

Standards, Procedures and Public Appointments Committee

1st Meeting 2022 (Session 6), Thursday 13 January 2022

Subordinate legislation

Affirmative instrument:

[The Scottish Local Government Elections Amendment Order 2022](#)

Type of Instrument:	Draft Affirmative
Laid Date:	14 December 2021
Meeting Date:	13 January 2022
Minister to attend meeting:	Yes
Motion to approve:	S6M-02576 - That the Standards, Procedures and Public Appointments Committee recommends that the Scottish Local Government Elections Amendment Order 2022 [draft] be approved.
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?:	No
Reporting deadline:	6 February 2022

Committee consideration

1. The Committee will take evidence from George Adam MSP, Minister for Parliamentary Business, and then formally consider this instrument today.

Purpose

2. This draft order amends the Scottish Local Government Elections Order 2011 (the “2011 Order”); the Representation of the People Act 1983 (the “1983 Act”); and the Political Parties, Elections and Referendums Act 2000 (the “2000 Act”) to reflect changes to the rules and procedures for the running of Local Government elections in Scotland.

3. A copy of the Scottish Government’s Policy Note is included in Annexe A and the equality impact assessment results at Annexe B.

Delegated Powers and Law Reform Committee (DPLRC)

4. The DPLRC considered the instrument at its meeting on 21 December 2021 and [reported](#) that it had no points to raise.

Procedure for affirmative instruments

5. The Scottish Local Government Elections) Amendment Order 2022 [draft] was laid on 14 December 2022 and referred to the Standards, Procedures and Public Appointments Committee. The procedure for affirmative instruments is set out in Rule 10.6 of Standing Orders. It is for the Standards, Procedures and Public Appointments Committee to recommend to the Parliament whether the Order should be approved. The Minister has, by motion [S6M-02576](#) (set out in the agenda), proposed that the Committee recommends the approval of the instrument.

Guidance on subordinate legislation

6. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee’s web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Decision

7. The Committee must decide whether or not to agree to the motion on this affirmative instrument, and then report to Parliament accordingly, by 6 February 2022.

8. Should the Committee agree to the motion, it is invited to delegate the final approval of a short, factual report on the instrument to the Convener.

Joanna Hardy
Senior Assistant Clerk
Standards Procedures and Public Appointments Committee
January 2022

Annexe A**POLICY NOTE****The Scottish Local Government Elections Amendment Order 2022
SSI 2022/XXX**

1. The above instrument was made in exercise of the powers conferred by sections 3 and 16 of the Local Governance (Scotland) Act 2004 and all other powers enabling the Scottish Ministers to do so. This instrument is subject to affirmative procedure.

Summary Box

This Order makes three main changes to the rules which set out how Scottish Local Government elections should be run.

- It requires returning officers to send copies of candidates' expenses returns and declarations to the Electoral Commission, if requested;
- It places the Electoral Commission's monitoring and securing compliance role on candidates' spending on a statutory basis; and
- It allows for poll cards to be issued to electors at an earlier date.

Policy Objectives

2. The purpose of this instrument is to amend the Scottish Local Government Elections Order 2011 (the "2011 Order"); the Representation of the People Act 1983 (the "1983 Act"); and the Political Parties, Elections and Referendums Act 2000 (the "2000 Act") to reflect changes to the rules and procedures for the running of Local Government elections in Scotland. The changes are set out in more detail below.
3. In terms of section 5 of the Local Government etc. (Scotland) Act 1994 (as amended by the Scottish Elections (Dates) Act 2016), the next ordinary Local Government election is scheduled to take place on 5 May 2022.
4. If approved, this Order will apply to any election for which the date of the poll is on or after 5 May 2022.

Amendments

5. The Electoral Commission has a statutory role in producing and ensuring compliance with guidance on candidates' election expenses for most elections across the UK, including Scottish Parliament elections. However, they do not have the same statutory role in relation to Scottish Local Government elections.

6. In the past, at the request of the Scottish Government, the Electoral Commission has produced spending information to assist candidates and agents by explaining the rules on spending at local government elections. However, that information was provided on an informal basis and had no statutory authority. Whilst this informal role has worked well, the Electoral Commission has requested that their existing informal role should be placed on a statutory footing.
7. The Scottish Government agrees that, in line with other recent changes to candidates' expenses at Local Government elections, it would be appropriate to give the Electoral Commission a statutory role in monitoring, and taking steps to secure, compliance the rules on expenses at Local Government elections. This role will include the production of guidance on those rules. This will bring the Commission's role at Local Government elections into line with its existing role at Scottish Parliament elections. These changes do not alter the rules for candidates' expenses - they provide a statutory monitoring role for the Commission in relation to those rules.
8. In order to put the Electoral Commission's previous informal role on to a statutory basis, the following amendments are being made:-

