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# SPICe Briefing

## **Scottish Elections (Reduction of Voting Age) Bill**

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The Scottish Elections (Reduction of Voting Age) Bill was introduced on 2 April 2015. Its purpose is to introduce the changes to electoral procedures necessary to allow the voting age for Scottish Parliament and local elections to be reduced to 16 years old from 18 years old.



The Scottish Parliament  
Pàrlamaid na h-Alba

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## **EXECUTIVE SUMMARY**

The Scottish Elections (Reduction of Voting Age) Bill was introduced in the Parliament on 2 April 2015. Its purpose is to introduce the changes to electoral procedures necessary to allow the voting age for Scottish Parliament and local elections to be reduced to 16 years old from 18 years old. This will allow procedures to be put in place in order to allow 16 and 17 year olds to vote in the Scottish Parliament election on 5 May 2016 and local elections from that date.

## **BACKGROUND**

The provisions of the Scottish Elections (Reduction of Voting Age) Bill will be discussed later in this paper. The following information is provided as background to the Bill.

## **CURRENT FRANCHISE AND ELECTORAL REGISTRATION**

### **Current franchise**

The franchise for Scottish Parliament elections is the franchise used for local government elections in Scotland and was the franchise used for the 1997 devolution referendum and the 2014 Scottish Independence referendum.

That franchise, set out in Section 2 of The Representation of the People Act 1983, is anyone, aged 18 years or older, resident in Scotland who, not being subject to any legal incapacity to vote is a:

- British citizen
- Irish citizen
- Qualifying citizen of a Commonwealth country. This means a Commonwealth citizen who has leave to enter or remain in the UK or does not require such leave
- Citizen of any other European Union (EU) country.

### **Electoral Register**

In order to vote in elections or referendums, an eligible person needs to be on the electoral register. Section 9 of the Representation of the People Act 1983, as amended by the Representation of the People Act 2000, states that:

“Each registration officer shall maintain—

(a) a register of parliamentary electors for each constituency or part of a constituency in the area for which he acts; and

(b) a register of local government electors for the local government areas or parts of local government areas included in the area for which he acts”.

An electoral register is a list of the names and addresses of everyone who is registered to vote. It includes electoral numbers and, for some electors, prefixed letters to show that they fall into particular categories of voter (such as an overseas voter). Some voters can register anonymously. It includes some 16 and 17 year olds, with the dates at which they become eligible to vote (i.e. reach age 18). The Representation of the People Act 2000 (Schedule 1) introduced a system of 'rolling registration', whereby, upon application to the local Electoral Registration Officer (ERO) at any time of the year, a voter may be placed on the next statutory update to the register.

There are two versions of the electoral register:

- The Full register lists the names and addresses of everyone who is registered to vote and is updated every month. A copy is held at the local electoral registration office. Anyone can look at it and make notes, but copies can only be supplied to certain

recipients for specific purposes. The main use of the full register is to show who can vote in elections and referendums.

- The Edited (or Open) register is available for general sale. It can be bought by any person, company or organisation and can be used for commercial activities such as marketing. Voters can choose not to be on the edited register by ticking the appropriate box on the annual canvass or rolling registration form.

## **Individual Electoral Registration**

On 31 January 2013, the Electoral Registration and Administration Act 2013 received Royal Assent. This UK legislation introduced Individual Electoral Registration (IER) in Great Britain.

Under previous legislation a person in each household completed the canvass form giving details of all those eligible to vote who were living at that address on a specific date, and this form was used to register all electors in the household. The last household canvass under the old system took place between October 2013 and February/March 2014 (Cabinet Office and Electoral Commission 2013).

The new legislation means that electors will register separately, each providing their own unique identifiers, such as National Insurance number and date of birth, so their information can be verified.

In order not to cause confusion ahead of the Referendum the provisions for transition to IER in Scotland did not come into force until 19 September 2014, with the transition expected to be completed by December 2015.

Under the new system, the UK Government estimated that around 80% of those already on the electoral register would be automatically added to the new system after their name and address were matched against existing government records.

Anyone not automatically matched is required to provide additional information to their local ERO.

The revised registers were published on 2 March 2015 in Scotland. From July 2015, EROs across Great Britain will be carrying out the annual canvass which, unlike in 2014/15, will involve sending household enquiry forms (HEFs) to all properties. Revised registers must be published by 1 December 2015.

The new system of registration includes a method of [registering online](#) by providing a name, address, date of birth and National Insurance number, which is seen as a secure, convenient, and modern way of registering to vote.

