

Minister for Parliamentary Business
Jamie Hepburn MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Martin Whitfield MSP
Convener
Standards, Procedures and Public
Appointments Committee
The Scottish Parliament
Edinburgh
EH99 1SP

16 July 2024

Dear Martin,

ELECTORAL REFORM – SECONDARY LEGISLATION

In my letter of 20 June I outlined my intention to consult further with stakeholders on areas where the Government is considering possible secondary legislation in relation to elections.

My intention remains to take forward these changes in secondary legislation in 2025 in respect of Scottish Parliament elections and in 2026 in relation to local government elections. As I indicated, this is an entirely separate process from the Scottish Elections (Representation and Reform) Bill, but I know that the Committee will be keen to be involved with all possible changes to electoral law.

My officials have now written to the following stakeholders asking for their views on possible changes in the terms set out in the Annex to this letter. This expands upon the content of the letter of 30 April sent to the Committee by my predecessor:

- the Electoral Commission;
- the Electoral Management Board for Scotland;
- the Association of Electoral Administrators;
- the Scottish Assessors Association; and
- the Scottish Parliament Political Parties Panel



We have asked these organisations to provide their initial views by 12 August and officials will continue their engagement. I am also very keen to hear the views of the Committee and would be happy to meet to discuss these matters further.

Following the consultation, work will continue in the autumn on the secondary legislation, which will be brought forward in full compliance with the Gould Principle concept that changes in electoral law cannot be applied to any election held within six months of the new provision coming into force.

Yours sincerely,



Jamie Hepburn

E: roddy.angus@gov.scot

Stakeholder organisation

XX July 2024

Dear

As you know, the Scottish Elections (Representation & Reform) Bill is currently being considered by the Scottish Parliament.

Separately from the Bill, it is the Scottish Government's intention to bring forward secondary legislation ahead of the 2026 Scottish Parliament and 2027 Scottish local government elections.

Legislation in relation to Scottish Parliament elections will be produced in 2025, with the aim of ensuring that the legislation is finalised well before the May 2026 elections (in compliance with the Gould Principle). Separate legislation for the Scottish local government elections in May 2027 will be brought forward following the Scottish Parliament Order and we will consider further the timetable for local government changes (there may be scope to make some changes in 2025 and others in 2026 if that is considered necessary or practicable).

This legislation is expected to make improvements to electoral law to assist the holding of those elections. It is also expected to advance some of the issues raised in the Scottish Government's Electoral Reform Consultation which ran from 14 December 2022 to 15 March 2023. The then Minister for Parliamentary Business outlined the main possible measures being considered in a letter to the Standards, Procedures and Public Appointments Committee on 30 April. This letter has been published on the Scottish Parliament [website](#).

The list of measures supplied with this letter reiterates and builds upon the letter of 30 April, including some additional changes flowing from suggestions from electoral administrators and others and some minor technical amendments.

I therefore attach 2 annexes:

- Annex A sets out policy proposals that the Scottish Government is actively considering including in secondary legislation for the Parliament's approval before the next relevant elections, May 2026 and May 2027 for Scottish Parliament and local government elections, respectively.
- Annex B sets out minor technical changes intended to improve existing legislation.

These proposals are still under active consideration and are subject to discussion and change. It is possible that additional changes may be added, or that some proposals may not be pursued. Final decisions will be informed by discussions with stakeholders.

We would be happy to provide further details and to discuss these proposals with you if you would find that helpful. Please note that the Annexes do not discuss secondary legislation directly resulting from the Scottish Elections (Representation and Reform) Bill (for that please see the Bill's [Delegated Powers Memorandum](#)).

The Scottish Government would welcome any comments or views that you may have on these proposed changes by 12 August 2024.

Yours sincerely

Roddy Angus
Elections Policy Advisor

Proposed amendments to secondary legislation for elections

Dissolution period before Scottish Parliament election (Amendment of article 84 of the Scottish Parliament (Elections etc.) Order 2015

(Scottish Parliament elections only)

Currently [article 84](#) of the Scottish Parliament (Elections etc.) Order 2015, taken together with [section 2\(3\)](#) of the Scotland Act 1998, requires that the Scottish Parliament must be dissolved at least 28 “working” days before the date of the poll at a Scottish Parliament ordinary general election.

