

Response to Scottish Government consultation on electoral reform | Electoral Commission Search Response to Scottish Government consultation on electoral reform You are in the Our responses to consultations section Home Our responses to consultations Currently reading: of 5 - Show page contents On this page Candidates Voting Scheduling of elections Campaigning Administration and Governance Introduction by: Enabling the delivery of free and fair elections and referendums, focusing on the needs of voters and addressing the changing environment to ensure every vote remains secure and accessible. Regulating political finance, taking proactive steps to increase transparency, ensure compliance and pursue breaches. Using our expertise to make and advocate for changes to our democracy, aiming to improve fairness, transparency and efficiency. The Commission was set up in 2000 and reports to the Scottish, UK and Welsh parliaments. Response overview This response sets out the Commission's views on the Scottish Government's consultation on electoral reform . It also includes additional recommendations that we suggest the Scottish Government reflect in policy development and legislation. We look forward to working with the Scottish Government in developing its thinking as the process continues. The Scottish Government needs to carefully consider the resilience of local electoral services as it takes forward its programme of reform. The issue of resilience has been clearly set out by us in our recent reports on the administration of elections in Scotland, and also raised by Returning Officers (ROs), Electoral Registration Officers (EROs) and the Electoral Management Board for Scotland (EMB). The proposals set out in the consultation are wide-ranging, and all those involved in delivering or participating in elections will need time to understand and prepare for any changes. For electoral administrators, many of whom have already raised concerns around their capacity, implementation of the Scottish Government's planned reforms is also likely to coincide with ongoing work to deliver changes resulting from the UK Government's Elections Act. In light of this it will be important to review the remit of the EMB in order to develop its capacity to support the delivery of electoral administration across Scotland, including considering any efficiencies which could be gained in delivering electoral services. Further, the Scottish Government will need to provide appropriate funding to local authorities to support the effective implementation of any changes. Failure to do so could create significant risks to the delivery of well-run polls and public confidence in elections. The Scottish Government will need to ensure that any legislation is in place at least six months before it is required to be implemented or complied with by campaigners, ROs or EROs. This will be essential to support effective planning for and delivery of the changes. For changes to be delivered effectively ahead of the 2026 Scottish Parliament election this means at least six months before: the commencement of the 1 July 2025 annual canvass in the case of changes to electoral registration processes the regulated period for campaigners which commences in January 2026 for any changes to campaigner laws the date of the poll on 7 May 2026 for any changes to voter participation in the election We note the Minister's intention to introduce legislation to the Scottish Parliament before the end of 2023. We will continue to monitor timescales for the delivery of any legislation and make Ministers and Parliament aware of any risks to changes being effectively delivered for voters. The Scottish Government should also utilise the opportunities provided by a legislative programme for electoral reform to consolidate, simplify and modernise the many existing sources of electoral law as recommended by the Law Commissions of Scotland, England and Wales, and Northern Ireland. This will help to minimise the impact of any further reform on the resilience of the electoral community by reducing

the complexity of electoral law. Candidates Expansion of candidacy rights Question 1: Do you think that 16 and 17 year-olds should be able to stand for election in: Both Scottish Parliament and Local Government elections Scottish Parliament elections only Local Government elections only Neither Scottish Parliament nor Local Government elections Question 2: Do you think that foreign nationals resident in Scotland with limited rights to remain in the UK should be able to stand for election in: Both Scottish Parliament and Local Government elections Scottish Parliament elections only Local Government elections only Neither Scottish Parliament nor Local Government elections Question 3: Do you have any additional comments on candidacy rights for 16 and 17 year-olds, or foreign nationals with limited rights to remain in the UK? We do not take a position on changes to eligibility for candidates at elections, which are significant policy matters for parliaments to decide. Where changes are made, we will work with the electoral community to ensure they are implemented effectively. We have noted below the concerns raised with us by candidates about intimidatory or abusive behaviour directed towards candidates at an election; the Scottish Government should seek advice from relevant organisations with expertise on the health and safety of young people in relation to the candidacy rights of 16 and 17 year-olds. The Government will also need to ensure that any changes are introduced in sufficient time for parties and independent candidates to familiarise themselves with them ahead of the next relevant election, and for us to update our guidance to support them. Disqualification for intimidatory or abusive behaviour Q4 and 5 summary Question 4: Do you think that anyone found guilty of an offence involving the harassment or intimidation of politicians, candidates or campaigners should be subject to an additional sanction of losing the right to stand for election for 5 years? Question 5: If not, would you suggest another electoral sanction or approach? As noted in the consultation document, we carried out research with candidates and agents following the 2022 Scottish council elections. A notable minority (44%) of those who responded to our survey told us that they had experienced some kind of problem with threats, abuse and intimidation at those elections (rating this as a 2 or above on a scale from 1 to 5). Our research with candidates in other parts of the UK in 2022 found similar levels of concern. Our research in Scotland found that 1 : Of those that said they experienced some kind of abuse, the most common sources were verbal (55%) and online (53%). Over four in five of those reporting abuse (84%) said that it came from members of the public. Three in 10 (31%) said it was from an anonymous/unknown source, while one in 10 (11%) received threats or abuse from other candidates. One in 10 (10%) who experienced threats or abuse said that their experience(s) would discourage them from standing as a candidate in the future. It is vital that action is taken against those who abuse, threaten or intimidate candidates and campaigners, and that this behaviour does not discourage people from standing for election or campaigning. We agree with the Scottish Government's proposal to introduce additional sanctions for those found guilty of the harassment or intimidation of politicians, candidates and campaigners. It would strengthen the deterrent against this behaviour and also align with the sanctions available for UK Parliament elections. We will continue to work with the UK's governments, Police Scotland and the wider electoral community to make sure we understand what is driving candidate abuse and intimidation, and to ensure this issue is addressed as a matter of urgency. Sending of free letters or leaflets by candidates and political parties at elections Q 6,7,8 Question 6: Do you think that the option of sending a freepost letter or leaflet should be extended to Scottish Local Government elections? Question 7: Do you think that the right for candidates to send a free mailing should be limited to one free

