



Law Society
of Scotland

Law Society Scotland

Elections Bill Second Reading Briefing

September 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Constitutional Law Subcommittee welcomes the opportunity to consider and respond to the Government consultation Elections Bill Second Reading Briefing. The sub-committee has the following comments to put forward for consideration.

General Comments

PART 1

ADMINISTRATION AND CONDUCT OF ELECTIONS

Voter identification

1. Voter identification

Our Comment

We agree with the Electoral Commission's view that "It is important that the UK's electoral system is both secure and accessible".

The Electoral Commission notes that UK elections have low levels of proven fraud. When voting by post the elector is subject to identity checks. This does not occur in votes at polling stations in Great Britain. In Northern Ireland, there has been a requirement to show ID when voting since 1985, updated to photo ID in 2003.

We note the report by the Joint Committee on Human Rights: Legislative Scrutiny: Elections Bill which seeks that the Government should demonstrate the need for voter ID and mitigate the potential barriers to voting its proposals may create:

<https://committees.parliament.uk/publications/7096/documents/74960/default/>

Postal and proxy voting

1. Restriction of period for which person can apply for postal vote

We have no comment to make.

2. Handling of postal voting documents by political campaigners

Our Comment

Clause 3(2) introduces a new section 112A into the Representation of the People Act 1983 (RPA). New section 112A deals with the handling of postal voting documents by political campaigners. It creates an offence for a political campaigner to handle a postal voting document that has been issued to another person.

New section 112A (3) provides a statutory defence that a person does not commit the offence if the person is the other person's spouse, civil partner, parent, grandparent, brother, sister, child or grandchild. This list of exempt persons excludes those who cohabit with the person to whom the postal voting document has been issued. Under the Family Law (Scotland) Act 2006 section 25, a cohabitant" is defined in section 25 as meaning either member of a couple consisting of—

- (a) a man and a woman who are (or were) living together as if they were husband and wife; or
- (b) two persons of the same sex who are (or were) living together as if they were civil partners.

We suggest that subsection (3) of new section 112A should be amended to produce a similar definition of "cohabitant", whilst also ensuring that, in the case of persons of the same sex, the definition includes not only those who are, or were, living together as if they were civil partners, but also those who are, or were, living together as if they were spouses.

112A (4) provides for a further defence that the person charged did not "dishonestly" handle the postal voting document for the purpose of promoting a particular outcome at the election. We question why there is a need to include a "dishonesty" element in the defence. Surely it is enough that the handling was not for the purpose of promoting a particular election outcome?

7. Undue influence

Our Comment

The proposed section 115(4)(g) defines an undue influence activity as including

"(g) doing any act designed to deceive a person in relation to the administration of an election"

Why is it restricted to "in relation to the administration of an election"? Why should it not cover, for example, misinformation designed to influence the outcome of the election.

8. Assistance with voting for persons with disabilities

Our Comment

We agree with the changes proposed in clause 8 which provide that Returning Officers provide equipment as is reasonable to enable voters with disabilities to cast their vote. Clause 8 also expands the criteria for

who can act in the role of ‘companion’ by redefining that as someone who is aged 18 or over who does not need to be an elector in the same election. The Government should monitor how these changes work at election time and take into account the views of persons with disabilities when measuring the effect of the changes.

PART 2

OVERSEAS ELECTORS AND EU CITIZENS

Overseas electors

10. Extension of franchise for parliamentary elections: British citizens overseas Voting and candidacy rights of EU citizens

Our Comment

We note the repeal of the 15-year limit on overseas voters’ right to vote in UK parliamentary elections, with additional measures around the process for registering as an overseas voter and declaring the elector’s connection to a UK constituency. The Government should explain their reasons for this amendment.

Extending the franchise for elections has democratic advantages but the Government must ensure the integrity of UK elections is not undermined by political donations from outside the UK of which there may be limited visibility.

PART 3

THE ELECTORAL COMMISSION

Strategy and policy statement

12. Strategy and policy statement

Clause 12 amends PPERA by introducing new sections 4A-E which includes a power to the Secretary of State to issue “(a) strategic and policy priorities of Her Majesty’s government 15 relating to elections, referendums and other matters in respect of which the Commission have functions, and (b) the role and responsibilities of the Commission in enabling Her Majesty’s government to meet those priorities”.

