Response to Scottish Government's Consultation on Electoral Reform

21 March 2018

Introduction

The Electoral Commission is the independent body which oversees elections and regulates political finance in the UK. The Commission works to promote public confidence in the democratic process and ensure its integrity by:

- enabling the delivery of free and fair elections and referendums, focusing on the needs of electors and addressing the changing environment to ensure every vote remains secure and accessible;
- regulating political finance – taking proactive steps to increase transparency, ensure compliance and pursue breaches;
- using its expertise to make and advocate for changes to our democracy, aiming to improve fairness, transparency and efficiency.

The Commission was set up in 2000 and reports to the UK and Scottish Parliaments.

This response sets out the Electoral Commission's views on the Scottish Government's consultation on electoral reform, published on 19 December 2017. It addresses the specific themes covered in the consultation paper and makes additional recommendations that we would want the Scottish Government to reflect in policy development and legislation. We have not commented on some questions as they are matters of principle which should be decided by elected representatives. We will, however, give advice on the implementation of such matters once the principle is agreed.

The Electoral Commission strongly supports the recommendations made by the Law Commissions of Scotland, England and Wales and Northern Ireland, which aim to consolidate, simplify and modernise the many existing sources of electoral law. We

are aware that the Scottish Government is considering implementing many of these recommendations in a future Elections Bill, as well as consolidating the rules for Scottish Parliament and council elections.

Consolidation of electoral law should not prevent the development of new or different policy approaches for elections in Scotland. We will continue to ensure that the interests of voters are put first in debates about new policy or legislation in Scotland, as well as across the UK as a whole.

We recognise that implementing the Law Commissions' recommendations for Scottish elections may not lead to consistency in how the rules are framed for Scottish elections and UK Parliament elections. Nevertheless, we urge the Scottish Government to implement those recommendations for elections which are within its jurisdiction, to ensure that electoral law in Scotland is fit for the 21st century.

We urge Scottish Government that the drafting of the Election Bill's provisions and necessary secondary legislation should commence without delay to ensure new law is in place in time for it to be implemented for the Scottish Parliament election in 2021. We welcome the opportunity to contribute to the debate on electoral reform for future Scottish Parliament and Council elections, and look forward to assisting the Scottish Government with our expert advice as the Elections Bill is being developed.

1 How often elections should be held

Question 1: Do you think the term length for the Scottish Parliament and local government should be: 4 years? 5 years? Other length (please specify)

Question 2: Do you have any other comments or suggestions on term lengths

1.1   The Electoral Commission recognises the Scottish Government's aim to avoid more than one election falling on the same day. Evidence from Northern Ireland indicates that the rate of rejected ballots is higher when elections to two institutions take place on the same day, particularly where two different voting systems are in use requiring electors to vote with an X on one ballot paper and vote using numbers on the second ballot paper.[1]

1.2   It is important that any debate around the dominant issues at the election should take place at a time that allows the full participation of voters and campaigners. In addition to this, the Scottish Government will also wish to consider how having two elections in close proximity would affect the regulation of campaigners. For example, the impact of potentially having two regulated periods overlap for political parties and non-party campaigners needs to be considered,, including how it would affect their spending limits and ability to campaign. Should the Scottish Government decide to schedule elections where the regulated period would overlap with another election, it should consult political parties to fully understand how this would affect them.

1.3   If the length of the Scottish Parliament or local government terms was to be changed, ideally such a change should not be made during a current Parliamentary or local government term but would instead come into effect at the date of the next election. This would ensure that voters elect their representatives with full knowledge of the length of their elected term. However, we recognise that the non-coincidence of scheduled elections may not otherwise be achievable in the short-term.

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[11] The Electoral Office for Northern Ireland, Elections 2005

2   Who runs elections and how they are run

Electoral Management Board for Scotland

Question 3: Do you agree that the Electoral Management Board and the Board's Convener should be given the same powers in relation to Scottish Parliament elections as they already have for Local Government elections?

Question 4: Do you have any other views on the future role of the Electoral Management Board?

2.1   The Commission welcomes the Scottish Government's intention to extend the statutory remit of the Electoral Management Board for Scotland (EMB) to Scottish Parliament elections. We have called for this extension since 2009 and welcome the Scottish Government's decision to do so at its earliest opportunity given its new statutory powers over Scottish Parliament elections. We continue to believe that the EMB makes a positive contribution to the effective delivery of elections in Scotland through the provision of advice, support and challenge to Returning Officers (ROs) and Electoral Registration Officers (EROs).

2.2   At council elections, following consultation with the Commission and individual ROs, the Convener of the EMB has used her power to direct ROs in the discharge of their responsibilities to ensure a consistent standard of service for voters. This has been undertaken in the interests of the voter and helps maintain the high levels of satisfaction amongst voters we consistently find in our post-poll surveys. For instance, after last year's council elections 82% of voters said they were confident that the polls were well run.

2.3   The Convener's power of direction supports the consistent delivery of elections in the interests of voters and has ensured high standards of transparency across Scotland. Not extending that power of direction to Scottish Parliament elections would risk inconsistent standards, as whether ROs chose to follow any recommendations of the EMB Convener would not be certain. In line with the Scottish Government's intention to extend the statutory basis of the EMB to include Scottish Parliament elections, the Commission has since 2008 recommended [2] that the UK Government should do the same in relation to UK Parliament elections in Scotland.

2.4   In addition to supporting the extension of the EMB's role to Scottish Parliament elections, the Scottish Government should ensure that the legal status and funding of the EMB are revised in such a way that it can undertake the management roles it was initially envisaged it would undertake. This includes oversight of the procurement and delivery of any e-counting solution for council elections. The

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The Electoral Commission, Electoral administration in Scotland, August 2008

Scottish Government should not have the operational role in the delivery of e-counting at council elections that it has had to date. Scotland's ROs are independent and to ensure that independence they need to be responsible for and undertake all aspects of the delivery of the administration of the election, including e-counting. The EMB should be the mechanism by which ROs collectively achieve delivery of e-counting and it should be funded to enable that.

