

# Scottish Elections (Reform) Bill

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## Explanatory Notes

### Introduction

1. As required under Rule 9.3.2A of the Parliament's Standing Orders, these Explanatory Notes are published to accompany the Scottish Elections (Reform) Bill introduced in the Scottish Parliament on 2 September 2019.
2. The following other accompanying documents are published separately:
  - a Financial Memorandum (SP Bill 53–FM);
  - a Policy Memorandum (SP Bill 53– PM)
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 53–LC).
3. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.
4. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or part of a section, does not seem to require any explanation or comment, none is given.

### Bill overview

5. The Bill covers a wide range of issues associated with reform of Scottish Parliament and local government elections in Scotland, set out under the following headings:
  - Term lengths (sections 1 and 2);

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- Postponement of general election to the Scottish Parliament (section 3);
- Scottish local government elections - Electoral wards: number of councillors (section 4);
- Scottish local government elections - Electors: prohibition on voting more than once (section 5);
- Scottish local government elections - Electronic voting (section 6);
- Entitlement to register as an elector before attaining voting age (section 7);
- Electoral Commission: codes of practice (sections 8 to 11);
- Electoral Commission: reporting to Ministers and standard-setting for devolved elections (sections 12 and 13);
- Electoral Commission: funding (sections 14 and 15);
- Electoral Commission examination and audit in relation to devolved Scottish elections (sections 16 to 18);
- Reports by the Electoral Commission on devolved Scottish functions and by the Scottish Parliamentary Corporate Body (“SPCB”) on its functions (section 19 and 20);
- Electoral Commission oversight in relation to expenses and donations for local government elections (sections 21 and 22);
- Electoral Commission: notification of Commission regulations (section 23);
- Electoral Management Board for Scotland (sections 24 to 27);
- Boundaries Scotland (sections 28 to 33).

## Background to the Bill

6. The Bill makes provision relating to a number of issues relating to Scottish Parliament and local government elections as mentioned above. This follows the devolution of additional powers on the control of Scottish Parliament and local government elections to the Scottish Parliament by the Scotland Act 2016<sup>1</sup>.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2016/11/contents/enacted>

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## The structure and summary of the Bill

7. The Bill consists of 36 sections and a schedule, which largely make modifications of existing electoral law, including the Local Government (Scotland) Act 1973<sup>2</sup> (“the 1973 Act”), the Representation of the People Act 1983<sup>3</sup> (“the 1983 Act”), the Scotland Act 1998<sup>4</sup> (“the 1998 Act”), the Political Parties, Elections and Referendums Act 2000<sup>5</sup> (“PPERA”), the Local Governance (Scotland) Act 2004<sup>6</sup> (“the 2004 Act”), the Local Electoral Administration and Registration Services (Scotland) Act 2006<sup>7</sup>, the Electoral Administration Act 2006<sup>8</sup>, and the Local Electoral Administration Act 2011<sup>9</sup> (“the 2011 Act”).

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<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1973/65/contents>

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/1983/2>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1998/46/contents>

<sup>5</sup> <http://www.legislation.gov.uk/ukpga/2000/41/contents>

<sup>6</sup> <http://www.legislation.gov.uk/asp/2004/9/contents>

<sup>7</sup> <http://www.legislation.gov.uk/asp/2006/14/contents>

<sup>8</sup> <http://www.legislation.gov.uk/ukpga/2006/22/contents>

<sup>9</sup> <http://www.legislation.gov.uk/asp/2011/10/contents>

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## Part 1 – General reforms

### Section 1 – Dates of general elections to the Scottish Parliament

8. The setting of the date for the Scottish Parliament election in 2016 was the result of a specific modification of section 2 of the 1998 Act by section 4 of the Fixed-term Parliaments Act 2011<sup>10</sup> in order to avoid a clash with the UK Parliament election that occurred in 2015. Similarly, the setting of the date for the next Scottish Parliament election in 2021 is the result of a modification of section 2 of the 1998 Act by section 1 of the Scottish Election (Dates) Act 2016 (“the 2016 Act”)<sup>11</sup> in order to avoid a clash with the UK Parliament election which was due to be held in 2020, but has subsequently been moved following the early UK Parliament general election called in 2017. Therefore, the current Scottish Parliament is expected to have a five-year term (from 2016 to 2021). The previous Scottish Parliament also had a five-year term (from 2011 to 2016). However, section 2(2) of the 1998 Act sets out that a period of four years is usually to apply between Scottish Parliament general elections. It provides that the poll at such an election shall be held on the first Thursday in May in the fourth calendar year following that in which the previous ordinary general election was held.

9. Subsection (1) changes the standard period between Scottish Parliament elections, as set out in section 2(2) of the 1998 Act, from four to five years. Subsection (1) amends section 2(2) of the 1998 Act to provide that the poll at ordinary general elections to the Scottish Parliament shall be held on the first Thursday in May in the fifth calendar year following that in which the previous ordinary general election was held. Section 2(1) of the 1998 Act, which allowed the Secretary of State to set the date for the first election to the Scottish Parliament, is repealed as it is now spent.

