

EXPLANATORY NOTES

Scottish Elections (Representation and Reform) Act 2025 (asp 4)

£13.57

SCOTTISH ELECTIONS (REPRESENTATION AND REFORM) ACT 2025

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Scottish Elections (Representation and Reform) Act 2025. They do not form part of the Act and have not been endorsed by the Parliament.

2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT: AN OVERVIEW

3. The Act covers a wide range of issues associated with reform of Scottish Parliament and local government elections in Scotland. This follows the Scottish Government's consultation[1] published in 2022.

4. The Act contains 74 sections under 12 Parts, and a schedule. Commentary on the effect of individual sections, and the schedule, follows below. In summary, the Act—

- extends candidacy rights at Scottish Parliament and local government elections to foreign nationals with limited leave to remain (Candidacy rights etc. of foreign nationals (Part 1));
- adjusts and extends the disqualification criteria for MSPs and councillors so that (i) regulations can be made to disqualify MPs, members of the House of Lords and councillors from being MSPs, (ii) a person is disqualified from being an MSP and a councillor if they are subject to any relevant sex offender notification requirements or a relevant sexual harm or risk order; and (iii) a person subject to a disqualification order under the Elections Act 2022 or a Scottish disqualification order under the Act (each of which are to be imposed by a court where it is satisfied that the offence is aggravated by hostility toward certain persons including, for example, politicians or election staff) is disqualified from being an MSP or a councillor; and (iv) severs the link which provides that disqualification from membership of the House of Commons automatically means that the person is disqualified from being an MSP (Disqualification (Part 2));
- holds candidates and agents accountable for notional expenditure only where they direct it and provides a new power for the Scottish Ministers to make regulations to amend the list of persons or bodies which can be recognised as a third party campaigner and restricts those who can operate as a third-party campaigner in

[1] https://www.gov.scot/publications/electoral-reform-consultation/

elections to the Scottish Parliament. To support these campaign finance changes, the Act also enables the Electoral Commission to prepare a code of practice in relation to the operation of the provisions as they concern devolved Scottish elections (Campaign Finance (Part 3));

- revises the existing power of the Presiding Officer of the Scottish Parliament (PO) to postpone an ordinary election so that it is possible to postpone it by a further 8 weeks and makes provision for the first meeting of the new Parliament to occur as soon as reasonably practicable thereafter; removes the requirement for the PO to set a date for an extraordinary general election where an ordinary general election is due to take place within 8 weeks; makes provision about the election of a new PO and the appointment of a new First Minister in such exceptional circumstances; gives a power to the convener of the Electoral Management Board for Scotland (EMB) to postpone an ordinary local election by 4 weeks; gives a power to returning officers to postpone the poll for an ordinary election for their area; and gives powers to returning officers to postpone or cancel by-elections (Rescheduling of Elections etc. (Part 4));
- requires the Scottish Ministers to review the ordering of candidates on ballot papers for local government and Parliamentary elections and to report on the review and any changes proposed as a result (Form of Ballot Papers (Part 5));
- amends the Scottish Local Government Elections Order 2011 (S.S.I. 2011/399) to allow candidates in council elections to specify their ward of residence in nominations and on ballot papers; amends the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425) to allow election agents to provide a correspondence address as the public notice of address, instead of a personal address for correspondence, in Scottish Parliament elections; and amends the Representation of the People Act 1983 to allow election agents to provide a correspondence address as the public notice of address, instead of a personal address for correspondence, in local government elections (Home Addresses of Candidates and Agents (Part 6));
- adjusts existing powers to pilot electoral processes by adding the Scottish Ministers, the EMB and electoral registration officers (EROs) as persons who may propose pilots (in addition to the existing power for local authorities) and making other procedural changes; provides a new power for the Scottish Ministers to make regulations to make temporary provision about the registration of electors which may be made permanent by further regulations following a positive evaluation and a recommendation by the Electoral Commission; and provides the Scottish Ministers with financial assistance powers for the purpose of increasing democratic engagement (Election Pilots and Democratic Engagement (Part 7));
- requires certain unpaid-for digital campaigning material for Scottish elections published by relevant third-party campaigners to display a digital imprint with the name and address of that third party promoter (and any other publisher) where the electronic material meets the conditions set out in the provisions (Information to be Included with Certain Electronic Material at Scottish Elections (Part 8));
- revises the deadline for Boundaries Scotland to submit its first report on the electoral arrangements for a local government area to October 2030 and provides for other reports on reviews of local government and Parliamentary boundaries to be submitted at least 18 months before an election (Boundaries (Part 9));

- requires the Electoral Commission to undertake education and report on spoilt ballot papers and to prepare a separate 5-year plan, to be scrutinised by the Scottish Parliament Corporate Body, in respect of its Scottish devolved functions (Electoral Commission (Part 10));
- adjusts the constitution of the EMB, most significantly giving it a separate legal personality as a body corporate, adding provisions for it to report to the Scottish Parliamentary Corporate Body, adjusting those eligible to be members and providing for 2 depute convener posts (Electoral Management Board for Scotland (Part 11));
- Part 12 contains general provision.

NOTE ON INTERPRETATION

5. The Act's freestanding text (that is, any provision which is not a textual amendment of another piece of legislation) is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.[2]

6. Text that the Act inserts into other enactments is to be interpreted in accordance with the interpretation legislation that applies to that enactment. For example—

- text inserted into the Local Government (Scotland) Act 1973, the Representation of the People Act 1983, the Political Parties, Elections and Referendums Act 2000 or the Scotland Act 1998 is to be interpreted in accordance with the Interpretation Act 1978;[3]
- text inserted into the Scottish Local Government (Elections) Act 2002 is to be interpreted in accordance with the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999;[4]
- text inserted into the Local Electoral Administration (Scotland) Act 2011 is to be interpreted in accordance with the Interpretation and Legislative Reform (Scotland) Act 2010.[5]

CROWN APPLICATION

7. Section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that the Crown will be bound by an Act of the Scottish Parliament or Scottish statutory instrument unless the provision expressly exempts it. As such, the Act applies to the Crown in the same way as it applies to everyone else. However, the Act amends a number of existing enactments – some of which do, and some of which do not, apply to the Crown. The Act makes no change to the application of those enactments to the Crown.

[2] https://www.legislation.gov.uk/asp/2010/10/contents
[3] https://www.legislation.gov.uk/ukpga/1978/30/contents
[4] https://www.legislation.gov.uk/uksi/1999/1379/contents/made
[5] https://www.legislation.gov.uk/asp/2010/10/contents

COMMENTARY ON PROVISIONS

Part 1: Candidacy rights etc. of foreign nationals

8. Part 1 contains provision which would give foreign nationals, with any form of leave to remain in the United Kingdom, the right to stand as candidates at Scottish local government elections and Scottish Parliament elections.

9. The Scotland Act 1998 (the "1998 Act") sets out who may be a member of the Scottish Parliament. Section 5 provides for candidacy but does not set out the criteria. Instead, that is left to sections 15 and 16 which provide for disqualification from membership of the Parliament and exemptions. Section 17 provides that if a disqualified person is returned as a member of the Parliament "*his return shall be void and his seat vacant*". So while there is no specific rule that an ineligible person may not be a candidate in a Scottish Parliament election, there is a *de facto* prohibition as they would be unable to take their seat if successful.

10. Section 15 provides the grounds by which a person is disqualified from being a member of the Parliament. Provision about nationality is made by subsection 15(1)(b) of the 1998 Act. That provision transposes the House of Commons' nationality requirements into the Scotland Act. The specific disqualification stems from the Act of Settlement 1700, but the UK Parliament's website sets out the position in plain English:-

> "To stand as a candidate in a UK Parliamentary General Election you need to be at least 18 years old and:
>
> a British citizen
>
> a citizen of the Republic of Ireland
>
> a citizen of a commonwealth country who does not require leave to enter or remain in the UK, or has indefinite leave to remain in the UK".[6]

11. Section 2 of the Scottish Elections (Franchise and Representation) Act 2020 (the "2020 Act") amended section 16 of the Scotland Act 1998 to create an exception to that, extending the categories of persons who may be members of the Scottish Parliament. This enabled foreign nationals with indefinite (or 'unlimited') leave to remain to stand as candidates in Scottish parliamentary elections.

12. Equivalent provision is made for local government (also known as local authorities or councils) by section 29 of the Local Government (Scotland) Act 1973 (the "1973 Act"). This section has been expanded over a number of years. As enacted, it enabled British subjects and Irish citizens to stand. The terminology of British subject was updated to the current label of

[6] https://www.parliament.uk/about/mps-and-lords/members/electing-mps/candidates/

"qualifying Commonwealth citizen".[7] Between the entry into force of the Treaty of the European Union and the UK's withdrawal from the EU, section 29 included provision enabling EU citizens to stand and hold office.[8]

13. Section 3 of the 2020 Act inserted a new category of eligible persons labelled "qualifying foreign nationals". This definition mirrors the text which was inserted into section 16 of the Scotland Act at the same time.

14. Finally, section 29 of the 1973 Act was amended by the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Act 2022 (the "2022 Act"). This added an additional category of persons labelled "schedule 6A nationals". These are nationals of countries with whom the UK has a bi-lateral treaty relating to candidacy in municipal elections (currently Denmark, Luxembourg, Spain, Portugal and Poland). Nationals of these countries may stand for election in local government elections in Scotland if they have any form of leave to remain.

15. "Leave to remain" is a term of art founded in the Immigration Act 1971 (the "1971 Act"). Section 3(1)(a) of that Act provides that a person who is not a British citizen shall not enter the UK unless given leave to do so. Section 3(1)(b) provides that such leave may be granted either for a limited or for an indefinite period of time. British citizenship is determined by reference to the British Nationality Act 1981. Section 3(2) provides that the Secretary of State for the Home Department (often referred to as the Home Secretary) shall make rules as to the practice followed in administration of the 1971 Act. These are the immigration rules.[9] They include rules as to periods of leave to remain and how conditions to leave to remain are attached in different circumstances.

16. Examples of people who may be lawfully present in the UK with limited leave to remain include those with student visas, work and business visas and certain visas given to the family members and dependents of persons who themselves have leave to remain in the UK. It excludes persons who have applied for refugee status in the UK and are awaiting a decision (these persons are also known as asylum seekers) or persons whose application has been refused. It also excludes people who are unlawfully present in the UK or who are lawfully in the UK without leave to remain. This final category may include diplomatic missions, armed service personnel and stateless persons.

17. The EU settlement scheme was established to provide for EU, EEA and Swiss citizens living in the UK at the end of the transition period in accordance with the UK's obligations under the Withdrawal Agreement.[10] In almost all cases, the deadline for applying for the EU settlement scheme has now passed. The scheme has two tiers. Settled status is a form of indefinite leave to remain open to eligible persons who had lived continuously in the UK for 5 years prior to their application. Persons who had less than 5 years continuous residence in the UK were able to apply for pre-settled status. This is a form of limited leave to remain which may be subject to extension and which is designed to lead to settled status.

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[7] See Schedule 1 of Electoral Administration Act 2006.

[8] Also known as the Maastricht Treaty. For details of the basis for this change in EU law see Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

[9] https://www.gov.uk/guidance/immigration-rules/immigration-rules-index

[10] The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community is available here: New Withdrawal Agreement and Political Declaration - GOV.UK (www.gov.uk)

18. Part 1 of the Act contains provision which would extend candidacy rights to all foreign nationals with any form of leave to remain. This Part confers candidacy rights only. That is because voting rights have already been conferred by virtue of section 1 of the 2020 Act. That section amended the Representation of the People Act 1983 to extend the franchise for Scottish elections to all foreign nationals who have any description of leave to enter or remain in the United Kingdom

Section 1 – Scottish Parliament elections

19. This section amends section 16 of the Scotland Act 1998 (exceptions and relief from disqualification) to allow all foreign nationals who are at least 18 years old and resident in the UK and with any form of leave to remain, to stand as candidates, to be nominated for election and to hold office in the Scottish Parliament.