The Registers of Electors which are usually to be published on 1 December each year are available for inspection at electoral registration offices. They may also be inspected at some council offices and local libraries. Electors may check the registers to ensure that their names have been included.

## **FRANCHISES FOR ELECTIONS AND THE SCOTTISH INDEPENDENCE REFERENDUM**

The franchise for the Scottish Parliament and local government elections is a matter reserved to the UK Parliament under Schedule 5, Paragraph B3 of the Scotland Act 1998. However, the franchise for any ballot legislated for by the Scottish Parliament is not reserved and can be decided by the Scottish Parliament. For example, the Scottish Parliament agreed to the Scottish

Government's proposals that the franchises for the pilot elections for Health Boards in 2010 and elections to the Crofting Commission (the first of which took place in 2012), include 16 and 17 year olds.

The Edinburgh Agreement, which was signed by the Prime Minister and the then First Minister in October 2012, set out the general principles for the holding of a referendum on Scottish independence. The Agreement was accompanied by a draft Section 30 Order and a Memorandum of Agreement (MoA) (HM Government and Scottish Government 2012).

Paragraph 9 of the MoA stated that both the UK and Scottish Governments agreed that anyone entitled to vote in the Scottish Parliament and Scottish local government elections would be able to vote in the proposed referendum.

In addition, paragraph 10 of the MoA acknowledged that the Scottish Government had already consulted on extending the franchise for the referendum to include 16 and 17 year olds and that it would be for the Scottish Government to decide what extension of the existing franchise it might wish to pursue within the detail of its referendum Bill. Paragraph 11 of the MoA also indicated that any franchise changes which the Scottish Government proposed would be informed by the analysis of responses to its consultations and by practical considerations.

### **Scottish Government consultations on reducing the referendum voting age**

Between 2010 and 2012, the Scottish Government consulted twice on extending the franchise for the independence referendum to include 16 and 17 year olds:

- February 2010 – the Scottish Government published its *Scotland's Future: Draft Referendum (Scotland) Bill Consultation Paper*. The draft Bill included Section 2(2) "A person is of voting age for the purposes of this Act if the person is aged 16 or over".

The consultation received 222 responses, 189 of which the Scottish Government had been given permission to publish on its website which it did in June 2010. However, the Scottish Government did not publish any analysis of the consultation responses received.

- January 2012 – *Your Scotland, your Referendum* consultation was launched. The consultation paper proposed that eligibility to vote in the referendum would follow the precedent of the 1997 referendum on establishing the Scottish Parliament and be based on the franchise for Scottish local government elections, which is also the franchise for the Scottish Parliament elections. This franchise closely reflects residency in Scotland. The only change to the 1997 referendum franchise the Scottish Government proposed was to reduce the voting age to 16.

The consultation included the question "What are your views on extending the franchise to those aged 16 and 17 years who are eligible to be registered on the electoral register?"

Both of these consultations were based on the existing registration rules for attainers (16 and 17 year olds who will attain the voting age for the Scottish Parliament and local government elections (i.e. become 18) during the 'life' of the electoral register and who are shown on it), so not all 16 year olds would have been included in the proposed franchise.

The 2012 consultation closed on 11 May 2012 with 26,219 valid responses. The Scottish Government published *Your Scotland, your referendum: an analysis of consultation responses* in October 2012 (Griesbach 2012).

Analysis of the consultation (Griesbach 2012 p.66) showed that, while 53% of respondents "definitely agreed" with extending the franchise for the referendum to 16 and 17 year olds, 40%

“definitely disagreed” with that proposal. It should be noted that the response “definitely disagreed” was supported by more individuals (9,917) than those who responded “definitely agreed” (9,226). It is also worth noting that the respondents who “definitely agreed” with this statement included 3,300 standard campaign responses. Standard campaign responses were run by the SNP and Scottish Labour Party (among others), allowing respondents to enter their name and email address to prepared responses.

The report provided some of the reasons given by supporters and detractors of the proposed franchise extension. However the report does not give the numbers of respondents who made such comments.

“Those who favoured extending the franchise frequently pointed out that if 16 and 17 year olds are able, for example, to get married and join the army, they should also be allowed to vote at elections. The other reason repeatedly given for supporting the extension of the franchise was that it is younger people who will live with the outcome of the referendum vote and they should be entitled to have their say on what a future Scotland will look like.”

