

# LEGISLATIVE CONSENT MEMORANDUM

## ELECTIONS BILL

### Background

1. This memorandum has been lodged by John Swinney, Deputy First Minister and Cabinet Secretary for Covid Recovery, under Rule 9.B.3.1(a) of the Parliament's standing orders, and is supported by George Adam, Minister for Parliamentary Business.

2. The Elections Bill ("the Bill") was introduced into the House of Commons on 5 July 2021. It is intended to modify electoral law across a range of subjects, with some changes limited to reserved elections and other applying to both reserved and devolved elections. The Bill and supporting documents can be found at: <https://bills.parliament.uk/bills/3020>. This memorandum relates to the Bill as introduced.

### Content of the Elections Bill

3. The Bill covers a wide range of topics and in a number of areas seeks to make changes that will apply to elections within the devolved responsibility of the Scottish Parliament. In addition, many of the Bill's changes that apply only to reserved elections (for example, voter identification) will nonetheless have implications for electoral administrators in Scotland in holding UK parliamentary elections.

4. The Explanatory Notes<sup>1</sup> accompanying the Bill set out the UK Government's view of its purpose, which includes the following statement:

*"2. The Bill will allow the Government to meet some of its 2019 manifesto commitments, including to "protect the integrity of the UK's democracy, by introducing identification to vote at polling stations, stopping postal vote harvesting and measures to prevent any foreign interference in elections" and to "make it easier for British expats to vote in Parliamentary elections, and get rid of the arbitrary 15-year limit on their voting rights."*

### Provisions Which Relate to Scotland

5. The Bill contains several measures in respect of which the UK Government is seeking legislative consent as, while it recognises devolved competence is in place, it believes the measures would work best on a UK-wide basis.

Provision in relation to reserved elections alone (and where legislative consent is not sought):

**a) to introduce a requirement for voters to show an approved form of photographic identification before collecting their ballot paper to vote in a polling station (section 1)**

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<sup>1</sup> <https://bills.parliament.uk/bills/3020/publications>

6. The Bill introduces photographic voter ID requirements for local elections in England and UK Parliamentary General Elections. A range of existing forms of ID would be valid, and voters without ID would be able to apply for a Local Elector ID to be provided by local authorities.

7. Voters will be required to show an approved form of photographic identification before collecting their ballot paper to vote at a polling station for UK parliamentary elections in Great Britain, at local elections in England, and at Police and Crime Commissioner elections in England and Wales. A broad range of documents will be accepted including passports, driving licences, various concessionary travel passes and photocard parking permits issued as part of the Blue Badge scheme. Any voter who does not have an approved form of identification will be able to apply for a free, local Voter Card from their local authority. The UK Government (UKG) has noted that in Northern Ireland voters have been required to produce personal identification before voting in polling stations since 1985, with photographic identification being required since 2003<sup>2</sup>.

8. Although this measure is wholly reserved and will not apply in relation to devolved elections, various stakeholders have indicated concern about the impact of this provision on voters and electoral administrators in Scotland in relation to UK Parliament elections. The Scottish Government considers that there is no evidence of significant electoral fraud to justify voter ID measures in Scotland. There appears to be considerable scope for confusion in the event of a UK poll occurring on the same day as a Scottish poll (e.g. where a by-election for one Parliament occurred on the same day as a general election to the other Parliament). In such a case ID would only be required for one ballot paper, which is likely to confuse voters and will place a great deal of responsibility on the Presiding Officer at each polling station in policing the ID requirement.

**b) in respect of postal and proxy voting, including a need to reapply for a postal vote after 3 years (sections 2 to 6)**

9. These measures will require those using a postal vote for UK Parliament elections to re-apply every three years (at present, there is only a need to provide an updated signature every five years). The provisions do not apply to devolved elections and so legislative consent is not required. The Bill bans political campaigners from handling postal votes and introduces a limit on the number of electors on behalf of whom a person may hand in postal votes to a returning officer or at a polling station. The Bill provides that a person may be appointed to act as a proxy for a maximum of four electors, and within that four, no more than two may be electors who are not overseas electors or service voters. Finally, the measures extend the secrecy of the ballot requirements in polling stations to absent voting.