20. Since giving candidacy rights to all foreign nationals with limited leave to remain would also include foreign nationals with indefinite leave to remain or EU nationals with pre-settled status, there is no need to create such a distinction. Therefore, the references to indefinite leave and pre-settled status in subsections (2B)(b)(ii) and (2C) of section 16 of the 1998 Act are removed by this section.

Section 2 – Local government elections

21. This section amends section 29 of the 1973 Act (Qualifications for nomination, election and holding office as member of local authority) to allow all foreign nationals who are at least 18 years old and resident in the UK and with any form of leave to remain, to stand as candidates, to be nominated for election and be a member of a local authority.

22. Since giving candidacy rights to all foreign nationals with limited leave to remain would also include foreign nationals with indefinite leave to remain, EU nationals with pre-settled status and "schedule 6A nationals" there is no need to create such a distinction. Therefore, the references to indefinite leave, pre-settled status and "schedule 6A nationals" are removed by this section. The 2022 Act is also repealed.

Part 2: Disqualification

23. This Part contains provisions both making changes and conferring powers to make changes to the disqualification criteria for membership of the Scottish Parliament and local authorities. Sections 3 to 5 contain new powers for Ministers to make regulations disqualifying MPs, members of the House of Lords and councillors from being MSPs. Sections 6 and 7 set out new grounds for disqualification, based on sexual offences notification requirements and sexual harm or risk orders. Sections 8 to 17 partly mirror the changes made by Part 5 of the Elections Act 2022 in respect of elective offices across the rest of the United Kingdom in disqualifying persons who have committed certain offences relating to elections, as well as providing for a sentencing aggravator for such offences. Sections 18 and 19 deal with temporary relief and transitional provision in relation to the new disqualifications. Finally, section 20 severs the link which provides that disqualification from membership of the House of Commons automatically means that the person is disqualified from being an MSP.

Disqualifications: MPs, members of the House of Lords and councillors

Section 3 – Scottish Parliament: disqualification of MPs.

24. This section gives the Scottish Ministers the power to make provision by affirmative regulations to disqualify a person from being an MSP if the person is a member of the House of Commons. The regulations may also include appropriate consequential, transitional, saving etc. provision resulting from the prohibition. Under the section, Ministers are required to lay draft regulations. After a first set of draft regulations have been laid, Ministers may bring forward further regulations.

25. Section 3(2) sets out more detail on some of the matters which may be included in the regulations. As well as a prohibition provided for by the regulations amending section 15 of the Scotland Act 1998, it makes clear that the regulations may also modify sections 16, 17 and 82 of that Act to provide for grace periods (for recently returned MSPs and for currently serving MSPs) and any restrictions during such grace periods, including limits on salaries.

Section 4 – Scottish Parliament: disqualification of members of the House of Lords.

26. This section gives the Scottish Ministers the power to make provision by affirmative regulations to disqualify a person from being an MSP if the person is a member of the House of Lords. The regulations may also include appropriate consequential, transitional, saving etc. provision resulting from the prohibition. Under the section, Ministers are required to lay draft regulations. After a first set of draft regulations have been laid, Ministers may bring forward further regulations.

27. Section 4(2) sets out more detail on some of the matters which may be included in the regulations. As well as a prohibition provided for by the regulations amending section 15 of the Scotland Act 1998, it makes clear that the regulations may also modify sections 16, 17 and 82 of that Act to provide for grace periods (for recently returned MSPs, for members of the House of Lords holding or applying for a leave of absence and for currently serving MSPs) and any restrictions during such grace periods, including limits on salaries.

Section 5 – Scottish Parliament: disqualification of councillors

28. This section gives the Scottish Ministers a discretionary power to make provision by affirmative regulations to disqualify a person from being an MSP if the person is a councillor. The regulations may also include appropriate consequential, transitional, saving etc. provision resulting from the prohibition.

29. Section 5(2) sets out more detail on some of the matters which may be included in the regulations. As well as a prohibition provided for by the regulations amending section 15 of the Scotland Act 1998, it makes clear that the regulations may also modify sections 16 and 17 of that Act to provide for grace periods (for recently returned MSP and or for currently serving MSPs) and any restrictions during such grace periods.

Disqualifications relating to sexual offences and notification requirements

Section 6– Scottish Parliament: disqualification relating to sexual offences etc.

30. This section amends section 15 of the Scotland Act 1998, which sets out the grounds on which a person is disqualified from becoming a member or continuing to be a member of the Scottish Parliament. Section 15 is amended so that a person who is subject to “any relevant notification requirements” or “a relevant sexual harm or risk order” is disqualified from

membership of the Scottish Parliament. The definition of "relevant notification requirements" and "relevant sexual harm or risk order" is by reference to sections 31(4) and (5) of the Local Government (Scotland) Act 1973 ("the 1973 Act") respectively. These definitions are added to the 1973 Act by section 7.

Section 7– Local authorities: disqualifications relating to sexual offences etc.

31. Section 7 amends section 31 of the Local Government (Scotland) Act 1973 which outlines the circumstances in which individuals are automatically disqualified for nomination, election and holding office as member of local authority. Section 31 of the 1973 Act is amended so that a person who is subject to "relevant notification requirements" or "a relevant sexual harm or risk order" is disqualified from nomination, election and holding office as member of a local authority. The definitions of "relevant notification requirements" and "relevant sexual harm or risk order" are added as new section 31(4) and (5) of the 1973 Act.

32. A "relevant notification requirement" means the notification requirements of Part 2 of the Sexual Offences Act 2003 and equivalent notification requirements in the Channel Islands and the Isle of Man. This definition covers sex offender notification requirements, which are commonly known as "registration" and often referred to colloquially as being on the "sex offenders' register".

33. Also added as section 31(5) of the 1973 Act, is a definition of "relevant sexual harm or risk order". The orders listed in this provision are imposed following a conviction or equivalent of a sexual offence or a relevant offence with a sexual element, or in other circumstances where the court has found that there is a risk of sexual offending.

34. Also added as section 31(6) of the 1973 Act is a regulation making power, enabling Scottish Ministers to update references to the Channel Islands and Isle of Man legislation listed in the definitions in section 31(4) and (5). Regulations made under this power would be subject to the affirmative procedure. This is necessary because the references to UK legislation could be updated as a consequential when the UK primary legislation is changed but that would not be possible if the Channel Islands and Isle of Man legislation was changed.

Scottish disqualification orders

Section 8 – Scottish disqualification orders

35. This section applies where an offender is convicted by a criminal court in Scotland of an offence listed in the schedule of the Act which was committed when the offender was aged 18 or over; and the court is satisfied beyond reasonable doubt that the offence is aggravated by hostility related to a returning officer or their staff (as defined in section 9), a registration officer or their staff (as defined in section 10) or a counting officer or their staff (as defined in section 11) (described here collectively as "election workers").

36. In those circumstances the court must, when dealing with the offender for the offence, also make a Scottish disqualification order. The disqualification order is to have effect for 5 years and, by virtue of the changes made by sections 12 and 13 to the Scotland Act 1998 and the Local Government (Scotland) Act 1973, respectively, means that the offender is disqualified from being a member of the Scottish Parliament or local authority.

37. However, the court does have some discretion as it does not have to make the disqualification order if they consider it would be unjust due to particular circumstances about the offence or the offender. Where the court determines not to make the order, the court must give its reasons for not doing so in open court.

38. An offence is aggravated by hostility if the offender demonstrated hostility towards the victim of the offence because the victim is, or the offender presumes the victim to be, an election worker. The hostility must be demonstrated by the offender at the time of committing the offence, or immediately before or after the commission of the offence.

39. In terms of section 8(4), the 'victim' of the offence doesn't necessarily need to be an election worker in order for the offence to be aggravated by the necessary hostility. This means that an offence could be aggravated by hostility where (for example) an offender commits a relevant offence against person A (e.g., an election worker's parent) and that offence is motivated by the offender's hostility towards person B because B is an election worker.

40. It is immaterial whether or not an offender's hostility is also based (to any extent) on any other factor not listed in that subsection, i.e., a factor other than the victim being or being presumed by the offender to be an election worker, or a factor other than hostility towards persons in their capacity as an election worker.

41. In terms of section 8(6) and (7), the court may consider evidence presented by the prosecution or defence in deciding whether or not to make a disqualification order under this section, even if that evidence would not have been admissible in the proceedings in which the offender was convicted.

42. For the purposes of determining whether an offender was aged 18 or over when the offence was committed, where an offender is found to be committed over more than a single day it is taken to have been committed on the last of those days.

43. Section 8(9) provides that where a person is convicted of an offence which would result in a disqualification order, the court must also take the aggravation into account when determining the sentence and state the difference (if any) the aggravation has made to the court's decision on sentence.

Schedule

44. The schedule lists the offences of an intimidatory nature in respect of which a Scottish disqualification order can be made by a court under section 8. It includes—

45. any offence which is tried under indictment (solemn procedure), which may for example include offences such as murder and rape,

46. certain common law and statutory offences tried on petition (summary procedure), which are listed in Chapter 1 (common law) and Chapter 2 (statutory offences) of the schedule.

47. Part 3 of the schedule also makes provision to include inchoate (that is, incomplete) versions of the offences listed, as well as superseded versions of those offences.

Section 9 – Returning officers

48. This section defines the first category of persons referred to in section 8.

Section 10 – Registration officers

49. This section defines the second category of persons referred to in section 8.

Section 11 – Counting officers

50. This section defines the third category of persons referred to in section 8.

Section 12 – Effect of order: Scottish Parliament

51. Section 15 of the 1998 Act provides the grounds by which a person is disqualified from being a member of the Parliament. This section amends section 15 of the 1998 Act to provide that a person who is subject to a Scottish disqualification order is disqualified from membership of the Parliament (but see commentary on effect of section 18). Section 17 of the 1998 Act provides that if a disqualified person is returned as a member of the Parliament "*his return shall be void and his seat vacant*". So while there is no specific rule that an ineligible person may not be a candidate in a Scottish Parliament election, there is a *de facto* prohibition as they would be unable to take their seat if successful.

Section 13 – Effect of order: local government

52. Section 31 of the 1973 Act provides the grounds by which a person is disqualified for nomination, election and holding office as a member of a local authority. This section amends section 31 of the 1973 Act to provide that a person who is subject to a Scottish disqualification order is disqualified from being a member of a local authority (but see commentary on effect of section 18).

Section 14 – Power to amend schedule

53. This section allows the Scottish Ministers by subsequent regulations to add or omit offences from the list of criminal offences in the schedule in respect of which a disqualification order can be made in accordance with section 8. Such regulations are subject to the affirmative procedure.

Disqualification orders under Elections Act 2022

54. Part 5 of the Elections Act 2022 made provision for a disqualification order, similar to the Scottish disqualification order provided under section 8 of this Act, but in relation to offences aggravated by hostility related to candidates (as defined in section 32 of that Act), holders of relevant elective offices (as defined in section 33 of that Act) or campaigners (as defined in section 34 of that Act). A person subject to an order is disqualified from being nominated for election to, being elected to or holding certain elective offices. Section 37 of the Elections Act 2022 lists the relevant elective offices to which the disqualification applies.