mailing to each household, rather than to each voter? Question 8: Do you have any other comments on the issue of candidate mailings to voters? Freepost mailings for candidates at Scottish council elections As noted in the consultation document, in our research with voters after the 2022 Scottish council elections we found that more than a quarter (26%) of respondents said they did not have enough information on candidates to be able to make an informed decision on who to vote for. Voters aged 25-34 were most likely to state this (40%). When asked where they had seen information about candidates and parties, the most cited sources were leaflets or flyers from the candidate or party (61%). Respondents were more likely to recall seeing leaflets which had been delivered to their house (81%), however this was significantly lower for 16–24-year-olds (66%), suggesting that another method may be more effective to reach younger voters. The consultation document suggests that one potential solution would be for councils to opt in to authorising and funding a free mailing from candidates to each voter or household. This could lead to an inconsistency of experience for both voters and campaigners participating in council elections across Scotland. Consideration would also need to be given to the transparency of the decision-making process at council level to ensure that it could not provide advantages, perceived or otherwise, to one set of candidates over another. Whether limited to councils who opted-in or in place for all councils, if free candidate mailings were to proceed then wider consideration would need to be given to the considerable logistical, environmental and financial implications of managing the review, printing and distribution of election addresses. This should be done well in advance of the 2027 Scottish council elections to ensure that resources and processes are in place at council level to deliver any such change. In addition to the consideration of printed freepost mailings, the Scottish Government should also explore the use of digital routes to provide voters with information on candidates. This could help to future proof the process and help alleviate any environmental impacts. If freepost mailings for council candidates were to be taken forward, consideration would need to be given to ensuring that the costs met by the council did not count as a donation to candidates or as notional spending.

Free mailings at Scottish Parliament elections The Scottish Government consultation paper also considers whether cost savings could be made by limiting candidates and parties to unaddressed material for households rather than to individual voters. We do not have enough evidence to be able to come to a view on this question. However, given the concerns noted above about access to information on candidates, there is a risk that those in multi-occupancy households may find it even harder to access information in the event of a move to unaddressed mailings. We recommend that the Government undertakes research with voters and consults political parties on the potential impact of this proposal.

Publication of home addresses Q9 Question 9: Should candidates who are acting as their own agents be able to use a correspondence address for communications? The publication of contact details for agents plays an important role in the democratic process as it retains transparency and accountability, and enables the detection of fraud. However, in our report on the 2016 Scottish Parliament election we noted that security concerns had been raised by candidates who were acting as their own agent, as their home address would be disclosed. We recommended that the Scottish Government review the rules. In general, we are supportive of the proposals, to address concerns around the security of candidates. However, we recommend that consideration is given to extending this provision to all agents who do not have an existing office address. This would cover instances where the agent shares a home address with the candidate. How a candidate's

location is shown on the ballot paper Q10 and 11 Question 10: Currently ballot papers show either the candidate's home address or council area. Do you think that the ballot paper should also show the ward in which the candidate lives, if they request it? Question 11: Do you have any further comments on the topic of candidate addresses? We do not have enough evidence available on the suggested change to come to a view at this time. Before making any changes, the Scottish Government should commission research with voters to understand impacts this may have on their ability to navigate and understand the information on the ballot paper, and whether the provision of additional information provides benefits to voters. Voting Increasing registration Question 12: What do you think could be done nationally or locally to improve registration levels, especially among under-represented groups such as younger people and foreign nationals? Modernising electoral registration There is an urgent need to reform electoral registration in the UK, as the current registration system does not work well for voters or administrators. Our research shows that the quality of the registers could be improved, and the process streamlined for administrators, if the UK's governments provided them with greater access to public data. A modern, joined-up electoral register would: Use trusted public data to keep itself accurate and complete throughout the year without relying solely on action by individuals; and Make it as easy as possible for people to ensure their own registration record is accurate and complete, particularly ahead of elections and referendums. More digital methods using existing public data could also help address some of the specific challenges which exist. For example: Regular access to reliable data about recent address changes from other public services would allow EROs to make contact directly with people who have recently changed address (including those who move frequently). Integrating electoral registration applications into other public service transactions could make it easier for individuals to keep their registration details up to date and accurate. This could be particularly effective for people who are already updating their details with other organisations. Existing public data could also help to improve levels of completeness among some of the specific under-registered groups identified in our research. For example, data from the education sector could help EROs to identify attainments and other young people. Data from the Department for Work and Pensions could be used by EROs to register young people to vote automatically when they are allocated their National Insurance number. Access to data for EROs EROs are legally entitled to access local data sets from: the council which appointed them any registrar of births, deaths and marriages any person, including a company or organisation, providing services to, or authorised to exercise any function of, the council; this includes those that are providing 'outsourced' services under any finance agreement. There are no statutory restrictions on this disclosure (including data protection legislation). However, EROs can face issues with the quality and accuracy of this local data, which can mean that they are unable to use it with confidence. There is currently no provision for EROs to access national data that may be of higher quality and reliability. Improving access to data The UK's governments should support EROs to improve the accuracy and completeness of electoral registers – and improve efficiency to alleviate resource burdens – by giving them access to high-quality data from other public service organisations. Depending on the quality coverage of these data sets, this change could support automatic registration, integration of registration applications alongside other public service transactions, or simply enable EROs to send targeted invitations to register to specific individuals not currently correctly registered. As noted above, EROs already have some rights to inspect data from local organisations to enable them

to maintain electoral registers. In practice, however, they would be dependent on the UK Government (and in some cases the Scottish or Welsh Government) to give them access to any national or UK-wide data. Our 2019 feasibility studies identified that government departments that are responsible for the data source organisations would need to provide legal gateways to allow data sharing with EROs (for example, the Department for Transport for access to DVLA data). It is likely that a centralised interface would also be needed to manage the flow of data between the data source organisations and individual EROs, similar to the IER digital service that was established by the UK Government. Integrating registration applications alongside other frequently used public service transactions would also require support and some resource investment by data source organisations and relevant departments. They would need to develop and maintain the necessary technical infrastructure to collect and transfer data about potential new electors, and to manage the relationship with any centralised interface. We recommend that the Scottish Government take forward electoral registration reform, in consultation with the UK and Welsh Governments. We note that the Welsh Government is considering further reforms to the electoral registration process, including an all-Wales database of electoral registration data, and the Scottish Government should consider any lessons which can be learned from Wales as they take these proposals forward. Registering young people to vote