10. Subsection (2) repeals section 1 of the 2016 Act. That section was necessary to move the election scheduled for 7 May 2020 by operation of section 2(2) of the 1998 Act. It made a one-off change to set aside that date and programme an election for 6 May 2021. As section 1(1) of the Bill will change the standard term length of the Scottish Parliament to five years, the one-off change in section 1 of the 2016 Act is no longer required.

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<sup>10</sup> <http://www.legislation.gov.uk/ukpga/2011/14/contents/enacted>

<sup>11</sup> <http://www.legislation.gov.uk/asp/2016/13/contents>

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This repeal makes no change to the date of the next Scottish Parliament election, which remains scheduled for 6 May 2021.

## Section 2 – Dates of Scottish local government elections

11. Section 2 changes the standard term length of Scottish local authorities from four to five years.

12. The current period between Scottish local government elections is four years, as set out in section 5(1C) of the Local Government etc. (Scotland) Act 1994 (as amended)<sup>12</sup>. Subsection (1) repeals subsections (1A) and (1B) of section 5 which are now spent, as they set the date for previous ordinary elections of councillors in 2012 and 2017. Subsection (1) also amends section 5(1C) to provide that ordinary elections for local councillors shall take place every fifth year after the next scheduled election in 2022. This change does not alter the date of the next scheduled election in 2022 but moves the standard period between elections from four to five years.

13. Section 43 of the 1983 Act (as amended) sets out that Scottish local government elections are to occur on the first Thursday in May or such other day as may be fixed by order, provided that that order is made no later than the 1st February in the year preceding the year of the poll. Subsection (2) amends section 43 in consequence of changes made by subsection (1).

## Section 3 – Postponement of general election to the Scottish Parliament

14. Section 3 amends sections 2 and 3 of the 1998 Act in relation to postponement of Scottish Parliament general elections. Subsection (2) is to ensure that the Presiding Officer can propose a revised date for the holding of a Scottish Parliament ordinary general election (of not more than one month earlier, nor more than one month later than the first Thursday in May in an election year) even when the Parliament has already been dissolved in the run up to a scheduled election. This will allow the Presiding Officer the flexibility to propose a new date for the poll in response to any event which occurs after the Parliament has already been dissolved and which may adversely affect the running of the poll on the originally scheduled date. Subsection (2) requires the Presiding Officer to

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<sup>12</sup> <https://www.legislation.gov.uk/ukpga/1994/39/contents>

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consult with the Electoral Commission before proposing a date for the holding of a poll under section 2(5). This will ensure that the Electoral Commission can make the Presiding Officer aware of any administrative difficulties which might affect the date proposed by the Presiding Officer in terms of section 2(5).

15. Subsection (3) makes clear that where the Parliament has been dissolved in advance of an extraordinary general election under section 3(2)(a) of the 1998 Act, the Presiding Officer may propose another day for the holding of the poll which is not more than one month later than the date proposed in terms of the proclamation under section 3(2). Before making such a proposal, the Presiding Officer must consult with the Electoral Commission.

## Section 4 – Electoral wards: number of councillors

16. Section 4 amends section 1 of the 2004 Act to allow Boundaries Scotland (the new name for the Local Government Boundary Commission for Scotland under section 28 of the Bill) greater flexibility around setting the number of councillors which can be returned for local authority electoral wards following a local government election. Boundaries Scotland will be able to recommend local authority wards with two or five elected members, in addition to the current three- and four-member wards.

17. Subsection (3) makes a consequential change in respect of electoral wards consisting wholly or partly of one or more inhabited islands (within the meaning of section 1(2) of the Islands (Scotland) Act 2018<sup>13</sup>), to provide that single member wards will continue to be possible in relation to such wards.

## Section 5 – Local government electors: prohibition on voting more than once

18. Section 5(2) amends section 2(2) of the 1983 Act (prohibitions on voting more than once) to restrict electors to voting in only one local authority area in Scotland at any polls held on the same day. Currently, it is possible in some circumstances to register and vote at a local government election in more than one local government area. It will still be possible for an individual to be on the electoral register for more than one local authority area.

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<sup>13</sup> <http://www.legislation.gov.uk/asp/2018/12/enacted>

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19. Subsection (3)(a) amends section 61(2) of the 1983 Act to make it an offence to vote in more than one electoral area in a local government election where on any particular day local government elections are held throughout Scotland or where by-elections are held in more than one area. Subsection (3)(a) creates an offence of voting at a local government election where that person has a proxy appointed to vote on their behalf at the election in some other electoral area in Scotland and there are multiple polls on the same day. Subsection (3)(b) creates an offence of voting as a proxy for the same elector in more than one electoral ward where the polls for more than one local government election are held on the same day.

