

## **The Scottish Elections (Representation and Reform) Bill**

**Written submission from Professor Toby James and Dr Holly Ann Garnett**

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The Electoral Integrity Project is an independent academic project which produces innovative and policy-relevant research comparing elections worldwide. The Project is housed at the Royal Military College of Canada/Queen's University and the University of East Anglia.

This submission argues that it is necessary to identify the strengths and weaknesses of the Scottish elections to consider whether the Bill is addressing key weaknesses. This submission of evidence therefore describes election quality in Scotland in a comparative context before discussing some of the key proposed amendments in the Bill. The key recommendations and findings are that:

- Elections in Scotland are strong and electoral integrity is high compared to other countries around the world.
- One area of weakness is voter registration. The Bill is a missed opportunity to adopt assisted and automated voter registration which is being taken up in Wales – and which there is support across the UK.
- Other measures in the Bill will improve election quality and the committee is encouraged to support.

### **Election Quality in Scotland**

The Bill has to be considered in the context of a wider assessment of election quality in Scotland. It is therefore necessary to consider what the strengths and weaknesses of Scottish elections are in order to understand whether the Bill is addressing any critical weaknesses in Scottish elections. We have collected data on election quality around the world – including across the UK – which enables the strengths of weaknesses of Scottish elections to be identified. This data is called the Perceptions of Electoral Integrity ('PEI') dataset.

The PEI dataset is based on a survey of academic experts about the quality of elections in each country. The evaluation of Scottish elections are therefore based on the views of experts on Scottish elections. The PEI dataset provides an overall score for each election, ranging from 0 to 100, as well as comparative rankings of countries based on these scores. We have recently collected data on election quality at the 2021 Scottish Parliamentary elections, alongside elections in Wales and Northern Ireland. Provisional results are presented in this evidence submission.

Overall, elections at the 2021 Scottish Parliamentary elections scored 74 out of 100. When compared to other countries around the world (Garnett et al. 2023), Scotland is placed joint at 25<sup>th</sup>. Election quality is therefore strong, and befitting a full democracy. Scotland broadly has elections to be proud of.

Like all countries, there are some aspects of the electoral process in Scotland which are stronger than others. The Electoral Integrity Project also compiles sub-indexes for different parts of the electoral cycle. Figure 1 demonstrates that the strongest parts of the electoral process in Scotland are the results, counting, electoral authorities ('EMBs') and procedures stages. The weakest areas are voter registration, campaign

finance and the media. Scotland is not alone. These are also the weakest aspects of elections globally.

The weakest scores were for the following sub-areas:

- Voter registration completeness
- Parties/candidates had equitable access to political donations
- Parties/candidates had equitable access to public subsidies
- Newspapers provided balanced election news
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Figure 2 compares the scores in Scotland to elections for the Northern Ireland Assembly, Welsh Senedd and UK Parliament. Scotland scores marginally higher on the aggregate index (PEI Index) and there is no aspect of the cycle where Scotland is weaker.

The Bill is nonetheless a welcome opportunity to strengthen and protect electoral integrity in Scotland in light of the challenges that many countries are facing.

It is notable that voter registration is an area of weakness across the UK. There are well-documented problems with the underlying levels of completeness and accuracy. It is estimated that Scotland’s registers were only 81% complete in 2022 and that this had declined by 2% since 2018 (Electoral Commission 2023). The policy solution for this is a move to assisted and automated voter registration – where citizens can register at other government services (James and Bernal 2020). Countries which have assisted and automated voter registration have higher levels of accuracy and completeness (James and Garnett 2023b). The Welsh government has responded to this challenge by moving to automatic voter registration and there is now support from the Electoral Commission (Electoral Commission 2023) and various UK Parliamentary committees. It is therefore strongly recommended that this taken forward in the Bill since it was part of the initial consultation.

