

# Scottish Elections (Representation and Reform) Bill

---

## Delegated Powers Memorandum

### Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Scottish Elections (Representation and Reform) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 42–EN);
  - a Financial Memorandum (SP Bill 42–FM);
  - a Policy Memorandum (SP Bill 42–PM);
  - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 42–LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Scottish Parliament.

### Outline of Bill provisions

4. The purpose of this Bill is to make a number of improvements to the law affecting Scottish Parliament and Scottish local government elections. It will amend Scottish electoral law to confer candidacy rights, set out new rules governing candidates, make improvements for voters, provide for emergency re-scheduling of elections and reform arrangements for several electoral organisations.
5. The Bill makes provision on the following:
  - Extending candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain;

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

- Extending Elections Act 2022 disqualification orders to bar those found guilty of offences involving intimidation of campaigners, candidates and elected representatives from being Members of the Scottish Parliament (“MSPs”) and councillors and create a new Scottish disqualification order which will apply to those guilty of offences involving intimidation of electoral workers;
- Updating the definition of notional expenditure at Scottish Parliament and local government elections in line with the Elections Act 2022;
- Reducing the amount which campaigners who are ineligible to register with the Electoral Commission can spend to £700 in Scottish Parliament elections, aligning with the Elections Act 2022;
- On rules for third party campaigning in Scottish Parliament elections, responding to the Elections Act 2022 by allowing the Scottish Ministers by regulations to amend the categories of third-party campaigners and by requiring the Electoral Commission to provide a code of practice on third-party campaigning;
- Taking forward a range of measures based on experience with Covid-19 to ensure emergency re-scheduling of elections can be more easily facilitated. These include:
  - Extending the period by which the Presiding Officer can postpone national Scottish Parliament elections to 8 weeks with the possibility of a further 8 week extension (and providing a power to rearrange by-elections by up to 3 months);
  - Removing the risk of an Extraordinary General Election being required in the run up to a scheduled Scottish Parliament election;
  - Allowing emergency postponement of local government elections by up to two weeks, with the Convener of the Electoral Management Board for Scotland (“EMB”) able to postpone the entire national election and each Returning Officer able to postpone in their area;
  - Allowing Returning Officers to rearrange local government by-elections in their area by up to 3 months;
- Amendments to the Scottish Local Government (Elections) Act 2002 to allow electoral pilot schemes to be proposed by the Scottish Ministers, the EMB and Electoral Registration Officers (“EROs”) in addition to local authorities (and requiring the EMB to be consulted on pilot proposals);
- Creating a power to permit funding by the Scottish Ministers to increase democratic engagement;
- Revoking the existing Scottish regulations on digital imprints, but reworking one aspect (requiring an imprint on unpaid for material posted by an organisation other than a regulated campaigner) to apply to material relating to Scottish devolved elections, in addition to the new Elections Act 2022 rules;

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

- Changing the deadline by which Boundaries Scotland is required to review local government electoral wards from 2028 to 2031, to match 5 year election cycles;
- Facilitating improved scrutiny by the Scottish Parliament of the activities of the Electoral Commission in relation to Scottish Parliament and local government elections;
- Amending the constitution of the EMB, including giving it legal personality in its own right.

## Rationale for subordinate legislation

6. The Bill contains ten provisions which create new or adjust existing delegated powers, all of which are explained in more detail below. This includes a short explanation of what each power allows, why the power has been taken or amended in the Bill and why the selected form of parliamentary procedure (where applicable) has been considered appropriate.

7. In deciding whether legislative provisions should be specified on the face of the Bill or made by subordinate legislation, the Scottish Government has had regard to:

- the need to make proper and efficient use of valuable parliamentary time;
- the need to provide the flexibility to respond to changing circumstances and to make changes quickly without the need for further primary legislation; and
- the potential for unexpected issues to arise, which might otherwise frustrate the purpose of the Bill's provisions as approved by the Parliament.