## **Section 6 – Electronic voting**

20. Section 6 amends sections of the 2004 Act to ensure that references to “marking” and “ballot papers” can be read as including marking by electronic means and electronic ballot papers. These references may require to be interpreted in such a way at a future date, depending on the outcome of pilot schemes or trials in relation to electronic voting which Scottish Ministers may bring forward at a future date under section 5 of the Scottish Local Government (Elections) Act 2002.

## **Section 7 – Entitlement to register as an elector before attaining voting age**

21. Section 7 amends the 1983 Act in relation to the register of local government electors in Scotland to provide that a person who is 14 years of age or over is entitled to register as an “attainer” provided that their entry on the register gives the date on which they will attain voting age (i.e. 16 years in relation to devolved elections). Until that date, they will not be eligible to vote in a Scottish local government or Scottish Parliament election.

## **Part 2 – electoral commission**

### **Section 8 – Expenditure of candidates at Scottish parliamentary elections**

22. Section 8 inserts a new section 6H into PPERA, permitting the Electoral Commission to prepare a code of practice in relation to the election expenses incurred by candidates at Scottish parliamentary elections.

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23. Subsection (2) of new section 6H requires the Commission to submit a draft code to Scottish Ministers for approval. Subsection (3) provides that Scottish Ministers may approve the code with or without modifications. Subsection (4) requires Scottish Ministers to lay a copy of the draft code, once approved, before the Scottish Parliament. Subsections (5) to (10) set out the process for approval of the draft code by the Scottish Parliament. The Scottish Parliament may resolve not to approve the draft code and if the Parliament makes such a resolution, the Scottish Ministers may not take any further steps in relation to the draft code (subsection (6)). If the Scottish Parliament does *not* resolve *not* to approve the draft code, the Scottish Ministers must issue it and the Electoral Commission must publish it (subsection (7)).

## Section 9 – Expenditure of candidates at Scottish local government elections

24. Section 9 inserts a new paragraph 12A into schedule 4B of the 1983 Act in relation to the preparation of a code of practice by the Electoral Commission for candidate expenditure at Scottish local government elections (schedule 4B of the 1983 Act is inserted by section 17(4) of the Local Electoral Administration and Registration Services (Scotland) Act 2006).

25. Sub-paragraph (2) of new paragraph 12A requires the Commission to submit a draft code to the Scottish Ministers for approval. Sub-paragraph (3) provides that Scottish Ministers may approve the code with or without modifications. Sub-paragraph (4) requires Scottish Ministers to lay a copy of the draft code, once approved by them, before the Scottish Parliament for its consideration. Sub-paragraphs (6) to (10) set out processes around approval and issue of the draft code and for its publication by the Commission. The Scottish Parliament may resolve not to approve the draft code and if the Parliament makes such a resolution, the Scottish Ministers may not take any further steps in relation to the draft code (subsection (6)). If the Scottish Parliament does *not* resolve *not* to approve the draft code, the Scottish Ministers must issue it and the Electoral Commission must publish it (subsection (7)).

## Section 10 – Attendance of observers at Scottish parliamentary elections

26. Section 10 inserts new section 6FA into PPERA. Section 6FA sets out the procedure for the preparation for a code of practice by the Electoral



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Commission on the attendance of observers at Scottish parliamentary elections.

27. Section 6FA makes similar provision to that made by section 6F in relation to codes of practice for the attendance of observers at reserved elections. Section 6FA(2) specifies the matters that must be included in the code. Section 6FA(4) requires the Electoral Commission to consult the Scottish Ministers before preparing the code. The Commission must lay the code before the Scottish Parliament and must publish the code as it may determine (subsections (5) and (6)). Subsection (7) specifies that the Electoral Commission and its representatives, as well as returning officers and counting officers, must have regard to the code in exercising functions under section 6A, 6B, 6C, 6D or 6E of PPERA. Subsections (8) and (9) allow the Electoral Commission to revise the code at any time, following the same procedure as for preparing the code.

## Section 11 – Controlled expenditure of third parties at Scottish local government elections

28. Section 11 extends the existing powers of Scottish Ministers in respect of controlled expenditure of third parties at Scottish Parliament elections under section 85A of PPERA. These are the powers to approve a draft code of practice prepared by the Electoral Commission, to appoint a day when the code comes into force, and to amend Part 1 of schedule 8A of PPERA (controlled expenditure: qualifying expenses). The extension allows the Scottish Ministers to exercise these powers in relation to Scottish local government elections.

## Section 12 – Reviews of electoral and political matters

29. Section 12 amends section 6 of PPERA and inserts a new section 6ZA in relation to the duty on the Electoral Commission to keep under review and report on electoral and political matters. Section 6 applies to Scottish Parliament elections as a result of section 6(6)(a)(i) and section 5(2)(c) of PPERA but does not currently apply to Scottish local government elections.