10. The change to require reapplications for postal votes every three years in relation to UK parliamentary elections departs from the current standard for all UK elections under which a postal vote must be refreshed every 5 years. Although this measure is wholly reserved and will not apply in relation to devolved elections, the

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<sup>2</sup> A UKG summary factsheet on the Bill is available at: [Elections Bill 2021: Summary factsheet - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/611212/Elections_Bill_2021_Summary_factsheet_-_GOV.UK.pdf)

divergence between reserved and devolved elections proposed by the Bill presents a clear risk of voter confusion and practical difficulties in operating two different periods and processes for postal voting (i.e. a 3 year reapplication process for postal voting in reserved elections and a 5 year refresh process for devolved elections).

**c) to remove restrictions on who can act as a companion to a disabled voter at a polling station and requiring local returning officers to provide support for a wider range of needs (section 8)**

11. The Bill places a new requirement on Returning Officers to consider a wider range of support for voters with disabilities in polling stations, supported through Electoral Commission guidance produced in partnership with the Government's expert Accessibility of Elections Working Group. The Bill also removes current restrictions on who can act as a 'companion' to support voters with disabilities to cast their vote in the polling station.

12. This measure is wholly reserved and will not apply in relation to devolved elections. The UK Government has highlighted the benefits of approaches to ensure that the needs of voters with a wide range of disabilities are provided for consistently across both devolved and reserved polls. The Scottish Government agrees that there is a need to improve the law in this area and intends to make a full assessment of possible improvements for devolved elections in order to bring forward its own changes in time for the 2026 Scottish Parliament election.

**d) Local elections and Assembly elections in Northern Ireland (section 9)**

13. This section makes changes relating to local elections in Northern Ireland, and changes for elections to the Northern Ireland Assembly. These provisions do not apply to Scotland.

**e) to allow UK citizens who have lived abroad for longer than 15 years to vote in UK parliamentary elections (section 10)**

14. The right for British citizens living overseas to vote in UK Parliament elections currently expires after 15 years living outwith the UK. These measures will remove the 15 year limit on overseas electors' right to vote in UK Parliamentary elections. The registration period for overseas electors in UK Parliament elections will be extended from one year to up to three years and electors will be able to reapply or refresh their absent vote arrangements (as appropriate) at the same time as renewing their registration. The Bill will also extend the registration period from 12 months to three years to align with the new measures on postal voting and to introduce a fixed point for that renewal.

15. While this provision does not apply to devolved elections and legislative consent is not required, Scottish Electoral Registration Officers have highlighted that registering voters absent from the UK for more than 15 years could require a significant fact-finding exercise.

16. The franchise for devolved elections is based on the principle that people who live in Scotland should be able to vote in Scotland. The Scottish Elections (Franchise

and Representation) Act 2020 underpinned that principle by extending the franchise to most foreign nationals who live in Scotland including refugees. Changes to the franchise for the Scottish Parliament election require the support of a “supermajority” of two thirds of members. The issue of voting by those not resident in Scotland for Scottish Parliament and Scottish Local Government elections was considered by the Scottish Parliament's Standards, Procedures and Public Appointments Committee in its deliberations on the Bill which preceded the Scottish Elections (Franchise and Representation) Act 2020. The Committee’s report on the Bill concluded (by a majority) that:

*“43. The Committee does not consider that British citizens who had previously been included on the register of local government electors and who now no longer live in Scotland should be given the right to vote in Scottish elections. The Committee does not believe that the case for allowing people who do not live in Scotland the opportunity to influence the result of local government elections or Scottish Parliament elections is strong enough”<sup>3</sup>*

**f) on voting and candidacy rights of EU citizens in local elections in England and Northern Ireland (section 11)**

17. The Bill amends the local voting and candidacy rights of EU citizens in local elections in England and Northern Ireland, elections to the Northern Ireland Assembly and Police and Crime Commissioner elections in England and Wales (other local elections in the UK are devolved). Once these measures are introduced, in addition to satisfying the usual eligibility requirements which apply to all electors (e.g. age, residence etc.), EU citizens must be part of one of two groups to participate in the above elections. They must either:

- be a citizen of an EU member state with which the UK has a voting rights agreement (currently Spain, Portugal, Luxembourg, Poland), or
- have been continuously resident in the UK or Crown Dependencies since before the Implementation Period completion date - 31 December 2020.