Section 20 of the [Scottish Elections \(Representation and Reform\) Bill](#) proposes changes which we consider necessary to allow for the postponement and rescheduling of an ordinary Scottish Parliament election at short notice.

The Government is considering a permanent change to the minimum period between the dissolution of the Parliament and the day of poll and is seeking views on what minimum period would be appropriate.

The Government does not intend for this proposal to impact on the electoral timetable. It is intended that the proposal will be further discussed with Scottish parliamentary authorities with a view to the Parliament going into a pre-election recess ahead of the new dissolution date. This would allow the election campaign to begin and avoid a change to the election timetable, but would also allow the Scottish Parliament to meet to pass emergency election to move polling day in the event of a UK General Election being called with minimal notice. A pre-election recess was a feature of the 2021 Scottish Parliament election, although in that case it ran until the day before the election.

Clarify definition of notional expenditure for candidates at Scottish Parliament elections

(Scottish Parliament elections only)

The [Scottish Elections \(Representation and Reform\) Bill](#) includes provisions which update the definition of notional expenditure at local government elections (section 19), and of notional expenditure by political parties and third parties at Scottish Parliament elections (section 14).

The same definition of notional expenditure relating to candidate spending at Scottish Parliament elections can be made in secondary legislation, and the Scottish Government intends to make secondary legislation to this effect, if the Bill provisions are agreed by the Scottish Parliament.

The UK Elections Act 2022 updated the definition of notional expenditure in relation to UK Parliamentary elections in Scotland ([section 90\(c\)\(1A\)](#) of the Representation of the People Act 1983 (“ROPA 1983”). Applying the same definition to devolved Scottish elections will help ensure the rules are clear and consistent for campaigners and candidates across all elections in Scotland.

Candidates' agents having an option of providing a correspondence address (Scottish Parliament and local government elections)

Currently an agent for a candidate must provide an address at which they can be contacted for election purposes. Concern has been expressed that in the situation where a candidate or a member of their immediate family is acting as their agent that, if the address they have to provide is their home address, this could lead to a security risk for the candidate or their family.

The Scottish Government is therefore proposing to bring forward an amendment which will allow for any individual acting as an agent, either for themselves or another person, to provide a correspondence address, should they so wish. This will allow anyone to act as an agent without having to publicise their home address, unless they specifically choose to do so. The Electoral Commission will provide guidance for candidates and agents on the options available around providing a correspondence address for election purposes.

Modernise definition of undue influence (Scottish Parliament and local government elections)

The existing offence of "undue influence" has been in place since the 19th century, and the language requires revising and updating. The Scottish Government intends to clarify what constitutes undue influence in order to make the legislation easier to interpret and enforce. It will do so by using modern terminology, and by clearly separating out the types of conduct that can cause undue influence.

It is proposed that the following activities should be considered undue influence, when carried out for the purpose of forcing a person to vote in a particular way, forcing them not to vote at all, or otherwise interfering with their free exercise of their vote:

- a) The use or threat of physical violence;
- b) Damage or destruction to property (or the threat of such damage or destruction);
- c) Reputational damage (or the threat of such damage);
- d) Causing or threatening to cause financial loss;
- e) Causing spiritual injury or exerting undue spiritual pressure. 'Undue spiritual pressure' refers to a level of improper or inappropriate pressure which goes beyond the free expression of opinions on political or other matters that have implications for the principles of a religion;
- f) Any other act or omission designed to intimidate a person which is not already covered above;
- g) Any act or omission designed to deceive a person in relation to the running of an election.

It is intended that this provision will be similar to the revised definition included in the UK Elections Act 2022 at UK Parliamentary elections (set out in [section 114A](#) of ROPA 1983).