2.5   We would also suggest that, irrespective of legislative change, the EMB should explore the scope for it to undertake additional roles to provide further consistency in electoral administration and improved service to voters, including any efficiencies and cost savings in the delivery of those services which may be achievable.

The role of the Returning Officers at Scottish Parliament elections

Question 5: Should the Returning Officer appointment for Scottish Parliament elections continue to be on an appointment on a personal basis, independent from Scottish Government and local authority control?

Question 6: Should the role of the Returning Officer become part of the job description of local authority Chief Executives? (This is not currently the case and would require renegotiation of terms and conditions.)

Question 7: Do you have any other comments or suggestions about who should have the role of Returning Officer or how Returning Officers should be paid?

2.6   The Electoral Commission continues to support the important principle that Returning Officers should be independent from the Scottish Government and local authority control when delivering their statutory electoral administration duties. This is necessary to secure the impartial administration of elections, avoid any perception of bias and promote public confidence and trust in the process.

2.7   Accordingly, it is important that the RO appointment for Scottish Parliament elections should continue to be made on a personal basis and should not be included within the job description of the Council Chief Executive. This will ensure that the RO's separation from the Council is maintained, together with a clear line of accountability to the courts.

2.8   It is vital to the efficient and successful running of elections that an appropriate person with the necessary skill set should carry out the role of RO and be remunerated accordingly. Any changes to the remuneration process should ensure that this is not put at risk.

Local government ballot papers: candidates' addresses

Question 8: Do you agree that candidates' addresses should not be required to appear on ballot papers for local government elections?

Question 9: Do you have any other comments to make on this issue?

2.9   During the Scottish Council elections in May 2017, candidates, agents and political parties contacted the Commission to express their concern that a candidates home address would be included on the ballot paper for the upcoming elections, feeling that this posed a significant risk to their personal safety; we referenced this issue in our subsequent election report.

2.10 In order to promote the safety of candidates, we agree that candidates' addresses should not be required to appear on ballot papers for local government elections. We also recommend that such measures be extended to the home addresses of agents on public notices, including where candidates act as their own agent.

2.11 Although such a change is consistent with similar measures either suggested or introduced for legislatures across the UK, the Scottish Government should also consider options which ensure that the system retains appropriate levels of transparency and enables the detection of fraud. The Scottish Government should engage with political parties and candidates to identify an alternative method for voters to identify the candidate's local connection, for example, stating the relevant ward on the ballot paper instead of their full address. Furthermore, we recommend that a home address should still be required on relevant nomination forms (which could be viewed at specific times) but not included in full on the ballot paper itself, as is already the case at Police and Crime Commissioner and UK Parliamentary elections.[3]

Local government election ballot papers: list order of candidates' names

Q*uestion 10:* The Scottish Government would welcome views on this issue.

• *Do you agree that – in order to counteract the list order effect – a change should be made to the way in which candidates are listed on election ballot papers?*

• *If so, what form of new system would you favour: rotation; randomisation; alphabetical-reverse alphabetical? Any other?*

Question 11: *Do you have any other comments to make on this issue?*

2.12 The Commission has been aware of this issue for some time. It has also been extensively studied by political scientists, with some identifying a ballot positional effect.[4]

2.13   Several stakeholders, including representatives of political parties, have raised with us concerns about the effect of ballot position – determined alphabetically – when more than one candidate from a political party is standing in the same ward. While it is difficult to establish the effect of alphabetical bias with any certainty (as it does not account for other factors such as the effect on incumbency within wards),

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[3] The Electoral Commission, response to the call for evidence by the Committee on Standards in Public Life (CSPL) on the Intimidation of Parliamentary candidates, September 2017
[4] See, for example, https://academic.oup.com/pa/article/67/1/119/1539298

we undertook a brief analysis of the 2017 council elections results which does suggest that the alphabetical placement of candidates may have implications for their chances of being elected.

2.14 In our report on the 2017 Scottish Council elections, we noted that of the 351 contested wards at the 2017 elections, 284 wards (81%) had more than one candidate representing a single political party.[5] Our analysis of the first preference votes gained by candidates affiliated to parties nominating two or more candidates within a ward indicates that in 73% of cases the highest placed candidate on the ballot paper gained more first preference votes than their party colleagues placed lower down the ballot paper.

2.15 This voter behaviour seems to affect some parties more than others. For example, in the wards where the SNP stood more than one candidate, the highest placed candidate on the ballot paper got the most first preference votes in 78% of cases and for the Labour Party in 82% of cases. The highest placed Conservative Party candidate gained the most first preference votes in 68% of cases and the highest placed Liberal Democrat in 64% of cases.

2.16 While the Commission agrees that there does seem to be evidence of some bias effect in relation to ballot position, our primary concern is how any change in ballot paper design would impact on the voter.

2.17 In order to determine the best solution from amongst the options proposed in the Scottish Government consultation paper or other alternative solutions, it is important that any proposed way forward is tested with voters before any change in the law is made or commenced, to ensure there are no unintended consequences. It would also be necessary to ensure that any solution proposed would be workable from an electoral administrative perspective, and to consider with political parties any implications for them and their vote management strategies.

Electronic Voting

Question 12: *Voting Machines*

Would you be happy to use an electronic voting machine in a polling place instead of a traditional ballot paper?

Would you like voting to be possible on more than one day?

Would you like to be able to vote at any polling place in Scotland?

Do you have any other comments?

Question 13: *Internet and Mobile Phone Voting*

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[5] The Electoral Commission, Scottish council elections. Report on the administration of the elections held on 4 May 2017, September 2017

If internet or mobile phone voting was available, would you choose to use that rather than vote at a polling place or by post?