55. Part 5 of the Elections Act 2022 is part of the law of Scotland. Therefore, a court in Scotland must make an order if an offender is convicted of an offence listed in schedule 9 of that Act aggravated by hostility in relation to MSPs, Scottish councillors etc. However, the Scottish Parliament and local authorities in Scotland are not included in the list of "relevant elective offices" from which a person subject to a disqualification order is disqualified.

Section 15– Disqualification from membership

56. Section 15 of the 1998 Act provides the grounds by which a person is disqualified from being a member of the Parliament. Section 15 of the Act therefore provides that a person who is subject to a disqualification order under section 30 of the Elections Act 2022 is disqualified from membership of the Parliament (but see commentary on effect of section 18). Section 17 of the 1998 Act provides that if a disqualified person is returned as a member of the Parliament "*his return shall be void and his seat vacant*". So while there is no specific rule that an ineligible person may not be a candidate in a Scottish Parliament election, there is a *de facto* prohibition as they would be unable to take their seat if successful.

Section 16 – Local authorities: disqualifications for nomination, election and holding office

57. Section 31 of the 1973 Act provides the grounds by which a person is disqualified for nomination, election and holding office as a member of a local authority. Section 16 therefore provides that a person who is subject to a Scottish disqualification order is also disqualified from being a member of a local authority (but see commentary on effect of section 18).

Section 17– Disqualification orders: aggravation

58. Section 17 further amends section 30 of the Elections Act 2022 so that (similar to the requirement under section 8(9) of the Act) where a person is convicted of an offence which would result in a disqualification order under the Elections Act 2022, the court must also take the aggravation into account when determining the sentence and state the difference (if any) the aggravation has made to the court's decision on sentence.

Temporary relief from disqualification

Section 18 – Persons holding office: temporary relief from effect of disqualification

59. This section sets out the process by which a member of the Scottish Parliament, or member of a local authority, who is disqualified from holding that office as a result of (i) being subject to any relevant sex offender notification requirements or a relevant sexual harm or risk order; or (ii) a Scottish Disqualification Order under section 3; or (iii) a disqualification order under section 30 of the Elections Act 2022 should lose their seat or vacate their office. It mirrors section 31 of the Elections Act 2022 and has the effect of providing temporary relief to an office-holder who becomes subject to an order to allow them, for a limited period only, to appeal the conviction or order.

60. Section 16 of the 1998 Act provides exceptions to the grounds by which a person is disqualified from being a member of the Parliament. Section 12 of the Act therefore amends section 16 of the 1998 Act to provide that any relevant notification requirements, a relevant sexual harm or risk order or a disqualification order do not disqualify a member until the appropriate time. The appropriate time being the end of the 3-month period after the court imposed the requirements or made the order or, if earlier, the end of the period during which an appeal or application against the conviction, finding, order or certification is allowed. When the member makes such an appeal or application the office is vacated at the end of the 3-month period unless the appeal or application is dismissed or abandoned before the 3-month period expires, in which case the person is disqualified at that earlier time; or the appeal or application is upheld before the 3-month period expires, in which case the member is not disqualified.

61. Section 17 of the 1998 Act deals with the effect of disqualification and subsection (2) of that section provides that if a member of the Scottish Parliament becomes disqualified from being a member of the Parliament or from being a member for the particular constituency or region for which he is sitting, the person shall cease to be a member of the Parliament (so that their seat is vacant). Subsection (3) of this section amends section 17(4) to make it clear that section 17(2) is subject to new provision inserted into section 16 of the 1998 Act (as made by this section of the Act) providing the (up to 3 month) temporary relief for the person subject to the notification requirements or order(s). This section also provides that where such relief applies, although the disqualified member's seat will not be vacated immediately (and therefore, the person does not cease to be a member of the Parliament until the seat is vacant) in the meantime, the member may not participate in any proceedings of the Parliament and other rights and privileges may be withdrawn on a resolution of the Parliament.

62. Section 31 of the 1973 Act provides the grounds by which a person is disqualified for nomination, election and holding office as a member of a local authority. Therefore, for local government, section 12(5) of the Act amends section 31 of the 1973 Act to create an exception, so that any relevant notification requirements, a relevant sexual harm or risk order or a disqualification order does not disqualify a member until the appropriate time. Again, the appropriate time is the end of the 3-month period after the court imposed the requirements or made the order or, if earlier, the end of the period during which an appeal or application against the criminal conviction, finding, order or certification is allowed. When the member makes such an appeal or application, the office is vacated at the end of the 3-month period unless the appeal or application is dismissed or abandoned before the 3-month period expires, in which case the person is disqualified at that earlier time; or the appeal is upheld before the 3-month period expires, in which case the member is not disqualified. The amendments to section 31 of the 1973 Act also provide that a councillor who is subject to a relevant notification requirement, relevant sexual harm or risk order or relevant disqualification order is suspended from performing any of the functions of a councillor during the 3 month (or shorter) period in which any appeal or application is available or made and not determined.

Section 19– Transitional provision: disqualifications relating to sexual offences etc.

63. Section 19 contains transitional arrangements for currently serving MSPs and councillors in relation to current disqualifications for sexual offences notification requirements and orders. The provision is relevant to persons holding office as an MSP on the day in which section 6 or as a or a councillor on the day on which section 7 comes into force. An MSP or councillor who is subject to any relevant notification requirements or a relevant sexual harm or risk order on the day of coming into force will not be disqualified for that person's remaining term of office. However, the disqualification provisions will have effect, in respect of such requirements or of an existing order, from the earlier of the next general election or ordinary local election or any by-election involving the particular MSP or councillor.

64. Section 19 makes no exception for any new requirements or orders imposed on a person after commencement. Therefore a sitting representative would be disqualified immediately should they become subject to any new requirements or order after the commencement date. Similarly, the transitional arrangements in this section do not apply to make any special provision for a person who is not currently elected. Such a person would be disqualified for any existing or new requirements or orders from the relevant commencement date.

Section 15 of the Scotland Act 1998

Section 20– Ending Ambulatory effect of section 15 of the Scotland Act 1998

65. Section 15 of the 1998 Act provides the grounds by which a person is disqualified from being a member of the Scottish Parliament. The general approach is that, subject to any exceptions described in section 16 of that Act, the grounds for disqualification governing membership of the House of Commons are imported in relation to membership of the Scottish Parliament.

66. Subsection (1) of section 15 of the 1998 Act sets out the main grounds of disqualification from membership of the Scottish Parliament but it is subject to the exceptions provided for in section 16.

67. Section 15(1)(a) of the 1998 Act provides that a person who is disqualified from membership of the House of Commons under section 1(1)(a) to (e) of the House of Commons Disqualification Act 1975 is also disqualified from membership of the Scottish Parliament. Section 1(1)(a) to (e) disqualifies judges, civil servants (which would include staff of the Scottish Administration), members of the armed forces, members of police forces and members of foreign legislatures.

68. Section 15(1)(b) of the 1998 Act provides that a person, who is disqualified from membership of the House of Commons, otherwise than under the House of Commons Disqualification Act 1975, is also disqualified from membership of the Scottish Parliament. This covers common law and other statutory disqualifications and, at the time of the passing of the 1998 Act, was said to have the effect of excluding from membership:

- persons under the age of 21 who are disqualified by section 7 of the Parliamentary Elections Act 1695;[11]
- aliens who are disqualified at common law and by virtue section 3 of the Act of Settlement 1700, as amended by the British Nationality Act 1981 (c.61),[12] Schedule 7. Irish or Commonwealth citizens are not regarded as aliens for this purpose. Section 16(2) also excepts EU citizens who are resident in the UK;
- persons who are mentally ill and who are disqualified at common law. The procedure for the vacation of their seats is specified in section 141 of the Mental Health Act 1983 (c.20),[13] as amended by paragraph 19 of Schedule 8 of the Scotland Act 1998;
- undischarged bankrupts who are disqualified by section 427 of the Insolvency Act 1986 (c.45),[14] as amended by paragraph 23(6) of Schedule 8 of the Scotland Act 1998;
- persons guilty of corrupt or illegal practices are disqualified under the Representation of the People Act 1983;[15]

[11] https://www.legislation.gov.uk/aep/Will3/7-8/25
[12] https://www.legislation.gov.uk/ukpga/1981/61
[13] https://www.legislation.gov.uk/ukpga/1983/20
[14] https://www.legislation.gov.uk/ukpga/1986/45
[15] https://www.legislation.gov.uk/ukpga/1983/2

- convicted prisoners serving a sentence of more than one year's detention (or an indefinite sentence) in the UK or Ireland are disqualified by the Representation of the People Act 1981 (c.34);[16]
- peers are disqualified because, as members of the House of Lords, they are already members of the UK Parliament but not Irish peers by virtue of the Peerage Act 1963. Section 16(1)(a) lifts this disqualification.

69. Sections 15(1)(a) and (b), prior to the Act, had "ambulatory" effect, which means that they were to be interpreted as modified from time to time. This means that any new rules which would have prevented a person being a member of the House of Commons (i.e. following an Act of Parliament passed by the UK Parliament) would automatically have the effect of being imported by section 15 of the 1998 Act, and so disqualify the person from membership of the Scottish Parliament.

70. Section 20 of the Act changes that by providing that whether or not a person is disqualified depends on how the law, which includes statutory rules and common law, would be interpreted at a point in time, namely 27 April 2022, which is the day before the Elections Act 2022 received Royal Assent. This means that if a person would be disqualified under the grounds for disqualification governing membership of the House of Commons (whether under the House of Commons Disqualification Act 1975 or otherwise) as the as law applied on 27 April 2022, or by any additional grounds specified in section 15(1) of the 1998 Act (which will now include, for example, a person subject to a Scottish Disqualification Order under section 8 or a disqualification order under section 30 of the Elections Act 2022) the person is disqualified from membership. The main purpose of this provision is to sever the link with House of Commons rules and so prevent any new rules which are made in respect of membership of the House of Commons automatically applying in relation to membership of the Scottish Parliament.

71. The changes made by this section do not affect the power of the Parliament of the United Kingdom to make laws for Scotland. In other words, the UK Parliament could still make provision disqualifying persons from being members of the Scottish Parliament if it consciously decided to do so.

Part 3: Campaign finance

72. The existing regulatory framework governing the spending and funding (political or campaign finance) of candidates, political parties and third-party campaigners and other campaigners is contained within the Representation of the People Act 1983 (the "1983 Act") and the Political Parties, Elections and Referendums Act 2000 ("PPERA").

73. Part 4 of the Elections Act 2022 made some changes to campaign finance rules for UK elections which are reserved to Westminster (in terms of the Scotland Act 1998). This Part contains provisions which provide for consistency with some of the changes to the rules made by the Elections Act 2022, as they concern devolved Scottish elections.

74. The Elections Act 2022 made amendments to the 1983 Act and PPERA in relation to reserved elections, to clarify the law in relation to notional expenditure, to ensure that benefits in kind, such as property, goods, services or facilities that are supplied to a candidate, party or campaign for free or at a discount, should only qualify as an election expense for the relevant

[16] https://www.legislation.gov.uk/ukpga/1981/34

campaign where it is authorised or directed by the campaign. This clarification came as a result of a Supreme Court judgment (R v Mackinlay and others [2018])[17] that held such notional expenditure was an election expense without the need for authorisation.

75. The Elections Act 2022 also introduced some restrictions on the ability of third parties, meaning individuals or organisations that are not registered political parties, to incur controlled expenditure in regulated periods in advance of elections to the House of Commons or to the Northern Ireland Assembly. Broadly speaking, controlled expenditure relates to reportable expense to support specified activity that meets the purpose of influencing voters to vote in a particular way.