30. Subsection (2) applies section 6 to Scottish local government elections, but subject to the provisions of new section 6ZA.

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31. Section 6ZA(1) provides that when a report under section 6(1) of PPERA relates to Scottish parliamentary general elections or Scottish local government elections, the Commission must submit the report to the Scottish Ministers in so far as it relates to a matter mentioned in section 6(1)(a). Where a report relates to a Scottish parliamentary general election or Scottish local government election and relates to a reserved matter mentioned in section 6(1) of PPERA, the report is to be submitted to the Secretary of State.

32. Subsections (2) and (3) of section 6ZA mirror the terms of section 6 in requiring the Electoral Commission to review and report on any matter requested by Scottish Ministers in relation to the Scottish devolved elections listed in section 6ZA(3) (provided that the request does not relate to a reserved matter).

## Section 13 – Setting of performance standards

33. Under section 9A of PPERA, the Electoral Commission must consult the Secretary of State before it sets performance standards of relevant officers (defined in section 9A(8) of PPERA as electoral registration officers and also returning officers in relation to elections listed in section 9A(6) of PPERA and counting officers in relation to referendums under section 9A(7) of PPERA). Section 13(2) disapplies that requirement in relation to Scottish devolved elections.

34. Subsection (3) inserts a new section 9AA into PPERA that mirrors subsections (3) and (5) of section 9A in respect of Scottish devolved elections. It requires the Electoral Commission to consult the Scottish Ministers before determining standards that relate to Scottish parliamentary general elections, elections under section 9 of the Scotland Act 1998 (constituency vacancies) and local government elections in Scotland. Subsection (2) of new section 9AA requires the Electoral Commission to send a copy of the published standards in relation to Scottish Parliament and local government elections to the Scottish Ministers who must lay a copy of the published standards before the Scottish Parliament.

## Section 14 – Financing of Electoral Commission

35. Paragraph 14(1) of schedule 1 of PPERA (the Electoral Commission) provides that any expenditure of the Electoral Commission, to the extent it cannot be met by income received by the Commission, shall be met out of money provided by the UK Parliament, with various exceptions.

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36. Section 14 modifies paragraphs 14 and 25 of schedule 1 of PPERA and inserts a new paragraph 14A, with the overall effect of transferring funding responsibility to the SPCB in respect of the Commission and its functions relating to devolved Scottish elections.

37. Paragraph (a) of subsection (2) repeals references to section 13A of PPERA in relation to funding by Scottish Ministers to the Electoral Commission in respect of local government elections in Scotland. This is a result of section 13A being repealed by section 15 of the Bill. Paragraph (a) also repeals an obsolete reference to section 19(11) of PPERA, which was repealed by the Local Democracy, Economic Development and Construction Act 2009. Paragraph (b) of subsection (2) adds funding from the SPCB under paragraph 14A of schedule 1 of PPERA (inserted by section 14(3) of the Bill) to the list of exceptions to the general duty on the UK Parliament to fund the Commission.

38. Subsection (3) inserts new paragraph 14A into schedule 1 of PPERA, imposing a duty on the SPCB to reimburse the Electoral Commission for any expenditure incurred in relation to the Commission's devolved Scottish functions, in so far as it cannot be met by income received by the Commission. Paragraph 14A largely replicates the existing duties in paragraph 14 in relation to the Commission's preparation of estimates (and revised estimates) of income and expenditure, but requires such estimates in relation to the Commission's devolved Scottish functions to be submitted to the SPCB for scrutiny. The SPCB is obliged to lay any estimate of income and expenditure before the Scottish Parliament, along with a report detailing any departures from the advice of Scottish Ministers, from recommendations from the Comptroller and Auditor General in relation to the estimate (or revised estimate) or any modification the SPCB makes to the estimate.

## **Section 15 – Reimbursement of costs by Scottish Ministers etc.**

39. Section 15 repeals section 13A of PPERA (inserted by section 16 of the 2011 Act). That section requires the Electoral Commission to be reimbursed by the Scottish Government for expenditure it incurs in carrying out its functions in relation to local government elections in Scotland, subject to a maximum amount specified by the Scottish Ministers by order. This funding supports Electoral Commission public awareness activities and its guidance and advice service to candidates and agents and

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returning officers and their staff at local government elections. The repeal is consequential on responsibility for this funding being transferred to the SPCB (by section 14 of the Bill).

## **Section 16 – Electoral Commission: five-year plan**

40. Section 16 amends schedule 1 of PPERA in relation to the submission of plans by the Electoral Commission setting out aims and objectives for the period of five years beginning with the financial year to which an estimate of the Commission's income and expenditure relates.

41. Subsection (2) inserts new paragraph 15A, requiring the Electoral Commission, in submitting its five-year plans to the Speaker's Committee (under paragraph 15), also to submit the plan to the SPCB. The Speaker's Committee oversees the work of the Electoral Commission.