If internet or mobile phone voting was available, would you be more likely to vote?

Would you like voting to be possible on more than one day?

Do you have any other comments?

Electronic or online voting

2.18 While the administration of electoral registration and postal voting is supported by digital technology (for example, through the availability of an online registration application portal since 2014, and the electronic scanning and automated comparisons of personal identifiers on returned postal ballot packs since 2007), the process of voting itself remains dependent on physical ballot papers. However, our research has shown that around 50% of the UK population already support the availability of online voting. Young people are the biggest advocates of increased digitalisation of the electoral process; 66% of 16 and 17 year olds and 52% of 18-34s said that they would have been more likely to vote if they could have voted online instead (compared with 35% of 35-54s and 17% of over 55s).[6]

2.19 It is therefore right that the Scottish Government is seeking to explore the potential for electronic or online voting to further improve accessibility and convenience for voters. Consideration of the potential benefits of electronic or online voting must, however, recognise the context of Scotland's currently secure and accessible electoral systems which inspire widespread voter confidence, as highlighted in our regular research with the public. Any consideration of changes to the current system of voting must ensure that we do not risk damaging that trust. The introduction of any new voting channels needs to be based on robust evidence and clearly justified before any changes are implemented.

2.20 Between 2002 and 2007, we evaluated a number of electronic voting (e-voting) pilot schemes at local government elections in England. The e-voting pilots involved testing a number of solutions, including remote internet voting, remote telephone voting, kiosk voting and networked "vote anywhere" polling stations. We have based our comments principally on our evaluation findings regarding the electronic and remote internet voting solutions piloted at local government elections during this period.[7] We also recognise that the world has changed a great deal since the pilot schemes were undertaken and a greater public expectation of the use of such technology exists.

2.21 While we appreciate that there has been a significant shift towards digital use through mobile devices in recent years, our evaluation of the earlier pilot schemes enabled the identification and analysis of important issues relating to remote internet voting which remain valid today. The factors identified then included risk

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[6] The Electoral Commission, Scottish council elections. Report on the administration of the elections held on 4 May 2017, September 2017
[7] The Electoral Commission, Electronic voting May 2007 electoral pilot schemes

management, security and confidence, accreditation and certification, procurement, project management, quality assurance and cost. We also concluded that while the schemes facilitated voting (although they did not have a significant impact on turnout), the level of implementation and security risk involved at the time was significant and unacceptable. All these factors remain valid and need to be addressed by Scottish Government.

2.22 The Scottish Government should also take account of the broader context, including the potential for cyber-attacks, the creation and dissemination of fake news, hacking and allegations of other outside interference with electronic systems. In the UK, the National Cyber Security Centre and Centre for the Protection of National Infrastructure issued guidance for local authorities ahead of the UK Parliamentary general election on 8 June 2017. This contained reminders about good cyber security practices for the systems that support the delivery of elections across the UK.

2.23 Voter choice is important, and we recognise that electronic voting may have the potential to increase participation in the democratic process. However, the issues we have outlined above would need to be properly assessed before any decision was taken about its potential future use at statutory elections or referendums. Central to any decision is that voters must have trust in the electoral system.

Voting at any polling place in Scotland and voting on more than one day
2.24 These options have the potential to improve accessibility and convenience for voters. Consideration would need to be given to the logistical and cost implications of such reforms. For example, enabling voting at any polling station would require consideration of: the mechanics of voting in different locations; and associated reliability, security and connectivity risks if new technologies form part of the solution. On the other hand, voting at any polling place would have the benefit of using much of the existing physical infrastructure for elections and may not raise the same questions about security and transparency as remote internet voting.

2.25 The implications for the management of electoral registers would also need to be considered. The Commission has previously made a number of recommendations on how this process could be modernised, and these recommendations should be considered when measuring the implications of the management of the electoral register on early voting. These recommendations will be set out in further detail in paragraph 6.20. In addition to these recommendations the Scottish Government should also consider how enabling early voting would affect the election timetable, and the deadlines for registering to vote or applying for a postal or proxy vote.

2.26 Many countries already allow their citizens to vote in person during a designated period prior to polling day. A number of advance (or early) voting pilot schemes took place at local elections in England between 2002 and 2007. Our evaluation of these pilots concluded that the process for managing advance voting facilities was similar to that involved in setting up and running traditional polling stations. The key additional tasks were obtaining suitable venues and recruiting and training staff. We also concluded that advance voting has the potential to enhance

the accessibility and convenience of the electoral process, at least as far as voters' perceptions are concerned, although the impact on turnout was very limited.[8]

2.27 Further work is necessary to establish the practical implications of any change including the degree to which it could impact differently on people, turnout and resources. This should include a review of existing research on advance voting and gathering information about how it works in practice in comparable democracies (e.g. Australia, Canada and New Zealand).[9]

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[8] The Electoral Commission, Advance voting May 2007 electoral pilot schemes, August 2007
[9] The Brennan Center for Justice, Early Voting: What works, 2013

3   Boundary reviews

Question 14: *Do you think that we should move to a rolling programme of reviews of local government electoral arrangements?*

3.1   The question of whether to move to a rolling programme of reviews is primarily a matter for the Boundary Commission. However, should a rolling programme be introduced, the Boundary Commission will need to ensure that any reviews are concluded (and the proposals approved by the Minister) sufficiently ahead of any poll that the boundaries will come into effect for, in order that administrators, candidates and parties are able to plan for the election based on the new boundaries. For example, ensuring the boundaries are approved in advance of 1 December in the year preceding the election would enable Electoral Registration Officers to publish their 1 December registers based on the revised boundaries and supply these to political parties and campaigners.

Question 15: *Independence of boundary reviews*

Should Scottish Ministers be able to change the recommendations of the Local Government Boundary Commission for Scotland on Scottish Parliament constituencies and Council wards?