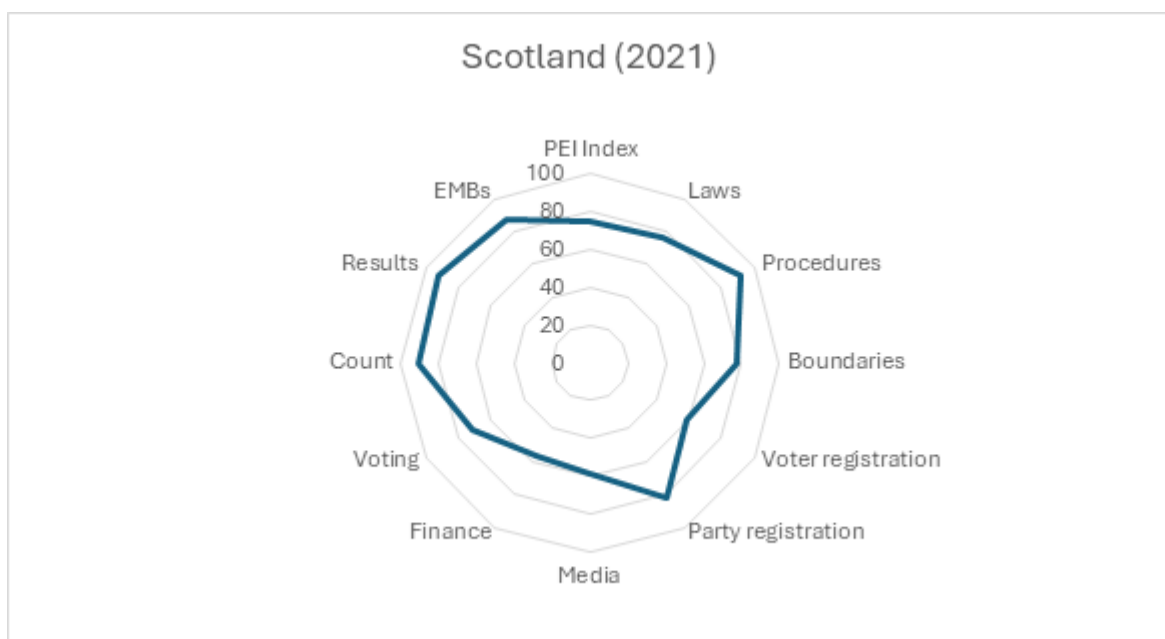


Figure 1: Election quality at the Scottish Parliamentary Elections 2021

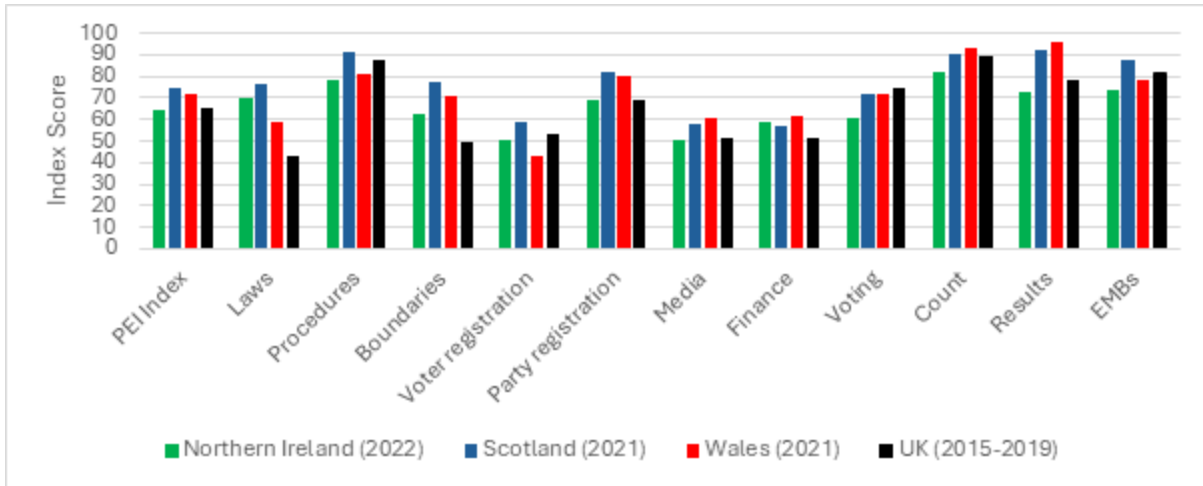


Figure 2: Election quality at recent elections across the UK

### The Disqualification Criteria for MSPs

Violence, intimidation and harassment are becoming growing problems around the world in elections, as countries have become more polarized (James and Garnett 2023a). This can make elections harder deliver. Although elections in Scotland and the UK have been relatively free of such problems (James and Clark 2020a, b), measures to disincentivise are worth adopting.

The Bill proposes extending the disqualification criteria for MSPs and councillors to prevent those subject to a disqualification order under the Elections Act 2022 from standing for five years. This would be an appropriate and relevant measure.

### Campaign Finance

The Bill proposes that candidates and agents should be accountable for notional expenditure only where they direct it and restricts those who can operate as a third-party campaigner in devolved elections. The Bill also proposes enabling the Electoral Commission to prepare a code of practice in relation to the operation of the provisions as they concern devolved Scottish elections.

Generally, these provisions stand to increase the transparency of campaign finance which could improve future elections in Scotland. They do not, however, address the weakness identified in our expert survey with respect to equitable access to political donations and public subsidies.

Requirements to include imprints for digital campaign materials are much needed reforms as election campaigning is increasingly a digital campaign.

### Delaying Elections

The COVID-19 pandemic presented an unprecedented challenge for running elections. Unfortunately, given rising challenges presented by climate change, emergencies may be on the increase. It is therefore necessary for policy makers to take proactive steps to protect elections. Making clearer provisions for postponement was a key recommendation of a recent international study examining the practices undertaken in the pandemic (James, Clark, and Asplund 2023).

Increasing the Presiding Officer's power to delay Scottish Parliament elections, and by-elections, in emergency situations is an important step to ensure that Scottish elections are prepared for any future emergencies. The experience of the pandemic was that countries fared better where these decisions were made on a cross-party basis which maximised input from stakeholders. Otherwise, there can often be accusations that the date is being changed for partisan reasons. The convenorship of an 'electoral council' into which leaders of respective political parties and electoral officials under the chairmanship of Presiding Officer is therefore recommended.

### **Electoral Pilots**

Electoral pilots are an important way in which ideas can be tested to improve elections. They have helped to establish the (un)viability of changes to electoral law such as postal voting and internet voting in the past (James 2011).

There are a variety of pilots which could be introduced to increase voter turnout, registration rates – or to respond to evolving threats to elections. The measures are therefore welcome. Ensuring that bodies such as the Electoral Commission, Electoral Management Body for Scotland and other electoral organisations are involved in the consultations is important to ensure that ideas are sound-boarded before being piloted. However, there is scope to include a wider set of stakeholders such as academics and civil society groups to assist with the evaluation of the pilots and provide ongoing ideas for pilots.

### **Electoral Management Body for Scotland**

The Bill proposes to make the Electoral Management Board for Scotland an organisation that is formally constituted in law with certain obligations. It is important to note that elections have been delivered successfully in Scotland and that evidence has suggested that the EMB has played a significant role in this (James and Clark 2020a). Giving the organisation a clearer legal standing, however, is welcome.

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