

Scotland Bill 2015 House of Lords Second Reading briefing

23 November 2015

Introduction

This briefing sets out the Electoral Commission's view on key issues arising from the Scotland Bill, ahead of its Second Reading on **Tuesday 24 November**. It covers:

- The proposed changes to legislative responsibility for the administration of Scottish Parliament and local government elections and the regulation of party and election finance rules.
- The Electoral Commission's accountability to the Scottish Parliament under the provisions of the Bill.

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 local government 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 Commission is committed to supporting all the legislatures across the UK where any electoral issues or any relevant wider reforms are being considered, and has been advising both the UK and Scottish Governments on matters arising from the draft legislation, following the Smith Commission Agreement which was published earlier in 2015.

The Commission does not take a view on the principle of devolving powers from the UK Parliament. We will, however, consider and, if appropriate, comment on the Bill's practical implications.

Legislative responsibility for the administration and regulation of Scottish Parliament and local government elections

The Scotland Bill would give increased powers to the Scottish Parliament for the administration and regulation of elections to the Scottish Parliament and local government in Scotland. This would include new powers to make provision about:

- The conduct of elections to the Scottish Parliament, challenging elections and filling vacancies other than by an election.
- The timing of polls for Scottish Parliament general elections to ensure they cannot be held on the same day as a UK Parliamentary general election.
- The combination of polls for Scottish Parliament and local government elections.
- The registration of electors, including the franchise, for Scottish Parliament and local government elections.
- Limitations on candidates' election expenses.
- Campaign expenditure at Scottish Parliament elections.
- Controls on donations and regulation of expenditure by non-party campaigners at Scottish Parliament elections.

The Bill would also transfer legislative competence for the following parts of the Political Parties Elections and Referendums Act 2000 (PPERA) relating to political parties and non-party campaigners at Scottish Parliament and local government elections in Scotland to Scottish Ministers:

- the definition of regulated spending;
- the definition of notional spending;
- the restrictions on incurring spending or making payments (including deadlines for receiving and paying claims);
- controls on donations to non-party campaigners
- the reporting requirements;
- the timetable for publishing returns submitted to us; and
- the spending limits for political parties and non-party campaigners at Scottish Parliamentary elections.¹

As noted above, the Electoral Commission would not comment on the principle of devolving responsibility for such arrangements to the Scottish Parliament. We would, however, expect to consider and, if appropriate, comment on the practical implications of any of the above changes, and any resulting differences between the rules that would apply at different types of election in Scotland, if and when they are proposed by either the UK or Scottish governments in future. We will consider the potential impact of any changes for voters, campaigners and electoral administrators in Scotland and – if relevant – elsewhere in the UK.

¹ The Scottish Parliament already has legislative competence in relation to campaign expenditure relating to local government elections in Scotland.

Functions of the Electoral Commission and accountability to the Scottish Parliament

The Bill also provides that legislative competence over some of the functions of the Electoral Commission with respect to elections to the Scottish Parliament would be devolved to the Scottish Parliament.

It is important for the Commission to be accountable to the Scottish Parliament and for our policy and spending to be scrutinised by the legislature that we are ultimately responsible to for the work that we do.

The Bill was amended during Report Stage consideration in the House of Commons to clarify that the Scottish Parliament would have legislative competence, in respect of elections to Scottish Parliament, for:

- the financing of the Commission;
- the preparation, laying and publication of reports by the Commission on the performance of our functions; and
- the provision by the Commission of copies of regulations made by it (or notice of the alteration or revocation of such regulations).

This would mean, for example, allowing the Scottish Parliament to enact legislation providing specific funding for the Commission in respect of activities relating to Scottish Parliament elections.

We have highlighted previously that, for reasons of real and perceived independence of the Electoral Commission from government, we believe it is necessary that our funding should come directly from the Scottish Parliament for each set of elections, and for any other activities related to the new powers.

In doing so, we would expect that the process for us receiving our funding was transparent and open, and that we were directly accountable to the Scottish Parliament for the work we undertake with it. We welcome this clarification and look forward to working with both Parliaments and Governments to achieve this in the most effective way.

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