The updated and revised offence of undue influence will continue to be classified as a "corrupt practice". As legislation already sets out, a person who is convicted of the corrupt practice of undue influence is liable to up to one year's imprisonment, a fine or both prison and a fine. This person (or a person who is named personally guilty of the corrupt practice in the report of an election court) will also be incapable of being elected to or holding certain

elective offices for five years; if the person already holds elective office, they would be required to vacate that position.

Replacing the requirement for a tactile voting device (TVD) with a general responsibility for Returning Officers to provide appropriate support (Scottish Parliament and local government elections)

The Scottish Government is proposing to remove the detailed description of the Tactile Voting Device (TVD), which is set out in [rule 38](#) of schedule 2 to the Scottish Parliament (Elections etc) Order 2015 and [rule 25](#) of schedule 1 to the Scottish Local Government Elections Order 2011, and replace it with a broader requirement for ROs to provide appropriate support to aid accessibility at polling stations and for the EC to provide guidance. This is broadly in line with what the UK Government did in the Elections Act and the Welsh Government's proposed changes.

The intention is to standardise the provisions at both Scottish Parliament and local government elections in a way which allows for more flexibility and ensures that the accessibility support offered can be adapted and evolve to take account of future innovations.

It is expected that the proposed provisions for Scottish Parliament and local government elections will broadly follow those which have already been put in place for UK Parliament elections. These revised provisions can be found in [rule 29](#) of schedule 1 to the Representation of the People Act 1983.

The Government is considering any need to amend the Bill to ensure that Ministers will in future be able to require the Electoral Commission to provide guidance to ROs on accessibility at local government elections. The Scottish Ministers already have the necessary powers to require the Electoral Commission to provide such guidance for Scottish Parliament elections and the proposed amendment will bring the position for local government election into line with existing position for Scottish Parliament elections.

Extent to which poll cards can be amended (local government elections)

The Government is interested in views on changing the law for local government elections to expressly allow poll cards to include additional information to aid accessibility. This could include phone numbers to call to get candidate names and parties read out; QR codes links to polling place address or other information.

Note: the existing rules for poll cards at Scottish Parliament elections include the following provision:

“The official poll card may, in addition to the matters in the form, set out such other information, not relating to any candidate or registered party, as the CRO considers appropriate, and different additional information may be provided to different electors or descriptions of elector.”

Our view is that returning officers therefore already have the power to add additional information on accessibility to poll cards at Scottish Parliament elections.

Voter registration on local connection grounds for looked after children (Scottish Parliament and local government elections)

Currently certain individuals who do not have a fixed or permanent address, such as those that are homeless or in prison, may register at the place where they spend most of their time, or to which they have a connection, by making a declaration of local connection.

In Wales, an additional ground to make a declaration of local connection was added to [section 7B\(2\)](#) of the Representation of the People Act 1983 by [paragraph 2 of schedule 2](#) to the Local Government and Elections (Wales) Act 2021. This allows for those under 18 years old if they are, or have been, looked after children or are currently being kept in secure accommodation to apply to vote using a declaration of local connection.

The Scottish Government is considering amending [section 7B\(2\)](#) of the Representation of the People Act 1983 to specifically allow looked after children under the age of 18 to register to vote at Scottish Parliament and local government elections using a declaration of local connection. This amendment will be along similar lines to the change already made for Wales.

Emergency proxies for companions of individuals who have to attend for medical treatment

(Scottish Parliament and local government elections)

The Electoral Commission has asked the Scottish Government to consider expanding the categories of voters who are entitled to apply for an emergency proxy to include those who find themselves unable to vote because they are in a position of acting as a companion for someone who needs to be accompanied to an unplanned medical appointment. In particular this would affect those who care for young or older people.

Under the existing provisions, the person with the medical appointment would be entitled to apply for a proxy vote, if they are registered to vote, however their companion is not able to apply for a proxy vote.

The Scottish Government is considering legislating for emergency proxies to be made available to the companions of those who are required to travel for medical appointments or treatment at short notice, where that travel would stop them being able to vote at their normal polling place. This will require an amendment to paragraph 4 of schedule 4 to the Representation of the People Act 2000.

