

Scottish Elections (Reduction of Voting Age) Bill

Stage 1 Debate Briefing

28 May 2015

The Electoral Commission is an independent body established in 2000. We regulate party and election finance and set standards for well-run elections and referendums. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation and no undue influence.

For council elections in Scotland we undertake a number of roles relating to the administration of the elections for which we report directly to the Scottish Parliament. We also undertook and continue to undertake a number of roles relating to the Scottish Independence Referendum for which we report directly to the Scottish Parliament.

The Bill

This briefing provides our views on the Scottish Elections (Reduction of Voting Age) Bill in general and its clauses which is due to be debated at Stage 1 on Thursday 28 May 2015.

The Electoral Commission has provided guidance and technical advice to Scottish Government officials during the drafting of the legislation drawing on our experience of electoral matters, specifically electoral registration and party and election finance regulation. We have also provided the Devolution (Further Powers) Committee with oral and written evidence on the bill at Stage 1.

Section 1(1): Scottish elections: reduction of voting age to 16

The Commission does not take a view on the principle of lowering the voting age to 16 for Scottish Parliament and local government elections, as we recognise that the definition of the franchise for these elections is properly the responsibility of elected representatives to decide. Therefore we will limit our debate briefing to implementation issues, including how the enfranchisement of 16 and 17 year olds would operate in practice and how to ensure that 16 and 17 year olds are registered and therefore able to participate.

Section 1(2): Timing of the legislation

In our report on the September 2014 Scottish Independence Referendum, we recommended that when any policy maker or legislator is considering legislation for referendums or elections with a franchise including 16 and 17 year olds, they consider the need to ensure legislation concerning the extension of the franchise is clear six months prior to the beginning of the canvass. This is to allow administrators time to plan for the canvass and public awareness activities, including political literacy initiatives.

While we note that this legislative timescale will not be achieved, we understand that now that the Bill has been introduced, it is proposed that the legislation should be passed by Parliament before the summer recess. The introduction of the Bill and the discussions between Scottish Government officials and various electoral administrators, including ourselves, prior to the introduction of the bill should enable necessary planning activities to be implemented, although any delay to the passage of the legislation would risk effective implementation.

We note that the Bill currently provides for the reduction of the voting age provisions to have effect for Scottish Parliament elections held on or after 5 April 2016 and for Scottish local government elections held on or after 5 May 2016. We understand that this is to accommodate the Presiding Officer's ability to move the date of the poll for a Scottish Parliament election in certain circumstances.

Parliament may wish to consider the implications of any local government by-election being held between 5 April and 5 May 2016 – this could potentially mean that different franchises would be used for two sets of polls held close together (or even on the same day if the date of the Scottish Parliament elections were brought forward). This could cause confusion for electors and we therefore recommend that the Scottish Government and the Scottish Parliament explore alternative options for limiting the potential for such confusion.

Section 2: Annual Canvass

We broadly agree with the approach to the registration of electors as set out in the Bill. The measures provide for a process to register those aged under 16, while at the same time removing certain features of the current registration system – for example, conducting personal visits; imposing civil penalties on non-respondents; the inclusion of young electors' details on the open (previously edited) register.

Section 5(4): Deadlines for registration applications

We note that section 5(4) of the Bill removes the requirement for an application to register and any objection to such an application to be made available for inspection, where that application has been made by someone under the age of 16. The requirements for a registration application are that once it is received it must be listed on the following day for five working days.

We have previously highlighted concerns that removing this period for applications from people under 16 could mean that the registration deadline for those electors will be later. We are, however, aware that other interpretations of the Bill suggest that they would not have the effect of changing the registration deadline for persons under 16.

We support the Devolution (Further Powers) Committee's request that Scottish Government clarifies its intention on this matter during the Stage 1 debate, and we would welcome confirmation that the deadline for making applications to register to vote will be the same for all electors, regardless of their age.

Section 13(1-3): Exceptions from prohibition on disclosure

The Bill provides for 16 and 17 year olds to be included in electoral registers used for elections to the Scottish Parliament and Scotland's councils. We note that some 14 and 15 year olds will also be included in the electoral registers as attainers (attainers are people who will become 16 within the twelve month period starting on the 1 December after they make their application). There would, therefore, be no need to create a separate Register of Young Voters, as was required to enable 16 and 17 year olds to vote in the 2014 Scottish Independence Referendum.

We are aware that the collection and publication of information about people under the age of 16 may raise some sensitivities and concerns about child protection and data protection. We note that the Bill therefore makes provision for the protection of such information (i.e. name, address and the date on which those currently aged under 16 will become 16) by the ERO, and only allows the information to be disclosed in specific circumstances connected with electoral registration and the conduct of elections.