Should the Scottish Parliament be able to challenge the recommendations of the Boundary Commission on Scottish Parliament constituencies and Council wards?

Should the recommendations of the Commission be implemented without change?

Please comment on your answer.

3.2   The independence of the boundary review process is important to ensure public confidence in the boundaries used for council and Scottish Parliament elections. In our view, to ensure transparency in the process and impartial independent decision, the Scottish Parliament should set the guidelines within which the Boundary Commission works for both Scottish Parliament and council boundary reviews and then have the ability to accept or reject the final proposals. During this process the public, parties and politicians should be widely consulted. Scottish Ministers should not have the ability to amend or reject selective parts of the Boundary Commission's proposals. We note that the process for reviewing local government boundaries in England provides no opportunity for the relevant Minister to change the recommendations of the Local Government Boundary Commission for England (LGBCE). Indeed the LGBCE itself is able to lay draft Orders for revised boundaries to the UK Parliament for approval, without requiring action or input by UK Government Ministers.

3.3   If the recommendations of the Boundary Commission continue to be open to change or challenge by Ministers or the Scottish Parliament, then it will be important to ensure that the process is fully transparent and can command the confidence of electors, political parties and candidates. As noted in question 14 above, the timetable for Ministerial and Parliamentary consideration of any boundary

recommendations will need to ensure that boundaries are settled in sufficient time for administrators, candidates and parties to plan for any scheduled Scottish Parliament or council election.

Changes to the number of Councillors per ward

Question 16: *Should the Local Government Boundary Commission for Scotland be allowed the flexibility to recommend wards which have between 2 and 5 Councillors, instead of 3 or 4 Councillors as at present?*

3.4   The decision as to whether the Local Government Boundary Commission for Scotland is allowed greater flexibility to recommend wards between two and five councillors, instead of the three or four at present, is one for the Scottish Parliament to decide upon and we have no view on this specific question. However, we believe that if such a decision was taken, then the Scottish Parliament and Government will want to consider any impact on the proportionality of the voting system in any council area where two member wards are established. Guidance for the Boundary Commission, proposed by Scottish Ministers and approved by the Scottish Parliament, should set out the exceptional circumstances in which two member wards could be established, as these would depart from the proportionality of the electoral system as intended in the Local Governance (Scotland) Act 2004.

3.5   Should there be changes to the number of councillors per ward then we will need to consider the implications for our national public awareness campaign ahead of local government elections, as it is important that voters are clear on what they are voting for in their ward.

4   Who can register and vote

Extending the voting franchise

Question 17: *Do you agree that the franchise should be extended to include everyone legally resident in Scotland?*

4.1   If the Government wishes to extend the voting franchise we would welcome the opportunity to provide detailed comment on the practical application of the changes, as we did when the voting franchise was lowered to 16 for Scottish Parliament and Council elections in 2015.

4.2   It is important that the legislation concerning any extension of the franchise is commenced six months prior to the beginning of the annual canvass. This would give EROs sufficient time to plan and effectively implement the changes, both for the canvass and for related public awareness activities, and to ensure that all those who are newly eligible to vote can take the steps they need to successfully register and participate in the elections.

4.3   Should the Scottish Government decide to extend the voting franchise, we would expect to carry out public awareness work among the affected groups so that they are aware they are able to register to vote, to vote, and to ensure they know how to do both.

Residency

Question 18: *Do you have any views on how long should someone be resident in Scotland before they become eligible to vote?*

Question 19: *Do you have any other comments to make on this issue?*

4.4   Northern Ireland is the only part of the UK to have had some form of residency requirement. This was introduced by the Ireland Act 1949 and existed in various forms until it was abolished through the Northern Ireland (Miscellaneous Provisions) Act 2014. Following the abolition of the annual canvass in Northern Ireland in 2006 anyone applying to register to vote in Northern Ireland was required to provide proof of their address and proof that they had been resident in Northern Ireland for at least three months. This placed an administrative burden both on the applicant and on electoral administrators when processing applications.

4.5   In 2008 the Commission raised concerns about the three month residency and the requirement for additional information in relation to the introduction of late electoral registration. We suggested that the evidence requirements could have a negative impact on certain groups already less likely to be registered including young people and those living in areas of higher social deprivation. We also highlighted that young people living at home would be particularly challenged by the requirements for supporting documentary evidence as they may not have a driving licence or bank or building society account and are less likely to have a bill or statement of account in

respect of a utility provider. Ultimately, the Commission supported the proposal to remove the three month residency requirement that year.

4.6   The Commission still has the same concerns about introducing a requirement for a period of residency that we raised in 2008. We believe it would be burdensome for both electors and EROs, as it would require the elector to provide additional documentation as to the length of time they have resided in Scotland. Requiring the applicant to prove their residency in an area for a certain length of time could be a barrier to some people wishing to register who are unable to provide the required documentary evidence.

4.7   The majority of applications to register to vote are currently made using the online service, and the digital portal (which is a reserved matter) does not currently allow for the inclusion of the length of residency. It might therefore require the ERO to ask for additional paper based documentation to verify the period of residency, which would have additional resource implications for the ERO when verifying applications to register. This would inadvertently create a two-tier system between electors that apply to register via the digital portal and electors that apply to register using a paper form which requests that information.

4.8   If the Scottish Government decides to introduce a period of residency they should consider the implications for voters and EROs, as well as how the changes may affect the permissibility of individual donors and prospective candidates' rights to stand for election. We would welcome the opportunity to provide detailed comment on the practical implementation of such a proposal.

Anonymous registration

Question 20: Do you think that we should make it easier for individuals who may be at risk from any form of abuse to register anonymously, whilst maintaining the integrity of the electoral register?

4.9   We strongly support the removal of any barriers that prevent voters from exercising their democratic rights, and have supported the measures that are being introduced by the Scottish Government in April 2018.

