

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	SSIs prepared for the 2022 Scottish Local Government Elections
Summary of aims and desired outcomes of Policy	These Scottish Statutory Instruments (SSIs) will update the law ahead of the 2022 Scottish Local Government elections, ensuring that these electoral events (and any subsequent Local Government by-elections) are run efficiently and with a focus on the needs of the voter.
Directorate: Division: team	Directorate for Constitution and Cabinet: FOI and Elections

Executive summary

The SSIs specified below update the law on running Local Government elections ahead of the next scheduled elections in May 2022. These are largely administrative measures designed to keep electoral law up-to-date and ensure the rules around the administration of electoral events keeps pace with changes brought in by primary legislation and wider factors such as standards in other parts of the UK.

While most of these measures do not have a direct impact on the community at large, including those with protected characteristics, they are designed with a focus on the needs of the voter. Some measures, specified below, will have a positive impact on communities with protected characteristics, directly or indirectly making it easier for them to participate as candidates, access electoral data and vote.

Background

Updates to the rules for running elections are required as part of the regular review of electoral policy. This is partly to keep pace with wider

developments in legislation in this area, but also to ensure that the regulations which guide electoral administrators and participants are clearly defined and reflective of the needs of voters and candidates.

The rules on the 2022 Scottish Local Government elections will be set out in the following instruments:

- The Scottish Local Government Elections Amendment Order 2021
- The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2021
- The Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2021
- The Representation of the People (Variation of Limit of Candidates' Local Government Election Expenses) (Scotland) Order 2021

The following Commencement Orders, which bring in to force provisions of previous primary legislation which are related to the context of Local Government elections in Scotland, will be laid before Parliament at the same time as the above SSIs.

- The Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 6) Order 2021
- The Scottish Elections Reform Act 2020 (Commencement No. 3) Order 2021

The majority of developments within these SSIs are aimed at the administration of elections, and do not have direct practical application for the voter themselves. However, some provisions will widen the options for voters and increase accessibility.

The proposed changes have been developed in consultation with key stakeholders: the Electoral Commission, The Electoral Management Board for Scotland (EMB), the Scottish Assessors Association (SAA), COSLA and the Association of Electoral Administrators (AEA). Officials have also consulted the Scottish Parliament Political Parties Panel (SPPPP).

The development of these SSIs was also informed by learning from the Scottish Parliament election on May 2021, and responses to the EQIA conducted for the legislation which underpinned that electoral event¹.

The Scope of the EQIA

The EqIA has assessed the potential impact of the SSIs by considering whether the equality evidence indicates potential differential impacts on persons with protected characteristics or provides an opportunity to improve equality in an area. In line with the requirements of the general equality duty, it considers the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a relevant protected characteristic and those who don't; and
- foster good relations between people who share a relevant protected characteristic and those who don't.

The measures outlined in the SSIs include some that are administrative in nature and which the Scottish Government does not consider to have an equality impact. Few have direct impact on the wider population and most do not have scope to apply differently to those with protected characteristics.

The EqIA has focussed on the following measures in the SSIs, that could have differential impacts on protected characteristic groups (note that most of these measures were specifically developed to widen access):

- Exclusion of certain items from expenditure
- Advertising that candidates' expenditure returns are available for inspection
- Deadlines for replacement of spoilt or lost postal ballot papers
- Emergency proxies

¹ <https://www.gov.scot/publications/scottish-general-election-coronavirus-bill-equality-impact-assessment-results/pages/1/>

The following protected characteristics have been considered in the EqIA²:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Key Findings

Taken together, the SSIs promote the principles of equality by seeking to ensure that the rules on running Local Government elections are clear and up-to-date, and that every eligible person who wishes to vote is able to do so safely. Specific provisions of the instruments also have direct positive impact on the accessibility of elections for both voters and candidates.