18. An EU citizen elected before these measures come into force, and who otherwise remains eligible, will be able to serve their full term. Citizens of Cyprus and Malta, which are both EU and Commonwealth states, will retain the right to vote and stand as candidates in all elections for which the UK Government is responsible. The voting and candidacy rights of Irish citizens are also not affected by these measures, as these long-standing rights pre-date EU membership.

19. This provision does not apply to devolved elections and legislative consent is not required. The Scottish Elections (Franchise and Representation) Act 2020 extended voting rights in Scottish Parliament and local government elections to all resident foreign nationals with leave to remain<sup>4</sup>.

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<sup>3</sup> <https://digitalpublications.parliament.scot/Committees/Report/SPPA/2019/11/13/Stage-1-Report-on-the-Scottish-Elections--Franchise-and-Representations--Bill-1>

<sup>4</sup> <https://www.legislation.gov.uk/asp/2020/6/introduction/enacted>

**g) about the membership of the Speaker's Committee (section 14)**

20. The Bill amends the function of the Speaker's Committee beyond its current limited remit to give it the power to examine the Commission's compliance with their duty to have regard to the Strategy and Policy Statement.

21. Oversight of the Electoral Commission – as a UK-wide body responsible for oversight of reserved and devolved elections – is a complex matter. The Scottish Elections (Reform) Act 2020 increased the role of the Scottish Parliament in scrutinising the Commission in relation to its activities in relation to Scottish devolved elections<sup>5</sup>. It retained the role of the Speaker's Committee in Electoral Commission oversight, with section 17(2) of that Act creating a structure for the Scottish Parliamentary Corporate Body to report to the Speaker's Committee on the Commission's five year plan.

22. Although this provision does not apply to devolved elections and legislative consent is not required, the Electoral Commission is a body with reserved and devolved functions and the Speaker's Committee on the Electoral Commission has an oversight role in relation to the Electoral Commission's activities on a UK-wide level. Scottish Ministers consider that the Bill should be amended to entitle the Scottish and Welsh Parliaments to participate in its deliberations, at least insofar as they impact upon devolved elections and for each Parliament to have a formal role in the appointment of the Electoral Commissioner with a lead role in their respective nation.

**h) about the Electoral Commission's functions in relation to criminal proceedings (section 15)**

23. The Bill legislates to expressly prevent the Commission from bringing criminal prosecutions in England, Wales and Northern Ireland. These provisions do not extend to Scotland.

Provision in relation to reserved and devolved elections, where the law is reserved and so legislative consent is not sought:

**i) about financial information to be provided by a political party on applying for registration (section 19)**

24. Section 19 deals with the registration of political parties by the Electoral Commission. This measure will introduce a requirement for new political parties to declare their assets and liabilities (if over £500) when registering with the Electoral Commission. This is intended to allow for earlier public scrutiny of political party finances. The Electoral Commission has commented that "*Requiring new political parties to set out any donations, income, loans or debts over £500 would give voters greater transparency. It would allow voters to see from the outset the level of funds or debts a party has.*"<sup>6</sup>

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<sup>5</sup> <https://www.legislation.gov.uk/asp/2020/12/contents>

<sup>6</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/elections-bill/changes-rules-non-party-campaigners>

25. While this change will apply to all UK elections, electoral law in this area is reserved under in Reservation B3 of schedule 5 of the Scotland Act 1998 (political party registration).

**j) for preventing a person being registered as a political party and being a recognised non-party campaigner at the same time (sections 20-21)**

26. These sections seek to create a ban on registering as both a political party and a third-party campaigner: Campaigners can currently register as both a political party and third-party campaigner at the same time, allowing them to potentially make use of two spending limits. This measure will prohibit entities from appearing on both registers at the same time, to ensure this cannot happen.

27. While this change will apply to all UK elections, electoral law in this area is reserved under in Reservation B3 of schedule 5 of the Scotland Act 1998 (political party registration).