42. Sub-paragraph (2) of paragraph 15A requires the SPCB to examine any five-year plan as it relates to the Electoral Commission's devolved Scottish functions.

43. Sub-paragraph (3) sets out that the SPCB's consideration of any plan is to be informed by the most recent report of the Comptroller and Auditor General and advice from the Scottish Ministers.

44. Sub-paragraph (4) makes provision for the SPCB to report any findings and recommendations to the Speaker's Committee and to lay the plan before the Scottish Parliament.

45. Sub-paragraph (5) requires the SPCB to report to the Scottish Parliament on any recommendations it makes in relation to any plan and its reasons for any departure from the advice of Scottish Ministers or recommendations from the Comptroller and Auditor General.

## **Section 17 – Examination of Commission by Comptroller and Auditor General**

46. Section 17 inserts new paragraph 16A into schedule 1 of PPERA requiring the Comptroller and Auditor General to assist the SPCB in its consideration of estimates of the Commission's income and expenditure under paragraph 14A and its consideration of the Commission's five-year plan under paragraph 15A, in a year in which a five-year plan and an estimate is submitted to the SPCB. It also provides that, where the

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Comptroller and Auditor General has already issued a report following its examination to the SPCB and the Commission submits a revised estimate, the Comptroller and Auditor General may carry out a further value for money examination in relation to the Commission.

## **Section 18 – Audit and accounting officers**

47. Section 18 amends paragraphs 18 and 19 of schedule 1 of PPERA to require the accounts prepared by the Commission for any financial year to be submitted to the SPCB in addition to the Comptroller and Auditor General and the Speaker’s Committee. Subsection (2) also provides that the SPCB may require the Commission to submit the accounts prepared to the Auditor General for Scotland for auditing in so far as those accounts relate to Commission’s devolved Scottish functions once the accounts have been certified, and laid before the UK Parliament, by the Comptroller and Auditor General.

## **Section 19 – Reports: devolved Scottish elections**

48. Section 19 amends paragraphs 20 and 20A of schedule 1 of PPERA to provide that the Electoral Commission is to provide annual reports about the performance of the Commission’s functions in respect of Scottish Parliament elections to the Scottish Parliament rather than the UK Parliament.

## **Section 20 – Reports by Scottish Parliamentary Corporate Body**

49. Section 20 amends schedule 1 of PPERA to insert a new paragraph 20B requiring the SPCB to prepare a report on the exercise of its functions under that schedule at least once in each year. The report is to be laid before the Scottish Parliament.

## **Section 21 – Electoral Commission: election expenses at local government elections**

50. Section 21 makes amendments to existing legislation to ensure that the Electoral Commission has the power to specify the information to be contained in the statement accompanying the return as to election expenses of a candidate at a local government election in Scotland.

51. Section 81(3A) of the 1983 Act (inserted by section 26(1) of the Electoral Administration Act 2006) provides that the return as to election expenses under that section must contain a statement relating to such other expenses as the Electoral Commission provide in regulations, a statement relating to claims in connection with election expenses and a

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statement relating to such other matters as is prescribed in regulations made by the Secretary of State. Section 81(3A) does not currently apply to local government elections in Scotland by virtue of section 26(2) of the Electoral Administration Act 2006. By repealing section 26(2) of the Electoral Administration Act 2006, section 21(1) of the Bill will apply section 81(3A) of the 1983 Act to local government elections in Scotland.

52. Section 21(2) consequentially repeals section 19 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (return as to election expenses). Section 19 (which sets out amendments to section 81 of the 1983 Act but has not been brought into force) is no longer required as a result of the application of section 81(3A) of the 1983 Act to local government elections in Scotland.

53. Section 21(3) further amends section 81 of the 1983 Act to insert a new subsection (3B), ensuring that any regulations under paragraph (c) of subsection (3A) of the 1983 Act in relation to a local government election in Scotland are to be made by the Scottish Ministers rather than by the Secretary of State (and the regulations are to be subject to the affirmative procedure). It also repeals section 81(10B) of the 1983 Act. Accordingly, section 81(10A), which provides that the Electoral Commission may, by regulations, prescribe a form of return which may be used for the purposes of making any return required by section 81, will apply in relation to local government elections in Scotland.

54. Section 21(4) requires the Electoral Commission to be consulted where the Scottish Ministers make regulations under section 81(3A)(c). This mirrors the requirement to consult the Commission where the Secretary of State is exercising that power (by virtue of section 7(2)(e) of PPERA).

## **Section 22 – Electoral Commission: donations to candidates at Scottish local government elections**

55. Section 130 of PPERA inserted section 71A and schedule 2A into the 1983 Act, providing for controls on donations to candidates made for the purpose of meeting election expenses. Those provisions do not currently apply to local government elections in Scotland (see section 130(4) of PPERA).

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56. Section 22(1) of the Bill repeals section 130(4) of PPERA, which will have the effect of applying section 71A of the 1983 Act to local government elections in Scotland.