4.10 It is important that any further changes to anonymous registration are considered as part of a broader examination of the anonymous registration system, with the aim of ensuring that those whose circumstances are such that they wish to register anonymously on grounds of personal safety are able to benefit. We therefore support the intention behind the anonymous electoral registration policy paper associated with this consultation. As part of this process, the Scottish Government should consult with individuals and groups representing such people who might also benefit from equivalent reforms.

Response to Anonymous electoral registration - Detailed Policy Paper

This is the Electoral Commission's response to the Scottish Government's policy paper on further changes to anonymous registration.

Question 9: Do you think that the list of current court orders and interdicts/injunctions which can be used to support an application for anonymous registration should be expanded? If so, what further court orders should be included and why?

Question 10: Are there any other forms of documentary evidence which you think should be allowed to be used to support an application for anonymous registration?

4.11 The Scottish Government should consider how the limits to the powers of attestation should be defined and set out in the legislation. We would generally welcome the widening of the range of civil and criminal orders that could be used to evidence the risk to the applicant's safety. This is both on the basis that this would more accurately reflects survivors' lived experience in allowing civil sanctions to be used as evidence, and because court orders provide straightforward, reliable evidence that can be submitted to the ERO as part of the application. It is important that EROs receive clear guidance on what constitutes an acceptable order, and the form that it can be received in by the ERO, so that they are able to make robust registration decisions. Any guidance should also cover acceptable orders which may be made in any part of the UK, allowing EROs in Scotland to confidently process applications accompanied by a court order granted, for example, in England.

Question 11: Do you have any suggestions on how the current requirement for annual renewal of an anonymous entry in the electoral register might be improved?

4.12 An advantage of the current system of annual renewal is that it helps ensure the accuracy of the register by confirming that the voter is still resident at their address. Nonetheless, we recognise that there may be scope to improve the system so that survivors who continue to be at risk of harm for many years after the last recorded incidence of abuse do not have a disproportionate burden placed upon them by requiring the same level of evidence to be produced each year with their application.

4.13 With regard to improving access to anonymous registration by extending the duration of an anonymous entry on the register, we would be happy to discuss the practicalities of this with the Scottish Government, Cabinet Office (for reasons of consistency) and other stakeholders. It would be important to ensure that any changes are workable in practice, without any unintended consequences, and that they continue to support accurate and complete electoral registers while making registration as straightforward as possible for electors.

Voting more than once at the Scottish Council elections

Question 21: *Should a voter be allowed to register in more than one local authority area?*

Question 22: *Do you agree that a voter should only be allowed to vote once in local government elections in Scotland?*

4.14 The decision as to whether an elector should no longer be allowed to register and vote in more than one local authority area in Scotland is for the Scottish Parliament to make. Should such a change be made, an appropriate vehicle to allow EROs to check whether an elector is registered elsewhere must be implemented.

4.15 We support. the Law Commissions' recommendation that applicants for registration in respect of a second home should be required to state the address in respect of where they would vote at a national election (Scottish Parliament, UK Parliamentary etc.) in their application to register. At the moment the electoral register for an area is only held by the ERO for that area, and there is no mechanism for EROs to compare entries across all the registers. Should Scottish Government decide to only allow an elector to vote once in a Council election they would need to consider how the ERO is able to check that the elector is not registered in another council area as well.

5 Accessibility of voting and Elected Office

Increasing the Representation of Under-Represented Groups and Making Voting More Accessible

Question 23: *What other action could the Scottish Government take to widen access to and remove barriers to voting and elected office?*

5.1   The Electoral Commission surveys candidates following every election and it is clear from the data we collect that, overall, the demographic profile of candidates remains skewed away from women, younger people and disabled people.[10] A diverse and representative range of candidates is important to the health of our democracy and we will continue to work with the Scottish Government to ensure that there are no unreasonable barriers to those wishing to stand for election.

The Access to Elected Office Fund Scotland

5.2   It is a positive step forward that expenses that can reasonably be attributed to a candidate's disability did not count towards their spending limit at the Scottish Parliament election in 2016 and Council elections in 2017, and that the Access to Elected Office Fund Scotland continues to operate for Scottish Parliament and Council elections.

5.3   There is a case for additional promotion to be undertaken to raise awareness of the Access to Elected Office Fund. Our research with candidates after the 2017 Scottish Council elections found that 39% of respondents with a disability or health problem said they were aware of it. The Commission will continue to assist in increasing awareness of the Fund at future Scottish Council and Parliament elections and any other elections to which it is introduced.

Disability related expenses
5.4   The rules for expenses relating to a candidate's disability and how these must be reported slightly differ for Scottish Parliament and council elections. The rules for the Scottish council elections in 2017 in particular raised concerns amongst candidates that had a disability, as to the level of detail required when reporting disability related expenses. We also believe that the legislative difference between the exemptions for disability-related expenses for Scottish Parliament and council elections is likely to continue to cause confusion amongst candidates and their agents, particularly considering the proximity of the two types of elections scheduled in 2021 and 2022. We would therefore recommend uniform rules on disability related expenses for candidates at both Scottish Parliament and Scottish Council elections.

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[10]The Electoral Commission, Standing for office in 2017, November 2017

5.5   We understood that the policy intention of the Scottish Government for the 2016 Scottish Parliament election, when the exemption was first introduced, was to completely exempt expenses that could reasonably be attributed to a candidate's disability, but that this could not be achieved because it would create inconsistency between constituency and independent regional list candidates (where the rules are devolved) and regional list party candidates (where the rules on spending were reserved). Since the Scotland Act 2016 devolves the responsibility of political party spending, it gives the Scottish Government the opportunity to align the rules for all types of candidates at a Scottish Parliament election, as well as exempting disability related expenses from the spending limit of political parties. The rules for non-party campaigners already exempt these expenses and, with the addition of exempting those from the spending limit of political parties, this would mean that disability related expenses would not be a barrier for anyone wishing to participate in the electoral process in Scotland.