Review of the provisions of the instruments, alongside evidence gathered as part of this EQIA, suggests the following areas where the measures in the SSIs, if enacted, may have a positive or negative differential impact on some protected characteristics, or where the implementation of the measures would provide opportunities to advance equality of opportunity between people who share a relevant protected characteristic and those who do not:

- **Exclusion of certain items from expenditure - Exclusion of costs incurred in connection to security, adapting campaign materials for those with disabilities and translation into different languages**

We have assessed that this policy has an positive impact - this change in rules allows political parties and candidates to choose to spend more on making their campaigns more accessible to these groups. The policy advances equality and can be used to eliminate discrimination or foster positive relations with people with these protected characteristics by

² The Scottish Government does not require assessment against the 'marriage or civil partnership' protected characteristic unless the policy or practice relates to work, for example HR policies and practices

making it easier to provide campaign materials to protected groups. We would note that the impact may be indirect, as it is still down to parties and candidates to spend in these areas, though the exclusion from spending limits may encourage such activity. Follow-up after the elections on how this expenditure exclusion is used may be helpful in understanding the impact of the policy.

As this policy has an indirect impact, relevant data is slightly hard to define at present. We have utilised available data in the production of this report, and note that upcoming Electoral Commission reports on the 2021 Scottish Parliament election (not available at date of writing) will include specific consideration of impact on voters with disabilities which will expand the available data to help assess the effect of this policy in the longer term.

The proportion of minority ethnic people and foreign nationals who may have difficulty understanding election communications or completing English language forms is not known - data on English language skills is available from the 2011 Census, but is now 10 years old. The 2011 data showed that, in 2011: 2% of adults aged 16 and over in Scotland could understand but not speak, read or write English; 1% could speak but not read or write English; and 1% could speak and read but not write English.

- **Advertising that candidates' expenditure returns are available for inspection - Introducing a requirement for Returning Officers to advertise the availability of the expenditure returns.**

This provision would allow the Returning Officer to advertise availability of returns for inspection in such manner as the Returning Officer considers appropriate, which can expand current approaches to include online media and other methods of awareness raising. We assess that this measure will have a positive impact – the new requirement promotes greater awareness of this material in the wider community, which can promote inclusion from wider range of voters, including those in traditionally harder to reach groups including young people and foreign nationals.

To ensure positive impact when deciding appropriate advertising approaches, we suggest that administrators ensure that media selected for publication is accessible to different groups. In particular, it is

important to be mindful that availability does not become ‘digital by default’, and that hard copy equivalents are available for those groups with little or no access to the internet.

- **Deadlines for replacement of spoilt or lost postal ballot papers - deadline for replacement of lost or spoilt postal ballot papers changed from 5pm to 10pm on the day of poll.**

As the new deadline provides more time for voters to replace ballots, which may be of particular help to those who traditionally face accessibility barriers such as older voters or those with disabilities, we assess this measure as having a positive impact.

More time available may reassure those who have concerns about attending during busy periods at offices and polling stations. Some voters, especially those with disabilities or older people, may need more time and support from electoral administrators to replace their ballots.

As part of their general duties, administrators will ensure offices and polling stations are accessible during these hours.

- **Emergency proxies - extending the availability of emergency proxies to those who suffer a disability before the period in which applications for an emergency proxy should be made, but who are unable to apply until during the application period.**

The new eligibility provides greater flexibility to voters, in circumstances where an unexpected occurrence would have previously prevented their participation. This may be of particular help to those who traditionally face accessibility barriers, specifically older people and people with disabilities, or those who find themselves in difficulty before the deadline. It is designed to widen access, especially in unexpected circumstances which prevent a voter from participating in their usual fashion, so the measure will have an overall positive impact on those with protected characteristics.

Wider Impact of the SSIs on Persons with Protected Characteristics

Officials have also assessed the potential impact of the SSIs as a whole on particular groups below.

Age

Around one in seven (14%) people in Scotland are aged 70 and over, two-fifths of people (40%) are aged 50+, and 11% are aged 16-24³.