57. Section 22(2) amends paragraphs 3 (sponsorship) and 10 (statement of relevant donations) of schedule 2A of the 1983 Act. Subsection (2)(a) inserts a new sub-paragraph (4A) into paragraph 3 which provides that any order by the Secretary of State under paragraph 3(4) of schedule 2A which modifies paragraphs 3(2) or 3(3) of schedule 2A is to have no effect in relation to local government elections in Scotland. Subsection (2)(b)(ii) repeals sub-paragraph 10(3) of schedule 2A. Accordingly, the power of the Secretary of State under paragraph 10(2) of schedule 2A (to specify what may be used as evidence that a donor has an anonymous entry in an electoral register for the purpose of reporting relevant donations to the Electoral Commission) would apply in relation to local government elections in Scotland. Subsection (2)(b)(i) inserts a new sub-paragraph (2A) into paragraph 10 of schedule 2A to provide that the power under paragraph 10(2) of schedule 2A in relation to local government elections in Scotland is to be exercisable by the Scottish Ministers rather than the Secretary of State.

58. Section 22(3) and (4) apply paragraph 10(2) of schedule 2A and any regulations made under that paragraph to local government elections in Scotland as they had effect on the date that the Bill was introduced to the Scottish Parliament. This applies the Donations to Candidates (Anonymous Registration) Regulations 2014 (S.I. 2014/1805)<sup>14</sup>, though section 22(5) provides that the Scottish Ministers may amend or revoke these regulations so far as they are applied to local government elections in Scotland.

59. Section 22(6) requires the Electoral Commission to be consulted where the Scottish Ministers make regulations under paragraph 10(2) of schedule 2A. This mirrors the requirement where the Secretary of State is exercising that power (by virtue of section 7(2)(e) of PPERA).

## Section 23 – Notification of Commission regulations: devolved Scottish elections

60. Section 23 inserts new paragraph 21A into schedule 1 of PPERA requiring the Commission to notify Scottish Ministers of any new, modified

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<sup>14</sup> <http://www.legislation.gov.uk/ukSI/2014/1805/made>

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or revoked regulations in relation to Scottish local government or Scottish Parliament elections made by the Electoral Commission.

## **Part 3 – Electoral Management Board for Scotland**

### **Section 24 – Electoral Management Board for Scotland: general functions**

61. Section 1 of the 2011 Act established the Electoral Management Board for Scotland (“the EMB”) with the general function of co-ordinating the administration of local government elections in Scotland.

62. Section 24 amends section 1 to extend the role of the EMB to Scottish Parliament elections. It replaces section 1(3) to expand the role of the EMB in providing assistance to returning officers, local authorities and other persons carrying out functions in relation to Scottish devolved elections.

### **Section 25 – Directions to returning officers: Scottish parliamentary elections**

63. Section 25 extends the role of the EMB to provide directions to returning officers at Scottish parliamentary elections, as is already the case for local government elections.

### **Section 26 – Directions to electoral registration officers: Scottish parliamentary elections**

64. Section 26 extends the role of the EMB to provide directions to electoral registration officers at Scottish parliamentary elections, as is already the case for local government elections.

### **Section 27 – Electoral Management Board for Scotland: miscellaneous amendments**

65. Section 27 amends Part 1 of the 2011 Act as a consequence of the EMB’s additional powers in relation to Scottish Parliament elections. The changes are largely to ensure the correct terminology and definitions (e.g. references to local government) are employed. Subsection (2) amends section 2 (membership) of the 2011 Act to ensure that the Convener of the EMB in appointing members is to have regard to the desirability of membership taken as a whole having a broad range of experience not just in relation to different local authority areas, but also in relation to different Scottish parliamentary constituencies and regions.



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## Part 4 – Boundaries Scotland

### Section 28 – Boundaries Scotland

66. Section 28 renames the Local Government Boundary Commission for Scotland as ‘Boundaries Scotland’.<sup>15</sup> This change reflects the wider role of the Commission, which has gained responsibility for reviewing and reporting on boundaries for the constituencies and regions for Scottish Parliament elections (as a result of section 8 of the Scotland Act 2016). Subsection (1) makes clear that Boundaries Scotland (which was originally established as the Local Government Boundary Commission for Scotland under section 12 of the 1973 Act) continues to operate as a commission, despite its renaming. Subsection (2) and the schedule of the Bill make consequential amendments to substitute the new name.

### Section 29 – Reviews of local government wards and number of councillors

67. Section 29 amends section 16 of the 1973 Act (substantive changes in electoral arrangements). Subsection (1)(a) repeals the existing section 16(2) of the 1973 Act and replaces it with new section 16(2) and (2A). New section 16(2) sets out the purposes of a review of the electoral arrangements for a local government area by Boundaries Scotland (“electoral arrangements” is defined in section 28(1) of the 1973 Act).