Emergency proxies for persons remanded in custody

(Scottish Parliament and local government elections)

The [schedule](#) to the Scottish Elections (Franchise and Representation) Act 2020 made a number of amendments as a consequence of the granting of the right to vote to a person to whom [section 3\(1A\)](#) of the Representation of the People Act 1983 (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies. One of these amendments allowed for offenders who are sentenced to term not exceeding 12 months shortly before the day of poll to apply for an emergency proxy vote. The intention

of this provision was to ensure that someone who had not already applied for an absent vote would not be disenfranchised if they were sentenced to detention after the six-day deadline for applying for an ordinary proxy vote.

The introduction of this provision highlighted that individuals who are remanded in custody, who are still entitled to vote as they have not been found guilty of an offence, currently do not have the same ability to apply for an emergency proxy if they are remanded after the six day deadline for applying for an ordinary proxy vote.

The Scottish Government is considering an amendment which will allow those remanded in custody shortly before the day of poll, to apply for an emergency proxy vote. This amendment will be similar to that already in place for offenders who are sentenced to term not exceeding 12 months.

Appointment of replacement proxies

(Scottish Parliament and local government elections)

[Article 2\(4\)](#) of the Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021 allowed for a voter who had appointed a proxy to change their proxy if the proxy would not be able to vote in person, due to having to follow Scottish Government advice or the advice of a registered medical practitioner in relation to coronavirus. This article was covered by a sunset provision and subsequently ceased to have effect on 10 December 2022. The intention was to ensure that the voter would not lose their vote if their proxy were unable to vote due to coronavirus restrictions.

The Scottish Government is now considering provisions which will allow a voter, who has already appointed a proxy, to change their proxy if the proxy will no longer be able to vote on their behalf. The provision will be similar to [Article 2\(4\)](#) of the Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021. It is likely that any provisions will include a deadline of requesting a replacement proxy due to the practical arrangements that EROs are required to make, such as informing the proxy of their appointment and informing the Returning Officer and the relevant polling station staff of the updated proxy's details.

Uprate limits for campaign expenditure

(Scottish Parliament and local government elections)

Expenditure limits for candidates, political parties and third parties at Scottish Parliament elections and for candidates at local government elections have not changed for some time. Increases in line with inflation were recently made for UK Parliamentary elections by the Representation of the People (Variation of Election Expenses, Expenditure Limits and Donation etc. Thresholds) Order 2023. The Government invites views on a possible change.

Emergency proxies where a postal voter has not received their pack

The UK General Election on 4 July has seen calls for emergency proxies to be available if a postal vote has not been received. The Government is interested in views as to whether a change would be desirable in relation to Scottish Parliament and local government elections. Should an emergency proxy only be available where the voter is unable to obtain a replacement postal pack or to hand their postal vote in at the polling stations?

Boundaries Scotland including attainer electoral data for Scottish Parliament and local government boundary reviews

(Scottish Parliament and local government elections)

Under [sections 12 to 15](#) of the Local Government (Scotland) Act 1973 and [schedule 1](#) of the Scotland Act 1998, Boundaries Scotland, formerly known as the 'Local Government Boundary Commission for Scotland', are required to conduct reviews of Scottish Parliament constituencies and regions, and reviews of the electoral arrangements for local government.

Attainers (pre-registered voters aged 14-15) are considered names on the register for the purposes of conducting boundary reviews (although are not considered electors until they reach voting age) and should therefore be included when considering the size of the electorate when undertaking boundary reviews

Some Electoral Registration Officers have expressed concerns that because Boundaries Scotland are not listed as an organisation entitled to receive attainer data, as set out in [section 14](#) of the Scottish Elections (Reduction of Voting Age) Act 2015, they could only send address-only data to Boundaries Scotland, without being in breach of the strict controls on sharing identifiable attainer data. Boundaries Scotland have made representations to the Scottish Government that, without the inclusion of attainers' data, the information used to set electoral quotas is not as accurate as it could be.

