

# Consultation Response



## Response to consultation on Scottish Elections (Representation and Reform) Bill

**Organisation:** The Association of Electoral Administrators (AEA).

**Summary:** Founded in 1987, the AEA is the professional body representing the interests of UK electoral administrators. We are a non-governmental and non-partisan body with over 2,000 members, the majority employed by local authorities to provide electoral registration and election services. Eleven branches of the Association cover the United Kingdom, including the Scotland and Northern Ireland Branch.

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### Background and summary of response to consultation:

The Standards, Procedures and Public Appointments Committee is consulting on the [Scottish Elections Representation and Reform\) Bill](#), which was published on 24 January 2024.

The Bill has been informed by the Scottish Government's earlier [consultation on electoral reform](#), to which the [AEA responded in March 2023](#).

The Bill proposes several changes to the law affecting Scottish Parliament and Scottish local government elections.

This includes:

- amending electoral law in relation to Scottish elections to confer additional candidacy rights
- setting out new rules governing candidates
- introducing campaign finance changes
- changing regulations on digital imprints
- encouraging the piloting of electoral innovations such as digital poll cards
- setting out processes for emergency re-scheduling of elections and reform arrangements for several electoral organisations.

We represent electoral administrators, and as such will only comment on areas of the consultation relevant to them.

Our responses reflect our concerns where additional burdens would be placed on electoral administrators who are already stretched to the limit. We are also concerned generally about increasing levels of divergence between the nations in Great Britain, which create additional complexity in the delivery of elections as well as voter confusion.

## Consultation Questions

### Who can stand at an election

#### 1. Allowing foreign nationals with limited leave to remain to stand for election

This is a matter of policy for the Scottish Government. However, as foreign nationals with any type of leave to remain can already vote in Scottish elections, we can understand the rationale for candidacy rights to be the same as voting rights.

We want to ensure the impact of implementing any change to candidacy rights is minimised for electoral administrators. For example, the legislation, nomination forms and guidance should be made in good time (at least six months before the first elections at which the change is effective).

We expect the Scottish Government and Electoral Commission (EC) to provide clear information as to what types of visa indicate a person's limited leave to remain. Even though it is not the role of electoral administrators to advise candidates on

whether they qualify to stand, it is important they are able to point candidates to further guidance.

As highlighted in [our response to the Scottish Government on electoral reform](#), careful consideration needs to be given to the impact of a successful candidate's leave to remain expiring during their term of office.

## **2. Creating a new rule that would prevent a person from standing as a candidate if they have committed an offence involving the intimidation of election staff or people standing for election**

We fully support and welcome the adoption of any measures designed to deter the intimidation of election staff or people standing for election. This is even if they create divergence from those in place at reserved polls.

## **Campaign finance**

### **3. Changes to how much money can be spent during an election campaign, especially in relation to third-party campaigners**

This does not impact on electoral administrators, but we can understand the rationale for adopting the Elections Act definition of notional expenditure, for the sake of consistency.

It would be a further divergence to give Scottish Ministers power to add to or amend the list of categories of third-party campaigners. While this is not an area of our concern, we approve of the proposed role of the EC in having oversight of this and for their responsibility for preparing a Code of Practice, to avoid the risk of political influence and to encourage compliance with the law.

We cannot comment on the proposed spending limits, as this is not within our remit.

## **Running elections**

### **4. Enhancing the Parliament's Presiding Officer's power to delay Scottish Parliament elections, and by-elections, in emergency situations**

We support this proposal in principle. As highlighted in [our response to the Scottish Government on electoral reform](#), the 'emergency situations' need to be clearly defined, for example a public health emergency like a pandemic, or security issues. While it may be difficult to provide a legal definition of an emergency, we would expect that some examples could be included in the Explanatory Notes to the Bill,

and an explanation that the power is only expected to be used in limited circumstances.

We welcome the provision in the Bill for the Presiding Officer's requirement to consult the EC and convener of the Election Management Board (EMB) before proposing a new date for the poll, which should help to ensure that the power is not used inappropriately. The AEA would also be happy to be informally consulted, to ensure all issues affecting the administration of the election are fully considered.

We note the proposals in the Bill could result in a delay to a Scottish Parliament election of up to 16 weeks, and that the delay could be made in two stages. In some respects, a longer delay has less of an impact on delivering the election than a shorter delay, allowing more time to reschedule activities.

However, we believe any uncertainty of the date of the election would have a considerable impact on administering the election, including securing venues, recruiting and appointing election staff, and managing printing contracts and other suppliers.

The financial and democratic costs of postponement also need to be carefully considered.

## **5. Making it easier to arrange election pilots, which aim to increase voting engagement, and allowing the Scottish Government to fund activities to increase democratic engagement**

We commend the intention to make it easier to arrange election pilots which aim to increase voting engagement. We welcome the possibility of election pilots which trial methods designed to modernise the electoral process and make voting more accessible. We are supportive of allowing pilots to be proposed by the EMB and Electoral Registration Officers (EROs).

Any such pilots need to have clear frameworks and adequate lead in time.

In principle, we support the plan for Scottish Government to fund activities to increase democratic engagement. We would expect close collaboration with the EC who have expertise in this area, and an assessment of good practice arising from the Welsh Democratic Engagement Scheme.

There also needs to be an appreciation of the endeavours that EROs already take to make their registers as complete and accurate as possible within their legal parameters and limited access to data.

Any funded activities will need to be evaluated, and while such activities may not necessarily increase levels of electoral registration or voter turnout, we would clearly support any initiatives designed to promote engagement among under-represented groups.

## **6. Clarifying the information that needs to be on digital election materials posted by an organisation that isn't a regulated campaigner and creating an offence if people do not follow the rules on the information that should be on digital election materials.**

Although an area outside of our direct concern, clear guidance to candidates and campaigners will be needed to minimise confusion.

## **Election governance reform**

## **7. Changing the deadline date for the Boundaries Scotland report on local government boundaries and the number of councillors in those boundaries from 31 December 2028 to 30 April 2031**

We approve of this change to the timing of the Boundaries Scotland report, to create a better fit with the cycle of local government elections – as the report would be published 12 months before the scheduled local elections in 2032.

## **8. Changing the ways in which Scottish Parliament scrutinises the activities of the Electoral Commission in relation to Scottish Parliament and local elections**

As highlighted in [our response to the Scottish Government on electoral reform](#), the EC's independence is fundamental to maintaining confidence and legitimacy in our electoral system. We have ongoing concerns about any Parliament having excessive influence over the EC's activities. It is therefore essential robust checks and balances are put in place as part of any measures Scottish Parliament wishes to introduce.

It is critical the EC is able to take a non-partisan approach to the democratic process, particularly in the guidance and support it provides. Any involvement of the Scottish Parliament in the content of the EC's five-year plan must not compromise this independence.

## **9. Making the Electoral Management Board for Scotland an organisation that is formally constituted in law with certain obligations**

We support the development of the EMB's legal status so that it can enter into contracts and support local authorities more effectively.

The EMB has been providing more than a co-ordinating role as originally intended, and its success should be built upon, subject to the adequate resources being allocated to the EMB by Scottish Government.