Expenditure in respect of Scottish Parliament elections

Section 21 – Notional and third party expenditure: Scottish Parliament elections

76. This section amends sections 73(1A), 86(1A), and 94(8A) of PPERA so that the amended provisions in relation to notional spending by political parties and third parties also now apply to campaign periods for Scottish Parliament general elections during devolved regulated periods.

Section 22– Third parties capable of giving notification

77. This section inserts section 88(11) and (12) into PPERA, to allow the Scottish Ministers to amend the list of third parties who can incur controlled expenditure during a Scottish devolved regulated period, defined as the period (normally 4 months) before a Scottish Parliament election for which campaign limits are applied in terms of paragraph 5 of schedule 10 of PPERA. Third parties can be added to or removed from the list, or the list can be varied, but changes to the list can only be effected on the recommendation of the Electoral Commission. Any regulations made by the Scottish Ministers under section 88(11) of PPERA will be subject to the affirmative procedure.

Section 23 – Restriction on which third parties may incur controlled expenditure

78. This section introduces a further restriction on third parties that may incur controlled expenditure (including notional controlled expenditure) in connection with a Scottish election campaign. It does this by inserting a new section 89B into PPERA, providing that only those third parties that would fall within the categories of third party listed in section 88(2) of PPERA are able to incur controlled expenditure expenses above a de minimis threshold of £700 during a Scottish devolved regulated period. Inserted section 89B also includes an either way offence of authorising expenses in breach of the section, which is punishable by fine.

Section 24– Transitional provision: offences relating to third party expenditure

79. This section sets out a transitional provision to provide that the changes made by section 16 have effect only in relation to a Scottish devolved regulated period beginning on or after the day on which section 23 comes into force. It is an offence for a non-eligible third party (see section 88(2) of PPERA) to incur controlled expenditure (or for someone to do so on their behalf).

[17] https://www.supremecourt.uk/cases/uksc-2018-0091.html

Section 25– Code of practice on controls relating to third parties

80. This section inserts new sections 100AA and 100BA into PPERA, which broadly mirrors sections 100A and 100B of that Act, which were inserted into PPERA by the Elections Act 2022. These new sections place a duty on the Electoral Commission to produce a statutory code of practice on the application of expenditure controls for third party campaigners contained within that Act as it relates to Scottish devolved elections and Scottish devolved regulated periods.

81. The Electoral Commission must, when preparing the code, follow the process set out in these sections which includes a requirement to consult with the Scottish Parliament, and any other persons the Electoral Commission considers appropriate. Section 100BA also sets out the process to be followed for the Code to be approved. The Scottish Ministers may approve a draft code with or without modifications and must then lay it before the Parliament. Parliament then has 40 days to resolve not to approve the Code.

82. The provision contained in this section also provides that compliance with any code issued under this section is a potential defence where the offence relates to expenditure incurred or treated as incurred by a third party during a Scottish devolved regulated period. This means where a person, for example, is charged with an offence in relation to controlled expenditure (or where expenditure is treated as controlled expenditure) and they determine what is or is not controlled expenditure (or is to be treated as such) in accordance with an issued code then there is a defence open to them.

Expenditure in respect of local government elections

Section 26 – Notional expenditure: local government elections

83. This section amends section 90C(1A) of the 1983 Act to clarify that expenditure on behalf of a candidate in a Scottish local election should only be considered incurred by the candidate where it has been directed, encouraged or authorised by them.

Part 4: Rescheduling of elections etc.

84. This Part contains provision to make arrangements to postpone elections and, in the case of certain by-elections, cancel elections and for connected purposes (including, in relation to the election of new Presiding Officer and choice of new First Minister, as it relates to postponed Scottish Parliament general elections).

Scottish Parliament elections

Section 27 – Power of Presiding Officer to postpone ordinary election

85. The existing power in section 2 of the Scotland Act 1998 (ordinary general elections) (the "1998 Act") gives the Presiding Officer of the Parliament a power to propose an alternative date for an election a month either side of when it would otherwise be due to occur. His Majesty may then, by proclamation under the Scottish Seal, dissolve the Parliament, require the poll to be held on the proposed day, and require the Parliament to meet within seven days of the election.

86. This section changes that by amending section 2 of the 1998 Act 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. The Presiding Officer may also, after proposing

a new date under the exercise of that power, propose a further (new) date which is 8 weeks later than the date previously fixed (which may result in a delay totalling 16 weeks). This section also provides that, where the date of the poll has been fixed in this way, the Parliament must meet "as soon as reasonably practicable" after the poll, rather than within 7 days, where a date for the poll has been fixed by the Presiding Officer in this way. This section also provides that, before proposing a day for the holding of a poll under the exercise of either power, the Presiding Officer must consult the Electoral Commission and the convener of the Electoral Management Board for Scotland. As soon as reasonably practicable after proposing a day for the holding of the poll, the Presiding Officer must publish a statement setting out the day proposed for the holding of the poll and the reasons for making the proposal.

87. The procedure involving the proclamation by His Majesty is otherwise unchanged and applies in relation to the second use of the power by the Presiding Officer, as it applies to the first, the only difference being that the second proclamation would not have the effect of dissolving Parliament (as it would already have been dissolved). Section 19 of the 1998 Act provides that the Presiding Officer will not cease to hold office merely because of the dissolution of the Parliament before a general election and will continue to hold office until such time as the new Parliament elects a Presiding Officer (and the deputies) under subsection (1) of that section. In other words, the Presiding Officer is able to propose a new date even after Parliament has been dissolved.

Section 28 – Power of Presiding Officer to schedule extraordinary general elections

88. Section 3 of the 1998 Act (extraordinary general elections) provides for the Presiding Officer to propose a date for the holding of a poll for a general election, in two circumstances—

- where the Parliament resolves that it should be dissolved. If the resolution is passed on a division, it requires two-thirds of the total membership of the Parliament to vote in favour (i.e. 2/3 of 129 = 86); or
- where the Parliament fails to nominate one of its members for appointment as First Minister within the time allowed under section 46.

89. This section creates an exception to that. It amends section 3 to provide that the Presiding Officer may not propose a day for the holding of a poll if either of the events mentioned above occurs within the period of 8 weeks ending with the day on which the poll at the next ordinary general election would be held. In other words, where an ordinary general election is scheduled to take place within 8 weeks, no extraordinary general election may be held.

Section 29 – Election of new Presiding Officer: extension of period

90. Section 19 of the 1998 Act provides that Parliament must, following a general election, elect from its members a Presiding Officer and two deputies before it conducts any other proceedings (except the taking by its members of the oath of allegiance) and in any event, within the period of 14 days beginning immediately after the day of the poll at an election.

91. This section changes that by amending section 19 of the 1998 Act so that, in cases where a general election was held on a day proposed by the Presiding Officer in accordance with a proclamation made by His Majesty under section 2(5) or new section 2(5E), the requirement for Parliament to elect a Presiding Officer and two deputies is to be done as soon as reasonably practicable after the day of the poll at the election.

Section 30 – Choice of new First Minister after changed election date

92. Section 46 of the 1998 Act requires the Parliament, within the period allowed in subsection (3), to nominate a First Minister if one of the events mentioned in subsection (2) of that section occurs.[18] The period allowed for nomination is normally 28 days after the occurrence of the event in question. If the Parliament fails to make a nomination within that period, then the Presiding Officer is required by section 3(1)(b) to propose a day for the holding of an extraordinary general election.

93. This section creates a small exception by amending section 46 so that if Parliament does not meet within the period of 7 days immediately after the day of the poll at a general election which was held on a day proposed by the Presiding Officer in accordance with a proclamation made by His Majesty under section 2(5) or new section 2(5E), any delay beyond the normal 7 day deadline for the first meeting is not counted as part of the 28 day period under section 46.

Section 31 – Rescheduling of by-elections

94. Section 9 of the 1998 Act provides for a by-election to be held within three months of a constituency seat becoming vacant. It also provides however that the by-election should not be held if the last day on which it could be held is within 3 months of the due date of the poll in the next ordinary general election. Subsection (2) of that section states that the date of the poll in that by-election is to be fixed by the Presiding Officer.

95. This section amends section 9 of the 1998 Act to give the Presiding Officer a power to fix another date for the poll for the by-election which is within 3 months of the date originally fixed. However that power is only exercisable if the date fixed does not fall within the period 6 months before the date of the next ordinary general election. This section also amends section 9 of the 1998 Act to provide that, in such cases (i.e. where the date fixed falls within the 3-6 month period before the date of the next ordinary general election, since it is not possible to fix a date within 3 months of the poll), the Presiding Officer is given a power to determine that the by-election is not held.

96. Before fixing another date or determining an election is not to be held, the Presiding Officer must consult the Electoral Commission, the convener of the Electoral Management Board for Scotland and the returning officer for the constituency.

97. As soon as reasonably practicable after fixing another date or determining an election is not to be held, the Presiding Officer must publish a statement setting out either the day proposed for the holding of the poll or (as the case may be) that an election is not to be held, and the reasons for making the proposal.

Local government elections

Section 32– Power of convener of Electoral Management Board to postpone ordinary local election

98. Section 43 of the Representation of the People Act 1983 (the "1983 Act") sets out that Scottish local government elections are to occur on the first Thursday in May in every year in which ordinary elections are to be held (see section 5 of the Local Government etc. (Scotland) Act 1994) unless specified by order under subsections (1)(b), (1AB) or (1B) of that section.

[18] (a) the holding of a poll at a general election, (b) the First Minister tendering his resignation to Her Majesty, (c) the office of First Minister becoming vacant (otherwise than in consequence of tendering their resignation) or (d) the First Minister ceasing to be a member of the Parliament otherwise than by virtue of a dissolution.

99. This section amends the 1983 Act to give the convener of the Electoral Management Board for Scotland a power to postpone the ordinary election by up to 4 weeks. Before fixing a new date the convener must consult the Electoral Commission, the Scottish Ministers and the Secretary of State. As soon as reasonably practicable after fixing another date the convener must publish a statement setting out setting out the day fixed for the holding of the poll and the reasons for the exercise of the power.

Section 33 – Power of returning officers to postpone election for their area

100. This section amends the 1983 Act to give returning officers a power, in relation to their local government area only, to postpone the poll at the ordinary election for that area by up to 4 weeks. Before fixing another date the returning officer must consult the Secretary of State, the Electoral Commission and the convener of the EMB. As soon as reasonably practicable after fixing another date the returning officer must publish a statement setting out the day fixed for the holding of the poll and the reasons for the exercise of the power.

101. This means that if the poll for the ordinary election was postponed by the convener of the EMB, then again by the returning officer, this could result in the poll for that area being postponed by a period totalling 8 weeks.

Section 34 – Power of returning officers to postpone or cancel by-election

102. Section 37 of the Local Government (Scotland) Act 1973 Act provides for a by-election to be held within three months of a casual vacancy in the office of councillor occurring (a casual vacancy may occur where a councillor dies, resigns or is disqualified). It also provides however that where a vacancy in the office of councillor occurs within 6 months before the date of the next ordinary local government election, a by-election should not be held but rather the vacancy filled at the next ordinary local government election. The exception to this is where, on the occurrence of the vacancy (or in the case of a number of simultaneous vacancies, the occurrence of the vacancies), the total number of unfilled vacancies in the membership of the council exceeds one third of the whole number of members, in which case the by-election must still be held.

103. This section amends the 1973 Act to give returning officers a power to fix another date for the poll that is within 3 months of the date fixed. The returning officer may also then delay the poll by a further 3 months. However, in both cases, the power is only exercisable if the date fixed does not fall within the period of 6 months before the date of the next ordinary local election. The exception to this is where, on the occurrence of the vacancy (or in the case of a number of simultaneous vacancies, the occurrence of the vacancies), the total number of unfilled vacancies in the membership of the council exceeds one third of the whole number of members, in which case the election may be delayed even if the date of the poll is fixed for a date falling within the 3-6 months period before an ordinary election.