Deposits at Scottish Parliament elections

5.6   In our UK Parliamentary general election candidate survey, just over a fifth of respondents felt it was not easy to raise the deposit required to stand. Amongst those identifying as having a disability or long-term health condition it was just over a quarter. The Commission recommends the removal of the financial barrier of the deposit requirement for all polls.

Question 24: As well as the above arrangements, is there anything else that can be done to increase the accessibility of elections?

5.7   There should be no barriers to voting for disabled people and everyone should have a right to vote on their own and in secret.

5.8   Following the June 2017 UK Parliament election, the Electoral Commission asked disabled voters about their experiences of voting at the election and asked them what they would like to see changed to make it easier for them to register to vote and vote at future elections. Our report on these findings, *Elections for Everyone[11]*, contained the following recommendations for governments to improve the accessibility of elections based on the experiences of disabled voters:

- **Changes to electoral forms:** Many people with learning disabilities said they found electoral forms – including registration forms, poll cards and postal voting packs – to be confusing and full of jargon. Other disabled people said that they found it hard to read forms which were not in large print or where there is black text on a white background. The Commission would support a review of statutory electoral forms to ensure that they are as accessible as possible.

- **Widening the range of people able to assist a disabled voter when they vote in a polling station**: Some disabled people told us that the rules relating to who could assist them were too restrictive and could make it hard for them to find someone to assist them. The Commission believes that the Scottish Government

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[11] The Electoral Commission, Elections for Everyone, November 2017

should review the legislation to provide disabled people with more choice over who assists them.

- **Greater flexibility and choice over methods of voting:** Respondents to our survey suggested that there should be a wider range of voting methods in order to ensure that disabled people are able to choose a way of voting which meets their needs. This includes the methods suggested by the Scottish Government in Chapter 2 of the consultation, as well as voting in mobile polling stations in hospitals, nursing homes, care homes or those set up in remote areas.

5.9   In addition to the recommendations aimed at governments, disabled people also highlighted the following as areas for improvement:

- **Information provided by political parties and candidates**: Concerns were raised about the lack of accessible campaigning materials and manifestos, particularly in Easy Read format. Respondents called for political parties to make their accessible manifestos available at the same time as they publish their other manifestos and in good time for people to be able to read them before they come to vote.

- **The role of electoral administrators:** Disabled voters told us that there needs to be better awareness and understanding amongst election staff and polling station staff of the support available for people to vote independently. This includes the availability of accessible versions of electoral forms and voting aids, such as a tactile voting template.

- **The role of carers and support workers**: Disabled voters told us that there needs to be improved information available in care services to educate support workers on the voting rights of disabled people and how they can be supported to vote.

5.10 The Commission will continue to work with the Scottish Government, disability organisations and the wider electoral community to improve the accessibility of electoral registration and elections. In consultation with accessibility groups we will also review the guidance on accessibility that we provide for Returning Officers, Electoral Registration Officers and their staff.

6　　Additional recommendations

6.1　In addition to the questions raised in the consultation paper, the Commission urges the Scottish Government to consider the following recommendations for changes to the legislation for Scottish Parliament and Council elections.

Regulation of campaigners

6.2　The rules on political finance aim to ensure there is transparency for voters about who is influencing the election and that there is no undue influence. It is important that those rules are guided by a set of principles, which enhance the accountability of those who are being regulated, and that they are fair, proportionate and enforceable. To uphold those principles the Commission has previously recommended changes to the political finance rules at Scottish council and Parliament elections. These recommendations will be reiterated in the first part of this section, and we would encourage the Scottish Government to take these recommendations forward in the Elections Bill.

6.3　The second part of this section will discuss some areas that we believe the Scottish Government needs to consider further as part of modernising Scottish elections. This is in light of the Scotland Act 2016, which devolves certain aspects of the rules for political parties (including regional list party candidates) and non-party campaigners (NPC) at Scottish Parliament elections, and provides the Scottish Government with the competence to set the rules on spending for all types of campaigns at future Scottish elections.

6.4　This consultation is an opportunity to review the rules on campaigning and ensure that they are fit to deal with modern forms of campaigning, and to improve the regulatory framework that enforces those rules. Some of the changes we are proposing are technical, and we would welcome detailed discussions with Scottish Government officials on those recommendations.

Recommended changes to the regulatory rules

6.5　In our reports on the 2012 and 2017 Scottish Council elections and the 2016 Scottish Parliament elections, we made a number of recommendations about improving transparency and regulation of election funding and spending at those elections. The Scottish Government should introduce those recommendations which are summarised as follows:

- **Transparency of donations towards candidate spending:** The Scottish Council elections are currently the only council elections in Great Britain where candidates do not have to declare who has funded their campaign. The controls on donations are important as they bring transparency to the democratic process. In addition to introducing controls on donations to Scottish Council candidates, the Scottish Government should also consider if candidates should be required to declare funding received for the 'long campaign' (also known as the 'pre-candidacy period') at Scottish Parliament elections.

- **Publication of candidate spending returns online:** The public can view copies of candidate spending returns by visiting the office of the Returning Officer. There would be greater transparency of election spending if candidate spending returns were published online. The UK's Law Commissions have previously recommended that secondary legislation should prescribe in detail the process for Returning Officers to publicise and make available for inspection spending returns (including non-receipt of a return), paving the way for publication online. We agree with this recommendation and believe it should be taken forward in relation to Scottish Parliament and Council elections.

