



Law Society  
of Scotland

# Law Society of Scotland Response

## Scottish Elections (Representation and Reform) Bill

February 2024



## Introduction

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The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Law Society of Scotland's Constitutional Law and Human Rights Subcommittee welcomes the opportunity to consider and respond to the Scottish Elections (Representation and Reform) Bill. The Constitutional Law and Human Rights Subcommittee has the following comments to put forward for consideration.

## General Comments

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### PART 1 – CANDIDACY RIGHTS ECT. OF FOREIGN NATIONALS

#### 1. Scottish Parliament elections

We support the premise of the Scottish Parliament and Local Government being representative of all demographics within society.

However, we have concerns in the practical hurdles which enabling those with limited right to remain to become elected would create, such as:

- a. The most-common duration of limited leave to remain granted in the UK is 2.5 years, whereas Scottish Parliament and Local Government elections tend to be every 5 years. Accordingly, if an elected official was refused further leave to remain whilst holding office, could this lead to an increase in by-elections etc. We are concerned that the expense, administrative requirements and uncertainty created for constituents may undermine democratic engagement.
- b. Applicants for further leave to remain are often waiting 6-12 months for a decision from the Home Office. Consideration would need to be given to their elected status whilst waiting a decision. Currently, if an application for leave to remain is lodged timeously, the rights of the foreign national continue under section 3C of the Immigration Act 1971. However, all rights and entitlements fall – even when an application is lodged with the Home Office – if it is lodged late. As such, the above proposal could create a situation whereby a Scottish Parliament or Local Government representative is compelled to stand down by virtue only of a late application.

There is also the issue which arises from the Scotland Act 1998 section 84 which provides “84 Oaths. (1) A person who is returned as a member of the Parliament shall take the oath of allegiance...”. This is reinforced by the Standing Orders of the Parliament which state in Rule 2. “Every person who is returned as a member shall take the oath of allegiance or shall make a solemn affirmation at a meeting of the Parliament before the Clerk. A member shall not take part in any other proceedings of the Parliament until

that member has done so.”. This could have an impact on citizens of more than 50 counties who do not accept dual citizenship.

For those who have no dual citizenship or allegiance issue we should draw attention the fact that under immigration law standing for an elected post in devolved government is not considered to be “employment” and conditions restricting employment do not affect the ability to undertake such activities.

## 2. Local government elections

See our comments regarding section 1.

## **PART 2 - DISQUALIFICATION**

### **Scottish disqualification orders**

We have no comments on Part 2.

## **PART 3 - CAMPAIGN FINANCE**

### **Expenditure in respect of Scottish Parliament elections**

We have no comments on Part 3.

## **PART 4 RESCHEDULING OF ELECTIONS ETC.**

### **Scottish Parliament elections**

#### 20. Power of Presiding Officer to postpone ordinary election

The bill makes changes to the time frame within which the Presiding Officer may postpone elections. Currently the Presiding Officer can propose an alternative date for an election a month either side of when it would otherwise be due to occur.

Section 20 changes that by amending section 2 of the Scotland Act 1998 so that the Presiding Officer may propose a date that is up to 4 weeks earlier, or 8 weeks later from when an ordinary general election would otherwise be scheduled. There is no requirement for the Presiding Officer to provide a reason for proposing a change of date. We take the view that the Presiding Officer should exercise this power only when it is necessary to do so and provide the reason for exercising this power.

#### 21. Power of Presiding Officer to schedule extraordinary general elections

We have no comment to make.

#### 22. Election of new Presiding Officer: extension of period

This provision follows the pattern for election of a new Presiding Officer in section 10 of the Scottish General Election (Coronavirus) Act 2021. We agree with this provision.

#### 23. Choice of new First Minister after changed election date

We have no comment to make.

24. Rescheduling of by-elections Local government elections

We have no comment to make.

25. Power of convener of Electoral Management Board to postpone ordinary local election

We have no comment to make.

26. Power of returning officers to postpone election for their area

We have no comment to make.

27. Power of returning officer to postpone or cancel by-election

We have no comment to make.

## **PART 5 - ELECTION PILOTS AND DEMOCRATIC ENGAGEMENT**

28. Pilot schemes under the Scottish Local Government (Elections) Act 2002

We have no comment to make on section 28.

29. Funding to increase democratic engagement

We agree with the objectives of section 29. Increasing democratic engagement is a key aspect of ensuring that electors and the population at large play their part in the proper functioning of our democracy.

## **PART 6 INFORMATION TO BE INCLUDED WITH CERTAIN ELECTRONIC MATERIAL AT SCOTTISH ELECTIONS**

We have no comment to make on Part 6

## **PART 7 BOUNDARIES**

We have no comment to make on Part 7.

## **PART 8 ELECTORAL COMMISSION**

We have no comment to make on Part 8

## **PART 9 ELECTORAL MANAGEMENT BOARD FOR SCOTLAND**

We have no comment to make on Part 9.

## **PART 10 GENERAL PROVISION**

We have no comment to make on Part 10.



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