles of the Bill

All members of the Committee reaffirm their support for the principle that 16 and 17 year olds should have the vote in Scottish Parliament and local government elections, including by-elections, and any other poll using the franchise for local government elections in Scotland (for example, elections for membership of a National Park authority).

Public awareness campaigns and schools

The Committee welcomes the work already underway by the Electoral Commission and their partners to raise public awareness amongst young people of their rights and the process for registration and voting. The Committee is
pleased to note that the Electoral Commission has indicated that it will look, in particular, at the lessons that can be learned from the Scottish Independence Referendum in terms of public awareness.

90. However, the Committee believes that more should be done by Education Scotland, Local Authorities and the Electoral Commission to ensure that all local authorities across Scotland and the relevant education bodies are best supporting the discussion of election issues in schools and colleges.

91. In our work in the aftermath of the Referendum, and our report on its management, we highlighted the need for national guidance to be produced to remove the inconsistencies in approach across local authorities when it comes to what is and what is not being permitted in schools by way of discussion on these matters.

92. It is clear to the Committee from the evidence received that young people have a strong desire to discuss such issues in school, and not just in specific subject classes, and have the ability to decide for themselves what choices they make. Whilst recognising that the education is the primary responsibility of schools and education authorities, we endorse the views of the Deputy First Minister that no aspect of the education system should prevent young people from reaching a fair and dispassionate understanding of political process and choices.

93. We recommend that Education Scotland should review and update its guidance in order to ensure consistency in this area, in the context of the extension of the franchise to a much larger number of school pupils, including the types of activities that can be permitted in schools as best practice, during any periods of ‘purdah’. Such guidance should be communicated to all local authorities and all schools.

Registration

94. The Committee notes the view of the Electoral Commission that there is a need to clarify the impact of the changing of the registration deadline for persons under 16. We ask the Scottish Government to clarify its intentions on this issue during the stage 1 debate.

Political donations and young voters

95. The Committee notes the apparent inconsistency between young person aged 14-17 who may wish to become a donor to a political party and the data protection principles restricting release of information about them to political parties. We ask the Scottish Government to outline its proposals to address this issue during the Stage 1 debate and whether this requires an amendment to the Bill, or can be dealt with in any guidance.
Possible implications for the selection of juries in Scotland

96. The Committee notes the issue highlighted by the Scottish Courts and Tribunals Service and asks the Scottish Government to respond during the Stage 1 debate on this matter.

Other data protection matters

97. At this stage in the passage of the Bill, the Committee raises no substantive concerns with the provisions in the Bill safeguarding information on younger voters.

Looked-after children and the role of local authorities

98. The Committee welcomes the spirit behind the provisions in the Bill relating to looked after children. We note the calls by Centre for Excellence for Looked After Children in Scotland (CELCIS) for consideration to be given to amending the Bill to place a duty on local authorities to provide assistance to young people who were formerly looked after by an authority of who are in receipt of aftercare services, or who are in continuing care.

99. The Committee has sympathy with the view expressed by CELCIS but is also of the view that consideration needs to be given as to how a local authority could be expected to deliver on such a duty.

Children with Additional Support Needs

100. The Committee welcomes the commitment of the Scottish Government to ensuring that registration and electoral information is accessible as possible. However, the Committee recommends that the Scottish Government engages in discussion with organisations such as Children in Scotland to ensure that the Bill fully enfranchises children with additional support needs.

Young offenders

101. The Committee notes the views expressed in written evidence by the Howard League for Penal Reform and by the Law Society of Scotland that competency questions may arise because “convicted persons in penal institutions”, including those under 18 (i.e. young offenders) will not be able to vote in future Scottish Parliament elections under the Bill. The Committee further notes the comments by the Deputy First Minister to the Committee on legal constraints when questioned on this issue.

102. The Committee is aware that the Presiding Officer has given her opinion on the legislative competence of this Bill, stating that, “In my view, the provisions of the Scottish Elections (Reduction of Voting Age) Bill would be within the legislative competence of the Scottish Parliament”. 43
103. Whether a provision is within the legislative competence of the Parliament is solely a matter for the courts but in light of the Presiding Officer’s opinion and the Deputy First Minister's response, the Committee is satisfied to proceed with its scrutiny at this stage.

General principles of the Bill

104. Under Rule 9.6.1 of Standing Orders, the lead committee is required to report to the Parliament on the general principles of the Bill.

105. The Committee supports the general principles of this Bill. We have made a number of recommendations aimed at improving certain aspects of the Bill which are set out in the main body of this report.


Electoral Commission, supplementary written submission of evidence, page 2.

