Vulnerable Young People

Thank you for your letter dated 12 June setting out the Scottish Government’s view concerning the registration options for vulnerable young people for the Scottish Independence Referendum in 2014.

I would like to take this opportunity to thank you for your constructive engagement with the concerns I have expressed in this regard. We share the same aim: to ensure that the largest possible share of those young people who will be eligible to vote in the Referendum will be able to register to do so safely, and to remove any barriers to young people exercising their right to vote.

Declaration of local connection

I welcomed your clarification to the Committee as to the nature of the Scottish Government’s concerns regarding the widely-drawn new ground for registration by declaration of local connection, which was included in s. 7 of the Bill as introduced. Your letter appears to imply that the purpose and effect of amendments 7 and 8 was to clarify the meaning of s. 7 in order to ensure that the provision delivers the policy intention behind it.

However, this was the first time it was suggested that the policy intention of this provision was limited to looked after children and those in secure accommodation. As you acknowledge in the letter, there are children and young people who are vulnerable but are not looked after, and those potential young voters would now be unable to register by way of a declaration of local connection.

Anonymous registration

I agree that anonymous registration provides a greater level of protection than registration by declaration of local connection. However, there are some questions as to the availability and practical accessibility of that process, even for adult prospective voters.

Regulations 31I and 31J of the Representation of the People (Scotland) Regulations 2001 (SSI 2001 No. 497) require either of two types of evidence in support of the application to the Electoral Registration Officer (ERO) for anonymous registration – one (or more) of a list of specified orders or ‘injunctions’ in respect of the applicant or another person in their household, or ‘attestation’ by a ‘qualified officer’.

Only two of the qualifying orders listed in reg. 31I are available in Scotland (‘non-harassment order’ under s. 8 (5)(b)(ii) of the Protection from
Harassment Act 1997, and a post-conviction ‘non-harassment order’ under s. 234A of the Criminal Procedure (Scotland) Act 1995). Interdicts obtained under s. 8 (5)(b)(i) of the 1997 Act are not listed, and nor are common law interdicts which are frequently granted by the Scottish courts. This problem with the anonymous registration process has been highlighted by Scottish Women’s Aid and was raised directly with the Advocate General for Scotland by Dr Eilidh Whiteford MP last year (‘Action call for victims of abuse ‘afraid to vote’, The Sun, 24 June 2012, http://www.snp.org/media-centre/news/2012/jun/action-call-victims-abuse-afraid-vote).

I was pleased to learn that the Scottish Office has now confirmed that the range of Scottish orders listed in the relevant regulations will be extended by Statutory Instrument shortly. I trust that your officials are in contact with the Scottish Office to ensure that this amendment is enacted swiftly, and that practice guidance and information made available to the public is updated in time for registration for the Referendum.

For obvious reasons, no orders available specifically in respect of children are currently included in that list (although some may be in place in respect of ‘attainers’). The need for inclusion of one such order was raised in oral evidence to the Committee by Dr Ken Macdonald from the Information Commissioner’s Office (ICO), who called for non-disclosure orders made by the sheriff in order to withhold the address of a child from a relevant person in the context of a children’s hearing to be included. The very welcome enfranchisement of 16-17 year-olds makes this a much more pertinent issue in respect of voter registration and I support ICO’s proposal. I understand that 1,791 non-disclosure orders made by children’s hearings and sheriffs are currently in force, 146 of which are in respect of 14-17 year-olds.

In terms of the attestation route, the ‘qualified officer’ empowered to certify that the prospective voter would be at risk if they appeared on the electoral register by name is most likely to be either a police officer of the rank of Superintendent or above or a local authority’s Chief Social Work Officer (reg. 31J). This assumes that prospective applicants have contact with either police or social work, which a proportion of the relevant population will do, but others will not. A further concern that Dr Whiteford and others have expressed is that this puts those who are already in a vulnerable position through yet another process of ‘scrutiny’ during which they may be required to recount their experiences of abuse. This is likely to be a barrier to adult prospective applicants’ proceeding with anonymous registration, and I would suggest that this will be at least as likely be the case for vulnerable children and young people.

I would reiterate that we are pursuing the same objective, which is to empower young people to participate in the debate about Scotland’s constitutional future, and to play their role in taking that decision. In this spirit, I would urge you to consider again any alternative courses of action which would address the concerns raised above. These could include a combination of the following measures, if they are within the Scottish Parliament’s competence and which you may consider to be practicable:
• amendments to s. 7 of the Bill in order to reverse the limitation of its application to looked after children;
• (if reversing amendment 7) amendments to s. 7 to restrict its application by reference to (say) ‘ordinary residence’ or a specified maximum period of time lapsed since the registrant was last resident in Scotland;
• amendments to reg. 31I to add non-disclosure orders;
• amendments to reg. 31J to add other specified persons as ‘qualified officer’ for the purposes of ‘attestation’, e.g. head teachers and the Principal Reporter.

21 June 2013