Our Comment

This proposal has been commented upon as an attempt to impinge upon the Commission’s independence. The Commission has stated that the proposal would ‘place a fetter on the Commission which would limit its activity’. The independence of the Commission is a necessary aspect of ensuring proper elections conducted according to the rule of law. No justification has been put forward for the need for this provision and the Government should explain their reasons for this proposal.

The Government and the Commission should enter into discussions to ensure that this proposal does not result in the outcome which the Commission foresees.

When revising the statement of strategy and policy priorities the Secretary of State should consult widely and not simply contain consultation to the: (a) the Commission, (b) the Speaker's Committee, (c) the Public Administration and Constitutional Affairs Committee, (d) 30 the Scottish Ministers, so far as the draft relates to the Commission's devolved Scottish functions, and (e) the Welsh Ministers, so far as the draft relates to the Commission's devolved Welsh functions as detailed in new section 4C(2). External stakeholders may well have useful observations to make on the Secretary of State's proposals.

13. Examination of duty to have regard to strategy and policy statement

We have no comment to make.

Membership of the Speaker's Committee

14. Membership of the Speaker's Committee

Clause 14 provides that the Minister for the Constitution will be a member of the Speaker's Committee.

Our Comment

Will the Minister for the Constitution report on Ministerial attendance at meetings of the Speaker's Committee?

Criminal proceedings

15. Criminal proceedings

Our Comment

Clause 15 removes the potential for the Electoral Commission to bring criminal prosecutions against those who break electoral law relating to parties and campaigners in England, Wales and Northern Ireland. In Scotland the Lord Advocate is responsible for all prosecutions.

PART 4

REGULATION OF EXPENDITURE

Notional expenditure of candidates and others

We have no comment to make on Part 4.

PART 5

DISQUALIFICATION OF OFFENDERS FOR HOLDING ELECTIVE OFFICE ETC

26. Disqualification orders

Clause 26 introduces a new criminal law aggravation of hostility towards candidates, holders of elective offices and campaigners following upon conviction for any of the serious offences in Schedule 8.

Clause 26(2) also requires the court (subject to a relaxation in clause 26(3)) to impose a disqualification order which bans the convicted person from nomination to elective office or standing for or holding elected office for five years.

Our Comment

The offences in Schedule 8 are serious in nature and cover many aspects of criminal activity. We note that (subject to a specific exemption) the discretion of the court is restricted when considering disqualification orders.

32. Power to amend Schedule 8

Our Comment

The Secretary of State should be under an obligation to consult broadly with relevant interests before amending Schedule 8. There should be a process of notification to the Scottish Parliament and Scottish Ministers when the Secretary of State proposes to amend the Schedule when adding, varying or omitting offences triable under the law of Scotland.

We have no comments on the other clauses in this Part.

PART 6

INFORMATION TO BE INCLUDED WITH ELECTRONIC MATERIAL

Our Comment

We agree with the provisions in Part 6 which introduce a new requirement for digital campaigning material to display a digital imprint, with the name and address of the promoter of the material or any person on behalf of whom the material is being published. This brings digital material into line with printed material. Under the current law campaigners are obliged to use an imprint to identify who they are and on behalf of whom they promote non-digital (i.e. printed) campaign material, such as leaflets and posters. At the present time imprint requirements do not apply to digital campaign material. The changes in Part 6 will rectify that anomaly.

Clause 52 (4) provides a long time in which to prosecute summary proceedings. It is consistent with England and Wales - but is there a policy justification for this – as prosecution is available for 3 years from

the relevant date being the date on which Crown Office and Procurator Fiscal Service became aware of the circumstances from the reporting Authority. What is the justification for over-riding the normal summary justice process?

PART 7

GENERAL

57. Power to amend references to subordinate legislation etc

Our Comment

The Secretary of State should be under an obligation to consult broadly with relevant interests before amending the Act or any affected primary legislation.

We have no comments on the remaining clauses in this Part.



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