## Delegated powers

### Section 9 – Power to amend the schedule (Offences for the purposes of Part 2)

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

### Provision

8. Part 2 of the Bill contains provision making changes to the disqualification criteria for membership of the Scottish Parliament and local authorities, part of which mirrors the changes made by Part 5 of the Elections Act 2022 (the "Elections Act") in respect of elective offices across the rest of the United Kingdom. Section 3 of the Bill applies where an offender is convicted by a criminal court in Scotland of an offence listed in the schedule of the Bill which was committed when the offender was aged 18 or over; and the court is satisfied beyond reasonable doubt that the offence is aggravated by hostility

related to a Returning Officer or their staff (as defined in section 4), a registration officer or their staff (as defined in section 5) or a counting officer or their staff (as defined in section 6) (described here collectively as “election workers”). In those circumstances the court must, when dealing with the offender for the offence, also make a Scottish disqualification order. The disqualification order is to have effect for 5 years and, by virtue of the changes made by sections 7 and 8 of the Bill to the Scotland Act 1998 (the “1998 Act”) and the Local Government (Scotland) Act 1973 (the “1973 Act”), respectively, means that the offender is disqualified from being a member of the Scottish Parliament or local authority.

9. Section 9 allows the Scottish Ministers by regulations to add or omit offences from the list of criminal offences in the schedule in respect of which a disqualification order can be made in accordance with section 3. Such regulations are subject to the affirmative procedure.

### Reason for taking power

10. The purpose of the provision in section 9 is to enable the Scottish Ministers to respond promptly to, and ensure compliance with, any changes in the criminal law, for example where an offence is amended or created or repealed. Delegation of this regulation-making function to the Scottish Ministers will ensure that, once this Bill is in force, the list of offences in the schedule to the Bill is updated as timeously as possible, reflecting changes in the criminal law, while providing an appropriate level of parliamentary scrutiny. It will also allow Ministers to respond if inclusion (or omission) of an offence from the list in the schedule is considered necessary in the light of experience. It is highlighted that paragraph 1 of the schedule as introduced covers all cases tried under solemn criminal procedure: this is a difference in approach from that of Part 5 of the Elections Act<sup>1</sup>. That Act’s schedule 9 lists specific offences under both solemn and summary procedure (and section 36 provides a comparable power for amendment of the list by regulations).

### Choice of procedure

11. The affirmative procedure is considered appropriate for regulations made under section 9. This is in order to afford a greater level of parliamentary scrutiny of changes to the list of offences, given the effect of listing an offence may lead, where there is aggravation present to the offender being disqualified from elected office. Likewise, we consider that the Parliament will want to carefully consider any proposed removal of an offence from the schedule and the consequences of that for the purpose of Scottish disqualification orders.

---

<sup>1</sup> [Elections Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

## Section 15 – power to make regulations to add, remove or vary description of third parties who can incur controlled expenditure

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

### Provision

12. Section 15 allows the Scottish Ministers to amend by regulations the list (contained in section 88(2) of the Political Parties, Elections and Referendums Act 2000 (“PPERA”)) of third parties who can incur controlled expenditure during a Scottish devolved regulated period (defined as the period (normally 4 months) before a Scottish Parliament election for which campaign limits are applied in terms of paragraph 5 of schedule 10 of PERA)<sup>2</sup>. The section allows for Ministers to add, change, or remove categories of third party able to campaign during Scottish Parliament regulated periods. To change or remove an existing category of third party campaigner, a recommendation by the Electoral Commission must first have been made.

### Reason for taking power

13. The purpose of the provision is to ensure the Scottish Ministers are able to respond to changes made by the UK Secretary of State to the list of third party campaigners at reserved elections, as set out in section 88(9) of PERA. This will allow for consistent rules between devolved and reserved elections, where this is desired. It will also allow for categories to be added if deemed necessary, in response to potential future changes in campaigning.

### Choice of procedure

14. The affirmative procedure is considered appropriate for regulations made under section 15. This is in order to afford greater parliamentary scrutiny of any amendments to the list of third party campaigners. A recommendation from the Electoral Commission would be required in advance of an affirmative instrument being laid in Parliament, if an existing category is being changed or removed.

