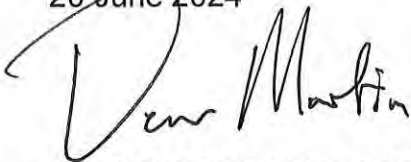


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20 June 2024



STAGE 1 REPORT - SCOTTISH ELECTIONS (REPRESENTATION AND REFORM) BILL

I am grateful to the Committee for its scrutiny of the Bill and for its detailed conclusions and recommendations in the Stage 1 Report.

I have responded to each of the recommendations in the Annex to this letter, as fully as possible at this stage. I will undertake further consideration of some of the recommendations in discussion with stakeholders.

As set out in the Annex, I am keen to keep the Committee updated with developments on these matters.

The numbered headings in the Annex refer to the paragraph numbers from the 'Summary of recommendations' section of the Report.

I note that the Report also comments on my predecessor providing a summary on 30 April of areas where the Government was considering possible secondary legislation in relation to elections. I appreciate that this letter came at a relatively late stage in the Committee's Stage 1 evidence-taking. However, I would like to stress that its central aim was to promote discussion on possible changes in electoral law that could be made in secondary legislation in 2025. As such it raises issues that are separate from the Bill, but which are clearly relevant to electoral reform. It also sought to explain why some of the measures that the Government had consulted upon in 2023 were not featured in the Bill.

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While the letter set out to explain that the Government plans to legislate on emergency proxies for the companions of those required to travel for medical appointments or treatment at short notice, I must stress that most other issues remain under consideration pending the views of stakeholders and that final decisions have not been made. For the avoidance of doubt, this includes the issue of free candidate mailings in local government elections, proxy voting for remand prisoners and replacement proxies.

Please be assured that full consultation with stakeholders will take place and we will of course come back to the Committee for comments.

Thank you again for the Committee's work on the Report and its contribution to electoral reform in Scotland.



JAMIE HEPBURN

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**ANNEX: STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE
RECOMMENDATIONS AND SCOTTISH GOVERNMENT RESPONSE**

Recommendation (numbering from Summary of Recommendations)	Committee recommendation
<p>1 and 2</p>	<p>The extension of candidacy rights at Scottish elections to foreign nationals with limited leave to remain</p> <p>The Committee supports the extension of candidacy rights to individuals with limited leave to remain. The Committee notes that some concerns were raised in evidence about the potential risk that the extension of candidacy right could be used by foreign players to undermine Scotland's electoral system. The Committee invites the Scottish Government to provide an undertaking to consider potential mitigations against such risks.</p>
<p>SG Response</p>	<p>The Government welcomes these conclusions and will consider how best to consider potential mitigations for the risks identified.</p>
<p>3 to 5</p>	<p>Disqualification</p> <p>The Committee is content with the provisions on temporary relief from the effect of disqualification which allow an individual already in elected office to have sufficient time to appeal any conviction and associated disqualification order. In relation to potential vexatious candidacy for Scottish Parliament elections, the Committee notes the reference provided by the Minister that the Elections Order offers sufficient safeguarding.</p> <p>The Committee asks the Scottish Government to keep this issue under review and to consider future amendment via primary legislation should any issues with vexatious candidacy transpire.</p> <p>The Committee also invites the Scottish Government to carry out an evaluation of the impact of the proposed changes in relation to increasing the diversity of those campaigning or standing for elected office and to the levels of abuse and intimidation that women and minority candidates experience. Should the Bill be enacted, the Committee asks that this evaluation is carried out ahead of the Scottish Parliamentary elections that would be scheduled for May 2031.</p>
<p>SG Response</p>	<p>The Scottish Government will reflect further on the question of vexatious</p>

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	<p>candidacy.</p> <p>The Government is committed to increasing the diversity of those campaigning or standing for elected office and to addressing abuse and intimidation. It conducted a survey of candidates of candidates running in the Scottish Local Government elections of 2022 and is closely following the Senedd Cymru (Electoral Candidate Lists) Bill, which seeks to introduce an integrated statutory gender quota to the Welsh Senedd's electoral system. The Bill's Equality Impact Assessment undertook to draw on a range of data sources to monitor the impact of the Bill, if enacted, including continuing to work with stakeholders to explore options to improve the availability of diversity data on candidates and those in elected office at the next set of elections. This will also include looking at the results of Electoral Commission surveys of campaigners and candidates in its post-election reports (which include specific questions on intimidation (e.g. Report on the May 2022 Scottish council elections Electoral Commission)).</p> <p>The Government agrees that an evaluation before the 2031 election would be helpful.</p>
<p>6 to 8</p>	<p>Consideration of the disqualification of MSPs and councillors who appear on the sex offenders register</p> <p>The Committee notes the support expressed by those who provided evidence for the introduction of provision to provide for disqualification of individuals who are subject to sex offender notification requirements (SONR) from being MSPs and Councillors. The Committee also notes that other legislatures in the UK have brought forward legislation to address this issue. The Committee recommends that it would be appropriate to make provision for disqualification from holding office as an MSP or local councillor in Scotland.</p> <p>While the Committee has been able to take evidence on the principle of such a disqualification, detailed scrutiny of how such provision could or should operate is not possible without sight of specific legislative proposals.</p> <p>Given the range of issues that need to be considered in making this provision within legislation, the Committee considers that it should be a matter for the Scottish Government to propose amendments to the Bill in this regard. The Committee asks the Scottish Government to confirm that it will provide draft amendments to the Committee at the earliest possible opportunity to enable the Committee to consider whether it wishes to seek additional evidence on specific proposals ahead of Stage 2.</p>