Having considered Boundaries Scotland's representations, the Scottish Government proposes bringing forward legislation which will amend the relevant legislation to make clear that Boundaries Scotland should receive relevant attainer information when receiving the electoral register for conducting reviews. They currently are not listed in [section 14\(4\)](#) of the Scottish Elections (Reduction of Voting Age) Act 2015 as an organisation that can receive attainer information, despite there being legislation which suggests they should access this. This information will likely be restricted to addresses (including post codes) and numbers of attainers in each individual address for the purposes of carrying out their

reviews under schedule 1 of the Scotland Act and part 2 of the 1973 Act. The Government is considering whether electoral data other than addresses and number of attainers at each address should be provided to Boundaries Scotland as they are not required for electoral quota purposes.

Evidence to support an application for anonymous registration (Scottish Parliament and local government elections)

If someone is concerned that having their name and address publicly available on the electoral register could affect their safety, or the safety of someone in their household, they can register to vote anonymously. This means that they are still be able to vote, but only their voter number, not their name and address will appear on the electoral register. In addition, their electoral registration office will not disclose their details to anyone, unless they are legally required to.

[Section 1](#) of the Domestic Abuse (Protection) (Scotland) Act 2021 provides that if the behaviour of an individual is abusive of another person and if the individual's behaviour is likely to cause that person to suffer physical or psychological harm then a Domestic Abuse Protection Order may be made.

An applicant for anonymous registration must provide evidence that there is a risk to safety if their details were to be made public. The Scottish Government proposes to amend [regulation 311](#) of the Representation of the People (Scotland) Regulations 2001, as amended by subsequent legislation, to add Domestic Abuse Protection Orders to the list of relevant evidence for anonymous registration. We will also consider, in consultation with other UK legislatures, if there are any further changes that need to be made to take account of similar orders granted in other parts of the UK.

Use of electoral registers for the setting up of Community Councils (Electoral registration)

Under [regulation 106](#) of the Representation of the People (Scotland) Regulations 2001, local councils are entitled to receive a copy of electoral registers for their area. However, use of those registers is restricted to the discharge of a statutory function of the council relating to security, law enforcement, crime prevention, the holding of local referendums or for statistical purposes. In addition, under this regulation, once established, local Community Councils are also entitled to receive a copy of the electoral register.

It has been suggested that where a new Community Council is proposed, Councils are not allowed to use the electoral register to identify which electors are resident in the proposed Community Council area, in order to establish a Community Council in the first place. This is because the setting up of community councils is not one of the permitted uses allowed by [regulation 106](#).

The Scottish Government is therefore considering amending regulation 106 in order to specifically permit the use of the electoral register for the purposes of establishing a Community Council.

Supply of electoral registers to Boundaries Scotland (Electoral registration)

St Andrew's House, Regent Road,
Edinburgh EH1 3DG
www.gov.scot



At the request of boundaries Scotland, the Scottish Government is considering amending the Representation of the People (Scotland) Regulations 2001 to provide for Boundaries Scotland to request copies of electoral registers when required. The provision of registers by Boundaries Scotland will be restricted to their use for the purpose of reviewing and setting the boundaries of Scottish Parliament constituencies and regions and local government electoral arrangements. This will reduce administrative burden, and will allow Boundaries Scotland to use the most up to date registers when considering boundary changes.

Candidate ward shown on ballot paper (Local government elections)

Rule 14 of the Scottish Local Government Elections Order 2011, as amended by the [Scottish Local Government Elections Amendment Order 2020](#), allows candidates standing at local government elections to have a choice of what “address” appears on ballot papers. Currently, they can choose to show their home address; their local council area; or their country of residence.

Following the 2022 local government elections, the Scottish Government received feedback that only allowing for the local government area where the candidate is resident on the ballot paper did not allow voters to easily identify candidates who lived in the same locality. This was a particular issue in relation to islands and more remote areas, where a candidate may live in the same local government area but may be based a significant distance from the ward where they are standing.