**Reasons for seeking legislative consent**

28. The following paragraphs set out the topics in the Bill where the legislative consent of the Scottish Parliament is sought and the Scottish Government's assessment.

Provision in relation to Scottish Parliament and local government elections (in addition to reserved elections):

**k) to make it clearer in law what constitutes 'undue influence' of a voter (section 7)**

29. Although it is already an offence to unduly influence an elector, there is general agreement that the current legislation is in need of modernising<sup>7</sup>. Current law refers to terms like "temporal or spiritual injury" which are no longer readily recognisable or relevant. The Bill clarifies and updates the offence so that undue influence encompasses a wide range of harms, such as physical violence, damage to a person's property or reputation, undue spiritual pressure and injury, or inflicting financial loss. Deceiving an elector about the conduct or administration of an election or referendum can also amount to undue influence. Intimidation of electors is explicitly listed as a form of undue influence.

30. The clarified offence will make it clear that any form of harm (including spiritual injury) which is inflicted on, or threatened to, an elector or their friends and family with the intention of changing their vote is a corrupt electoral practice. It will also make it an offence to deceive electors about the conduct and administration of elections in a way which is intended to stop them from voting or to change their voting behaviour.

31. Electoral law in relation to Scottish Parliament and local government elections is generally devolved to the Scottish Parliament, subject to exceptions set out in

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<sup>7</sup> the Representation of the People Act 1983 s.115, which predates all devolution settlements and, at present, applies to all polls in the UK

Reservation B3 of schedule 5 of the Scotland Act 1998<sup>8</sup>. This provision in the Elections Bill seeks to make provision in relation to Scottish Parliament and local government elections and in such a way as to generate the requirement for legislative consent of the Scottish Parliament. The UK Government considers that this provision presents an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes.

32. Application of this change to Scottish devolved elections is within the competence of the Scottish Parliament and requires consent. The newly defined offence would mean that anyone found guilty of a corrupt practice would be restricted from standing at both local government and Scottish Parliament elections. The Electoral Commission has highlighted that this change would *“help to protect voters against exploitation and would make clear what is and is not acceptable behaviour... This change will also make it easier for the police and prosecutors to take action where appropriate.”*<sup>9</sup>

33. The Scottish Government is sympathetic to this change, but intends to legislate in this area prior to the Scottish Parliament election in 2026. This will allow any Scottish legislation to take account of any issues raised in adoption of this provision. The Scottish Government does not therefore recommend legislative consent in relation to this provision.

#### **I) for the designation of a strategy and policy statement in respect of the Electoral Commission (sections 12 and 13)**

34. The Bill makes provision for the introduction of a ‘Strategy and Policy Statement’, to be approved by the UK Parliament (with an affirmative vote). This Strategy and Policy Statement will provide the Electoral Commission with guidance they must have regard to in the discharge of their functions. Section 13 expands the role of the UK Parliament’s Speaker’s Committee on the Electoral Commission to include a power to examine the performance by the Commission of their duty in relation to the Statement.

35. Electoral law in relation to Scottish Parliament and local government elections is generally devolved to the Scottish Parliament, subject to exceptions set out in Reservation B3 of schedule 5 of the Scotland Act 1998. These provisions in the Bill seek to make provision in relation to Scottish Parliament and local government elections and in such a way as to generate the requirement for legislative consent of the Scottish Parliament. The UK Government considers that these provisions present an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes.

36. Application of this change to Scottish devolved elections is within the competence of the Scottish Parliament and requires consent. The Scottish Government does not consider that UK Ministers should be able to include material in

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<sup>8</sup> <https://www.legislation.gov.uk/ukpga/1998/46/schedule/5>

<sup>9</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/elections-bill/preventing-undue-influence>

relation to devolved elections in the Statement. It does not therefore recommend legislative consent in relation to sections 12 and 13 of the Bill.

37. Even with legislative consent not recommended, the proposed Strategy and Policy Statement in relation to the Electoral Commission is likely in practice to influence all aspects of the Commission's work, including in relation to devolved elections. Scottish Ministers consider that it is excessively narrow to restrict the consultation with Scottish and Welsh Ministers to the draft Statement only as it relates to devolved elections and that the Bill should ensure that Scottish and Welsh Ministers are consulted on the Statement in its generality even if the Scottish Parliament does not indicate legislative consent.