---

<sup>2</sup> [Political Parties, Elections and Referendums Act 2000 \(legislation.gov.uk\)](https://legislation.gov.uk)

## Section 18(2) and (3) – draft Electoral Commission code of practice on third party campaigning

Power conferred on: the Scottish Ministers

Power exercisable by: approval of a code of practice

Parliamentary procedure: bespoke procedure as set out in new section 100BA of PPERA (inserted into PPERA by section 18(3) of the Bill)

### Provision

15. Section 18 inserts new sections 100AA and 100BA into PPERA, which broadly mirrors sections 100A and 100B of that Act, which were inserted into PPERA by the Elections Act 2022. These new sections place a duty on the Electoral Commission to produce a statutory code of practice on the application of expenditure controls for third party campaigners contained within that Act as it relates to Scottish devolved elections and Scottish devolved regulated periods.

16. The Electoral Commission must, when preparing the code, follow the process set out in these sections which includes a requirement to consult with the Scottish Parliament, and any other persons the Electoral Commission considers appropriate. Section 100BA also sets out the process to be followed for the Code to be approved. The Scottish Ministers may approve a draft code with or without modifications and must then lay it before the Parliament. Parliament then has 40 days to resolve not to approve the Code.

### Reason for taking power

17. The purpose of the provision in section 18 is to facilitate the creation of a statutory code of practice on expenditure controls for third party campaigners for Scottish devolved elections and Scottish devolved regulated periods by the Electoral Commission.

### Choice of procedure

18. The Bill provides that if the Scottish Parliament resolves not to approve a draft code within a 40-day period, the Scottish Ministers must take no further steps in relation to the draft code. The mechanisms echo the existing provisions in relation to approval of Electoral Commission codes of practice by the UK Parliament and, for example, the provision inserted into PPERA by section 9 of the Scottish Elections (Reform) Act 2020 in relation to expenditure of candidates at Scottish parliamentary elections<sup>3</sup>.

---

<sup>3</sup> [Scottish Elections \(Reform\) Act 2020 \(legislation.gov.uk\)](https://legislation.gov.uk)

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

19. Once a code has been approved by the Scottish Parliament and published by the Commission, that version would remain in place if the Scottish Parliament subsequently decided not to approve a replacement draft code of practice.

20. The Electoral Commission is required to conduct a consultation with the Scottish Parliament and other persons as they consider appropriate ahead of preparing a draft code.

## Section 28 – modification to existing order-making power in relation to pilot schemes for local elections

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: no procedure

### Provision

21. Section 28 adjusts existing powers in section 5 and 6 of the Local Government (Elections) Act 2002 (the “2002 Act”) for local authorities to run pilot schemes of new electoral processes in local elections in their area. This is achieved by a council proposing a pilot scheme to the Scottish Ministers, for example a pilot scheme to “facilitate voting by any persons or any class of person”<sup>4</sup>. The Scottish Ministers can modify a proposed scheme and implement it by order.

22. Section 28 expands who can propose a pilot scheme, to add a reference to other enactments which may be modified by a pilot scheme, to add consultation requirements and to make consequential amendments. It will allow, in addition to local authorities, the Scottish Ministers, the EMB or EROs to initiate a pilot proposal. The requirement in section 5(3) of the 2002 Act for a pilot to be likely to facilitate voting or encourage more voting will apply.

23. Pilot schemes can introduce different provisions regarding voting methods, locations, and counting of votes, as well as candidate election communications. After the relevant elections, the Electoral Commission must prepare a report assessing the scheme's impact on voting, informed decision-making, and ease of use. The report may also address voter turnout, electoral offences, and malpractice.

24. Under section 6 of the 2002 Act, the Scottish Ministers may make permanent changes to election procedures based on the success of pilot schemes. The changes can apply to all local government elections in Scotland or specific types of elections. Such a section 6 Order, if approved by the Scottish Parliament under affirmative procedure, may modify or disapply existing laws. Section 28(3) adds a mandatory consultation requirement with the EMB to the Scottish Ministers' existing powers in

---

<sup>4</sup> <https://www.legislation.gov.uk/asp/2002/1/section/5>

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

section 6 of the 2002 Act to make an order making permanent changes to election procedures following the success of pilot schemes.