(Griesbach 2012 p. 41)

The supporters included those in favour of the principle of extending the franchise to all elections, including some who felt the franchise should only be extended for the referendum if such an extension was introduced for all elections.

The report also stated that some respondents objected to 16 and 17 year olds being given the vote under any circumstances:

“It was felt that 16 and 17 year olds are simply not mature enough and have insufficient life experience to make such an important decision. This position was often associated with concerns that young people in this age group would be too easily influenced by their peers, parents or teachers.

It was also argued that society does not consider 16 and 17 year olds responsible enough to buy alcohol, and the Scottish Government has recently decided they should not be able to buy cigarettes. Given these restrictions, these respondents sometimes questioned why society would consider them mature enough to vote. A few respondents also suggested that, far from citing being able to get married or join the army as a reason for allowing 16 and 17 year olds the vote, the more appropriate policy response would be to increase the minimum age for such important life decisions to 18 years.”

(Griesbach 2012 p. 42-43)

## **Draft Scottish Independence Referendum (Franchise) Bill**

In December 2012, the Scottish Government consulted with key stakeholders, including electoral administrators, the Electoral Commission and child protection groups, on the technicalities of extending the franchise to 16 and 17 year olds, and sought comments on its proposed approach to implementing the extension of the franchise and on an initial draft Bill (Sturgeon 2012a, 2012b and 2012c). This draft contained the proposal that any eligible young person who would be at least 16 on the day of the referendum could register and take part in the referendum.

The responses it received from stakeholders helped the Government inform the final version of its Referendum Franchise Bill.

## **SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) ACT 2013**

The Scottish Independence Referendum (Franchise) Bill was introduced in the Scottish Parliament by the then Deputy First Minister, Nicola Sturgeon, on 11 March 2013. The Bill's main purpose was to set out the franchise for the Scottish Independence Referendum and to make provisions for the registration of young voters, who would be at least 16 years old on the date of the poll, in time for them to take part in the independence referendum in 2014.

The Bill was passed on 27 June 2013 and received Royal Assent on 7 August 2013.

By 10 March 2014, the National Records of Scotland (NRS) reported that the Act had resulted in over 98,000 16 or 17 year olds registering to vote in the Independence Referendum. This represented around 80% of the 16 and 17 year olds in Scotland.

On 16 April 2015, NRS published [statistics on the 2015 Electoral Register which came into effect on 2 March 2015](#). These indicate that the number of people registered to vote in elections in Scotland has continued to rise and that the registered electorates for local councils, the Scottish Parliament, the UK Parliament and the European Parliament have all seen increases.

## **SMITH COMMISSION REPORT**

Immediately following the confirmation of the result of the Scottish Independence Referendum the Prime Minister announced the appointment of Lord Smith of Kelvin to lead a Commission including representatives of the five political parties represented in the Scottish Parliament. The purpose of the Commission was to agree what new powers should be devolved to the Scottish Parliament.

The Commission published its report on 27 November 2014. Paragraph 25 stated that:

“The parties call on the UK Parliament to devolve the relevant powers in sufficient time to allow the Scottish Parliament to extend the franchise to 16 and 17 year olds for the 2016 Scottish Parliamentary elections, should the Scottish Parliament wish to do so.”

## **COMMAND PAPER**

In response to the Smith Commission, the UK Government published its command paper entitled, “Scotland in the United Kingdom: An enduring settlement”, in January 2015. The paper included draft clauses of a bill which the UK Government said would implement the Smith Commission recommendations.

As a first step, the UK and Scottish Governments had already taken measures to devolve powers to the Scottish Parliament to extend the franchise to 16 and 17 year olds. This was done by means of an Order, made under section 30 and section 63 of the 1998 Scotland Act. This would enable the Scottish Parliament to extend the franchise in time for the 2016 Scottish Parliament elections and the 2017 local government elections in Scotland.

The Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) draft Order was laid before the UK and Scottish Parliaments on 20 January 2015. It was examined by the Scottish Parliament's Devolution (Further Powers) Committee and the Committee published its report on the draft Order on 2 March 2015.

The draft Order was approved by the Scottish Parliament, after a short debate with contributions in support from all political parties on 4 March 2015.

The draft Order had already been approved in the House of Commons, on 2 February 2015, and in the House of Lords, on 26 February 2015. The Order was finally approved and made at the Privy Council meeting held on 19 March 2015, with the power to extend the franchise at Scottish Parliament and Scottish local government elections to 16 and 17 year olds being devolved to the Scottish Parliament from 20 March 2015.