These specific circumstances include supplying, in the period immediately before the election, a copy of the electoral register to candidates standing at a Scottish Parliament or local government election for electoral purposes (e.g. campaigning) or to comply with the rules on political donations only. This would include entries for attainers who will be eligible to vote in that election.

The Bill also provides for EROs to supply a copy of the electoral register to the Electoral Commission, local authority Returning Officers for the purposes of an election to a National Park Authority in Scotland, and Returning Officers for the purposes of Scottish Parliament or local government elections. In these cases, the copy of the electoral register supplied would not contain dates of birth or anything else that would identify a voter who is under the age of 16.

We are content with the approach as set out in the Bill from the perspective of supporting effective participation and the administration of elections. It will ensure that election campaigners will be able to communicate with all electors and that the electoral register retains necessary levels of transparency. However, given the potential sensitivities and concerns about child protection and data protection, we advised the Devolution (Further Powers) Committee to seek specific views and evidence from child protection professionals to ensure their concerns are addressed. If any changes are proposed as a result of these discussions we would comment on their practical implications at that point.

Political donations

The Commission has previously raised in our Stage 1 evidence to the Devolution (Further Powers) Committee the importance of understanding the implications of how the wider Political Parties, Elections and Referendums Act 2000 (PPERA) regulatory framework for donations and loans to political parties and other regulated campaigners would apply to 14-17 year olds when the franchise is extended.

It was necessary to consider whether extending the franchise in Scotland would mean that the people additionally included on the register of local government electors (including attainers) will become permissible donors and lenders, including across the UK.

We have considered this matter in further detail and have concluded that the law as currently set out under the Bill and in PPERA would permit electors under 18 (including attainers who are aged 14 or 15) to be donors and lenders. At present, regulated organisations and individuals use the copies of the electoral registers which they are entitled to receive, which contain the name and address details of all those who are registered as electors, to verify whether a donation or loan has been received from a permissible source. The restrictions currently set out in the Bill on the supply of information about 14 and 15 year olds who are included in the electoral register as attainers would mean, however, that regulated organisations and individuals would not be able to check donations or loans received from these otherwise permissible donors or lenders.

Given this situation, there will need to be a mechanism in place to enable regulated organisations and individuals to check the permissibility of donations or loans received from attainers aged under 16. We suggested to the Committee it may wish to consider alternative options which would enable all regulated organisations and individuals (across the UK, and not only in Scotland) who may receive donations and loans from 14-15 year olds to check the permissibility of donations or loans received from such attainers in Scotland. These could include, for example, asking the potential donor to obtain a letter from the ERO confirming their registration, or requiring the ERO to make a check of the person's registration status and then confirm to the campaigner.

Given that the numbers of 14 and 15 year olds attainers involved is likely to be very low, we do not anticipate this being a significant administrative burden for EROs. We note that the Committee's Stage 1 report asks that Scottish Government outlines its proposals on this matter at the Stage 1 debate and will of course assist if needed with technical advice on this matter.

Public Awareness Campaigns and schools

We plan to run a six-week public awareness campaign aimed at 15-17 year olds around the annual canvass which will likely commence in early August. The campaign will aim to raise awareness of the change in the voting franchise among 14 to 17 year olds; encourage registration among 15-17 year olds who will be eligible to vote next May; and maximise the number who complete an online application. All advertising will encourage people to register at www.gov.uk/register-to-vote.

We are currently developing the detail of the strategy but we expect to run online 'display' advertising (adverts that you see when visiting particular websites), and that social media and partnership work will play an important role. The partnership work will build on the activity we undertook with a range of organisations across Scotland ahead of the independence referendum, focussing particularly on groups that work with young people (e.g. Young Scot) and social media sites that are popular with this age group (e.g. Facebook, Twitter). The campaign will also incorporate learnings from the recent UK Parliamentary general election campaign, as well as the Scottish independence referendum campaign, on how to reach and engage attainers.

We have read the Stage 1 report which calls for more to be done by Education Scotland, Local Authorities and ourselves to ensure that all local authorities across Scotland and the relevant education bodies are best supporting the discussion of electoral issues in schools and colleges. We are keen to play our part in this matter and will work with relevant others to assist them in achieving this objective. We expect to co-ordinate our activity closely with work taking place

in schools and will discuss with Education Scotland, the Association of Directors in Education Scotland (ADES), School Leaders Scotland and the Electoral Management Board how best to do this, as we did for the referendum.

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