25. Section 28 also removes the limitation that a scheme may only make provision differing from Representation of the People Acts. This is considered too restrictive in terms of local government elections in Scotland, given that the Representation of the People Acts are not the only source of electoral law in Scotland. For example, provisions about the conduct of local government elections in section 3 of the Local Government Scotland Act 2004 and the Scottish Local Government Elections Order 2011 which has the rules for those elections, including actions to be taken before the poll and voting procedure.

### Reason for taking power

26. The purpose of the provision is to expand what is seen as an overly restrictive existing regime on who can propose pilot schemes for electoral purposes. By allowing other organisations in addition to local authorities to initiate pilots the Bill will allow for increased flexibility in electoral innovation.

27. Examples of possible future pilots in this area include the use of digital poll cards (transmitted to voters by email or App), either in addition to or in place of paper poll cards this would be aimed at making these accessible for people with sight loss. Other possibilities include a pilot of a new tactile or audio voting aid. No pilots under this legislation are currently planned. It is not anticipated that these changes will result in a substantial number of pilots, for example there could be two pilots in one year and then no pilots for the rest of the five year electoral cycle. For reference, a pilot of advance voting occurred in Wales in 2021 but this is not being considered in Scotland<sup>5</sup>.

28. By making it possible for pilots to be proposed by the EMB and EROs the Government hopes to encourage innovation.

### Choice of procedure

29. The choice of procedure follows the existing provision in section 5 of the 2002 Act. Under this provision 'no procedure' secondary legislation is needed where a pilot is proposed. Any orders making piloted schemes permanent require parliamentary approval (affirmative procedure) under section 6 of the 2002 Act.

---

<sup>5</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/advance-voting-pilots-evaluation>



## Section 31(3) – power to amend section so as to so as to modify the definition of “electronic material”, “promoter” or “published”, or “relevant third party”

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

### Provision

30. Part 6 of the Bill contains provisions promoting further transparency at Scottish Parliament and local elections. It requires certain unpaid-for electronic campaigning material which is promoted by or published on behalf of “relevant third party” organisations to display an imprint with the name and address of the promoter and of any other person on behalf of whom the material is being published. The provision is designed to complement the scheme set out in Part 6 of the Elections Act 2022<sup>6</sup>.

31. Section 31 defines key terms for the coverage of Part 6 of the Bill and this includes "electronic material", "promoter", "published" and "relevant third party". The definitions of "electronic material", "promoter" and "published" are broadly consistent with those in section 39 of the Elections Act, which defines those terms for the coverage of Part 6 of that Act. The definition of “relevant third party” covers persons who undertake campaigning activities in relation to a relevant Scottish election<sup>7</sup> but with the explicit exclusion of individuals, recognised third parties and registered parties.

32. Section 31(3) of the Bill allows the Scottish Ministers to modify these key definitions by regulations. This is similar to the power set out in section 39 of the Elections Act for the Secretary of State to modify the Elections Act definitions of "electronic material", "the promoter" or "publish".

### Reason for taking power

33. This provision allows the Scottish Ministers to react to changes made to the UK digital imprints regime set out in the Elections Act and also to account for any issues arising in the operation of Part 6 of the Bill. The Elections Act regime applies to Scottish Parliament and local elections and the scheme set out in Part 6 of the Bill is an addition to that scheme. There is therefore a need to ensure continuity and to respond to relevant changes made to the Elections Act regime.

---

<sup>6</sup> [Elections Act 2022 \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>7</sup> Section 32(1) of the Bill defines “relevant Scottish election” as an election to the Scottish Parliament, or a local government election within the meaning of section 204 of the Representation of the People Act 1983.