## **Votes at 16 and current views of political parties**

The SNP have been in favour of reducing the voting age since their 2007 annual conference unanimously agreed proposals to lower the voting age to 16.

The Liberal Democrats have also supported the reduction of the voting age since 2007 and their 2010 UK election manifesto promised to introduce the right to vote from 16. And they were part of the UK Coalition Government which signed the Edinburgh Agreement which led to the extension of the franchise for the Scottish Independence Referendum.

The Conservative Party, also part of the UK Coalition Government and a signatory to the Edinburgh Agreement, have to date not made a similar manifesto pledge to lower the voting age.

Labour's 2015 UK election manifesto (Changing Britain together) includes a pledge to give 16 and 17 year olds the vote.

The Scottish Green Party manifesto for the 2010 UK general election (Scottish Green Party 2010) contained a commitment to extend voting rights to 16 and 17 year olds.

## **SCOTTISH ELECTIONS (REDUCTION OF VOTING AGE) BILL**

The Scottish Elections (Reduction of Voting Age) Bill was introduced in the Scottish Parliament by the Scottish Government on 2 April 2015. The Bill, a highly technical one, was drafted, by the Government in light of the practical experience of electoral registration officers (EROs) in Scotland when dealing with extension of the franchise for the Scottish Independence Referendum. This experience included gathering and holding information on persons who were 15 year olds.

The Scottish Government hopes that the Bill will be passed by the Scottish Parliament before the summer recess. This timescale for the passage of the Bill should provide EROs with the necessary time to carry out the changes required to provide electoral registers, which will include 14 and 15 year old attainers and 16 and 17 year old voters, in time for the 2016 Scottish Parliament election and for local government and other local elections from that date.

### **Specific categories of under 16 year olds**

Provisions in the Bill deal with specific categories of young people, namely:

- those who satisfy the "safety" test to register anonymously (Section 7 of the Bill)
- looked after children (Sections 8 and 15 of the Bill)
- children in secure accommodation (Section 8 of the Bill)
- children of Service personnel, including civil servants and British Council staff (Sections 9, 10 and 11 of the Bill).

Section 9B of the Representation of the People Act 1983 enables a person to register anonymously if their safety, or that of a member of their household, would be at risk if an electoral register showed their name or address. To show that there is a risk the person has to produce evidence of a relevant court order or have their application certified by specific persons. Section 7 of the Bill allows chief social work officers to authorise persons to certify applications.

For looked after children, the provisions in the Bill specifically give local authorities a duty to take action to promote registration and help such children as necessary with the registration process.

For looked after children and children in secure accommodation, provisions in Section 8 of the Bill will amend Section 7B of the Representation of the People Act 1983, which deals with declarations of local connection. Making a declaration of local connection means that an elector does not need to have their present address shown on the register, but can use a different address for electoral correspondence (which could, for example, be a social work office address). This is important, for example, if the person is in temporary care or in secure accommodation, as they can register at their home address rather than that of their actual residence. It could also be used if address information is subject to a non-disclosure order (Section 40 of the Children's Hearings (Scotland) Act 2011 asp 1 gives sheriffs powers to make orders to restrict access to information on the location of children who are subject to a child protection order).

For the children of Service personnel the aim of the provisions is to be to enable them to have similar registration rights as the parent or guardian who is in the Services (armed forces, civil service or British Council employees) when the child is living with the parent or guardian, who is stationed abroad. The child will be able to make a service declaration, similar to the declaration made by their parent or guardian, to register at an address at which they would otherwise be residing in Scotland, or at a previous address.

## **Electoral Registers: registration**

Under the present UK legislation (Section 4(5) of the Representation of the People Act 1983), 16 and 17 year olds who will attain the voting age for Scottish Parliament and local government elections (i.e. become 18) during the 'life' of the electoral register can put their names forward to be included in the electoral register. The lifetime of the register varies, because of "rolling registration", but runs from the date of application to the 30 November which falls more than a year after the date the person applies to register.

The provisions in the Bill will amend the 1983 Act, as already amended to take account of the needs of Individual Electoral Registration, to permit Scottish EROs to canvass all households in Scotland in order to identify 14 and 15 year olds who will be the new attainers.

The Bill makes changes to the registration requirements for people under 16, for example, they will not incur the civil penalties which those 16 and over would be subject to (Section 9E(7) of the 1983 Act) if they failed to respond to a requirement to register made by an ERO (Section 3 of the Bill).