104. This section also amends the 1973 Act so that, where the date fixed falls within the 6 month period before the date of the next ordinary local election, the returning officer is given a power to determine that the by-election is not held and so the casual vacancy is filled at the next ordinary local election. In such cases the date fixed for the holding of the poll remains and the returning officer has no power to cancel the by-election.

105. Before fixing another date or determining an election is not to be held, the returning officer must consult the Electoral Commission and the convener of the EMB.

106. As soon as reasonably practicable after fixing another date or determining that an election is not to be held, the returning officer must publish a statement setting out either the day fixed for the holding of the poll or (as the case may be) that an election is not to be held, and the reasons for making the proposal.

Part 5: Form of Ballot Papers

Section 35 – Review of order of candidates on ballot papers used at elections

107. This section places a duty on Scottish Ministers to conduct a review of the order of candidates on ballot papers used at local government and Scottish Parliament elections. Currently candidates' names are in alphabetical order by surname as opposed to alternative methods such as randomisation. The report is to be published and laid before the Scottish Parliament within 5 years of the provision coming into force.

108. The report must assess, for local government and Scottish Parliament elections: (a) whether any changes should be made to the method of ordering of candidates, and (b) the advantages and disadvantages of different methods of randomising ballot papers or otherwise changing the ordering of candidates on ballot papers. The report must also set out whether the Scottish Ministers intend to make changes to the law in relation to the method of ordering candidates on ballot papers at local government elections or Scottish Parliament elections using their existing powers in section 3 of the Local Governance (Scotland) Act 2004 and section 12 of the Scotland Act 1998.

Part 6: Home addresses of candidates and agents

Section 36 – Nomination of candidate in local government elections: home address forms

109. This section amends the Scottish Local Government Elections Order 2011 (S.S.I. 2011/399). It allows candidates in council elections to specify their ward of residence in nominations and on ballot papers. At present candidates can only choose to specify their home address or the council area in which they reside.

Section 37 – Election agent and sub-agent in Scottish Parliament elections: public notice of home address

110. This section amends the Scottish Parliament (Elections etc.) Order 2015 (S.S.I. 2015/425). It allows election agents to provide a correspondence address (for example, an office address) as the public notice of address, instead of a personal address for correspondence, in Scottish Parliament elections.

Section 38 – Election agent and sub-agent in local government elections: public notice of home address

111. This section amends the Representation of the People Act 1983. It allows election agents to provide a correspondence address as the public notice of address, instead of a personal address for correspondence, in local government elections.

Part 7: Election pilots and democratic engagement

112. Part 7 contains various changes in relation to pilot schemes and democratic engagement. Section 39 adjusts existing powers in sections 5 and 6 of the Local Government (Elections) Act 2002 (the "2002 Act") to pilot electoral processes and sections 40 to 43 introduce new piloting powers for registration of electors. Section 44 provides the Scottish Ministers with new financial assistance powers for the purpose of increasing democratic engagement. Currently,

the Scottish Ministers have a range of grant making powers that may be used to facilitate participation in elections, although these tend to be framed in relation to specific groups rather than the whole electorate. . Section 45 makes a change to the existing general power in section 3 of the Local Governance (Scotland) Act 2004 for Ministers to make provision on the conduct of local government elections, to allow sub-delegation in order that other bodies can issue documents relevant to the conduct of local elections, such as guidance or forms. Section 46 places the Access to Elected Office Fund on a statutory basis.

Section 39 – Pilot schemes under the 2002 Act

113. This section amends section 5 and 6 of the 2002 Act to expand who can propose a pilot scheme, to add a reference to other enactments which may be modified by a pilot scheme, to add consultation requirements and to make consequential amendments.

114. The existing pilot powers in section 5 of the 2002 Act allow a local authority to propose to the Scottish Ministers a pilot scheme for a local government election held in their area. The Scottish Ministers can modify a proposed scheme and implement it by order. A scheme can introduce different provisions regarding voting methods, locations, and counting of votes, as well as candidate election communications. After the relevant elections, the Electoral Commission must prepare a report assessing the scheme's impact on voting, informed decision-making, and ease of use. The report may also address voter turnout, electoral offences, and malpractice. Under section 6 of the 2002 Act, the Scottish Ministers may make permanent changes to election procedures based on the success of pilot schemes. The changes can apply to all local government elections in Scotland or specific types of elections. Such a section 6 Order, if approved by the Scottish Parliament under affirmative procedure, may modify or disapply existing laws.

115. Subsection (2)(a) and (b) of section 39 allow, in addition to local authorities, the Scottish Ministers, the Electoral Management Board for Scotland or electoral registration officers to initiate a pilot proposal. Consultation with the Electoral Commission is a prerequisite to a proposal by any of those persons. The EMB must also be consulted before a proposal is made in all instances, except where it is the person making the proposal. The requirement in section 5(3) of the 2002 Act for a pilot to be likely to facilitate voting or encourage more voting remains (as provided for by the amendments in subsection (3)(e)).

116. Subsection (2)(c) removes the limitation that a scheme may only make provision differing from Representation of the People Acts. This is too restrictive in terms of local government elections in Scotland, given that the Representation of the People Acts are not the only source of electoral law in Scotland. For example, provisions about the conduct of local government elections in section 3 of the Local Government Scotland Act 2004 and the Scottish Local Government Elections Order 2011 which has the rules for those elections, including actions to be taken before the poll and voting procedure. Subsection (2)(g) makes amendments consequential on that.

117. Subsection (2)(d) introduces a restriction to the existing pilot powers in relation to electronic voting. A proposed pilot scheme implemented by an order under section 5 is normally subject to no procedure. However, the new section 5(2A) introduced by subsection (2)(d) ensures that any pilot which concerns electronic voting cannot occur without Parliamentary approval, requiring the order to be subject to the affirmative procedure. The requirement applies if a proposed pilot scheme includes provision where the method used to cast votes involves specifying a voter’s preference by electronic means.

118. Further consequential adjustments are made: by subsection (2)(f), to update the consultation requirements for pilot Orders for the possible different sources of a proposal; by subsection (2)(h) to adjust the recipients of an Electoral Commission report on a pilot scheme; and by subsection (2)(i) to provide a definition of "electoral registration officer".

119. Subsection (3) adds a mandatory consultation requirement with the Electoral Management Board for Scotland and the Electoral Commission to the Scottish Ministers' existing powers in section 6 of the 2002 Act to make an order making permanent changes to election procedures following the success of pilot schemes.

Section 40 – Registration of electors pilot provision: power to make temporary provision

120. This section enables the Scottish Ministers to make regulations to make temporary provision about the registration of electors ("registration of electors pilot provision").

121. A definition of a "registration of electors pilot provision" provides that the pilots are in relation to the registration of persons in the Scottish local government registers only (i.e. the registers used for both local government and Scottish Parliament elections). A non-exhaustive list of the matters pilot provision may cover is provided. This includes provision about the processing of information for and in connection with any matter as regards registration. Any regulations made under this power will not compel UK Ministers or UK public bodies to provide information unless they have consented to take part in a pilot made under this provision. The registration pilots are expected to be run by public bodies only or by bodies with public functions by agreement with the relevant body. The provision therefore does not contain a regime to require enforcement of information sharing for the purposes of a pilot.

122. The section provides that the regulations cannot affect someone's right to be registered (i.e. matters relating to franchise).

123. As pilots are temporary, regulations made under this power must include a date by which they expire. The Scottish Ministers will only be able to make regulations under this section where a proposal for a pilot has been made and approved in accordance with the section 41.

124. Regulations made under this provision must specify a date before which the Electoral Commission must send a report to evaluate the pilot (details of the evaluation procedure are contained in section 41).

125. Regulations made under this provision are subject to negative parliamentary procedure.

Section 41 – Proposals for registration of electors pilot provision

126. This section provides that the Scottish Ministers may propose a registration of electors pilot after consulting with the Electoral Commission, the Electoral Management Board for Scotland, and other persons they consider appropriate.

127. Alternatively, a pilot may be proposed by the Electoral Management Board, a local authority, or an electoral registration officer, either on their own or jointly, by submitting a proposal to the Scottish Ministers. A local authority and an electoral registration officer are required to consult with the Electoral Commission and the Electoral Management Board for Scotland before submitting a proposal.

128. If a pilot is proposed by a person with authority to do so, other than the Scottish Ministers, the Scottish Ministers may approve the proposed pilot either with or without modifications.

129. A registration of electors pilot may only be put in place where the Scottish Ministers or, where the pilot is proposed by another body (or bodies acting jointly) that body (or bodies), think the provision is likely to facilitate registration by any person or a description of persons or encourage more persons, or descriptions of person, to register.

130. The Scottish Ministers may consult with such persons as they think appropriate to inform their consideration of a proposal submitted by another body with authority to do so. If Minsters do wish to modify the proposal, they must first consult with the EMB and the body (or bodies acting jointly) who submitted the proposal.

Section 42 – Evaluation of registration of electors pilot provision by Electoral Commission

131. This section sets out that the Electoral Commission must prepare a report on the operation of the pilot, send a copy of the report to the Scottish Ministers, any local authority to which the pilot relates, the EMB and any ERO who proposed the pilot (if applicable) and publish the report. This must be done before the date specified in the regulations making the electoral registration pilot provision or such later date as the Commission and the Scottish Minister may agree.

132. The report must cover, a description of the way in which the provision made by the regulations differed from the provisions which would otherwise have applied, a copy of the registration of electors pilot provision, an assessment of the success or otherwise of the pilot provision, the arrangements made under the regulations to assist disabled persons, an assessment of whether persons found the procedures for registration easy to use, an assessment of whether the procedures provided under the regulations led to any incidence of, or increase in, impersonation or other electoral offences or in any other malpractice in connection with elections, an assessment of whether provision similar to that made by the regulations should apply generally, and on a permanent basis, and any other matter relating to the registration of electors pilot provision as the Scottish Ministers may direct.

Section 43 – Power to permanently modify provision about registration of electors

133. This section provides Scottish Ministers with the power to permanently modify electoral law if, following the Electoral Commission's report, they decide that the piloted provisions or similar provisions should apply generally and on a permanent basis. The power is contingent on the Electoral Commission report recommending that the change should be made generally and permanently.

134. Before laying a draft of the SSI containing the regulations, the Scottish Ministers must consult the Electoral Management Board for Scotland and such other persons they consider appropriate. The Scottish Ministers must lay a copy of the report prepared by the Electoral Commission into the operation of the pilot at the same time as laying a draft of the SSI. Regulations made under this power would be subject to affirmative parliamentary procedure.

Section 44 – Funding to increase democratic engagement

135. This section sets out a new specific financial assistance power to enable the Scottish Ministers to make or give grants, loans, guarantees and indemnities for the purposes of, or in connection with, increasing democratic engagement. This may be in relation to local government elections or Scottish Parliament elections. The purpose for which a grant or financial assistance may be given includes activities which, in the opinion of the Scottish Ministers, are undertaken with a view to increasing or improving registration and participation by voters, candidates, campaigners and others.

136. For example, funding may be given to third parties to run engagement campaigns, or the Scottish Ministers may fund initiatives of its own. Some examples of projects which have been tried in other jurisdictions and which may be considered for funding are things such as digital surgeries connecting councillors and MPs with people, chatbots answering common questions on registering and voting in different languages and videos tailored to different groups giving a "walk through" or other information about a polling station. Grants made by the Scottish Ministers may also include funding automatic voter registration at educational establishments.