**m) about notional expenditure in relation to the application of the rules on campaign expenditure at devolved elections (sections 16-18)**

38. The Bill seeks to clarify the law on notional spending, which refers to property, goods, services or facilities ('goods etc.') provided to a candidate free of charge or at a discount that must be declared as an election expense in the candidate's return. The Bill seeks to amend the law to make it clear that candidates only need to report benefits in kind which they have actually used, or which they or their election agent have directed, authorised or encouraged someone else to use on the candidate's behalf and do not need to fear being responsible for benefits in kind, of which they had no knowledge. This clarification will also be extended to other campaigners who are subject to notional expenditure controls. Expenditure which promotes an individual candidature will continue to count towards a candidate's own spending limit.

39. Electoral law in relation to Scottish Parliament and local government elections is generally devolved to the Scottish Parliament, subject to exceptions set out in Reservation B3 of schedule 5 of the Scotland Act 1998. This provision in the Elections Bill seeks to make provision in relation to Scottish Parliament and local government elections and in such a way as to generate the requirement for legislative consent of the Scottish Parliament. The UK Government considers that this provision presents an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes.

40. Application of this change to Scottish devolved elections is within the competence of the Scottish Parliament and requires consent.

41. The Scottish Government is sympathetic to these changes, but intends to legislate in this area prior to the Scottish Parliament election in 2026. This will allow any Scottish legislation to take account of any issues raised in adoption of these provisions. The Scottish Government does not therefore recommend legislative consent in relation to these provisions.

**n) about regulation of expenditure for political purposes (sections 22-25)**

42. These measures address:

- Third-party campaigner registration: This measure will introduce a new 'lower' tier of registration with the Electoral Commission for third parties spending above £10,000 across the constituent parts of the UK but less than the current per-country registration thresholds. Groups in this 'lower tier' would be subject to basic transparency requirements and would need to be UK-based or otherwise eligible to register (e.g. a registered overseas elector).
- Restriction of all third-party campaigning to UK-based entities and eligible overseas electors: This will restrict third-party campaigning during a regulated period to only those groups eligible to register with the Electoral Commission, even those spending below the registration threshold. This will remove the scope for spending by ineligible foreign third-party campaigners.
- Restrictions on coordinated spending between parties and third parties: Currently, when one or more third parties work together on a campaign, they must all account for the costs. This new measure will extend similar principles to third-party campaigners and political parties who work together on a joint campaign, to ensure they cannot unfairly expand their spending limits by sharing costs.

43. Electoral law in relation to Scottish Parliament and local government elections is generally devolved to the Scottish Parliament, subject to exceptions set out in Reservation B3 of schedule 5 of the Scotland Act 1998. These provisions in the Elections Bill seek to make provision in relation to Scottish Parliament and local government elections and in such a way as to generate the requirement for legislative consent of the Scottish Parliament. The UK Government considers that these provisions present an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes. It highlights that the application of different rules to the registration and activity of third party campaigners in relation to different types of elections in the UK would be more complicated for campaigners to navigate and for the Electoral Commission to regulate.

44. Application of this change to Scottish devolved elections is within the competence of the Scottish Parliament and requires consent. The Scottish Government is sympathetic to these changes, but intends to legislate in this area prior to the Scottish Parliament election in 2026. This will allow any Scottish legislation to take account of any issues raised in adoption of these provisions. It is also worth noting that the existing threshold for both registration and reporting for non-party campaigners in Scotland is already £10,000. The Scottish Government does not therefore recommend legislative consent in relation to these provisions.