The Bill also has to provide means of confirming the identity of those who are not yet 16 years old for the new Individual Electoral Registration system. Those who are 16 years old can use their national insurance number, but this is only usually issued to them two or three months before their 16th birthday.

The Bill will amend the Representation of the People (Scotland) Regulations 2001 (which have been amended by Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 to set out procedures for verification of identity of persons

applying to register). The amendments made by the Bill (Section 5) will allow EROs to access and use education records to confirm the identity of relevant 14 and 15 year olds.

## **Electoral Commission**

The provisions in the Bill on the invitation to register (Sections 3 and 4) set out amendments to the current form for invitations, but with potential to create a separate form. The Scottish Government has explained (in the Delegated Powers Memorandum) that the power at Section 4 of the Bill is intended to be used only if experience of operating the approach proposed by Section 3 of the Bill indicates that a separate form would be desirable. Section 4 includes reference to functions which may be given to the Electoral Commission, which mirror functions that the Commission already has in relation to individual electoral registration.

The Commission has been given functions in designing the forms used for the annual canvass, for invitations to apply for registration and for applications for registration. More generally, it has worked with government and others to develop and coordinate a programme of public awareness activity to make sure electors understand what they need to do under the new registration system.

The Bill (Section 4) includes the ability for the Scottish Ministers to make regulations relating to the invitation to register specifically for 14 and 15 year olds. These regulations could include giving the Commission a role in designing the invitation. In preparing any regulations to be made under this Section of the Bill, the Scottish Ministers would have to consult with the Commission. For the annual canvass forms and the application forms for registration, the Commission will have to take into account in their design the requirements that the Bill will impose on young voters.

## **Electoral Registers: publication**

One of the issues which had arisen during the passage of the Scottish Independence Referendum (Franchise) Act was the protection of the data, especially relating to those aged under 16 years and children (under 17) whose location was subject to a need for confidentiality.

A separate register, with its own forms and attainers, was prepared for the registration of under 16 year olds for the Scottish Independence Referendum. After discussion between the Scottish Government and election professionals it has been agreed that, in the new system for registering under 16 year olds, there will be no separate register, and the younger age group of voters will simply be included in the current local government electoral register. However, in order to protect under 16 year olds, information relating to them will not be disclosed, except where it is permitted and necessary to do so.

The main reasons, given in Section 13 of the Bill, which would require the disclosure of information on young people, held in the register, are for the purposes of registration itself, or in connection with the conduct of an election at which the young person could vote.

Section 14 of the Bill allows the Scottish Ministers to extend the exceptions to the Bill's general restriction on access to information. Any changes to the disclosure of a young person's information would have to be made by regulations, and Ministers would have to consult the Electoral Commission and any other appropriate people, and obtain the approval of the Scottish Parliament, before making the regulations.

## **Secondary legislation**

In addition to the regulations which the Scottish Ministers can make under the provisions of Sections 4 and 14, the Bill also provides for the making of further regulations under Section 17.

These regulations would be for the purpose of ensuring that provisions in the Bill were fully brought into effect. Such regulations might also be made to take account of modifications of registration procedures being made, or proposed, by the UK Government.

## Financial memorandum

The Financial Memorandum which accompanies the Bill sets out the estimated costs for the Scottish Government, the Electoral Commission, local authorities (who are responsible for EROs and Returning Officers) and the Cabinet Office.

The Scottish Government costs are incurred as it will be responsible for reimbursing both the Electoral Commission and the local authorities for any additional costs those bodies may sustain. The costings provided in the memorandum (see table below) are those, identified by the Scottish Government and EROs, as necessary to meet the deadlines to ensure that all eligible 16 and 17 year olds are on the local government register in time for the 2016 Scottish Parliament elections.

<b>Category of costs</b>	<b>Estimate (£)</b>
Designing and testing the modified Invitation to Register	75,000
Electoral management software changes	400,000 – 600,000
Public awareness	120,000
ERO administrative costs	250,000 – 300,000
Returning Officer costs	250,000
Cabinet Office costs for minor changes to Digital Service	20,000
<b>TOTAL</b>	<b>1,115,000 - 1,365,000</b>

## Scottish Parliament scrutiny of the Bill

The Devolution (Further Powers) Committee has been designated the lead Committee on the Bill. A deadline of 29 May 2015 for Stage One consideration of the Bill was agreed by the Parliament on 22 April 2015.

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