<p>SG Response</p>	<p>The Government welcomes the Committee’s agreement that it would be appropriate to provide for disqualification of MSPs and councillors who appear on the sex offenders register. The Government is actively considering potential Stage 2 amendments in this area and will endeavour to provide further detail to the Committee as soon as possible.</p>
<p>9 to 11</p>	<p>Campaign finance at Scottish elections</p> <p>The Committee agrees with the proposals in the Bill in respect of notional expenditure.</p> <p>The Committee is content that consultation by the Electoral Commission on the code of practice for third party campaigners would be with the Parliament, rather than a designated committee. The Committee notes existing Standing Order provisions set out a process to be followed where an enactment contains provisions in relation to consulting the Parliament.</p> <p>The Committee also recommends:</p> <ul style="list-style-type: none"> • that the Electoral Commission should be consulted before Scottish Ministers add a category to the list of third party campaigners required to register with the Commission. • that the Scottish Government should undertake work with relevant stakeholders to consider how the range of campaign expenses could be increased to support increased diversity in candidates for elected office, such as, but not restricted to, childcare costs. • that, in relation to restrictions on spending by overseas third party campaigners, the Scottish Government provides further information as to how it intends such restrictions to be enforced. • that the Scottish Government undertakes further work with stakeholders to bring the reporting regime for Scottish Parliament elections into line with the regime for UK Parliament elections.

<p>SG Response</p>	<p>The Government welcomes the Committee’s agreement on proposals regarding notional expenditure. On consulting the Electoral Commission before adding a category of third-party campaigner, the Government is actively considering a potential Stage 2 amendment to this effect. The Government will reflect on whether changes to the rules around campaign expenses could support increased diversity for candidates, and will consider whether any changes in this area are appropriate. The Government will engage further with the Electoral Commission on enforcement of spending by overseas third party campaigners, and will provide an update to the Committee.</p> <p>On bringing reporting for Scottish Parliament elections in line with the UK regime, the Government is sympathetic to the argument that the requirement for UK Parliament elections to submit weekly reports on donations, loans and spending to the Electoral Commission should be adopted for Scottish Parliament elections. However, discussion with the Electoral Commission has highlighted the complexity of making a change in this area. In particular for political parties operating across the UK it would be difficult to establish if a donation was in respect of the Scottish Parliament election rather than another election held elsewhere in the UK. The issue will be considered further.</p>
<p>12 to 14</p>	<p>The rescheduling of elections</p> <p>The Committee welcomes the consideration that has been given to providing greater flexibility in relation to the rescheduling of Scottish elections.</p> <p>The Committee notes the concerns that have been raised by electoral administrators in relation to the minimum period of postponement for Scotland wide local authority elections should be increased from two weeks, as set out in the Bill at present, to four weeks.</p> <p>The Committee recognises and emphasises the importance of clarity and transparency in relation to any decisions to reschedule elections. The Committee considers that the provisions in the Bill could be strengthened by the addition of a requirement for a statement of reasons to be published where a decision is taken on rescheduling. The Committee considers that amendments to the Bill in this regard are important measures to ensure wider understanding and command confidence in relation to any decision to reschedule an election and welcomes the indication in the Minister’s letter of 16 May 2024 that the Scottish Government is open to considering whether the Bill should be amended.</p>