**o) about disqualification of offenders for holding elective offices as a result of intimidatory or abusive behaviour (sections 26-34)**

45. The Bill introduces a new electoral sanction to protect candidates, future candidates, campaigners and elected officeholders from intimidation and abuse, both

online and in person. Under this new electoral sanction, someone convicted of intimidating a candidate, future candidate, campaigner or elected officeholder will face a five-year disqualification from standing for, being elected to and holding elective office. This five-year disqualification is in addition to the punishment for the underlying criminal offence of an intimidatory nature, such as a fine or imprisonment, depending on the severity of the intimidation. The Electoral Commission has commented *“Following the 2019 UK general election, more than half of the candidates we spoke to said they were concerned about standing for election because of the risk of intimidation, threats and abuse. Three quarters of respondents said that they had experienced this behaviour. It is vital that action is taken against those who abuse, threaten or intimidate candidates and campaigners. This behaviour cannot be allowed to discourage people from standing for election or campaigning.”*<sup>10</sup>

46. Section 32 allows UK Ministers to vary or omit offences from the list of criminal offences in Schedule 8 in respect of which a disqualification order can be made. There is no duty to gain the consent of Scottish or Welsh Ministers, despite the implications for devolved elections.

47. Electoral law in relation to Scottish Parliament and local government elections is generally devolved to the Scottish Parliament, subject to exceptions set out in Reservation B3 of schedule 5 of the Scotland Act 1998. These provisions in the Elections Bill seek to make provision in relation to Scottish Parliament and local government elections and in such a way as to generate the requirement for legislative consent of the Scottish Parliament. The UK Government considers that these provisions present an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes.

48. Application of this change to Scottish devolved elections is within the competence of the Scottish Parliament and requires consent. UK-wide application would seem to strengthen the sanction, ensuring that candidates etc. in every part of the UK can benefit equally from the protection of the sanction and mean that the five-year ban, and its deterrent effect, are enforced consistently.

49. The Scottish Government is sympathetic to these changes, but intends to legislate in this area prior to the Scottish Parliament election in 2026. This will allow any Scottish legislation to take account of any issues raised in adoption of these provisions. The Scottish Government does not therefore recommend legislative consent in relation to these provisions.

**p) about information to be included in electronic campaigning material - requiring political campaigners to explicitly declare who they are when promoting campaign content online and on whose behalf (sections 35-56)**

50. This measure introduces a new digital imprints regime, requiring political campaigners to explicitly show who they are and on behalf of whom they are promoting

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<sup>10</sup><https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/elections-bill/preventing-candidate-intimidation>

digital campaigning material. Under the new regime, all paid for digital political material will require an imprint, regardless of who it is promoted by. Certain campaigners, such as elected representatives and political parties, will also require a digital imprint on their organic material if it constitutes digital election material, referendum material or recall petition material.

51. Electoral law in relation to Scottish Parliament and local government elections is generally devolved to the Scottish Parliament, subject to exceptions set out in Reservation B3 of schedule 5 of the Scotland Act 1998. This provision in the Elections Bill seeks to make provision in relation to Scottish Parliament and local government elections and in such a way as to generate the requirement for legislative consent of the Scottish Parliament. The UK Government considers that this provision presents an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes.

52. In 2020 Scottish Ministers made broadly similar provision introducing requirements for digital imprints, in the [Scottish Elections \(Details to appear on Election Material\) Regulations 2020/297](#) and the [Scottish Elections \(Details to appear on Election Publications\) Regulations 2020/298](#). This was the first (and so far only) regime in the UK to require digital imprints at an election.

53. The Scottish Government considers that the application of these changes to Scottish devolved elections is within the competence of the Scottish Parliament and requires consent, however the UK Government considers that the provisions are wholly reserved as coming under the 'Internet Services' reservation in the Scotland Act 1998. The Scottish Government's view is that sections 35-56 of the Bill, other than the "take down" provisions, would engage the legislative consent process of the Scottish Parliament, in addition to those other parts of the Bill in relation to which UKG have noted that the process would be engaged.

54. The Scottish Government does not recommend legislative consent in relation to these provisions. The Bill seeks to effectively override an existing Scottish regime that focuses on specific elections and all kinds of election material, including both paid and unpaid material from registered and unregistered campaigners. The Scottish Government's initial position is that the existing Scottish regime should remain in place, with any adjustments needed to accommodate the reserved aspects of the Bill in relation to the "takedown" of material on the internet. It will however keep this area of the law under review and assess the impact of the provisions of the Bill as they apply in relation to reserved elections.