- **Revision of the candidate spending reporting requirements for Scottish Council elections**: The activities that count against candidates' spending limits at Scottish Council elections include the use of property, the use of other facilities, and goods or services. The rules do not specify in any further detail the items and activities that count against the spending limit. Introducing the same standard schedule of items as used at Scottish Parliament elections would increase the transparency for voters inspecting the returns, and would make it easier for candidates and agents to complete the spending return.

- **Advice and guidance:** Section 145 of the Political Parties, Elections and Referendums Act 2000 enables the Scottish Minister to provide us with the statutory power through an order to provide advice and guidance to candidates and agents at Scottish Council elections, but this has not been done. At previous elections we have produced guidance at the request of the Scottish Government, but recommend that the Scottish Government now provides us with a statutory role for future elections.

- **Regulation of campaigning:** Only spending by candidates is regulated at Council elections. As Council elections occur simultaneously in all areas of Scotland and centrally coordinated political party spending has been observed in addition to candidate spending, there is a case for extending regulation to political parties and non-party campaigners (NPCs) at these elections. We have therefore highlighted that the Scottish Government may wish to review whether rules for political parties and general campaigning[12] by NPCs should be introduced at Scottish Council elections. When undertaking such a review they should consult political parties, major NPCs in Scotland, the Crown Office and Procurator Fiscal Service, the Commission and any other interested stakeholders.

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[12] Campaigners that campaigns for or against a candidate at Scottish council elections are already regulated (known as 'local campaigning'), however campaigners that campaign for or against a party, category of candidates or an issue are not regulated (known as 'general campaigning'). Regulation of 'general campaigning' only applies at parliamentary elections.

Further recommendations for improving the regulatory framework

6.6 As part of our role to keep electoral law under review, the Commission has made a number of recommendations about improving and modernising the regulatory framework for elections. Following the devolution of powers in the Scotland Act 2016, we advise that the Scottish Government should consider the following changes when legislating for future Scottish Parliament elections.

Transparency of online campaigning

6.7 Recent years have seen rapid increases in the use of digital and online campaign techniques at elections, including increasingly sophisticated uses of data, more personalised and targeted messaging, and the capacity for campaigners to reach more voters at a lower cost than ever before.

6.8 Political parties and other campaigners can determine how best to use the campaign techniques available to them and the rules on campaigning should not restrict lawful permitted campaigning. However, our priority is to make sure that the rules are followed and appropriate transparency of campaign spending is maintained in order to ensure voters' confidence in the political finance rules.

6.9 While spending on online campaigning is subject to regulation in the same way as other, more traditional campaign methods, it does present some specific regulatory challenges. We want to make sure that electoral law appropriately reflects changes in campaigning techniques, and we have made several recommendations for improvements following previous elections.

6.10 We recommend the following improvements to the current rules for campaigning at Scottish Parliament and Scottish Council elections:

- **Imprints on digital material:** Online campaign material produced by political parties and non-party campaigners should – like its printed equivalent – be required to include an imprint stating who has published it. This would enable voters to identify who is spending money on trying to influence them at elections. Such a provision was introduced at the Scottish Independence Referendum in 2014, and we would welcome further discussions with the Scottish Government about lessons learned from the referendum on the practical implications of imprints on digital election campaign material.

- **Reporting of digital and other campaigning:** Parties, candidates and NPCs at Scottish Parliament elections have to report their spending using prescribed categories. Reporting against these categories is not detailed enough to provide a representative picture of what is actually spent on digital campaigning. Voters should be entitled to expect the same transparency about spending by campaigners at elections, regardless of whether that spending relates to online and social media advertising or other more familiar types of political advertising such as leaflets and billboards. The rules should therefore be improved by ensuring that campaigners report more detailed breakdowns of spending,

including on different types of advertising such as online and social media promotion.

Codes of practice

6.11 The Electoral Commission is enabled under PPERA to make a statutory Code on qualifying expenses for political parties, and under the Representation of the People Act 1983 to make a statutory Code on candidate election expenses. The Scotland Act 2016 devolves the ability to prepare a code for political parties for approval by the Scottish Minister; however it would require a separate power in legislation to enable us to create a Code for candidates at Scottish Parliament elections.

6.12 Creating a code for parties and for candidates would allow us to address areas of electoral law where the law currently allows for more than one way of accounting for election spending. The results of the codes will improve transparency and enforceability of the law, and would lead to improved public confidence in the rules on election spending.

6.13 We will undertake work on developing these Codes under our current powers for UK Parliamentary General elections this year, and would welcome a discussion with the Scottish Government as to how additional powers to create these codes could be introduced and how Codes could apply at future Scottish Parliament elections.

Spending on staff time for political parties

6.14 The election spending rules provide insufficient transparency and limits on the money that political parties spend on staffing their election campaigns. The money that is spent on activities such as producing campaign material or market research is regulated. But many of the staffing costs of parties are exempt from the rules, whilst the staffing costs of candidates and NPCs are included. We have recommended that this inconsistency should be addressed in the interests of transparency and ensuring that relevant election spending is controlled by spending limits.

Increasing the Commission's regulatory and sanctioning powers

6.15 Since 2010 we have had investigatory powers and sanctions relating to most of the obligations set out in PPERA for political parties and NPCs. The civil sanctions powers introduced a toolkit of measures that could be used for addressing non-compliance, with criminal prosecution remaining as the sole remedy for the most serious breaches. Our sanctions include compliance notices, fixed monetary penalties of £200 and variable monetary penalties up to a maximum value of £20,000. There is a case for reviewing and significantly increasing the present cap, so that we can impose sanctions proportionate to the amounts of money that major campaigners raise and spend at elections.

6.16 While the Commission is responsible for enforcing the rules for political parties and non-party campaigners, the police and prosecuting authorities are currently responsible for enforcing the rules for candidates and investigating breaches. We have recommended that our investigative and sanctioning powers should be extended to offences relating to candidate spending and donations at Scottish Parliament elections. This change would help ensure compliance with the rules and strengthen voters' trust in the regulatory system. This would also ensure that parties

and candidates are subject to the same sanctions if they do not comply with the legislation.