The Commission's research into the 1 December 2018 electoral registers found that levels of completeness in Scotland varied by age group, with younger groups less likely to be registered. Completeness stands at 68% for those aged 18-34 while it is higher for those aged 35-54 (87%) and those aged 55+ (92%). The Curriculum for Excellence provides opportunities for young people to be supported to develop their political literacy skills in school and youth work settings. While some young people receive excellent political literacy education through Modern Studies, not all young people will have the chance to develop the necessary skills if they do not progress with Modern Studies after second or third year of secondary education or where schools do not offer Modern Studies as a teaching subject. The Commission has produced a range of free and impartial education resources, designed to help young people understand how to get involved in democracy and support educators to teach political literacy. These can be used in Modern Studies, as well as in other subjects and whole-school activities. The Commission also runs Welcome to Your Vote Week each year, to provide support and encouragement to schools and youth organisations to run political literacy activity. We would support any initiatives from the Scottish Government to embed the teaching of political literacy across other areas of school teaching, including through Personal and Social Education. The Scottish Government should also explore the potential for allowing students to register to vote when enrolling at university, and data sharing agreements between councils and universities could help to facilitate this. Under the Higher Education and Research Act 2017, higher education providers in England that are registered with the Office for Students (OfS) are required to comply with OfS guidance to facilitate the electoral registration of students. We would welcome equivalent provisions being introduced for higher education providers in Scotland. The Government should also consider whether there are other institutions that may be able to assist with the registration of young people, such as further education colleges or large apprenticeship employers.

Improving the accessibility of voting

Q13 Question 13: The Scottish Government intends to amend the rule requiring only a specific form of Tactile Voting Device to be provided in polling stations, to allow more flexibility and ensure the accessibility support offered can be adapted to take account of future innovations.

It also intends to place a duty on the Electoral Commission to provide guidance that includes minimum standards. Which of the following options would you prefer: The current legal requirement for a specific Tactile Voting Device is replaced by a general requirement on Returning Officers to provide appropriate support. The current legal requirement for a specific Tactile Voting Device is replaced with a requirement to provide a non-specific form of tactile support. No change to current legislation. Other. Everyone should be able to register and cast their vote without facing barriers. While there have been significant improvements, we know there is still more to be done to improve the voting experience for disabled people. Provisions within the UK Government's Elections Act 2022 have replaced the specific requirement to provide a tactile voting device in polling stations with a broader duty on Returning Officers (ROs) to provide such equipment as is reasonable to enable, or make it easier, for disabled people to vote independently and in secret at the polling station. Our view is that this will improve the range and quality of support available, and we support a similar approach being taken by the Scottish Government. Introducing similar rules for devolved and reserved elections would also make it easier for people to understand the support they can expect when voting, and less complex for electoral administrators to deliver. It is important that ROs are clear on how to meet their responsibilities in relation to supporting disabled voters. If the Scottish Government were to introduce such a requirement, we would provide guidance and examples of good practice to support them in discharging this duty. Under the Elections Act, we have a duty to provide guidance to support ROs in delivering their duties under the Act and to consult on this guidance. While this guidance applies only to reserved elections, we anticipate that any Commission guidance that would be required for devolved elections in Scotland would cover similar considerations. We have a specific duty to report on the steps taken by ROs to assist disabled voters at elections and this will provide opportunities to learn from how the new duty has worked in practice. If the Scottish Government were to introduce such a duty on ROs, it would need to set out what funding would be available for additional support required as a result of any legislative change, as there is a risk that any new duty for ROs will not be effective if it is not funded appropriately.

Q14 Q14 summary Question 14: Should the limit to the number of times one companion can support voters in casting their votes: Remain at two people per election Rise to five people per election Be changed to another number In our research, disabled voters told us that restrictions on who can act as a companion can make it difficult to find someone to help. Some evidence from learning disability charities suggests that people don't always know who they can take along to the polling station to help them. We support the Scottish Government's proposal to increase the number of voters a companion can support at the same election from the current limit of two. This will make it easier for disabled people to get support from a companion in the polling station if they need it. We have no firm view on what number this should be increased to. The Scottish Government should consider the evidence from disabled voters in coming to any decision in this area. We also recommend that the Scottish Government consider removing the requirement for a companion, who is not a close relative of the voter, to be a qualified elector. This would provide greater choice and flexibility for disabled voters and would align with changes to reserved elections being brought in by the UK Government's Elections Act.

Q15 Q15 summary Question 15: Should there be an option in the future to request a digital poll card instead of a paper poll card for Scottish elections? In principle the option for providing digital poll cards may improve the accessibility of election

material for voters with sight loss, and we recommend in our guidance to ROs for reserved elections that they consider providing poll card information in other accessible formats in addition to the printed poll card. However, we would welcome further detail from and discussion with the Scottish Government on this proposal, including how it would ensure that any digital poll cards issued by ROs were compliant with digital accessibility standards.

Q16 Q16 summary Question 16: What more could be done to improve the voting experience for individuals with accessibility needs or requirements? In our 'Elections for Everyone' report, published in 2017, we made a range of recommendations on how the UK's governments, electoral administrators, parties, and candidates could improve the experience of disabled people taking part in elections. We made several specific recommendations for how political parties and campaigners should communicate with voters, including: Making sure the information they produce is easy to read. Publishing easy read manifestos at the same time so disabled people have the same time as everyone else to understand what the parties stand for and make an informed decision. Sending information in good time so that people have time to read it. We recommend that the Scottish Government works with parties, the Commission and other relevant organisations to produce good practice guidelines and accessibility standards for accessible election materials.