137. In considering whether to provide financial assistance under this section, the Scottish Ministers must have regard to the impact of the funded activity or activities in relation to persons with protected characteristics listed in section 4 of the Equality Act 2010.

Section 45 – Scottish Ministers' power to make provision about elections under the Local Governance (Scotland) Act 2004

138. This section changes the Scottish Ministers' powers to make legislation for the administration of local government elections to allow that legislation to refer to documents (such as guidance or forms) prepared by other organisations and provide that those documents form part of the rules in relation to local elections.

139. It modifies the general power in section 3 of the Local Governance (Scotland) Act 2004 for Ministers to make provision in secondary legislation in relation to the conduct of local government elections. This power is typically used ahead of every local government election to update the rules for the forthcoming election.

140. Unlike the equivalent power in relation to Scottish Parliament elections (section 12 of the Scotland Act 1998) the local government power for secondary legislation does not allow Ministers to sub-delegate tasks to other bodies. Sub-delegation is when a piece of secondary (or delegated) legislation contains a further delegation of authority to another public body. The modifications made by this section will permit sub-delegation, and that will allow bodies such as the EMB or Electoral Commission to be asked to provide guidance on elections, for example on asking the Electoral Commission to provide guidance on accessibility measures in polling places, as they already do for UK Parliamentary elections in Scotland.

141. Paragraph (a) of inserted subsection (3A) provides that references are ambulatory. This means that the most recently published version of a document referred to will automatically become the authoritative one. For example, Ministers will not need to make a new Order every time that the Electoral Commission updates its accessibility guidance. However, paragraph (b) of this subsection helps Ministers retain control by giving them the power to specify other requirements in an Order which a document must meet before a document is considered authoritative.

Section 46 – Access to elected office fund

142. This section puts the Access to Elected Office Fund on a statutory footing. The Fund has been operating since 2016 on a non-statutory basis. The effect will be to ensure that the Fund continues to support disabled candidates to stand for election in Scottish Parliament and local government elections as long as the provision remains in force.

143. The section provides that the Fund will be administered separately by a person designated by the Scottish Ministers, subject to the Parliament approving that designation in draft by resolution. However, provision is made to allow the existing administrative arrangements for the Fund to continue without re-designating the administrator already chosen.

144. The Scottish Ministers are required to report to Parliament after each ordinary Scottish Parliament election and each ordinary local election on the operation of the Fund.

Part 8: Information to be included with certain electronic material at Scottish elections

145. Part 8 of the Act contains provisions promoting further transparency at Scottish elections. It requires certain unpaid-for electronic campaigning material for Scottish elections which is promoted by or published on behalf of "relevant third party" organisations to display an imprint with the name and address of the promoter and of any other person on behalf of whom the material is being published.

146. While the term "digital imprint" is not used in the Act or in the corresponding provisions in Part 6 of the Elections Act 2022 (see below), it is often used to mean required identification information added to digital campaigning material. Therefore, wherever that term is used in these Explanatory Notes or in other Accompanying Documents, it is an intended shorthand for the information required to be included with any electronic campaigning material to which legislative provisions apply.

147. Part 8 regulates any "relevant third party", which means a body (not a candidate or another individual) involved in campaigning or influencing the election while not being a direct participant, such as a political party (hence "third party"). The "relevant" qualification recognises that there are other third parties involved in campaigning which are not covered by this Part. For example, "recognised third parties" (campaigning groups which have registered with the Electoral Commission) fall to be regulated under the regime in Part 6 of the Elections Act 2022.

148. Part 8 of the Act supplements the regime in Part 6 of the Elections Act 2022, which requires digital imprints to be included in a broad range of electronic material. Generally, the transparency requirements there require contact information to be included with paid-for electronic material which relates to registered political parties and candidates and also with other unpaid-for electronic material connected with elections. The application of the Election Act 2022 as regards unpaid-for material is limited to material which is promoted by or published on behalf of certain groups listed in section 44(3) of the Act, such as registered parties, candidates, office holders and recognised third parties.

149. Therefore the Elections Act 2022 does not extend to unpaid-for digital campaigning material for Scottish elections which is promoted by or published on behalf of third party campaign groups which are not recognised third parties. The supplementary provisions in Part 8 of the Act are intended to extend requirements to that group.

150. Digital imprint rules for Scottish elections are currently found in the Scottish Elections (Details to appear on Election Material) Regulations (S.S.I. 2020/297) and the Scottish Elections (Details to appear on Election Publications) Regulations (S.S.I. 2020/298). Following the enactment of this Part it is intended that the coverage and requirements for Scottish elections will be in Part 8 of the Act and in Part 6 of the Elections Act 2022. The regulations are therefore revoked by section 61.

151. More generally, there remain requirements to include contact details in campaign material for Scottish elections for printed material which is not in an electronic or digital format. Section 143 of the Political Parties, Elections and Referendums Act 2000 ("PPERA") sets out what details are to appear on printed election material at Scottish Parliament (and other) elections and section 110A of the Representation of the People Act 1983 provides for the details to appear on election publications for Scottish local government elections.

Introduction

Section 47– Application of this Part

152. This section notes the coverage of Part 8 of the Act as applying to electronic material published in connection with a relevant Scottish election (defined in section 49 as Scottish Parliament and local government elections). It also notes the other legislation in relation to electronic material published in connection with these elections.

153. As noted, Part 8 of the Act supplements Part 6 of the Elections Act 2022, which requires the display of a digital imprint for other types of digital campaigning material published in connection with Scottish elections. Therefore subsection (2) is a signpost towards those provisions. The reference in that subsection to requirements in "any other enactment" recognises that there may also be legislative requirements set out elsewhere in the future.

Interpretation

Section 48 – Key definitions

154. This section defines key terms for the coverage of the Part: "electronic material", "promoter", "published" and "relevant third party". "Electronic material" can be text, pictures, videos, audio or music. However, phone calls and text messages are explicitly excluded from this definition. In order to be published by the promoter, the electronic material needs to be transmitted to the public or any section of the public. This may be done via the internet or by other electronic means.

155. The definitions of "electronic material", "promoter" and "published" are broadly consistent with those in section 39 of the Elections Act 2022, which defines those terms for the coverage of the complementary Part 6 of the Elections Act 2022. A "promoter" is the person causing the material to be published, but is not a person who does such publishing in the ordinary course of their business, (for example, internet providers or social media companies).

156. Section 39 of the Elections Act 2022 contains a power for the Secretary of State to modify the definitions of "electronic material", "the promoter" or "publish". Similarly, subsection (3) allows the Scottish Ministers to modify these key definitions by regulations.

157. The definition of "relevant third party" is also key in terms of the coverage of the Part. This defines the third party campaign groups to which, as noted above, digital imprint requirements in the Elections Act 2022 do not apply. The contact details of the promoter and of any other person on whose behalf the material is published are to be included when certain

electronic material is promoted by a relevant third party or published on behalf of a relevant third party. The definition of relevant third party covers persons who undertake activities in relation to a Scottish election but with the explicit exclusion of individuals, recognised third parties and registered parties. This definition may also be modified by regulations made by the Scottish Ministers in terms of their power in this section.

Section 49 – Further definitions relating to candidates etc.

158. This section defines other terms used in Part 8 of the Act to outline the boundaries of the transparency requirements in this Part: "candidate", "future candidate", "registered party", "recognised third party", "registered party", "relevant Scottish election" and "relevant Scottish elective office". As with its inclusion in Part 6 of the Elections Act 2022, "future candidate" is a person who is a future candidate at an election for a relevant Scottish elective office. This category is intended to avoid any potential ambiguity in relation to when imprints are required because candidates are only being legally recognised for a limited pre-election period, despite the fact they may have been campaigning before then.

Electronic material: conditions for application

Section 50 – Electronic material: conditions for application of section 52

159. This section sets out 3 conditions for when the digital imprint requirements will apply. These conditions are that:

- The material can reasonably be regarded to achieve either of the 2 purposes within the subsequent section (i.e. (i) procuring electoral success at a relevant Scottish election for registered parties or more than one candidate or future candidate or (ii) the election of a particular candidate or future candidate).
- The promoter of the material is a relevant third party or the person on whose behalf it is published is a relevant third party.
- Neither the promoter of the material nor the person on whose behalf the material is published has paid for the material to be published as an advertisement.

160. The first condition is further elaborated on in section 51. The second condition provides that material can be promoted by the relevant third party or published on their behalf. Where it is published on their behalf, section 52(2) will require their contact details to be included despite the relevant third party not being the actual promoter. The third condition restricts the coverage of this to unpaid-for material, with paid-for material and some other unpaid-for material published by persons other than relevant third parties already regulated by the regime in Part 6 of the Elections Act 2022.

Section 51 – Purpose of the electronic material

161. This section sets out the 2 purposes mentioned in the first condition in section 50. The first purpose is promoting or procuring electoral success at one or more particular Scottish elections in relation to a registered party, registered parties who advocate for or against particular policies or otherwise fall within a particular category of parties and candidates or future candidates with particular opinions or otherwise come within a particular category.

162. The references here to parties who promote policies and to candidates in categories is consistent with the tests in Part 6 of the Elections Act 2022 for its regulation of paid-for and certain unpaid-for electronic material. The intention is to capture more general material, for example material promoted by a relevant third party persuading the public to vote for

candidates with a particular position on the constitution, climate, taxes, etc. The material might prejudice rather than promote the electoral prospects of other parties, candidates or future candidates. It need not expressly mention the name of any party, candidate or future candidate to achieve this purpose.

163. The second purpose is in subsection (4): promoting or procuring the election of a particular candidate or future candidate at one or more Scottish elections. It need not expressly mention the name of any candidate or future candidate, to be in scope of the regime.

164. Subsections (5)(b) and (6) clarify that where electronic material may be reasonably regarded as promoting or procuring the electoral success of two or more candidates standing in the name of a party or included in a list of candidates submitted by the party then it may be regarded as being published on behalf of the registered party (rather than on behalf of a candidate).

165. The split of the 2 purposes between success of parties or groups on the one hand and individual candidates on the other facilitates continuation of the existing enforcement regime. Material in the former category is generally enforced by the Electoral Commission and material about an individual candidate is generally enforced by the police in the first instance. The existing split of responsibilities between the enforcement authorities is found in the print regime, Part 6 of the Elections Act 2022 and the to-be-revoked the Scottish Elections (Details to appear on Election Material) Regulations (S.S.I. 2020/297) and the Scottish Elections (Details to appear on Election Publications) Regulations (S.S.I. 2020/298). Where there is overlap, it would be for the authorities to establish, based on the particular facts, where the enforcement responsibility lies.

Requirements when publishing electronic material

Section 52 – Requirement to include information

166. This section has the principal (digital imprint) requirement for information about any relevant third party promoters and any person on behalf of whom the material is being published (who is not the promoter) to be included as part of the electronic material. It is to be legible or audible and directly accessible (where not included in the material itself) imprint on electronic material within the scope of the regime. It is a similar requirement to that in section 41 of the Elections Act 2022 in relation to the material covered there.

167. Subsection (1) requires these imprints to be displayed as part of the material or in a location that is directly accessible from the material only where that is not reasonably practicable. Subsection (2) provides that the imprint information required to be embedded within electronic material is the name and address of the promoter of the material and any person on behalf of whom the material is being published (and who is not the promoter).

168. As with the corresponding provisions in the Elections Act 2022, subsection (3) has regulation-making powers to modify the details to be included in the imprint, if required. This is to accommodate technological advances and any required changes as a result of the implementation of this or the corresponding regime under the Elections Act 2022.

169. Subsections (4) to (6) set out further imprint requirements, for example that the imprint is legible or audible and retained as part of the material when republished.