The Scottish Government proposes to add an additional option of allowing candidates to choose to include the ward where they reside on the ballot paper as an alternative to their home address, local government area or country of residence.

Changes in the event of a rescheduled election: spending limits and implications for postal votes, electoral register etc.

The Scottish Elections (Representation and Reform) Bill includes a number of provisions in relation to emergency re-scheduling of elections. The Government intends to discuss further with the Electoral Commission and political parties on the merits of rules adjusting spending limits in the event of a postponement to an election. It is also considering possible other secondary legislation that might be needed in the event of a postponement (e.g. on the status of postal votes or implications of a delay for the electoral register), noting comments by the [Scottish Assessors Association](#).

Any views on areas which may need to be addressed would be welcomed.

Limiting campaign free mailings to one per household

(Scottish Parliament elections only)

The Scottish Government's electoral reform consultation sought views on restricting the current right to send a letter or leaflet free of postage costs to the sending of unaddressed leaflets only. This would mean that parties and candidates would only be allowed to send an unaddressed leaflet to every household.

Extend free mailings to local government candidates

(Local government elections only)

Whilst allowing candidates at UK and Scottish Parliamentary elections to send a free mailing has been normal practice for many years, this facility has never been extended to candidates at local government elections. Over recent years, there has been a number of calls for local government candidates to be allowed to send a communication free of postage costs to voters.

Turnout at local government elections is normally lower than at Government elections and it has been suggested that allowing candidates a free mailing would assist campaigning and would be helpful in getting voters engaged in the elections process.

In the 2022 Electoral Reform Consultation, the Scottish Government sought views on whether free mailings should be extended to local government elections. Two specific questions were asked:

- Should free mailings be extended to candidates at local government elections? and
- Should any free mailing be limited to one leaflet per household?

All organisations who answered the first question supported the option of extending freepost communications to local election candidates. However, only one third (37%) of individuals were in favour. There was more consensus on the proposal to limit mailings to one per household, with 78% of individuals and 70% of organisations in favour.

Respondents were also asked for any comments on the general proposal and two broad themes were evident; opposition to freepost mailings as a waste of time and money, and debate around who should bear the cost of freepost mailings.

The Scottish Government has sought the views of the Scottish Parliament on the general principle of extending free mailings to candidates at local government elections, one leaflet per household, the affordability of extending the scheme in this way and, if implemented, who should meet the cost of any such extension?

Increase the number of disabled voters who can be assisted by an individual companion

(Scottish Parliament and local government elections)

Under current rules, [rule 48](#) of schedule 2 to the Scottish parliament (Elections etc.) Order 2015 and [rule 35](#) of schedule 1 to the Scottish local government Elections Order 2011, an eligible individual can assist up to 2 people, who are disabled or can't read to vote.

Individuals who help voters needing additional support in the polling station when casting their vote, are an important option for those who face such barriers. Help from a friend, relative or carer can be essential in overcoming issues like navigating the polling station or understanding a ballot paper.

The historical reasons for the restriction of only assisting 2 people, relates to concerns over the potential influence any one person might have on multiple voters. However, there may be circumstances where this restriction impedes the needs of voters themselves - for example multiple members of one family might need support but have only one relative available to assist. Professional carers may also be best placed to support their clients at the polling station, because of their understanding of their clients' individual needs, but would be prevented from supporting more than 2 clients and/or members of their own family under the current system.

The electoral reform [Consultation](#) asked if the number of voters a companion can support at Scottish Parliament and local government elections should be increased to 5.

The Scottish Government is seeking the Scottish Parliament's views on whether this increase strikes a reasonable balance between practical considerations and concerns over undue influence. The Scottish Government has also asked for views on whether an individual, such as a registered care worker, who, as part of their employment at a particular care home, should be allowed to assist a higher or unlimited number of voters who are resident at the care home where they are employed.