Clarification of undue influence of a voter Q17 summary Question 17: Do you agree that the offence of 'undue influence' should be made easier to understand and enforce? We support the intention to update the definition of the undue influence electoral offence in line with the changes set out in the UK Government's Elections Act. The Commission has consistently called for the offence of undue influence to be clarified, as it is a complex offence that is not easily understood by voters, and we welcomed the provisions within the Elections Act to deliver this change. This should provide voters with more meaningful protection against exploitation and make clear what is and is not acceptable behaviour. It should also make it simpler for the police to act when allegations of undue influence are made. It is important that legitimate campaigning is not inadvertently prevented by changes to the way this offence is defined. We recommended that the UK Government should introduce a clear, workable definition of what activity should and should not be allowed around polling stations for reserved elections. We will monitor any cases of alleged undue influence at future reserved polls to identify whether the new offence in the Elections Act is clear and workable for voters, campaigners and the police.

Absent voting Q18 summary Question 18: Do you think that we should extend the right to emergency proxies to the companions of anyone who has to attend an unexpected medical appointment or treatment which would prevent them from voting at their normal voting place? The Commission has consistently recommended that the qualifying circumstances for appointing an emergency proxy should be extended, so that those who have unforeseen caring responsibilities or who have experienced the death of a close relative would also be eligible for an emergency proxy. Under current law, where a voter is incapacitated by ill health or an accident after the deadline to apply for a normal proxy vote, the individual would qualify for an emergency proxy on medical grounds but anyone caring for them, or accompanying them for medical treatment, would not. This is of particular concern in island and rural communities where a person may have to travel for medical treatment elsewhere in Scotland. The Commission will work with the Scottish Government and the electoral community to support the development of these proposals. It will be important that the qualification criteria, and any attestation requirements, enable EROs to confidently assess an applicant's eligibility within the short timescales available

ahead of the poll. Acting as a proxy Q19 summary Question 19: Do you have any comments on changes to proxy voting in Scottish Parliament or local government elections? Proxy voting is an important option for people who can't – or don't want to – vote in person in a polling station or by post. We support the Scottish Government's proposal to retain the existing proxy voting provisions for devolved elections. Any move to limit the number of close family members for whom a voter may act as a proxy could disadvantage some people with a genuine need to appoint a proxy. Our 2014 review of electoral fraud did not identify any public support for further restrictions on proxy voting. People said that the current restrictions were reasonable, and would not prevent someone who might need a proxy from being able to vote in this way. There are existing safeguards to protect voters from unwelcome or inappropriate pressure to appoint a proxy. When a voter applies to appoint a proxy, they are required to state their relationship with the proposed proxy. This helps identify suspicious patterns that could be referred to the police for investigation. An updated offence of undue influence should also act as a deterrent to people who would want to force someone to appoint a proxy. We will ensure that clear information is available to voters so that they can easily understand the different rules in place for reserved and devolved Scottish elections. Postal voting Q20 Question 20: Do you have any comments on the handing in of postal ballots? Postal voting is an important and popular voting method, used by around 24% of voters in Scotland. Strengthening some of the safeguards protecting postal voting could improve voter trust and confidence in the system and address perceptions that electoral fraud or inappropriate activity is taking place. Our 2022 Public Opinion tracker shows that a significant minority of voters in Scotland have concerns about the safety of postal voting: one in five (20%) believe it is not safe from fraud and abuse. However, any changes to postal voting must not only address the security of postal voting but also maintain its accessibility, ensuring everyone who wants to vote by post is able to do so easily. Limiting the number of postal votes handed into the polling station Limiting who can hand in postal votes at polling stations and the number they can hand in could create barriers for some voters who need assistance. For example, friends or neighbours of voters would not be allowed to provide support by handing in postal votes, and people may be prevented from returning postal votes for family members. In any case, postal votes that are handed in at polling stations must still go through the same security checks as those returned through the postal service before they can be included in the count. Banning the handling of completed postal ballot packs For reserved elections, the UK Government's Elections Act introduces a ban on parties and campaigners handling completed postal votes and postal vote envelopes. This change could improve voter trust and address concerns around the potential for inappropriate activity taking place when postal ballot packs are handled. This formalises a key part of the 'best practice' approach that has been set out in our guidance and our voluntary Code of Conduct for campaigners for more than 15 years. The Code was developed and agreed with political parties, but not all campaigners are aware of or actively comply with it. We would welcome a discussion with the Scottish Government on how similar provisions could work for devolved elections in Scotland. Voting rights Q21, 22 Question 21: Should voting rights in Scottish Parliament and Local Government elections be extended to some or all persons detained on mental health grounds related to criminal justice? Question 22: Do you have any additional comments on voting rights for persons detained on mental health grounds related to criminal justice? The Commission does not take a position on changes to the franchise at elections, which are significant policy matters for

Parliament to decide. Where changes are made, we will work with the electoral community to ensure they are implemented effectively. If persons detained on mental health grounds related to criminal justice are included in the franchise, careful consideration would need to be given to the processes by which they would be registered and cast their vote. These should be prescribed in law and take into account the specific challenges that would be faced by these individuals in exercising their right to vote, building on the lessons learned around the enfranchisement of prisoners serving sentences of 12 months or less. This should include how EROs would identify and make contact with potentially eligible individuals, and determine their eligibility, and how such individuals should receive and return any absent votes. Consideration would also need to be given to how these individuals would be able to access information on upcoming elections and the policies and manifesto commitments of candidates and parties.

Q23 Q23 summary Question 23: Should voting rights in Scottish Parliament and Local Government elections be extended to all people seeking asylum in Scotland? As noted above, the franchise for devolved Scottish elections is an important constitutional decision for the Scottish Parliament to consider and decide. If the franchise is extended to include all people seeking asylum, careful consideration would need to be given to how EROs will be able to determine their eligibility.