Duty of appropriate officer to forward returns and declarations to Electoral Commission (article 2)

9. In order to allow the Electoral Commission to monitor candidates' compliance with the rules on candidates' expenses, a new section (87B) is being inserted into the Representation of the People Act 1983. This new provision allows for the Electoral Commission to request that a returning officer send them a copy of any return of expenses incurred by a third party on behalf of a candidate (section 75A); any return of the amount of expenses incurred by, or on behalf of the candidate (section 81); and any declaration from the candidate or their agent that the expenses return is complete and correct (section 82) and any accompanying documents. These returns are already available for public inspection for two years following their receipt by the returning officer and copies can be requested on payment of a fee. This amendment however allows for the Electoral Commission to request copies of these public documents be sent to them without payment of the fee.

Duties of the Commission with respect to compliance (article 3)

10. Section 145 of the Political Parties, Elections and Referendums Act 2000 sets out the role of the Electoral Commission in monitoring and securing compliance with the restrictions and other requirements imposed by various sections of the Act. This includes the ability to produce and publish guidance on expenses rules. However, the monitoring of candidates' election expenses and donations to candidates at Scottish Local Government elections was specifically excluded from the Commission's monitoring and compliance role.
11. This amendment removes that exclusion so that the Electoral Commission will now have a statutory role in monitoring donations to and expenditure by candidates or their election agents. The Scottish Government's view was that

rather than using the order making power in section 145(2), which would have required additional subordinate legislation to apply these duties to the Commission, it was more efficient to simply remove the subsection which disapplied section 145 to Scottish Local Government elections.

12. Following specific discussions with the Electoral Commission, the SSI will also remove the duty on the Scottish Government to reimburse the Commission for specific guidance and monitoring action assigned to them (section 145(6)). This change recognises the shift from Commission monitoring of Local Government elections by specific order of the Government, into such monitoring being part of the Electoral Commission's general duties. It also reflects the transfer of responsibility for funding the Electoral Commission's Scottish devolved activities from the Speaker's Committee of the UK Parliament to the Scottish Parliamentary Corporate Body.

Issue of official poll cards and notifications (article 4)

13. Rule 24 of schedule 1 of the Scottish Local Government Elections Order 2011 (the 2011 Order) sets out that that as soon as practical after the issue of the notice of poll, the Returning Officer should send to electors and their proxies an official poll card. The Convener of the Electoral Management Board for Scotland ("the Convener") has written to the Scottish Government to request that this provision be amended so that returning officers can send official poll cards after the issue of the notice of election rather than the issue of the notice of poll. This would bring practice at Scottish Local Government elections into line with other elections in Scotland, where poll cards are already sent after the issue of the notice of election.
14. The practical effect of the Convener's request is that official poll cards would be issued to electors at an earlier date. The timetable for Scottish Local government elections, which is set out in rule 1 of the 2011 Order, sets out that the notice of poll must be issued as soon as practicable after the deadline for withdrawal of nominations (not later than 4pm on the twenty-third day before the date of poll). Similarly, under this timetable, the notice of election must be published no earlier than thirty-five days or later than twenty-eight days before the date of poll.
15. For the Scottish Local Government elections which are due to be held on 5 May 2022, the Convener has already directed that Returning Officers should publish the notice of election on 14 March 2022, in order to maximise the period during which nominations can be delivered to Returning Officers¹. This is the earliest date allowed for publication under the timetable. The earliest that the notice of poll can be issued for these elections will be the 30 March 2022. Moving issue of official poll cards from after the notice of poll to after the publication of the notice of election will mean that electors will receive their poll cards about 16 calendar days earlier than currently allowed for under the timetable.

¹ See <https://www.emb.scot/downloads/download/160/scottish-local-government-elections-2022>

16. Earlier issue of poll cards will be to the benefit of electors as this will give them official notification of the election at an earlier date and will allow them more time to apply for an absent vote, should they require it.
17. The Electoral Management Board for Scotland have indicated that the earlier issue of poll cards will not cause any problem or additional costs for Returning Officers. The Convener has already directed Returning Officers to plan on the basis that poll cards will be dispatched from printers between 15-16 March 2022, should this Order be approved by the Parliament.

Consultation

18. Due to the limited effect of the proposed changes on most stakeholders, and the need to make this Order in sufficient time to apply it to the May 2022 Local Government elections, consultation on the proposals was, by necessity, restricted. However, the proposed changes were shared with the following stakeholders:
 - Electoral Commission
 - Electoral Management Board for Scotland
 - Association of Electoral Administrators
 - Electoral Registration Committee of the Scottish Assessors Association
 - Society of Local Authority Lawyers & Administrators in Scotland
 - Society of Local Authority Chief Executives and Senior Managers
 - COSLA
 - Political Parties represented in the Scottish Parliament
 - Community groups representing protected characteristics
19. Two responses to the consultation was received, from the Electoral Commission (in its statutory consultation role) and the Scottish Assessors Association as of 14 December 2021. Both welcomed and supported the proposed changes.