Dies-Non

(Scottish Parliament and local government elections)

When calculating periods of time at both elections and for registration purposes, some days, such as Christmas Day, Good Friday and bank holidays are disregarded for timetable purposes. However, there is a disparity between those days which are disregarded, with Maundy Thursday being disregarded for registration purposes but not election purposes and Easter Monday being disregarded for election purposes but not registration purposes.

The Scottish Government would like to consider aligning the non-counting days so that they are the same for both election and registration purposes. However, we appreciate that changing the disregarded days for registration purposes for devolved elections will introduce a mismatch with the disregarded days for registration for UK Parliament elections.

We would welcome the views of Returning Officers and Electoral Registration Officers on whether or not it would be helpful to bring forward proposals to standardise the dies-non for registration and polling at devolved elections.

Next day counts at Scottish Parliament elections

(Scottish Parliament elections)

Feedback has been received that the requirement in [rule 54 of schedule 2](#) to the Scottish Parliament (Elections etc.) Order 2015 that “The CRO shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll” is causing difficulties at Scottish Parliament elections.

The main concern is that, under the current legislation, Returning Officers are effectively required to count the votes cast at Scottish Parliament elections overnight. This means that staff at the count start work shortly before the close of polls at 10pm and in some areas do not finish until after 7am the next morning, over a 9-hour shift. Returning Officers are concerned that it is difficult to recruit staff for long overnight counts and that tiredness can be a factor at counts with an increased risk of errors occurring. In particular this can affect senior election staff as they will have started work early on the Thursday morning, to ensure that the polling proceeds smoothly, and they may have little chance to rest and recover before the close of an overnight count, some 48 hours later.

It has been suggested that if the count were to start on the Friday morning, after a Thursday poll, then it would be easier to employ staff who would be well rested and less likely to make mistakes. It would also allow senior staff the opportunity to get some rest and sleep between the close of poll and the start of the count.

Were the count to start on the Friday morning, it would be likely that the final result would be available mid-afternoon on the Friday, as there would be no delays in waiting for ballot boxes to be delivered and some preliminary preparation work could be completed following the close of poll. The count at Scottish local government elections starts on the Friday morning with the result being available late Friday afternoon.

The Scottish Government is currently seeing the views of the Scottish Parliament on the timing of the count at Scottish Parliament elections. The Convener of the EMB has also [raised this issue](#) with the Standards Committee.

Replacement of spoilt postal vote packs

(Scottish Parliament and local government elections)

Prior to the Scottish Parliament election in May 2021, the Scottish Government brought forward amendments relating to the replacement of lost or spoilt postal ballot packs.

Before this change, [paragraph 13\(3\) of schedule 4](#) to the Scottish Parliament (Elections etc.) Order 2015 set out that the deadline for replacing spoilt postal ballot papers was “5pm on the day of poll”. [Paragraph 14](#) of the same schedule set out the procedure for replacing lost postal ballot papers but did not specify a deadline on the day of poll for applications. It was therefore generally accepted that, in the absence of anything to the contrary, the deadline was the close of poll at 10pm.

There was no obvious reason why there were different deadlines for the replacement of postal ballot papers in these two similar circumstances and therefore the deadline for the replacement of spoilt ballot papers was changed to 10pm on the day of poll. In addition, to

clarify the position around replacement of lost/not received ballot papers, a specific deadline of 10pm was specified.

These amendments were set out in [article 17](#) of the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020. A similar change was made for local government elections by [regulation 2\(3\)](#) of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2021.

At the time of those amendments, Returning Officers had expressed concerns that a 10pm deadline was unrealistic and that it would cause staffing issues with a need to set up points where replacement postal ballot packs could be issued. This was a significant concern particularly in rural areas where voters might have to travel significant distances. The Scottish Government appreciated the Returning Officers' concerns but felt that the flexibility of the later deadline for the voter outweighed logistical difficulties. However, the Scottish Government undertook to keep the position under review.

Following the May 2021 and May 2022 elections, Returning Officers reported that no replacement postal ballot packs were issued between 5pm and 10pm on the days of poll and, once again, expressed concerns about the logistics of the replacement process.