## **Consultation**

55. UK Government officials consulted Scottish Government officials in preparing the Bill and shared draft provisions on most of the Bill's content. Following the Bill's introduction, the Scottish Government invited views on the Bill from interested stakeholders by 6 August 2021<sup>11</sup>. Responses were received from the Association of Electoral Administrators, the Electoral Commission, Scotland, the Electoral

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<sup>11</sup> <https://www.gov.scot/publications/uk-elections-bill-letter-to-electoral-stakeholders/>

Management Board for Scotland, RNIB Scotland, the Scottish Assessors Association and the Scottish Parliamentary Corporate Body. The EMB has questioned the voter ID and intimidation provisions, citing that they are out of proportion to the problem that they aim to solve<sup>12</sup>. RNIB Scotland has questioned the voter ID proposal as negatively impacting blind and partially sighted people; and consider that the Bill's removal of the clause to provide equipment to assist blind and partially sighted people to vote "without any need for assistance" would downgrade the legal protection afforded to people who are blind or partially sighted to ensure that they can vote independently and in secret. The Scottish Parliamentary Corporate Body has not indicated particular concern in relation to the provisions on the Electoral Commission (the SPCB has a role in relation to the Commission's devolved funding and corporate plan). The Association of Electoral Administrators and the Scottish Assessors Association<sup>13</sup> have both highlighted the significant difficulties and confusion that would be involved in holding a Scottish devolved election on the same day as a UK parliamentary election would be exacerbated by the voter ID and postal vote changes and called for additional resources for electoral administrators. Select comments by the Electoral Commission have been highlighted elsewhere in this Memorandum on a topic-by-topic basis.

## **Financial Implications**

56. Financial implications in Scotland are not likely to be high. Electoral administrators will have to take a number of additional steps, in particular in relation to voter ID and extraterritorial voting for reserved elections. The Scottish Assessors Association has called for additional funding to implement the voter ID and postal vote changes, but this is a matter for the UK Government as the changes are in relation to reserved elections. Electoral Management System changes will be required, but it is expected that the UK Government will bear those costs. Section 58 of the Bill states that Parliament will pay for any costs that a Minister incurs as a result of the Bill.

## **Conclusion**

57. Although the Scottish Government agrees that there is merit in consistency across the UK in some aspects of electoral law, it does not accept that alignment is necessary or desirable in all respects. For example, Scotland has its own distinctive franchise expanded to include 16-17 year olds and foreign nationals in Scottish devolved elections, which operated successfully in the May 2021 Scottish Parliament election.

58. The Scottish Government is sympathetic to some of the changes proposed in the Bill and considers that aspects of the Elections Bill represent an improvement upon existing law. However, there is substantial period until the next major Scottish devolved election (7 May 2026<sup>14</sup>) and it considers it preferable to consider adoption of some of the Bill's measures (e.g. in relation to campaign finance) further in separate Scottish legislation, informed by experience in relation to implementation of the Bill in UK reserved elections and after consultation with electoral stakeholders and others. In doing so, the Scottish Government will pay regard to the necessity of providing clear

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<sup>12</sup> <https://committees.parliament.uk/writtenevidence/38318/pdf/>

<sup>13</sup> <https://committees.parliament.uk/writtenevidence/38449/pdf/>

<sup>14</sup> There is no expectation that the Elections Bill will be in force before the May 2022 Scottish local government elections.

and adequate notice of changes to electoral law and the ‘Gould Principle’ that changes to electoral law should be made at least six months prior to any election at which they are to take effect<sup>15</sup>.

59. As a result, and for the reasons set out above, a Legislative Consent Motion is not being lodged.

## **SCOTTISH GOVERNMENT**

September 2021

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<sup>15</sup> Articulated in “The independent review of the Scottish Parliamentary and local government elections 3 May 2007”, available at:  
[https://www.electoralcommission.org.uk/sites/default/files/electoral\\_commission\\_pdf\\_file/Scottish-Election-Report-A-Final-For-Web.pdf](https://www.electoralcommission.org.uk/sites/default/files/electoral_commission_pdf_file/Scottish-Election-Report-A-Final-For-Web.pdf)

*This Legislative Consent Memorandum relates to the Elections Bill (UK legislation) and was lodged with the Scottish Parliament on 21 September 2021*

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