Section 53 – Exceptions to requirement in section 52

170. This section sets out a number of exceptions to the regime. Subsection (1) provides that generally, the re-publishing or 're-sharing' of electronic material will not require a new imprint, where the original (section 52 compliant) imprint is retained in the material, and the material (the content or the imprint) has not been materially altered since it was previously published (for example, sharing, forwarding or re-posting an existing message on social media). The exception applies regardless of whether the material is re-published by the original promoter, or by another person.

171. Subsection (3) outlines exceptions for material published for journalistic purposes which is the publication of electronic material on a website or mobile application whose primary purpose is the publication of journalism. For example, campaigning material written as an article in a blog or an online newspaper would not require a digital imprint.

172. Subsection (5) makes provision to amend the section, by way of regulations, to add, modify or remove cases to which an imprint is not required.

Offences

Section 54 – Offence of breaching section 52

173. Section 54 sets out the offence, defences and penalties applicable to the regime. Subsection (1) provides that where electronic material is published without an imprint (in contravention of the requirements in section 52), the relevant third party who is the promoter of the material and any person on behalf of whom the material is being published (if not the promoter) becomes liable for a criminal offence. The penalties are set out in subsection (2) and defences in subsections (3), (4) and (5).

174. Under subsection (7) a court must notify the Electoral Commission when a person is convicted of an offence under subsection (1) and the sentence imposed, as soon as is practicable.

Section 55 – Individual culpability where organisation commits an offence

175. Despite the general exclusion of liability for individuals acting as such there is still potential for an individual to commit an offence, where they are the controlling mind of an organisation. Section 55 makes provision for certain persons associated with different types of organisations to be held criminally liable for committing an offence under section 54, in addition to the organisation.

176. For that to happen, any person referred to in this section as a "responsible individual" must have consented to, or connived in, the organisation's commission of the offence. Subsection (4) sets out a table explaining which type of person is a "responsible individual" in relation to different types of organisation listed in the table. For example, the director or secretary of a company, and a partner in a firm, are responsible individuals, so potentially have criminal liability for offences under section 54 committed by the company or partnership, respectively.

Enforcement and investigation

Section 56 – Enforcement by the Electoral Commission

177. Section 56 and 47 enable enforcement by the Electoral Commission using investigatory powers and civil sanctions. As noted above, certain types of material are investigated by the Electoral Commission, although this does not prevent appropriate cases being referred to or investigated by the police.

178. Section 56 applies Parts 1 to 4 and 6 of Schedule 19C of PPERA and the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 (S.I. 2010/2860) in respect of offences described in subsection (2). The Commission's enforcement powers are limited to material the purpose of which is procuring electoral success for registered parties and categories of registered parties, candidates or future candidates. The police and the courts are responsible for the enforcement of offences relating to electronic material promoting particular candidates or particular future candidates.

Section 57 – Supply of information

179. To supplement enforcement of the Act, this section provides investigatory powers to gather information. The powers are those set out in Schedule 12 of the Elections Act 2022 in relation to the requirements of Part 6 of that Act.

180. Schedule 12 requires any person to comply with a notice for the supply of information to enable the Electoral Commission or a police constable to determine whether electronic material has been published in contravention of the electronic imprint regime. The information required will be identified by the Electoral Commission or police in the notice and must be information that is reasonably required to determine whether electronic material has been published in contravention of the regime or to make contact with the promoter of the material or the person on behalf of whom the material has been published (and who is not the promoter). It ensures compliance with an order through the courts. The schedule also applies restrictions on the disclosure of information. A person is not required to provide legally professionally privileged information or disclose information which would contravene data protection legislation.

Guidance and Electoral Commission Report

Section 58 – Guidance

181. This section requires the Electoral Commission to issue statutory guidance. Under subsection (1) it must contain details on the operation and enforcement of the regime. In enforcing the regime the Electoral Commission are to have regard to the guidance. The guidance is also relevant as a defence under section 54(4).

182. The section also provides the procedure for creating the guidance. The Electoral Commission must draft the guidance for approval by the Scottish Ministers who are able to modify the draft before laying it before the Scottish Parliament. Any modified guidance must be accompanied by a statement outlining the reason for the amendments. Subsections (7) to (9) outline the process for laying the guidance, which includes a 40 day period in which the Parliament can resolve not to approve the guidance. Given this parliamentary procedure, the subsequent regulations bringing the guidance into force are not subject to any Parliamentary procedure.

Section 59 – Electoral Commission's Annual Report

183. This section adds to the Scottish reporting requirements of the Electoral Commission in paragraph 20A of schedule 1 of PPERA. Under subsections (1) and (2) the Electoral Commission's annual report must include information about convictions (for offences relevant to this Part) reported to the Electoral Commission and the Electoral Commission's use of its powers to request information under Schedule 12. The Commission is not required to provide any information which may be unlawful or adversely impact upon ongoing investigations or proceedings (subsection (3)).

Final provisions

Section 60 – Scottish Ministers regulation making powers

184. Under this section, the Scottish Ministers are only able to make regulations under the powers Part 8 of the Act following a recommendation from the Electoral Commission or after consultation with the Electoral Commission, except for regulations under section 58(9)(b) (which bring guidance into force).

Section 61 – Consequential revocations

185. As digital imprint rules for Scottish elections will be in Part 8 of the Act and in Part 6 of the Elections Act 2022, this section revokes the regulations containing the earlier Scottish regime.

Part 9: Boundaries

186. Part 9 contains provisions adjusting the date of the new review of local government wards and numbers of councillors and provisions restricting the submission of reports on reviews of local government and Parliamentary boundaries in the 18 months before an election.

Section 62 – Boundaries Scotland: changing date of next review of local government wards and number of councillors

187. Section 62(2) amends section 14 of the Local Government (Scotland) Act 1973 ("the 1973 Act") so that any review by Boundaries Scotland of local government areas must be completed no less than 18 months before the date of the next normally scheduled election.

188. Before the Act the first report of Boundaries Scotland on the electoral arrangements for a local government area under section 16(2A) of the 1973 Act was to be submitted by no later than 31 December 2028. Section 62(3)(a) changes that so that the report must be submitted by no later than 31 October 2030. Section 62(3)(b) adds a new subsection (4) to section 16 of the 1973 Act, applying to subsequent reports by Boundaries Scotland. It provides that reports on reviews of the electoral arrangements for a local government area under section 16(2A)(b) (or proposals made to the Scottish Ministers under section 16(3) regarding substantial changes to those arrangements) may not be made during any period which is 18 months before the date of the each normally scheduled local government election.

Section 63 – Boundaries Scotland: reports on Parliament boundaries before a general election

189. Section 63 amends schedule 1 of the Scotland Act 1998 by inserting a requirement that any report of Boundaries Scotland made under paragraph 3(5) or (6) of that schedule which makes proposals to alter the boundaries of Scottish Parliament constituencies may not be made during any period which is 18 months before the date of the each normally scheduled Scottish Parliament general election.

Part 10: Electoral Commission

190. This Part contains provisions adding or adjusting requirements on the Electoral Commission. The requirements are in relation to education and reporting on spoilt ballot papers and to require the Commission to provide 5-year plans setting out its aims and objectives and requirements for resources in respect of its Scottish devolved functions. Currently, the Commission submits its 5-year plan to the Speaker's Committee (which covers its functions for other UK elections) at the start of the first sitting of the UK Parliament following a general election. The SPCB is sent a copy and can make recommendations. This Part changes that in that it would require the Commission to prepare a separate plan for Scottish elections and for the timing of these plans to correlate with Scottish Parliament general election cycles, giving the SPCB better oversight in terms of the Commission's strategic and financial priorities.

Section 64 – education about electoral and democratic systems

191. This section amends section 13 of the Political Parties, Elections and Referendums Act 2000 to require the Electoral Commission to promote public awareness of how to mark the ballot paper in Scottish Parliament elections and Scottish local government elections. This is an addition to the Commission's existing duty to promote public awareness of the different voting systems used in the UK.

Section 65 – Electoral Commission's annual reports: spoilt ballot papers

192. This section amends the contents of the annual report which the Electoral Commission lays before the Scottish Parliament each year about the performance of its devolved Scottish functions. The amendment adds that each annual report must include information on the steps the Commission has taken to reduce the number of spoilt ballot papers at Scottish Parliament and Scottish local elections.

Section 66 – Five-year plan: devolved Scottish elections and referendums

193. This section amends schedule 1 of the Political Parties, Elections and Referendums Act 2000 ("PPERA").

194. It provides that for each financial year, the Commission must prepare an estimate of the Commission's income and expenditure for the year in relation to the Commission's devolved Scottish functions and, by no later than 6 months before the start of each financial year (or such later date as the Commission and the SPCB may agree), send the estimate to the SPCB for approval.

195. When the Commission send to the SPCB such an estimate in respect of the first financial year following a Scottish Parliament general election, it must also submit to the SPCB a plan setting out its aims and objectives for the exercise of the Commission's devolved Scottish functions during the next 5 years and estimated requirements for resources for the exercise of those functions during that period. A plan must also include how the Commission will aim to reduce the number of spoilt ballots at devolved Scottish elections.

196. The SPCB must examine each plan submitted to it and decide whether it is satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their functions. If it is not so satisfied it may recommend such modifications to the plan as it considers appropriate for the purpose of achieving such consistency. As part of its examination, the SPCB may consult a committee of the Scottish Parliament (for example, the Standards, Procedures and Public Appointments Committee) and any other persons as it considers appropriate.

197. After the SPCB has reported to the Commission on its findings and recommendations (if any) the Commission must make whatever modifications to the draft plan it considers necessary and lay the plan before the Parliament. If the Commission did not follow any recommendations it must explain in a document laid before Parliament why it did not.

198. The Commission may, of its own accord or as required by the SPCB, submit a new (or revised) plan at any other time during the 5 year period, under the same process.

199. Scottish devolved functions cover any functions under Part 1 of PPERA in relation to Scottish Parliamentary general elections and by-elections, any local government elections and under the Referendums (Scotland) Act 2020 in relation to any referendum held throughout Scotland.

Section 67– Reports on promotion of public awareness about elections

200. This section makes changes to the report which the Electoral Commission must prepare after the holding of nationwide Scottish Parliament and local government elections. It requires the Commission to report on steps taken by the Commission and Returning Officers to promote public awareness about the election and how to vote in it (including in particular, how to fill in a ballot paper). The report can also describe steps taken by others, as the Commission considers appropriate.

Section 68– Electoral Commission strategy: spoilt ballot papers

201. This section places a duty on the Electoral Commission to prepare and publish a strategy for reducing the number of spoilt ballot papers at each national ordinary local government election.

Part 11: Electoral Management Board for Scotland

202. Part 11 contains provisions adjusting the constitution of the Electoral Management Board for Scotland (the "EMB"), most significantly giving it a separate legal personality as a body corporate, adding provisions for it to report to the Scottish Parliamentary Corporate Body ("SPCB"), adjusting those eligible to be members and providing for 2 depute convener posts. The EMB was established on a non-statutory basis in 2008, before the Local Electoral Administration (Scotland) Act 2011 ("the 2011 Act") provided it with its current statutory basis. It consists of a convener appointed by Scottish Ministers and other board members appointed by the convener. Section 69 of the Act amends the EMB constitution as set out in the 2011 Act, making some changes to Part 1 of the 2011 Act and adding a schedule to the 2011 Act with the detailed provisions on the status, membership, and operation of the Board and about other administrative matters.