Having considered the Returning Officers' representations, and the lack of use of the extended deadline, the suggestion has been made to revert back to 5pm deadlines for both elections.

The Scottish Government would welcome views on this proposal.

Delegate forms design to the Electoral Management Board's Forms Working Group (Scottish Parliament and local government elections)

Currently, the legislation for elections sets out what information must be included in forms, in addition, often, but not in all cases, templates for the forms are also included in an appendix. However, although templates are provided, [article 86\(1\)](#) of the Scottish Parliament (Elections etc.) Order 2015 specifically states "The forms set out in the Appendix may be used with such variations as the circumstances may require."

Having templates for forms set out in legislation can lead to delays if there is a need to update a form or to clarify some aspect. An example of this is [form 15](#) (Declaration by the companion of a voter with disabilities) in the Scottish Local Government Elections Order 2011, which contains a long standing error. The declaration on the template form requires the companion to certify that they have not helped any other elector with disabilities to vote, whilst rule 35(2)(b)(ii) clearly states that a companion can assist up to 2 voters.

The Scottish Government is considering removing some templates from the legislation to allow additional flexibility around their design and contents. It is expected that this flexibility will be used to include information which will be helpful to voters, such as additional information in poll cards on accessibility and what will be available at polling stations to assist voters.

Subject to necessary primary legislation, the intention is to transfer responsibility for designing some forms for use by electoral administrators to the [Electoral Management](#)

[Board's Forms Working Group](#) who already have a role in developing consistent and quality non-statutory forms. The Forms Working Group has been providing example forms for returning Officers for many years and the Scottish Government would view this as an extension of their existing role.

The intention is that templates for some forms would remain in legislation, such as ballot paper designs and nomination papers, but responsibility for others, such as Certificates of employment and information and guidance notices, would transfer to the Forms Working Group. The Scottish Government's view is that transferring the responsibility for designing templates for the forms used by Returning Officers to the Electoral Management Board's Forms Working Group would allow for more agile design and the opportunity for ROs to quickly adapt them to changing circumstances.

The intention is that there will be discussions with electoral administrators around which forms should be removed from the legislation, but the Scottish Government would welcome any views that you may have on the generality of this proposal.

Technical amendments to secondary legislation for elections

Spending oversight by the Electoral Commission in Scottish Parliament elections (Scottish Parliament elections only)

The Electoral Commission's oversight role in relation to Scottish Parliament candidate spending in [Section 145](#) of Political Parties, Elections and Referendums Act 2000 does not cover provisions set out in Scottish Parliament enactments (because the definition of 'enactment' in section 145(1)(b) does not include Scottish Parliament legislation). An amendment is required to ensure Scottish Parliament legislation is covered. This change will be similar to that made by article 3 of the [Scottish Local Government Elections Amendment Order 2022 \(S.S.I. 2022/38\)](#) which allowed for Scottish local Government enactments on spending to be subject to the Electoral Commission's oversight.

Correction of error in security expense provision (Scottish Parliament elections only)

The Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 at [para 8\(3\)](#) refers to "reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events" when it should read "persons or property". The Scottish Government is intending to bring forward an amendment to rectify this error, as has already been done for local government elections by [article 3\(2\)](#) of the Scottish Local Government Elections Amendment Order 2021.

Revoke legacy regulations which are no longer required (Scottish local government elections only)

- The Scottish Government is considering revoking or replacing regulations 75, 76 and 78 to 98 of the Representation of the People (Scotland) Regulations 1986 (issue of postal ballot papers and combination of polls), as far as they relate to Scottish local government elections. These regulations were superseded initially by the Scottish Local Government Elections Regulations 2002 and subsequently by the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007, but do not appear to have been revoked at that time.

The 1986 Regulations were revoked by the Scotland Office in 2001 in relation to Scottish Parliament elections but because these particular regulations still had effect at Scottish local government elections, the Scotland Office could not totally revoke them.

This action is subject to legal confirmation that these specific provisions are no longer required.