Impact Assessments

20. An equality impact assessment (EQIA) has been produced and published for this Order.
21. The Scottish Government view is that this order will have no significant impact on child rights and wellbeing, the environment or island communities and therefore no impact assessments are required for those areas. No significant additional processing of personal data is considered to be involved in the provision around Electoral Commission access to spending returns as these are already publically available.
22. The Scottish Government does not consider that a Business and Regulatory Impact Assessment (BRIA) is necessary, as the policy changes will not lead to any significant new costs or savings for business, third or public sector organisations, regulators or consumers and there is no transfer of costs or benefits from one group to another.

Financial Implications

23. Local authorities are responsible for meeting the cost of Local Government elections from within their overall budget. This order is not expected to result in any significant increased costs.
24. Section 14A of the Political Parties, Elections and Referendums Act 2000 requires that the Scottish Parliament Corporate Body must reimburse the Commission which is attributable to the exercise of the Commission's devolved Scottish functions. The Scottish Government has discussed, with the Electoral Commission, the cost of putting their role in producing and ensuring compliance with guidance on candidates' election expenses on a statutory basis. The Electoral Commission have indicated that since they already carried out this role on an informal basis, they do not anticipate that any additional expenditure will be incurred, though requests for any future projects beyond this business as usual work would require further discussions.

Scottish Government
Directorate for Constitution and Cabinet
14 December 2021

Annexe B

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Scottish Local Government Elections Amendment Order 2022
Summary of aims and desired outcomes of Policy	This Scottish Statutory Instruments (SSI) will update the law ahead of the 2022 Scottish Local Government elections. Specifically, the SSI gives the Electoral Commission a statutory role in producing guidance and monitoring spending returns for these elections; and moves the issuing of polling cards to an earlier date.
Directorate: Division: team	Directorate for Constitution and Cabinet: FOI and Elections

Executive summary

This SSI updates the law on running Local Government elections ahead of the next scheduled elections in May 2022. The instrument deals with administrative measures designed to keep electoral law up-to-date, and ensures the rules around the administration of electoral events keeps pace with wider factors such as standards in other parts of the UK.

Aspects of the instrument, specified below, may have a positive impact on communities with protected characteristics, directly or indirectly making it easier for them to participate as voters and as candidates.

Background

Updates to the rules for running elections are required as part of the regular review of electoral policy. This is partly to keep pace with wider developments in legislation in this area, but also to ensure that the regulations which guide electoral administrators and participants are clearly defined and reflective of the needs of voters and candidates. This

Order builds on recent instruments developed ahead of the 2022 elections, which were the subject of a separate EQIA².

The proposed changes have been developed in consultation with key stakeholders: the Electoral Commission, The Electoral Management Board for Scotland (EMB), the Scottish Assessors Association (SAA), COSLA and the Association of Electoral Administrators (AEA). Officials have also consulted the Scottish Parliament Political Parties Panel (SPPPP). Organisations representing specific communities were also informed of the upcoming changes and offered the opportunity to comment.

The development of this SSI was also informed by learning from the Scottish Parliament election on May 2021, and responses to the EQIA conducted for the legislation which underpinned that electoral event³.

The Scope of the EQIA

The EQIA has assessed the potential impact of the SSI by considering whether the equality evidence indicates potential differential impacts on persons with protected characteristics or provides an opportunity to improve equality in an area. In line with the requirements of the general equality duty, it considers the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a relevant protected characteristic and those who don't; and
- foster good relations between people who share a relevant protected characteristic and those who don't.

The measures outlined in the SSI are administrative in nature, and do not apply differently to those with protected characteristics. However, they may still have positive impact on specific groups, as the generally applicable changes they bring in may increase the scope for advance

² <https://www.legislation.gov.uk/ssi/2021/437/resources>

³ <https://www.gov.scot/publications/scottish-general-election-coronavirus-bill-equality-impact-assessment-results/pages/1/>

planning and awareness raising, which can be more impactful on certain communities, as well as placing guidance functions on a statutory basis.

The following protected characteristics have been considered in the EQIA⁴:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

⁴ The Scottish Government does not require assessment against the 'marriage or civil partnership' protected characteristic unless the policy or practice relates to work, for example HR policies and practices

Key Findings

This SSI primarily promotes the principles of equality by seeking to ensure that the rules on running Local Government elections are clear and up-to-date. The provisions of the instrument have a positive impact on the accessibility of elections for both voters and candidates, because they enhance the availability of information and guidance which will help both groups act in a more informed way.