68. The first report of Boundaries Scotland on the electoral arrangements for a local government area after the coming into force of new section 16(2A) must be submitted by no later than 31 December 2028, so far as is reasonably practicable (in terms of paragraph (a) of new section 16(2A)). Thereafter, section 16(2A)(b) provides that, so far as is reasonably practicable, subsequent reports by Boundaries Scotland on the electoral arrangements for a local government area shall be submitted at intervals of not more than 12 years after the date of the submission of the report on its previous review of that area. Accordingly, it removes the existing duty in section 16(2) on Boundaries Scotland to submit reports on reviews of the electoral arrangements for a local government area between eight and twelve years after the submission of the previous report in relation to an

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<sup>15</sup> These explanatory notes subsequently refer to the Local Government Boundary Commission for Scotland as “the Commission” or “Boundaries Scotland”.

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area. This change will allow Boundaries Scotland to review areas which are subject to significant population changes more frequently.

69. Subsections (2) and (3) make provision in relation to the interaction between reviews under section 20 of the Islands (Scotland) Act 2018 and the amended section 16 of the 1973 Act. Subsection (2) provides for a report under section 20 of the Islands (Scotland) Act 2018 to be treated as the first report under new section 16(2A)(a) (to avoid duplications of reports under the new section and under that Act). Subsection (3) provides for a consequential repeal of section 20(4) of the Islands (Scotland) Act 2018 as it is unnecessary in light of the provision to be made by the Bill.

## Section 30 - Changes to boundaries of parliamentary constituencies: procedure

70. Section 30 amends paragraph 6 of schedule 1 of the 1998 Act in relation to Orders giving effect to recommendations by Boundaries Scotland on the boundaries of Scottish Parliament constituencies. Subsection (2) makes clear that the power of Scottish Ministers to amend recommendations by Boundaries Scotland in respect of Scottish Parliament constituencies is restricted to minor or technical alterations, such as to correct a spelling mistake or factual error.

71. Subsection (3) inserts sub-paragraphs (3A) and (3B) into paragraph 6 of schedule 1. Sub-paragraph (3A) provides that the Scottish Ministers must set out a statement explaining their reasons for making any minor or technical alterations as soon as reasonably practicable after laying the amended order under paragraph 6(3). Sub-paragraph (3B) provides that a draft order giving effect to Boundaries Scotland's recommendations, or an amended order, must not, once it has been laid in the Parliament, be withdrawn except with the agreement of the Parliament.

72. Subsection (4) inserts four new sub-paragraphs ((4A) to (4D)) into paragraph 6 of schedule 1 to cover the situation where a draft order giving effect to Boundaries Scotland recommendations in relation to the boundaries of Scottish Parliament constituencies has been withdrawn or rejected by the Scottish Parliament on a substantive point. New sub-paragraph (4A) requires the Scottish Ministers to notify Boundaries Scotland of the need to conduct a further review if the Parliament's concerns are substantive (and cannot therefore be addressed by an amended order making necessary minor or technical alterations). Sub-paragraph (4B) requires Boundaries Scotland to conduct a further review

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on receiving that notification. Sub-paragraph (4C) applies the procedure for submitting the new report to the Parliament set out in paragraph 3 of schedule 1 of the 1998 Act in relation to reviews, but ensures that Scottish Ministers will not be obliged to refer the new report back to Boundaries Scotland if it is again withdrawn or rejected by the Scottish Parliament, unless the Scottish Parliament passes a resolution requesting a further review. Sub-paragraph (4D) ensures that any review conducted under sub-paragraph (4B) will not count as a review for the purposes of calculating when the next review by Boundaries Scotland in respect of the Scottish Parliament constituency is to take place.

## **Section 31 – Changes to boundaries of local government areas or electoral arrangements: procedure**

73. Section 31 amends the 1973 Act in relation to local government boundary reviews. Subsection (2) replaces the existing section 17 with a replacement section and it also inserts a new section 17A into the 1973 Act.

74. Subsection (1) of the replacement section 17 reformulates the existing duty on Boundaries Scotland to submit reports arising from its reviews of (a) the extent and number of local government electoral areas carried out under sections 14 (duty and power to review local government areas) and 15 (powers of the Scottish Ministers in relation to reviews) of the 1973 Act; or (b) electoral arrangements within a local authority area under section 16 (substantive changes in electoral arrangements) of the 1973 Act.

75. Subsection (2) of the replacement section 17 reformulates the existing duties in relation to submission of any report within the appropriate time limit. Subsection (3) of that section obliges the Scottish Ministers to lay any report by Boundaries Scotland in relation to a review of local government areas or electoral arrangements under sections 14, 15 or 16 of the 1973 Act before the Scottish Parliament.