Aside from those outlined above, no further impacts have been identified for this group.

Disability

Over a third (35%) of adults in Scotland live with limiting long-term conditions with women more likely than men to do so (37% compared to 32% respectively)⁴. The proportion of adults living with limiting long-term conditions increases with age. Just over a fifth (22%) of those aged 16-24 live with limiting long-term conditions, compared with almost three-fifths (58%) of those aged 75 and over

The most recent available data on the number of people registered as blind or partially sighted in Scotland is from 2010, when the number was estimated to be 34,492. The majority, 55 per cent, of those on the register were blind, 45 per cent were partially sighted. Three in five (61%) were female, two in five (39%) were male, and three-quarters (75%) of those registered were over the age of 65. A third of those registered as visually impaired had additional disabilities (32%, 11,158 people)⁵.

Aside from those outlined above, no further impacts have been identified for this group.

Gender reassignment

The EqIA has not found evidence to suggest that the instruments will have a differential impact on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex.

³ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/population/population-estimates/mid-year-population-estimates/mid-2019>

⁴ Scottish Health Survey 2019: <https://www.gov.scot/publications/scottish-health-survey-2019-volume-1-main-report/pages/4/>

⁵ <https://www.gov.scot/publications/registered-blind-partially-sighted-persons-scotland-2010/>

It should be noted that many of the surveys and data sources do not include questions on a person's trans status or provide a non-binary response to the sex/gender question.

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of gender reassignment. The need to eliminate discrimination, advance equality and foster good relations has however been fully considered.

Pregnancy and maternity

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of pregnancy and maternity status. The need to eliminate discrimination, advance equality and foster good relations has however been fully considered.

Race

Around 5%, or one in twenty, of Scotland's population self-identified as a non-white minority ethnic group in 2018. The remaining 95% of the population identified as white with over three quarters (77%) identifying as 'White: Scottish', 12% identifying as 'White: Other British', 2% identifying as 'White: Polish' and 5% as 'White: Other'. The protected characteristic of race includes nationality⁶. The Scottish Elections (Franchise and Representation) Act 2020 extended the franchise in Scotland to all foreign nationals with leave to remain in Scotland.

The measures of the SSIs are designed to positively affect the entire population, but as outlined above specific provisions may be of particular benefit to those whose primary language is not English. The need to ensure effective and inclusive communications around the proposals will be fully explored to ensure that the measures meet the tests of advancing equality and fostering good relations with respect to race.

Religion or belief

In 2018, 46% of the adult population in Scotland reported belonging to a Christian (Church of Scotland, Roman Catholic and Other Christian) religion, 1.6% Muslim, and 1.9% another religion. Just over half of adults in Scotland (50.1%) reported not belonging to a religion.

⁶ Section 9 of the [Equality Act 2010](#)

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of religion or belief. The need to eliminate discrimination, advance equality and foster good relation has however been fully considered.

Sex

Just over half (51%) of Scotland's population are women. The ratio of women to men is higher in older age groups, reflecting women's longer life expectancy.

There is no evidence available at this time to suggest that these proposals will have a disproportionate impact on the basis of sex. The need to eliminate discrimination, advance equality and foster good relation has however been fully considered.

Recommendations and Conclusion

The measures in these instruments, particularly those outlined specifically above, are designed to ensure that accessible, safe and secure Local Government elections can proceed as planned in 2022. This includes specific policy approaches which are aimed at addressing potential barriers to participation for voters and candidates with protected characteristics.

As noted above, indirect impacts are minimal, though some voters with protected characteristics may not receive the full benefit of these measures if they are in very specific circumstances related to availability of support from administrators in their area. We recommend that administrators continue to exercise their best judgement in the provision of services to ensure maximum benefit to all voters, including ensuring that communications and avenues to apply for proxies are not 'digital by default' and that support and access is available where possible.