203. Under section 1 of the 2011 Act, the EMB was given the general function of "co-ordinating the administration of local government elections in Scotland." Its role was extended by the Scottish Elections (Reform) Act 2020 to include Scottish Parliamentary elections. The functions in relation to those elections include assisting returning officers, local authorities and other persons and promoting best practice. The 2011 Act gives the convener the power to issue directions to returning officers on the running of the local government elections and, as a result of the changes made by the Scottish Elections (Reform) Act 2020, also on the running of Scottish Parliament elections.

204. The convener of the EMB took on the role of chief counting officer in the 2014 referendum and section 7 of the Referendums (Scotland) Act 2020 provides for the convener to be the chief counting officer in any future referendums held under the rules in that Act.

Section 69 – Constitution of the Electoral Management Board for Scotland

205. Subsection (2)(a) provides in section 1 of the 2011 Act that the EMB continues to exist and becomes a body corporate with the same name. The continuation means that the current convener and members of the board will continue to serve in their roles in accordance with their current terms of office. As a body corporate, the EMB will have a separate legal personality and will be able to take actions in its own name, for example entering into contracts. Subsection (2)(b) adds a new section 1(4) to the 2011 Act, making reference to the schedule added to that Act and the further provision on the EMB's constitution that the schedule contains.

206. Sections 2 (membership), 3 (duration of membership), 4 (procedure of EMB), and 8 (annual report) of the 2011 Act are all repealed by subsection (3) and subsection (5), as specific provision is made in the additions to the 2011 Act elsewhere in this section.

207. Subsection (4) adds a new section 7A to the 2011 Act, which provides for the EMB to prepare a strategic plan every five years, following a national local government election. A draft of the plan will be submitted to the SPCB setting out the Board's strategic and policy priorities relating to its functions and estimates of the costs involved. The SPCB will scrutinise the strategic plan and can recommend modifications. In doing so it can seek views including from a committee of the Scottish Parliament. The Board will make any modifications it considers necessary in light of the SPCB's findings and recommendations and then lay the plan before the Scottish Parliament.

208. Subsection (4) also adds a new section 7B to the 2011 Act, which allows Scottish Ministers to request that the Board review and report on any matter relating to the Board's functions as set out in section 1(3) of the 2011 Act. Before making a request, the Scottish Ministers must consult the SPCB.

209. Subsection (6) adds some new definitions to section 9 the 2011 Act, for the purposes of the new provisions and the new schedule added to that Act by this section.

210. Subsection (7) adds the new schedule to the 2011 Act. The schedule covers various constitutional matters for the EMB—

- Status - the Board, its members and staff are not Crown servants or agents.
- Membership – the Board is to consist of a convener, who must be either a serving or former returning officer (RO) and 8 other members (appointed by the convener) of whom 5 are to be current or former ROs (or deputes) category, and 3 are to be EROs or former EROs category. This includes ROs an EROs from elsewhere in the UK. Board appointments must take into account a broad range of experience of Scottish electoral regions and cannot include a person with a relevant connection to a political party. A person with a connection to a political party may not be appointed.
- The convener – to be appointed by the SPCB on the nomination of the Scottish Parliament and holds office on terms and conditions determined by the SPCB. The other members hold office on terms and conditions determined by the convener, with the approval of the SPCB

- Depute conveners – appointed by the convener from the members of the Board for a period (with the approval of the SPCB) of up to 5 years. A RO depute convener will be able to carry out certain of the convener's functions where the office of convener is vacant, or the convener is incapacitated. The functions are those under the 2011 Act (including power of direction to ROs) and under section 43A of the Representation of the People Act 1983 (in relation to fixing another day for the holding of the poll at an ordinary local election). A second depute can be appointed who is an ERO. They will not be able to exercise power of direction or postponement.
- Term limits – the convener and deputes will be able to serve as such for two terms of up to 5 years. Board members may serve terms of up to 5 years, with no limit on number of terms. The approval of the SPCB is needed as regards the duration of the appointments.
- Early termination of membership – the convener and other members may be relieved of office at their request. The convener may also be removed from office if the SPCB so resolves. Any other member may be removed from office by the convener if (a) absent, without reasonable excuse from meetings of the Board for a period of longer than 6 consecutive months, or (b) the convener considers that the member is (i) unable to perform the functions of a member, or (ii) unsuitable to continue as a member, or (c) the member becomes connected to a political party.
- Remuneration and pensions etc. of convener, other Board members - the SPCB may pay the convener remuneration, allowances, expenses and pensions. The Board may make similar payments to its members with the approval of the SPCB.
- Staff – the Board may appoint staff who are to be employed on terms and conditions (including remuneration, pensions, allowances and expenses) as are determined by the Board with approval from the SPCB. Certain restrictions apply on persons who may be appointed.
- Advisers and other services – the Boards may seek and pay for specialist advisers and services, although the payments are subject to SPCB approval.
- Powers of the Board and validity of actions – the Board may do anything which appears to it (a) to be necessary or expedient for the purposes of, or in connection with, the performance of its functions, or (b) be otherwise conductive to the performance of its functions.
- Sharing of premises, staff and other resources – the SPCB may direct the Board to share resources with other public bodies or officeholders.
- Budget – The Board must, before the start of each financial year, prepare a budget for the SPCB for approval.
- Financial provision – the SPCB is to pay any expenditure properly incurred by the Board in the exercise of the functions of the Board.
- Accountable officer – the SPCB must designate an accountable officer.
- Accounts and audit - the Board must (a) keep proper accounts and accounting records, and (b) prepare annual accounts in respect of each financial year.
- Annual report – the convener must lay an annual report before the Parliament within 7 months of the end of each financial year.

Section 70 – Application of public bodies legislation to the Electoral Management Board for Scotland

211. Section 70 makes provision on application of public bodies legislation to the EMB. It will make the Board subject to Scotland's freedom of information regime, the Public Services Reform (Scotland) Act 2010 and the Gender Representation on Public Boards (Scotland) Act 2018.

Section 71 – Transitional provision: membership of the Electoral Management Board for Scotland

212. Section 71 makes transitional arrangements in relation to the status of EMB Board members (including the convener) at the point that the Act's changes take effect. It ensures that Board members continue to hold office and are treated as if that person was appointed for the first time for a period of 5 years on the day that the amendments made.

Part 12: General provision

Section 72 – Ancillary provision

213. This section empowers the Scottish Ministers, by regulations, to make various types of ancillary provision for the purposes of, in connection with, or to give full effect to the Act or any provision made under it.

214. Regulations under this section may modify any enactment (including the Act itself). The word "enactment" is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010[19] and includes Acts of the Scottish or UK Parliaments as well as secondary legislation.

215. If regulations under this section textually amend an Act then they are subject to the affirmative procedure, but otherwise they are subject to the negative procedure (see sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010[20]).

Section 73 – Commencement

216. This section sets out when the provisions of the Act will come into force (i.e., take effect).

217. Some of the final sections, including this section, will come into force automatically on the day after the Bill for the Act receives Royal Assent. The substantive provisions will be commenced in accordance with regulations made by the Scottish Ministers under this section. Such regulations may include transitional, transitory or saving provision related to commencement and may make different provision for different purposes. In particular, this allows different provisions to be commenced on different days.

218. Regulations under this section will, unless exercised in conjunction with powers under other sections, be laid before the Scottish Parliament but will not be subject to any parliamentary procedure (see section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010[21]).

[19] https://www.legislation.gov.uk/asp/2010/10/schedule/1
[20] https://www.legislation.gov.uk/asp/2010/10/part/2/crossheading/parliamentary-scrutiny
[21] https://www.legislation.gov.uk/asp/2010/10/section/30

Section 74– Short title

219. This section provides that the Act may be cited as the Scottish Elections (Representation and Reform) Act 2025.

PARLIAMENTARY HISTORY

220. The following is a list of the proceedings in the Scottish Parliament on the Bill for the Act and significant documents connected to the Bill published by the Parliament during the Bill's parliamentary passage.

Proceedings and reports	***Reference***
INTRODUCTION	
Bill as Introduced (23 January 2025)	SP Bill 42 (Session 6 (2024))
Policy Memorandum (23 January 2025)	SP Bill 42 – PM (Session 6 (2024))
Explanatory Notes (23 January 2025)	SP Bill 42 – EN (Session 6 (2024))
Financial Memorandum (23 January 2025)	SP Bill 42 – FM (Session 6 (2024))
Statements on Legislative Competence (23 January 2025)	SP Bill 42 – LC (Session 6 (2024))
Delegated Powers Memorandum (23 January 2025)	SP Bill 42 – DPM (Session 6 (2024))
STAGE 1	
The Standards, Procedures and Public Appointments Committee (lead committee)	
Consideration in private (1 February 2024)	Minutes of proceedings (SPPAC/S6/24/2)
Evidence session (21 March 2024)	Official Report (cols 2 to 22)
Evidence session (28 March 2024)	Official Report (cols 2 to 40)
Evidence session (18 April 2024)	Official Report (cols 2 to 44)
Evidence session (2 May 2024)	Official Report (cols 3 to 31)
Consideration in private (6 June 2024)	Minutes of proceedings (SPPAC/S6/24/16)
Meeting (13 June 2024)	Minutes of proceedings (SPAAC/S6/24/17)
Stage 1 report (18 June 2024)	SP Paper 622, 3rd Report, 2024 (Session 6)

Proceedings and reports	***Reference***
Delegated Powers and Law Reform Committee	
Report on delegated powers provisions in the Scottish Elections (Representation and Reform) Bill at Stage 1 (18 March 2024)	SP Paper 554, 20th Report, 2024 (Session 6)
Whole Parliament	
Stage 1 debate (27 June 2024)	Official Report (cols 35 to 66)
STAGE 2	
Marshalled list of amendments for Stage 2 (4 November 2024)	SP Bill 42 – ML (Session 6 (2024))
Groupings of amendments for Stage 2 (4 November 2024)	SP Bill 42 – G (Session 6 (2024))
First meeting on amendments (7 November 2024)	Official Report (cols 2 to 44)
Second marshalled list of amendments for Stage 2 (11 November 2024)	SP Bill 42 – ML2 (Session 6 (2024))
Second groupings of amendments for Stage 2 (1 November 2024)	SP Bill 42 – G2 (Session 6 (2024))
Second meeting on amendments (14 November 2024)	Official Report (cols 1 to 12)
Bill as amended at Stage 2 (14 November 2024)	SP Bill 42A – amended Bill (Session 6 (2024))
Revised Explanatory Notes (28 November 2024)	SP Bill 42A – EN (Session 6 (2024))
Supplementary Financial Memorandum (2 December 2024)	SP Bill 42A – FM (Session 6 (2024))
Supplementary Delegated Powers Memorandum (28 November 2024)	SP Bill 42A – DPM (Session 6 (2024))
Report on delegated powers provisions in the in the Scottish Elections (Representation and Reform)) Bill after Stage 2 (12 December 2024)	SP Paper 707, 77th Report, 2024 (Session 6)
STAGE 3	
Marshalled list of amendments for Stage 3 (11 December 2024)	SP Bill 42A - ML (Session 6 (2024))

Proceedings and reports	***Reference***
Timed groupings of amendments for Stage 3 (16 December 2024)	SP Bill 42A - G (Session 6 (2024))
Consideration of amendments and debate (17 December 2024)	Official Report (cols 24 to 82)
Bill as passed (17 December 2024)	SP Bill 42B (Session 6 (2024))
ROYAL ASSENT	
Royal Assent (29 January 2025)	2025 asp 4

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a Williams Lea company

Published by TSO (The Stationery Office), a Williams Lea company, and available from:

Online
www.tsoshop.co.uk

Mail, Telephone & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0333 202 5070
E-mail: customer.services@tso.co.uk
Textphone: 0333 202 5077

ISBN 978-0-10-592088-5

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