Implications of Elections Act 2022 changes Q24 summary Question 24: What issues do you think that the changes in the Elections Act 2022 to introduce voter ID and change postal vote renewals raise for elections held in Scotland? There is a potential for voter confusion about the different requirements for voter ID at reserved and devolved elections. From May 2023, voters in Scotland will be required to bring photo ID to vote in person in a polling station for any UK Parliament by-election or recall petition. The requirement for voter ID to be provided at UK Parliament general elections will take effect for polls from October 2023. A new form of identification, the Voter Authority Certificate, has been introduced as a form of free ID for those who do not have another type of accepted ID, as specified by legislation. The Electoral Commission has developed a public awareness campaign aimed at raising awareness of the voter ID requirement and reminding voters to take their ID with them to the polling station. It also advises of the option to apply for a Voter Authority Certificate if they do not already have an accepted form of ID. The campaign includes targeted partnership work with organisations which are a trusted voice in communities where people are less likely to have an accepted form of photo ID. The campaign will be deployed in Scotland ahead of a UK Parliament general election and across specific constituencies in the event of a UK Parliament by-election or recall petition. The Commission has also provided administrators with tailored guidance on planning for and delivering elections, including updated procedures for polling station staff to follow. In developing the guidance we have worked closely with the electoral community and civil society to help ensure that it meets the needs of voters with a range of different circumstances and needs.

Postal vote renewals As set out in the consultation document, the Elections Act is introducing a change to postal votes for UK Parliament elections, and voters will now need to reapply every three years. With postal votes for devolved Scottish elections remaining on a five-year renewal cycle, the differences in absent vote renewal cycles risk creating confusion for voters and complexity for electoral administrators. Voters would need to respond to two separate renewal/re-application processes to maintain their absent voting status for both devolved and reserved elections. Electoral administrators would have two separate sets of processes to follow, with two sets of personal identifiers for each absent

voter. We strongly recommend that aligning these rules for devolved and reserved elections would be in the best interests of voters and administrators. This should be taken forward urgently in order to minimise the impact of divergence of rules on voters and electoral administrators. There may also be further benefits in moving to a three-year cycle of postal vote renewal, ensuring that electoral administrators hold the most up to date signatures for voters, reducing the risk of postal vote rejection. If the Scottish Government does opt to retain the existing five-year renewal cycle for devolved elections, there would be a significant risk of disenfranchisement for voters, who may incorrectly assume they have an active absent vote arrangement in place. The Scottish Government would need to consider whether there are any other changes that could be made to mitigate this risk in practice, to streamline the actions required of voters and electoral administrators and to enable clear communications to support voters' understanding of the process and its consequences. Online absent vote applications The Elections Act also contains provisions for the introduction of an online absent vote application (OAVA) system which is expected to go live later in 2023. Under the current proposals, the system would only enable online applications for postal votes at reserved (i.e. UK Parliament) elections; applications for postal votes at Scottish devolved elections would continue to be made on postal vote application forms. During the passage of the Elections Act, we said that an online absent voting application system would improve accessibility by making it easier for people to apply to vote by post. We also highlighted that it would likely result in improvements in efficiency for administrators – for example, by reducing the time taken to process applications. In the best interests of voters, we recommend that the Scottish Government works with the UK Government to ensure that the OAVA system is also available for those applying for a postal vote for devolved Scottish elections. At the latest, this should be in place for the commencement of the 2025 annual canvass in order that voters can easily obtain a postal vote for the 2026 Scottish Parliament election. The implementation of any online absent voting application system would need to be well-planned, phased, and resourced. Careful consideration would need to be given to the digital infrastructure required; the processes electoral administrators will need to develop and follow; ensuring voters understand how to use the system; and ensuring there is the capacity in the system for postal votes to be despatched in time for all those who have applied for one to be able to receive, complete and return it in time for it to be counted.

Q25 Q25 summary Question 25: Should there be a presumption against a Scottish devolved election being held on the same day as a UK Parliament election (for example, a UK Parliament by-election on the same day as a national Scottish Parliament election)? Our priority is that voters and campaigners should be able to understand and easily participate in any elections. There are both advantages and disadvantages to holding polls on the same day and these should be carefully considered. For example, holding two polls on the same day may risk voter confusion, particularly where different voting systems are in use or where processes in the polling station are different (for example, different franchises and different ID requirements). It could also lead to the campaign arguments for one poll receiving less media attention than the other poll. However, combining polls can provide convenience for voters, who do not need to attend the polling station on two separate occasions, and lead to cost efficiencies for administrators. On balance, our view is that there should be a presumption against holding a UK Parliament election on the same day as a devolved Scottish election. In the event that polls are held on the same day, it will be important to ensure that combination rules are carefully drafted