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<p>SG Response</p>	<p>The Government welcomes the Committee’s comments on emergency rescheduling of elections in Scotland. The Government has previously noted its openness to further consideration of the minimum period of postponement for local government elections and is actively considering a Stage 2 amendment which would increase this to four weeks. The Government also recognises the importance of transparency around any rescheduling of elections, and is minded to bring a Stage 2 amendment which would make provision for a statement of reasons to be published in such situations.</p>
<p>15</p>	<p>Election pilots and the democratic engagement fund</p> <p>The Committee is largely content with the provisions in the Bill in relation to election pilots and the establishment of a democratic engagement fund. The Committee notes that there will be a balance to be struck between the increased opportunity to suggest pilots and having multiple pilots running at a single poll. The Committee understands that the EMB are the experts in this area and they would be consulted prior to any pilot. To add to the provisions in the Bill, the Committee asks the Scottish Government to:</p> <ul style="list-style-type: none"> • clarify what mechanisms will be put in place to ensure that clear objectives are set for any election pilots and for evaluation of any pilots (in addition to the evaluation that the Electoral Commission is required to carry out) • confirm that the Electoral Commission will be added to the list of bodies to be consulted on proposed election pilots • clarify that voter registration, including automatic voter registration, can be the subject of an election pilot • consider the evidence from the Electoral Commission in relation to the Commission’s plans to establish a fund to support democratic engagement and indicate how it might work with the Commission to ensure best use of each fund • confirm if the Minister will be making a case for funding to be allocated to the democratic engagement fund in the next budget round and whether the funding requested would be for £300,000, • further clarify how monies from the democratic engagement fund would be distributed.



<p>SG Response</p>	<p>The Government welcomes the Committee’s conclusions. It will engage with the Electoral Commission on these points and provide further detail to the Committee.</p> <p>Stage 2 amendments to add the Electoral Commission as a statutory consultee for electoral innovation pilots and to ensure pilots can encompass electoral registration changes are being actively pursued.</p> <p>Funding for democratic engagement grants will be considered carefully as part of the budget process and the figures involved discussed with the Electoral Commission.</p>
<p>16 to 18</p>	<p>Digital imprints</p> <p>The Committee is generally content with the proposal in the Bill around digital imprints and accepts having one regime in place with a ‘bolt on’ for Scottish elections is likely to be easier for candidates and campaigners to navigate. The Committee are aware of the very complex and evolving nature of digital media and the need for imprints. The Committee highlights the following specific issues and asks the Scottish Government to address them in responding to the Committee’s report:</p> <ul style="list-style-type: none"> • the Scottish Government's intentions in relation to monitoring use of the 'reasonably practicable' caveat in relation to digital imprints • how the Scottish Government intends to support the Electoral Commission, which has enforcement powers only in the UK, in regulating the digital imprint regime in relation to material from overseas • what the Scottish Government's view is on how the accessibility of digital imprints can be improved for those who use screen readers and whether there is any work underway with stakeholders to consider this issue. <p>The Committee also seeks clarity from the Scottish Government on section 41 of the Bill in light of the concerns raised by Police Scotland and the Electoral Commission regarding any requirement for the police to have to take into account guidance issued by the Electoral Commission when investigating a breach or alleged breach of imprint requirements.</p> <p>In relation to the question posed by the Electoral Commission as to how the statutory guidance on digital imprints it is required to publish under the Bill relates to that which already exists for the</p>

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	Elections Act 2022, the Committee asks the Scottish Government to confirm what further exploration of this issue it has undertaken.
SG Response	<p>The Government welcomes the Committee’s comments.</p> <p>In relation to the concerns raised over the ‘reasonably practicable’ wording it is important to note that scope for change in this area is restricted as we are working within the constraints of the new UK Elections Act regime. The requirement is to display the imprint as part of the material or in a location that is directly accessible from the material only where that is not reasonably practicable. The information that is required to be embedded within the electronic material is the name and address of the promoter of the material and any person on behalf of whom the material is being published (and who is not the promoter). This means that in all cases there must be something on the election material containing a signpost to the imprint information.</p> <p>The Government is discussing the issues raised around guidance with the Electoral Commission and Police Scotland. An amendment to remove the statutory requirement for the police to take account of Electoral Commission guidance on digital imprints, might be taken forward contingent on the outcome of those discussions.</p>
19 to 20	<p>The revision of the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers by 30 April 2031</p> <p>The Committee is content with the proposed revision extend the deadline for Boundaries Scotland to submit its next report on council wards and councillor numbers from 31 December 2028 to 30 April 2031.</p> <p>The Committee welcomes the Scottish Government’s commitment that automaticity is the way forward and invites them to set out the details of their proposals and timetable in relation to automaticity before Stage 3.</p>
SG Response	<p>The Government welcomes the Committee’s agreement to the revision of the deadline for Boundaries Scotland to submit its next reports on local government electoral arrangements.</p> <p>The Government will write separately to the Committee to provide further details on potential changes to the approval process for recommendations made by Boundaries Scotland.</p>