CELCIS, written submission of evidence, page 3.


Children in Scotland, written submission of evidence, page 5.


Howard League for Penal Reform Scotland, written submission of evidence, page 1.

Howard League for Penal Reform Scotland, written submission of evidence, page 2.

Law Society of Scotland, written submission of evidence, page 2.


Annexe A

Letter from the Finance Committee (22 April 2015)

The Finance Committee considered its approach to the scrutiny of the Scottish Elections (Reduction in Voting Age) Bill’s Financial Memorandum (FM) today. The Bill was introduced immediately prior to Easter recess and I understand that your committee intends to hold its final stage 1 oral evidence session on the Bill with the Deputy First Minister on Thursday 30 April.

I recognise that the timings for consideration of the Bill have largely been determined by factors beyond the control of your committee. However, given these truncated timescales it will not be possible for the Finance Committee to meaningfully scrutinise the FM.

I am therefore writing to confirm that the Finance Committee does not intend to submit any views on the FM to your committee. I have also written to the Deputy First Minister to inform him.

Yours sincerely,

Kenneth Gibson MSP,
Convener

Report of the Delegated Powers and Law Reform Committee (22 April 2015)

23rd Report, 2015 (Session 4): Scottish Elections (Reduction of Voting Age) Bill at stage 1
Annexe B

Extract from the minutes of the meetings of the Committee and links to the Official Reports

<table>
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<tr>
<th>12th Meeting, 2015 (Session 4), Thursday 23 April 2015</th>
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<td>Bruce Crawford (Convener)</td>
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| Apologies were received from Alex Johnstone and Duncan McNeil (Deputy Convener). |

The meeting opened at 9.00 am.

1. Scottish Elections (Reduction of Voting Age) Bill: The Committee took evidence on the Bill at Stage 1 from—

Ian Milton, Grampian Assessor & Electoral Registration Officer, Chair of the Scottish Assessors Association (SAA) Electoral Registration Committee, Member of the Electoral Management Board for Scotland;
Ken Macdonald, Assistant Commissioner for Scotland and Northern Ireland, Information Commissioner's Office;

and then from—

David McNeill, Entitlements and Rewards Director, Young Scot;
Louise Cameron, Member, Scottish Youth Parliament;
Graham Connelly, Educational Outcomes Lead, Centre for Excellence for Looked After Children in Scotland;
Bill Scott, Director of Policy, Inclusion Scotland;
Philip Whyte, Senior Press and Policy Officer, NUS Scotland;
13th Meeting, 2015 (Session 4), Thursday 30 April 2015

Present:

Bruce Crawford (Convener)
Linda Fabiani
Rob Gibson
Alison Johnstone
Lewis Macdonald
Stewart Maxwell
Mark McDonald
Stuart McMillan
Tavish Scott

Apologies were received from Alex Johnstone, Duncan McNeil (Deputy Convener).

The meeting opened at 8.03 am.

2. Scottish Elections (Reduction of Voting Age) Bill: The Committee took evidence on the Bill at Stage 1 from—

John Swinney, Deputy First Minister & Cabinet Secretary for Finance, Constitution and Economy, Helen Clifford, Team Leader, Franchise Team, Gillian Cross, Policy Adviser, Franchise Team, Stuart Foubister, Divisional Solicitor, Legal Directorate, and Willie Ferrie, Parliamentary Counsel, Scottish Government.
14th Meeting, 2016 (Session 4), Thursday 14 May 2015

Present:

Bruce Crawford (Convener)
Linda Fabiani
Rob Gibson
Alex Johnstone
Alison Johnstone
Lewis Macdonald
Stewart Maxwell
Mark McDonald
Stuart McMillan
Duncan McNeil (Deputy Convener)

Apologies were received from Tavish Scott.

The meeting opened at 10.32 am.

1. Scottish Elections (Reduction of Voting Age) Bill (in private): The Committee considered and agreed a Stage 1 report.

The meeting closed at 10.50 am.
Annexe C

List of other written evidence

- Centre for Excellence for Looked after Children in Scotland (CELCIS)
- Children in Scotland
- Eichhorn, Jan Dr
- Electoral Commission Scotland
- Electoral Commission Scotland Additional Submission
- Electoral Registration Committee of the SAA and the Electoral Management Board for Scotland
- Howard League Scotland
- Inclusion Scotland
- Information Commissioner
- Information Commissioner Additional Submission
- Law Society of Scotland
- Milton, Ian
- Thomson, David
- Young Scot
- Young Scot, SYP and Youthlink Scotland
- Youthlink Scotland