to minimise the risk of confusion for voters and electoral administrators. Scheduling of elections We recognise the importance of having a backstop provision for responding to any unanticipated events – such as a public health emergency – particularly in light of the impact of the Covid pandemic. However, certainty around elections is of critical importance to the confidence of voters, campaigners and electoral administrators. Consequently, we are strongly of the view that postponement of polls should only take place in very exceptional circumstances, and the process of decision making should be fully transparent and command the confidence of all those involved in delivering and participating in electoral events. Postponement of Scottish Parliament and local government elections Q26 27 summary Question 26: Do you think that the maximum period by which the Presiding Officer can propose the postponement of a Scottish Parliament election should be extended beyond 1 month? Question 27: Do you think that the date of dissolution of the Scottish Parliament in the run up to a general election should be changed to the day before the election, allowing MSPs to continue to hold office in case of emergency? These proposals appear to be a useful backstop for responding to any unanticipated events – including a public health emergency or a UK Parliament general election – which may impact on the smooth running of the poll and compromise the ability of voters and campaigners to participate. The Presiding Officer should be required to consult the Convener of the Electoral Management Board for Scotland (EMB) and the Electoral Commission before taking any such decision. There is precedent for this approach in the Scottish General Election (Coronavirus) Act 2021 . If the date of dissolution of Parliament is moved to one day before the poll, clear rules would need to be developed around MSPs' use of parliamentary resources during the regulated campaign period before the poll to avoid any advantage – perceived or otherwise – for incumbent candidates. Postponement of Scottish Parliament by-elections Q28 29 summary Question 28: Do you think that the Presiding Officer should have the power to change the date of a Scottish Parliament by-election, if it is no longer possible to hold the election on the originally selected date? Question 29: Do you have any other comments on changing the date of a Scottish Parliament by-election? As with local government by-elections discussed below, there may be very limited circumstances in which to progress with a by-election may risk the health and safety of voters and polling staff, or where the ability of voter and campaigners to participate freely in the poll may be curtailed. In these cases it would seem useful to have a backstop provision for postponement of the poll. As the date of the poll is set by the Presiding Officer, it would provide consistency if the power to change the date resided with them. However, they should be required to consult the Convener of the EMB and the Electoral Commission, along with the local Returning Officer, before taking any action to postpone. Postponement of scheduled local government elections Q30 summary Question 30: Do you think that the Convener of the Electoral Management Board should be given the power to postpone national Local Government elections in consultation with the Electoral Commission and the Scottish Government? Question 31: Should the law allow a Local Government by-election to be postponed, and if yes, who should make the decision to postpone? No Yes, Returning Officer Yes, EMB Convener Yes, Other Question 32: Do you have any other comments on rescheduling of elections? Scotland-wide local government elections As the Scottish Parliament would still be sitting in this case, any decision to postpone local government elections across Scotland should remain with the legislative body. The Electoral Commission and the Convener of the EMB should be required to provide advice to Parliament to inform their decision making. Local government by-elections The legislation does not allow a Returning Officer to

postpone a poll due to, for example, severe weather conditions or other factors that could potentially prevent a large number of people voting at polling stations. Concerns about Returning Officers not being able to postpone a poll were raised by some candidates at a by-election held during severe snow storms in March 2018. We have previously recommended that the Scottish Government consider whether such a provision should be introduced. Consideration would need to be given to what conditions could enable the poll to be postponed, who should ultimately be responsible for making that decision and what processes should be put in place to ensure such decisions are made reasonably and consistently. The Commission believes the circumstances for postponements should be exceptional, and the risks of creating such a provision would need to be considered carefully. For example, postponing a poll might cause uncertainty and confusion for voters, and introducing such an element of discretion for Returning Officers might lead to them being subject to unwarranted pressure from campaigners or others. There is precedent in the temporary arrangements put in place to manage the impact of the pandemic on local government by-elections in the autumn of 2020. In this case, the decision rested with the local RO, after consultation with the Convener of the EMB and the Electoral Commission. This process largely worked well and brought consistency to local decision making across Scotland. We recommend that this model is retained, with the local RO, who is accountable in law for the delivery of the poll, retaining the decision making power after consultation with the Convener of the EMB and the Electoral Commission. For transparency purposes, ROs should be required to publish the advice they have received and a statement on the factors they took into account when reaching their decision.

Campaigning Campaigning and Finance Question 33: Do you think that the language clarifying the definition of notional spending adopted in the UK Elections Act 2022 should also apply to Scottish devolved elections? The laws on notional spending ensure that campaigners properly account for and report all goods, services and materials that are donated to them, and which they use to help them in any way with their campaign activities. There is a considerable level of notional spending reported by candidates at elections. Notional spending reported by constituency and independent regional candidates at the 2021 Scottish Parliament election was £1,587,497.82, amounting to over half (52.28%) of all reported spending by constituency and independent regional candidates. Candidates, agents and party or campaigner staff need a clear understanding of when something is “notional spending” or “election expenses” because it counts towards their total campaign spend, which must not exceed the specified spending limit. The current law on notional spending for Scottish devolved elections is long established and has operated in practice for many years. The Elections Act 2022 changes the legal test for when a candidate or agent authorises someone else to use benefits in kind on their behalf. It will apply at UK Parliament elections in Scotland and Wales, and at all types of elections in England and Northern Ireland. Candidates need to report benefits in kind which they have “made use of” themselves or have authorised, directed or encouraged someone else to “make use of” on their behalf. The Act enables an agent to authorise another campaigner to pay for expenses that count towards the candidate’s spending limit - currently, only an agent can pay for these expenses. Differences in political finance rules between devolved and reserved elections inevitably add complexity as campaigners would have to plan, account and have different payment arrangements for their spending for devolved and reserved elections, even if they had undertaken the same kind of activity. However, changing a long-standing and well understood law also brings complexity, at least at first. We would recommend that the Scottish Government

test any proposed changes to the notional spending wording with a wide range of parties, candidates and agents to ensure that they are clear and commonly understood. Further, the changes to the notional spending law for UK elections have not yet been tested at any significant elections. We will monitor the practical impact of the changes in the Elections Act at any reserved elections and share any findings with the Scottish Government. We will continue to provide guidance to support the regulated community to understand and comply with the law. If the law is amended for notional expenditure at Scottish devolved elections, the Commission would develop a statutory Code of Practice on candidate expenses to provide further clarity about notional spending and spending under local non-party campaigner laws. However, guidance and Codes can only reflect the law, so it is important that the provisions themselves are clear and unambiguous. The Commission would need sufficient time to prepare and consult on any Code, ahead of the laws coming into force.