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21	<p>The requirement for the Electoral Commission to prepare a five-year plan in respect of its devolved functions, which is to be scrutinised by the Scottish Parliamentary Corporate Body</p> <p>The Committee is content with the provisions in the Bill in relation to the scrutiny of the five-year plan for the Electoral Commission's devolved functions in Scotland, including that it would be for the Electoral Commission rather than the SPCB to have the final view on what should be included in the plan.</p>
SG Response	<p>The Government welcomes the Committee's agreement with the provisions on scrutiny of the Electoral Commission's devolved functions.</p>
22 to 25	<p>The Electoral Management Board for Scotland as a body corporate and the establishment of the post of deputy convener</p> <p>In principle, the Committee welcomes and supports the establishment of the EMB as a body corporate. However, the Committee regrets that important detail regarding the constitution, accountability and remuneration of the EMB were not included in the Bill as introduced.</p> <p>The Committee notes that work is ongoing in relation to the development of a Schedule to the Bill that will provide information on the constitution of the EMB. It may be the case that that Committee considers that it is necessary to seek additional evidence on the proposed Schedule to inform its consideration at Stage 2. The Committee considers that the Bill should make provision for there to be two deputy conveners of the EMB.</p> <p>The Committee also has concerns regarding the identification of funding to enable the EMB to carry out its functions. The Committee seeks reassurance that confirmation of the funding arrangements will be set out in full in advance of consideration of any amendments to the Bill at Stage 2.</p> <p>While the Committee expects to receive comprehensive information regarding the establishment of and funding for the EMB in writing, it also asks the Scottish Government to provide an update on these matters during the Stage 1 debate.</p>
SG Response	<p>The Government welcomes the Committee's in principle agreement in favour of the proposed changes to the structure of the EMB. It confirms that work is ongoing to prepare detailed provisions outlining the changes to the constitution of the EMB. The Government will provide an update on this work to the Committee in time for it to consider whether it wants to seek additional evidence on this area.</p> <p>In relation to Deputy Conveners, there appears to be agreement that only one Deputy Convener should be able to issue formal directions if</p>

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	<p>the Convener is indisposed or unable to act. The Bill's provisions are focused on the legal power of a deputy to issue directions in the absence of the Convener. There was never any intention to prevent the appointment of other deputy conveners without that power of direction. The Government will consider ways in which this position can be made clear.</p> <p>As set out in the Bill's Financial Memorandum a source for additional EMB funding beyond the current £200K per annum has not currently been identified. No obligation is created in the Bill for paid office holders to be established. The Government intends to consult further with COSLA and others on possible sources of additional funding for the EMB, but at present the changes made by the Bill will not directly result in the additional cost identified in the Memorandum. This is because they are enabling changes: the Bill does not require paid postholders or other expenditure to be incurred.</p>
<p>26 to 30</p>	<p>Correspondence from the Scottish Government on secondary legislation</p> <p>The number of issues that the Scottish Government plans to take forward via secondary legislation is significant. The Committee notes that some indication was given of matters that the Scottish Government was likely to propose to address via secondary legislation in its response to the independent analysis of the Electoral Reform Consultation, but that the Committee received no further indication of the Scottish Government's thinking on these issues until after its evidence with stakeholders was concluded. As such, the Committee has only been able to hear a limited range of views on some of these matters during Stage 1. It would have been helpful to the Committee to have received the letter in relation to secondary legislation at an earlier point in its scrutiny as this may have afforded us the opportunity to hear views from relevant stakeholders and to make recommendations.</p> <p>The Committee was copied into a letter to the Minister from the Convener of the EMB dated 28 May 2024, on matters the Scottish Government plans to address via secondary legislation. The letter is of concern to the Committee as it appears to reflect that consultation has not been undertaken with key stakeholders.</p> <p>The Committee asks the Scottish Government, at the earliest possible opportunity as a matter of urgency, to provide full details of:</p> <ul style="list-style-type: none"> • previous, current or planned consultation with stakeholders in relation to each matter that it has indicated it intends to take forward by secondary legislation • a list of stakeholders consulted on each matter

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	<ul style="list-style-type: none"> • the timeline for analysis of any such consultation to be prepared and final policy decisions reached. <p>The Committee would like to know when it can expect to receive this information, including any consultation analysis and final policy proposals. It should be noted that the Committee, asks for this to be in reasonable advance of any secondary legislation being laid.</p> <p>The Committee would also ask for clarification on when the Scottish Government anticipates laying relevant secondary legislation (whether that outlined in the Minister’s letter or other necessary secondary legislation) in advance of the next Scottish Parliament election. The Committee expects that the Gould principle – that any legislation is in place at least six months prior to the first electoral event to which it applies – will be respected.</p>
SG Response	<p>The Government plans to write to electoral stakeholders on possible secondary legislation changes shortly and will provide the Committee with a copy of this correspondence and list of recipients. Comments will be requested by early August.</p> <p>Government officials have already written to the Electoral Management Board for Scotland to address one of the points raised in its letter of 28 May. This concerned the possible change to the dissolution date for the Scottish Parliament ahead of a scheduled Scottish Parliament General Election. Officials have clarified to the EMB that 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 the 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.</p> <p>It is planned to bring forward secondary legislation relevant to the May 2026 Scottish Parliament election in full compliance with the Gould Principle.</p>