76. Subsection (4) of the replacement section 17 specifies that regulations giving effect to proposals which abolish or alter the boundaries of any local government area or electoral ward or increase or decrease the number of councillors to be returned in any electoral ward will be subject to the affirmative procedure in the Scottish Parliament. This is a change from the current arrangements, which require negative procedure for changes to

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the boundaries of local government areas and no procedure for changes to electoral wards. The change will afford greater parliamentary scrutiny of the boundary review process and bring the procedure for approving changes to boundaries into line with that which is already in place for review of Scottish Parliament constituency boundaries.

77. Subsection (5) of the replacement section 17 sets out the procedure if a draft instrument (containing regulations) adopting the recommendations is rejected by the Scottish Parliament. In those circumstances the Scottish Ministers will only be able to amend that draft instrument to make minor or technical alterations, such as to correct a spelling mistake or factual error. If a draft instrument has been rejected for substantive reasons, the Scottish Ministers will be obliged to refer the matter back to Boundaries Scotland for a further review to be conducted in accordance with new section 17A of the 1973 Act (to be inserted by section 31(2) of the Bill).

78. New section 17A of the 1973 Act requires Boundaries Scotland to conduct a further review of proposals to alter any local government area or electoral arrangements when notified by the Scottish Ministers following the withdrawal or rejection by the Scottish Parliament of an instrument giving effect to its proposals (and the objection cannot be remedied by the Scottish Ministers amending the draft instrument to make minor or technical alterations).

79. Subsection (2) of section 17A confers discretion on Boundaries Scotland as to the manner and extent of the further review to be carried out by it. Subsection (3) applies the procedure for the carrying out of a review to the carrying out of a further review by Boundaries Scotland, but disapplies the consultation and publication requirements. Subsection (4) provides that the Scottish Ministers retain their power of direction in relation to any consultation carried out by Boundaries Scotland regarding a further review. Subsection (5) provides that Boundaries Scotland has powers regarding publicity in respect of further reviews.

80. Subsection (6) of section 17A requires Boundaries Scotland to submit a report to Scottish Ministers on its further review, including any further or supplementary proposals. Subsection (7) applies the procedure for submitting the new report to Scottish Parliament set out in section 17. Subsections (8) and (9) ensure an additional further review will only occur if requested by a resolution of the Scottish Parliament and that any further review will not count as a review for the purposes of calculating when the next review in respect of the local authority area is to occur.

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81. Subsections (3) to (7) of section 31 also amend the 1973 Act to change references to ‘orders’ to ‘regulations’ in consequence of new section 17 of the 1973 Act conferring a power to make regulations rather than an order (adopting the modern approach to the form of delegated powers).

## **Section 32 – Scottish Parliament constituency boundaries: timing of first report**

82. Section 32 changes the last date by which Boundaries Scotland must submit its first report under paragraph 3 of schedule 1 of the 1998 Act on the review of the boundaries of Scottish Parliament constituencies. The last date changes from 1 May 2022 to 1 May 2024. This change reflects the extension of the previous and current terms of the Scottish Parliament from four to five years and ensures that the boundary recommendations contained in the Boundaries Scotland report will be current and relevant for the scheduled Scottish Parliament election in May 2026 (as a result of the change to five-year Scottish Parliament terms effected by section 1 of the Bill).

## **Section 33 – Publishing of proposals affecting Scottish Parliament constituencies**

83. Paragraph 7(2) of schedule 1 of the 1998 Act sets out that when Boundaries Scotland has provisionally determined to make recommendations affecting a Scottish Parliament constituency it must publish in at least one newspaper circulating in the constituency a notice stating the effect of the proposed recommendations and inviting representations on the proposed recommendations. Section 33 allows Boundaries Scotland to advertise its draft recommendations on Scottish Parliament constituency and regional boundaries in such a manner as it sees fit, rather than requiring publication of a notice in a local newspaper.

## **Part 7 – final provisions**

### **Section 34 – Ancillary provision**

84. Section 34 enables the Scottish Ministers by regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill. Subsection (2) provides that such regulations may make different provision for different purposes and modify any enactment (including the Bill once enacted). Subsection (3) provides

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that such regulations are subject to the affirmative procedure if they contain provision adding to, replacing or omitting any part of the text of an Act, but otherwise are subject to the negative procedure.

## **Section 35 – Commencement**

85. Part 5 of the Bill (its final provisions) will come into force on the day after Royal Assent. Its other provisions will come into force on such day as the Scottish Ministers may by regulations appoint.

86. Subsection (3) provides that such regulations may appoint different days for different purposes, may include transitional, transitory or saving provision and may make different provision for different purposes.

## **Section 36 - Short title**

87. Section 36 provides that the short title for the Bill once enacted is to be the Scottish Elections (Reform) Act 2020.

## **Schedule – Boundaries Scotland: modification of enactments**

88. The schedule amends each of the enactments referred to in consequence of renaming of the Local Government Boundary Commission for Scotland as Boundaries Scotland by section 28 (and to refer to the Commission in the singular rather than the plural).

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# Scottish Elections (Reform) Bill

## Explanatory Notes

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