Q34 35 36 Q34 35 36 summary Question 34: Do you think that third party campaigners should have to register with the Electoral Commission if they spend more than £10,000 across the whole of the UK, even if they spend less than £10,000 in Scotland? The £10,000 registration threshold should apply to devolved elections across the UK The £10,000 registration threshold should apply to Scottish devolved elections only I have another view on the registration threshold Question 35: Do you think that the spending limit should be reduced to £700 for overseas based third parties that are ineligible to register with the Electoral Commission? The spending limit should be reduced to £700 The spending limit should remain the same (£10,000) I have another view of the spending limit Question 36: Do you think that an order-making power for Scottish Ministers should be introduced which allows them to add, change, or removed categories of third-party campaigners? A recommendation by the Electoral Commission would be required before a category of third-party campaigners could be changed or removed. Question 37: Do you think that the Electoral Commission should be able to provide a code of practice on third party expenditure in Scottish devolved elections? Non-party campaigners are a vital part of a healthy democracy and play an important role in providing information for voters and a diversity of voices. It is important that these groups can easily participate in the UK's elections. Controls in election law help voters to see and understand how these groups receive and spend money when they are intending to influence an election outcome. Over recent years, there has been an increase in the number of non-party campaigners. Spending by these groups has risen too. At the 2021 Scottish Parliament election seven registered non-party campaigners reported spending totalling £260,220 on campaigning during the regulated period. At the 2019 UK Parliament election, there were 61 registered non-party campaigners, and those who were required to report their spending recorded a total spend of more than £6 million. Registering with the Electoral Commission Currently non-party campaigners who spend, or plan to spend, more than £10,000 campaigning at a Scottish Parliament election must notify the Electoral Commission. s that spend more than £10,000 at a Scottish Parliament election must report their spending and donations after the poll. Imposing a new requirement for non-party campaigners to register with the Electoral Commission if they spend more than £10,000 campaigning across the constituent parts of the UK would not affect the reporting threshold in Scotland. Consequently, the impact of this proposal would be increased complexity to laws which many campaigners have said are already hard to understand and comply with, but with no increase in the transparency of non-party campaigner spending and donations. We urge caution about changes that bring a new regulatory burden for campaigners with no clear benefit for voters. Overseas campaigners Our recent public

attitudes research showed some concerns about the risks of foreign interference. When we asked people to prioritise their concerns from a list of issues, two fifths (40%) said “foreign interference on UK elections results” was a problem. Reductions to the limits on unregistered campaigning would make it clear that foreign interference in UK elections is not permitted. During the regulated period before an election, only specific categories of individuals and organisations would be allowed to spend more than £700 on activities that are intended to influence the election outcome. This would be a significant reduction from the current limits for unregistered campaigning, and would introduce a new principle that campaigners are subject to eligibility criteria even when they are not required to be registered. However, should these laws be broken, we would not be able to take enforcement action against organisations or individuals based outside the UK. The police are also limited in the action they can take against people or organisations based overseas.

Order making power for Ministers We agree that Scottish Ministers should have an order making power to add, change or remove permitted categories of non-party campaigners for devolved Scottish elections. This would enable future flexibility to respond to the emergence of new categories of campaigners to ensure that legitimate campaigners are not prevented from engaging in democratic debate. As any changes would be in response to a recommendation from the Electoral Commission, it would build in a safeguard to prevent the politicisation of the process.

Code of Practice on third party expenditure We agree that the Commission should be able to provide a Code of Practice for non-party campaigner expenditure at Scottish devolved elections. This Code would support campaigners by providing a clearer statutory base for the non-party campaigner rules and offer them assurances that if they have followed our Code, they will have complied with the law. We have recently consulted on a draft Code of Practice for non-party campaigners at UK Parliament and Northern Ireland Assembly elections. Subject to approval from the UK Parliament, we expect to publish this Code in the summer of 2023. We would follow a similar consultation process in developing any Code for Scottish Parliament elections. However, it will be vital for any legislation which affects non-party expenditure at Scottish Parliament elections to be in place in sufficient time for us to develop and consult on a code ahead of its use at the next Scottish Parliament election.

Q38 Q38 summary Question 38: Do you think the maximum fine the Electoral Commission should be able to impose for breaches of electoral law in Scottish elections should:

- A - Rise to £500,000, so it is in line with the maximum fine for referendums
- B - Be set at another amount (please specify the amount below)
- C - Remain unchanged at £10,000

The current maximum fine that the Electoral Commission can impose for each breach of the election spending laws for political parties or registered non-party campaigners at elections is set in law at £20,000 (£10,000 in Scotland). We recommend that our maximum fine is increased so that sanctions can be more proportionate to the amounts of money major parties and non-party campaigners raise and spend at those elections. Our maximum fine should be set at a high enough level for it to be a suitable deterrent that encourages compliance by all campaigners. We welcomed the provisions in the Referendums (Scotland) Act 2020 which increased our maximum fine to £500,000. It is important that the maximum fine for elections keeps pace with that for referendums to reflect the regulatory similarities between the two types of electoral events and to create consistency for campaigners and parties campaigning at both. We encourage the Scottish Government to consider £500,000 as a starting point for increasing our maximum fine. We would continue to regulate in a fair and proportionate way and only apply a sanction where we consider it appropriate to meet our enforcement aim and

objectives, and when it is proportionate and in the public interest to do so. Digital imprints

Q39 summary Question 39: Do you think that the Scottish Government should revoke its own regulations for digital imprints and rely on the provisions of the Elections Act 2022? Question 40: Do you have any further comments on digital imprints? Digital campaigning accounts for an increasingly large proportion of spending reported by campaigners after elections. Requiring campaigners to include imprints on digital campaign material delivers greater transparency for voters, and helps improve public confidence in digital campaigning at elections and referendums. The Scottish Government introduced new digital imprint requirements ahead of the 2021 Scottish Parliament election which apply to all devolved Scottish elections. The UK Government's Elections Act introduced digital imprints requirements for all UK elections and campaign activity which are expected to come into force in late 2023. The UK Government regime is broader than the Scottish law in two ways. The UK Government's digital imprints regime will apply throughout the year, whereas the Scottish rules apply to the period before Scottish Parliament elections and council elections. The UK Government's regime introduces a wider definition of material requiring an imprint because they require campaigners to include imprints on digital 'political' campaign material that promotes a party or candidate. The Scottish law covers only 'election material' that promotes success at Scottish Parliament or Scottish council elections. In these two ways, the Elections Act provisions to extend imprint rules could offer more transparency than the current Scottish approach. However, the Scottish law is wider and provides greater transparency in one specific aspect, in that a digital imprint is required on all kinds of election material, including both paid and unpaid material from registered and unregistered campaigners, with some limited exceptions for personal opinion. Under the Elections Act, only paid-for political material by unregistered campaigners requires an imprint. It will be important to avoid the risk of separate legislative regimes applying to the same offence, which risks confusion for campaigners, regulators, and prosecutors. For example, both imprint regimes could apply to a piece of digital political material which promotes a candidate or party generally and at a Scottish Parliament election. If the campaigner did not include an imprint, the Commission and the Crown Office Procurator Fiscal Service would potentially have to consider which offence should be investigated, and whether a campaigner in that scenario could have committed two offences under two separate regimes.