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

34. The Scottish Ministers are only able to make regulations under this power following a recommendation from the Electoral Commission or consultation with the Electoral Commission.<sup>8</sup>

### Choice of procedure

35. The affirmative procedure is considered appropriate for regulations made under section 31. This is in order to afford greater parliamentary scrutiny of any amendments to key terms for the coverage of Part 6 of the Bill.

### Section 35(3) – power to modify descriptions of information included as part of electronic material

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

### Provision

36. Section 35 sets out the principal requirement under Part 6 of the Bill for information about any relevant third party promoters and any person on behalf of whom campaign material is being published (who is not the promoter) to be included as part of the electronic material (this is regularly described as a ‘digital imprint’). It is to be legible or audible and directly accessible (where not included in the material itself) imprint on electronic material within the scope of the Part 6 regime. It is a similar requirement to that in section 41 of the Elections Act 2022 in relation to the material covered there.

37. Subsection (1) requires these imprints to be displayed as part of the material or in a location that is directly accessible from the material only where that is not reasonably practicable. Subsection (2) provides that the imprint information required to be embedded within electronic material is the name and address of the promoter of the material and any person on behalf of whom the material is being published (and who is not the promoter).

38. Section 35 (3) sets out a regulation-making power to modify the details to be included in the imprint, if required. This corresponds to the provisions in the Elections Act.

### Reason for taking power

39. This provision allows the Scottish Ministers to react to changes made to the UK digital imprints regime set out in the Elections Act and also to account for any issues arising in the operation of Part 6 of the Bill (including technological advances). The Elections Act regime applies to Scottish Parliament and local elections and the scheme

---

<sup>8</sup> See section 43(1) of the Bill.

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

set out in Part 6 of the Bill is an addition to that scheme. There is therefore a need to ensure continuity and to respond to relevant changes made to the Elections Act regime.

40. The Scottish Ministers are only able to make regulations under this power, following a recommendation from the Electoral Commission or consultation with the Electoral Commission.

### Choice of procedure

41. The affirmative procedure is considered appropriate for regulations made under section 35. This is in order to afford greater parliamentary scrutiny of any amendments to imprint information required to be embedded within electronic material. The requirement to include information with certain digital communications is the purpose of this part of the Bill and therefore we anticipate that the Parliament will want greater scrutiny of any proposals to adjust the content of the information required to be included.

### Section 36(5) – power to modify cases to which section 35 does not apply

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

### Provision

42. Section 36 sets out a number of exceptions to the digital imprints regime under Part 6 of the Bill. It provides that generally, the re-publishing or 're-sharing' of electronic material will not require a new imprint, where the original imprint is retained in the material, and the material (the content or the imprint) has not been materially altered since it was previously published. The exception applies regardless of whether the material is re-published by the original promoter, or by another person.

43. Section 36(5) makes provision to amend the section, by way of regulations, to add, modify or remove cases to which an imprint is not required.

### Reason for taking power

44. This provision allows the Scottish Ministers to react to changes made to the UK digital imprints regime set out in the Elections Act 2022 and also to account for any issues arising in the operation of Part 6 of the Bill (including technological advances). The Elections Act regime applies to Scottish Parliament and local elections and the scheme set out in Part 6 of the Bill is an addition to that scheme. There is therefore a need to ensure continuity and to respond to relevant changes made to the Elections Act regime.

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

45. The Scottish Ministers are only able to make regulations under this power, following a recommendation from the Electoral Commission or consultation with the Electoral Commission.

### Choice of procedure

46. The affirmative procedure is considered appropriate for regulations made under section 36. This is to afford greater parliamentary scrutiny of any amendments to imprint information required to be embedded within electronic material.

## Section 41 – Electoral Commission guidance

Power conferred on: the Scottish Ministers

Power exercisable by: approval of guidance

Parliamentary procedure: bespoke procedure as set out in section 41

### Provision

47. Section 41 requires the Electoral Commission to issue statutory guidance on the operation of Part 6. The guidance must contain details on the operation and enforcement of the regime.

### Reason for taking power

48. The purpose of the provision is to require the Electoral Commission to issue statutory guidance on the operation of Part 6. In enforcing the regime the Electoral Commission and the police are to have regard to the guidance.