Review of the provisions of the instruments, alongside evidence gathered as part of this EQIA, suggests the following areas where the measures in the SSIs, if enacted, may have a positive or negative differential impact on some protected characteristics, or where the implementation of the measures would provide opportunities to advance equality of opportunity between people who share a relevant protected characteristic and those who do not:

Statutory guidance role for the Electoral Commission

We have assessed that this policy has an positive impact – formalising the Commission’s role in providing guidance for candidates on elections spending should assist all candidates in obtaining the support and clarity they need to adhere to the rules. These changes do not alter the rules for candidates’ expenses - they provide a statutory guidance and monitoring role for the Commission in relation to those rules.

While this policy has general applicability to all candidates, it may specifically advance equality and eliminate discrimination with people with some protected characteristics because certain groups may require support in understanding the rules, or may have specific rules applying to their personal circumstances, for which formal guidance may be helpful. For example, candidate understanding of spending exemptions on disability access, or translation of materials into other languages, may be clarified from reference to guidance. As production of such material remains with the Electoral Commission, this policy remains an indirect impact. It is also acknowledged that the Electoral Commission currently provides guidance in this area on non-statutory basis.

The proportion of minority ethnic people and foreign nationals who may have difficulty understanding election communications or completing English language forms is not known - data on English language skills is available from the 2011 Census, but is now 10 years old. The 2011 data showed that, in 2011: 2% of adults aged 16 and over in Scotland could understand but not speak, read or write English; 1% could speak but not read or write English; and 1% could speak and read but not write English.

Issue of official poll cards and notifications

This provision would amend the rules on Local Government elections so that returning officers can send official poll cards after the issue of the notice of election, rather than the issue of the notice of poll. This would bring practice at Scottish Local Government elections into line with other elections in Scotland, where poll cards are already sent after the issue of the notice of election.

As well as promoting consistency of approach across elections in Scotland, which will help with voter understanding and expectations, this change will also give voters greater advance notice of an upcoming electoral event. We assess that this measure will have a positive impact – the new requirement promotes greater awareness of the election in the wider community at an earlier stage, which can promote inclusion from wider range of voters.

Earlier notification will give voters who may wish to consider their preferred options for casting their ballot (in person, by post or by proxy) more time to do so. This would include older voters and those with disabilities, who could benefit from more time to work out the best approach for their circumstances.

The impact of this provision is direct, in that it specifically impacts the time available for voters to make choices about the manner in which they vote safely and with confidence.

Wider Impact of the SSIs on Persons with Protected Characteristics

Officials have also assessed the potential impact of the SSIs as a whole on particular groups below.

Age

Around one in seven (14%) people in Scotland are aged 70 and over, two-fifths of people (40%) are aged 50+, and 11% are aged 16-24⁵.

Aside from those outlined above, no further impacts have been identified for this group.

Disability

Over a third (35%) of adults in Scotland live with limiting long-term conditions with women more likely than men to do so (37% compared to 32% respectively)⁶. The proportion of adults living with limiting long-term conditions increases with age. Just over a fifth (22%) of those aged 16-24 live with limiting long-term conditions, compared with almost three-fifths (58%) of those aged 75 and over.

Aside from those outlined above, no further impacts have been identified for this group.

Gender reassignment

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of gender reassignment. The need to eliminate discrimination, advance equality and foster good relations has however been fully considered.

Pregnancy and maternity

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of pregnancy and

⁵ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

⁶ Scottish Health Survey 2019: <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/pages/4/>

maternity status. The need to eliminate discrimination, advance equality and foster good relations has however been fully considered.

Race

Around 5%, or one in twenty, of Scotland's population self-identified as a non-white minority ethnic group in 2018. The remaining 95% of the population identified as white with over three quarters (77%) identifying as 'White: Scottish', 12% identifying as 'White: Other British', 2% identifying as 'White: Polish' and 5% as 'White: Other'. The protected characteristic of race includes nationality⁷. The Scottish Elections (Franchise and Representation) Act 2020 extended the franchise in Scotland to all foreign nationals with leave to remain in Scotland.

Aside from those outlined above, no further impacts have been identified for this group.

Religion or belief

In 2018, 46% of the adult population in Scotland reported belonging to a Christian (Church of Scotland, Roman Catholic and Other Christian) religion, 1.6% Muslim, and 1.9% another religion. Just over half of adults in Scotland (50.1%) reported not belonging to a religion.

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of religion or belief. The need to eliminate discrimination, advance equality and foster good relation has however been fully considered.

Sex

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of sex. The need to

⁷ Section 9 of the [Equality Act 2010](#)

eliminate discrimination, advance equality and foster good relation has however been fully considered.

Recommendations and Conclusion

The measures in this SSI are designed to assist the holding of safe and accessible Local Government elections in 2022. The provisions may have positive impact, improving availability of information for candidates and voters. This will help ensure that both groups have access to the support they need, while the change in relation to polling cards means they will have more time to plan their approach to the electoral events.