6.17 We note that the SNP expressed support for increasing the Commission's regulatory and sanctioning powers in its 2017 UK Parliamentary General election manifesto. We would welcome the opportunity to discuss these proposals with the Scottish Government in relation to future Scottish Parliament elections.

Electoral administration

Fees and charges

6.18 The Scottish Parliament election was funded for the first time in 2016 by the Scottish Government via a fees and charges order. Previously, until changes enacted by the Scotland Act 2012, the costs incurred by ROs in administering the election were met by UK Government under a fees and charges order.

6.19 We recommend that the Scottish Government publicly report on the administration of the fees and charges for the 2016 Scottish Parliament elections in order to ensure transparency of the costs of delivering elections, and make any recommendations necessary for improvements in the way the process is administered.

Electoral registration

6.20 The accurate registration of voters is at the heart of a sound and efficient electoral system. After the June 2017 UK Parliamentary general election, we made several recommendations[13] for the improvement of electoral registration:

- **Urgent steps are needed to reduce both the scale and administrative impact of duplicate registration applications for EROs ahead of future polls:** Our research with Electoral Registration Officers (EROs) following the 2017 UK Parliament election found that between 30% and 70% of applications received by EROs across the UK were duplicates. Dealing with these unneccessary duplicate applications diverts EROs limited resources away from processing valid applications to register and from their efforts to encourage applications from traditionally under-registered groups.

- **Tools to prevent double voting at general elections should be explored quickly**: While there is no evidence to suggest widespread incidence of double voting at a single election the dispersed and unconnected nature of the electoral registers across Great Britain means it is not currently possible to collectively interrogate registers to identify duplicate entries. Providing a mechanism for EROs to compare electoral register entries across all the registers in Great Britain could help to address the risk of electors voting more than once in any single election.

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[13] The Electoral Commission, Electoral registration at the June 2017 UK general election, July 2017

- **Funding for EROs needs to reflect better the scale of activity required to process electoral registration applications ahead of major polls**: The introduction of online registration means that people are more likely to apply to register when they are motivated by forthcoming elections, rather than in response to contact from the ERO during the annual canvass period. While the costs for Returning Officers at elections are funded by relevant governments, the EROs costs are funded entirely by the local authority which has appointed them. In the event of an unplanned poll such as the 2017 UK Parliament election or a poll with significant voter engagement, such as the 2014 Scottish independence referendum, this can lead to EROs being required to draw on their local annual budgets to deal with the impact of an electoral event.

- **Electoral registration should be more joined-up with other public services, to make registering to vote even simpler for the public and more efficient for EROs. This should include integrating applications into other public service transactions, and better use of national data to identify new electors or home movers**: Introducing IER and an online registration application service has transformed electoral registration in Great Britain during the last three years. But it is now time for governments to evolve the current system - which relies solely on electors taking steps to register themselves - to make electoral registration more joined up with other public services. That means considering direct or automatic enrolment processes which have the potential to deliver more accurate and complete electoral registers more efficiently than current resource intensive canvass processes.

- **Automatic registration methods should be explored further, drawing on other countries' experiences**: The popularity of online registration reflects growing public expectations about the availability of online channels for completing transactions, including government services. The availability of online channels to access an increasingly wide range of public services presents opportunities to make electoral registration even simpler for the public and more efficient for EROs**.** Other countries have implemented procedures to enable simultaneous voter registration application alongside accessing other public services with the most well-known example being the USA's National Voter Registration Act 1993 (commonly known as the "Motor Voter Act") requiring each US state to offer registration at public service agencies such as motor vehicles departments. We want to work with EROs and governments across the UK to explore options to enable people to make an application to register to vote when using other online public services including, for example, as part of their driving licence or passport application or tax return submission.

Emergency proxy applications

6.21 We restate our recommendation that the Scottish Government consult on and bring forward legislation extending the emergency proxy provisions so that those who have unforeseen caring responsibilities or who have experienced the death of a close relative would also be eligible to apply for an emergency proxy.

Ballot papers

6.22 We continue to recommend that where a candidate represents a political party on a ballot paper, it should be clear to voters which party the candidate represents. While legislation for Scottish Parliament elections already ensures that it is clear which party a candidate represents, this is not the case for Council elections in Scotland.

6.23 We would welcome further discussions with the Scottish Government about reforming the provisions for the use of party descriptions for party candidates at Scottish council elections. This change would ensure that there is clarity for the voter about which party the candidate represents.

FOI

6.24 ROs and EROs are currently not subject to the Freedom of Information (FOI) regulations when acting in that role. As such ROs do not have to respond to requests for information about elections. We recommend that the FOI requirements be extended to include ROs and Counting Officers to correct this irregularity.

Postponing the poll

6.25 Concerns about Returning Officers not being able to postpone the poll were raised by some candidates at a by-election held during the severe snow storms in March 2018. The legislation for Scottish Parliament and council elections does not allow a Returning Officer to postpone the poll due to, for example, severe weather conditions or other factors that could potentially prevent a large number of electors from casting their votes at polling stations.

6.26 We therefore suggest the Scottish Government should consider whether such a provision should be introduced for Scottish Parliament and council elections. Consideration would need to be given to what conditions could enable the poll to be postponed, who should ultimately be responsible for making that decision and what processes should be put in place to ensure such decisions are made reasonably and consistently.

6.27 The Commission believes the circumstances for such postponements should be exceptional, and the risks of creating such a provision would need to be considered carefully. For example, the risk that postponing the poll might cause uncertainty and confusion for electors, and the risk that introducing an element of discretion for Returning Officers to determine when a poll should be postponed might lead to them being subject to unwarranted pressure from campaigners or others. We would welcome the opportunity to work with Scottish Government to consider this further.