### Choice of procedure

49. Section 41 provides that the Electoral Commission must draft the guidance for approval by the Scottish Ministers who are able to modify the draft before laying it before the Scottish Parliament. Any modified guidance must be accompanied by a statement outlining the reason for the amendments. Subsections (7) to (9) outline the process for laying the guidance, which includes a 40 day period in which the Parliament can resolve not to approve the guidance. Given this preceding process, the regulations bringing the guidance into force are not subject to any parliamentary procedure.

## Section 48 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if amending an Act, otherwise negative

### Provision

50. Section 48 of the Bill confers on the Scottish Ministers a power to make any incidental, supplementary, consequential, transitional, transitory or saving provision that they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill as enacted. This includes the power to make different provision for different purposes. It also includes the power to modify any enactment.

### Reason for taking power

51. The power to make a range of ancillary provision is needed to ensure that the policy intention of the Bill is fully achieved. Whilst there are no specific proposals to use this power, it provides a flexible and efficient way to make ancillary provision should the need arise. For instance, consequential provision may be required to make necessary changes to related legislation, or incidental or supplementary provision may be required to prescribe some additional procedure to fully implement the changes proposed by the Bill. Accordingly, the power may require to be used to prescribe or update forms, to specify new or additional documents that may be used as proof of identity and eligibility to stand for election. Although the Scottish Government has carefully considered the implications of the Bill in the wider scheme of electoral law, the power would enable them to address any unforeseen or unexpected issues that would otherwise reduce the Bill's effectiveness.

52. Without the power to make any such ancillary provision, it might be necessary to return to Parliament with another Bill, to deal with technical, operational or implementation matters clearly within the scope and policy intention of this Bill. That would not be an efficient use of resources.

53. The Scottish Government recognises the potentially broad application of this power, which includes the power to modify primary legislation. However, it is limited to the extent that it may only be used if the Scottish Ministers consider it appropriate to do so for the purposes of, in connection with or for giving full effect to the Bill.

### Choice of procedure

54. Section 48(3)(a) of the Bill provides that any regulations under section 48 will be subject to the affirmative procedure if they contain provisions which make textual changes to an Act. Section 48(3)(b) provides that, in any other case, regulations under section 48 will be subject to the negative procedure. This approach is typical for delegated powers to make ancillary provision. It is considered to provide the

This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

appropriate level of parliamentary scrutiny for regulations which textually amend primary legislation, while allowing efficient use of parliamentary time for regulations that do not require the same level of scrutiny because they make changes to the administrative details set out in electoral subordinate legislation.

## Section 49 – power to commence

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

### Provision

55. Section 49 provides that it, along with sections 48 and 50 of the Bill, once enacted, will come into force on the day after Royal Assent. Otherwise, provisions will commence on such day or days as the Scottish Ministers may by regulations appoint. Subsection (3) provides that commencement regulations may include transitional, transitory or saving provision and make different provision for different purposes.

### Reason for taking power

56. It is standard for the Scottish Ministers to have power to provide in this manner for the commencement of Bills, once enacted. It is appropriate for the substantive provisions of the Bill to be commenced at such time as the Scottish Ministers consider to be suitable, where they are not to come into effect immediately (noting the need for any legislative provisions to be in place in adequate time for the next scheduled national election). It is necessary to provide that commencement regulations can also make provision for effective transitional arrangements when provisions are being brought into force and can provide for them to be commenced for different purposes. For example, it may be appropriate initially only to commence a provision for the purpose of making regulations.

### Choice of procedure

57. As is usual for commencement regulations, the power is subject to the default laying requirement, under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.



This document relates to the Scottish Elections (Representation and Reform) Bill (SP Bill 42) as introduced in the Scottish Parliament on 23 January 2024

# Scottish Elections (Representation and Reform) Bill

## Delegated Powers Memorandum

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot)

Produced and published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at: [www.parliament.scot/documents](http://www.parliament.scot/documents)