Administration and Governance Reviews of electoral boundaries Question 41: Do you think the process for approving boundary changes should be changed, and which of the options set out above would you prefer? No change Option 1 Option 2 Option 3 Other option Question 42: Do you have any further comments on this topic? The independence of the boundary review process is important to ensure public confidence in the boundaries used for Scottish Parliament and council elections. The timetable for parliamentary consideration of any boundary recommendations will need to ensure that boundaries are settled in sufficient time for administrators, candidates and parties to plan for any scheduled Scottish Parliament or council election.

Governance – The Electoral Commission in Scotland Q43 44 summary Question 43: Should the Scottish Parliament take a greater role in oversight of the Electoral Commission's devolved activities? For example, the Electoral Commission's devolved activities, including their spending plans, being scrutinised by a Scottish Parliamentary Committee. Question 44: Do you have any additional comments on the oversight of the Electoral Commission's activities in relation to Scottish Parliament and Local Government elections? The Commission welcomed the changes in the Scottish Electoral (Reform) Act 2020 which required us to

account directly to the Scottish Parliament for our activities in relation to Scottish devolved elections and receive our funding directly from the Parliament. It is important that the Scottish Parliament can have confidence in our work and plans, and we would welcome additional scrutiny by a relevant committee in the Parliament. In Wales, the Senedd established a committee to scrutinise the Electoral Commission's financial estimates and five-year plans as they relate to devolved Welsh elections and referendums. The Committee also reports to the Senedd on its oversight of the Commission and its scrutiny of its financial estimates. The Scottish Parliament allocated the approval of the Commission's funding to the Scottish Parliament Corporate Body (SPCB). However, in practice the Standards, Procedures and Public Appointments Committee (SPPAC) currently undertakes policy scrutiny of our activities, as its remit extends to matters relating to devolved elections, referendums and the responsibilities of the Elections Minister. The SPCB undertakes a wide range of activities, and we understand has limited resource, including time, to scrutinise our activities. It is usual for most legislatures to allocate the approval of estimates and policy scrutiny to two different committees. This model has the advantage of bringing impartiality and objectivity to the consideration of budget estimates, which may be less so in the case of policy scrutiny. In the case of the Scottish Parliament, estimate consideration by the SPCB ensures that all parties in the legislature are involved in consideration of our funding, as all are represented on the SPCB. Currently, the SPPAC does not have representation from all parties in the Scottish Parliament. We believe the body which approves our funding should be cross-party across the legislature. An option to facilitate further scrutiny of the Commission's estimate could be to require, in an albeit already tight timeframe, a subject committee of the Parliament, which would likely be the SPPAC, to undertake at the request of the SPCB a consideration of our estimate submission and provide the SPCB with an opinion on our estimate prior to the SPCB taking a decision. In addition, if the Parliament wishes to formally allocate wider policy scrutiny of the Commission's work to a subject committee, we would support that development.

Developing the role of the Electoral Management Board Q45 46 summary Question 45: Do you have any views on the role and structure of the EMB? Question 46: Should a Deputy Convener post be established, with power to exercise the functions of the Convener of the EMB if they are unable to act? The Electoral Management Board for Scotland (EMB) was first established in 2009 and its role has been set in statute for Scottish council elections since 2011 and for Scottish Parliament elections since 2020. Over that period, the EMB has continued to make a positive contribution to the effective delivery of elections and referendums in Scotland through the provision of advice, support and challenge to Returning Officers (ROs) and Electoral Registration Officers (EROs). At devolved Scottish elections the Convener of the EMB has used their power to direct ROs in the discharge of their responsibilities to ensure a consistent standard of service for voters. This has been undertaken in the interests of the voter and helps maintain the high levels of satisfaction amongst voters we consistently find in our post-poll surveys. Given the concerns about the resilience of electoral services highlighted earlier in this response, we continue to support further steps to ensure that the legal status and funding of the EMB are developed in such a way that it could undertake the management roles it was initially envisaged it would undertake, such as providing oversight of the procurement and delivery of any e-counting solution for council elections. This could also include exploring the scope for the EMB to provide further consistency in electoral administration and improved service to voters by considering any efficiencies and cost savings in

procuring services and goods on behalf of ROs, such as through the centralisation of print contracts for ballot papers and other election stationery. The EMB is currently reliant on the goodwill of councils to support many of its activities. Developing its legal status would enable it to employ staff and contract services directly, enabling it to respond quickly to any unscheduled polls. Irrespective of legislative change, the EMB should develop its role in providing mentoring and support to ROs and EROs across Scotland to ensure that knowledge and confidence in delivering electoral processes is not affected by the turnover of senior council officers. Any expanded role for the EMB would require additional support for the Convener. We therefore support the proposal to appoint a deputy Convener. Given the split in responsibilities in Scotland for the delivery of elections and electoral registration services, we recommend that two deputies be appointed, to include an RO and an ERO. 1. Over 2500 candidates stood for election across Scotland in 2022. The survey received 190 responses from candidates across 29 out of 32 local authorities, with 160 respondents answering the question on abuse. Candidates were asked: "On a scale of 1-5, with 1 being no problem at all and 5 being a serious problem, how much of a problem, if any, did you have with threats, abuse or intimidation in this election?" Respondents who rated their experience as a 2 or above were counted as having experienced threats, abuse, or intimidation. Respondents who rated their experience as a 4 or above were counted as having experienced a serious problem ■ Back to content at footnote 1 Page history First published: 15 March 2023 Last updated: 16 March 2023