

Deputy First Minister
and Cabinet Secretary for Finance, Constitution and Economy
John Swinney MSP

T: 0300 244 4000
E: dfm@scotland.gsi.gov.uk

Bruce Crawford MSP
Convener
Devolution (Further Powers) Committee
Scottish Parliament
EH99 1SP



7 June 2015

SCOTTISH ELECTIONS (REDUCTION OF VOTING AGE) BILL: RESPONSE TO THE STAGE 1 REPORT AND ISSUES RAISED IN THE STAGE 1 DEBATE

Thank you for the Committee's detailed scrutiny of the Bill so far and for its comprehensive Stage 1 Report. In particular, I am grateful for the Committee's support for the general principles of this important Bill, and the constructive way in which it has considered this legislation and the issue of votes for 16 and 17 year olds more generally.

My comments during the Stage 1 debate on the Bill on 28 May set out the Scottish Government's response to the Committee's findings. I have lodged a number of amendments in the past few days, picking up on some of those points, for example in relation to political donations and jury selection. I am still considering the most appropriate way forward in relation to the calls made by some witnesses to extend the duty on local authorities at section 15 of the Bill in relation to young people formerly looked after by a local authority, who are in receipt of aftercare services, or who are in continuing care. Like the Committee, I have some sympathy with organisations such as the Centre for Excellence for Looked After Children in Scotland (CELACIS) on this point, but agree with the Committee the importance of taking a proportionate and practical approach. That is why Scottish Government officials are currently in discussion with COSLA about the best approach. I will report back to the Committee on the outcome of those discussions as soon as possible.

In parallel with considering amendments to the Bill, the Scottish Government is also progressing issues which do not require legislation - such as the interesting points made by the committee in relation to political literacy education, and children with additional support needs - for further consideration. I would be happy to update the Committee on these in due course.

There are a couple of specific points raised in the Stage 1 Report and debate that I would like to follow up here. During the Stage 1 debate, I undertook to provide further information to the Committee ahead of Stage 2 on the registration deadlines arising from the Scottish Elections (Reduction of Voting Age) Bill.

I also said that I would check again the data protection and child protection arrangements set out in and underpinning the Bill, to ensure that we can all be satisfied that the correct procedures are being put in place. I trust that the information below will be helpful to the Committee, and look forward to discussing the Bill's provisions further during the remaining Parliamentary stages.

Registration Deadlines

In its written evidence to the committee, the Electoral Commission queried the interpretation of the Bill in terms of the registration deadline for those aged under 16. The Bill removes the requirement, where an application has been made by someone under the age of 16, for that application to register and any objection to it to be made available for inspection during five full days. The Electoral Commission queried whether that would make the registration deadline later for those aged under 16.

As I indicated during the Stage 1 debate, Scottish Government officials have been discussing this issue with the Electoral Commission. I undertook to update the committee on the outcome of those discussions.

It might be helpful if I explain the provision more fully. The relevant section of the Scottish Elections (Reduction of Voting Age) Bill is section 5(4), which disapplies regulation 28 of the Representation of the People (Scotland) Regulations 2001, removing the requirement for a 14 or 15 year old's application details to be *published*. While that could of course make objections more difficult to lodge, it does not prevent them. The application by a 14 or 15 year old would still be entered on the list of applications kept under regulation 29(2)(a), but that part of the list would not be published. There would still be a period of five working days during which any objections could be made and the application cannot be determined until that period has passed without any objection being made, or until any objection made in that period has been considered. The overall timeframe would therefore be unaltered. The same approach was taken in the Scottish Independence Referendum (Franchise) Bill in relation to the Register of Young Voters.

Following discussion with Scottish Government officials, the Electoral Commission has now indicated that it is content with this interpretation and that the registration deadline in the period before a poll will be the same for those aged under 16 as it is for older voters, i.e. the latest date for an application to register is 12 days before a poll.

Protection of Information

The issue of protection of information on young voters was the subject of some discussion during the Stage One debate, and I undertook to reflect on the Bill's provisions in the context of remarks made by Jackie Baillie and others during that debate.

As I explained to the Committee during its evidence session, the proposals contained in the Bill build on existing electoral and registration practice as far as possible, and seek to balance that with maintaining the integrity of the electoral system and treating data on the youngest voters – i.e. those aged under 16 - with greater sensitivity.

It might assist if I remind the Committee of the arrangements for the referendum. As the referendum was a single electoral event, the Scottish Independence Referendum (Franchise) Act 2013 only needed to provide for the collection of information on those 15 year olds who would be 16 by 18 September 2014. The Scottish Elections (Reduction of Voting Age) Bill however needs to put in place arrangements for the collection and use of

data to ensure that 16 and 17 year olds are able to vote in any election or by-election that takes place after Spring 2016. That means that, just as information of 16 and 17 year olds needs to be collected at present to ensure people can vote as soon as they turn 18, information on 14 and 15 year olds needs to be collected to reflect the lowering of the voting age. The collection of data cannot be more limited without potentially risking some eligible 16 year olds being unable to vote.

Similarly, and in light of the fact that the Parliament did not have any powers to alter the local government register for the referendum, it made sense to create a separate Register of Young Voters for that poll. Only 16 and 17 year old attainers (i.e. those who would turn 18 within the life of the register) could be placed on the local government register. Younger 16 year olds not eligible to be placed on the local government register were placed on the Register of Young Voters, along with those 15 year olds who would be 16 by the date of the referendum. The restrictions placed on access to data on those on the Register of Young Voters were almost identical to those provided by this Bill.

Shortly before the referendum, the Register of Young Voters was merged with the local government register to create a polling list, which only returning officers and their staff, the two campaign organisations and the Electoral Commission were entitled to see. Again, the access restrictions, and the restrictions on how the data was displayed and used was almost identical to those provided by this Bill.

As I say, the arrangements are very similar to those for the referendum, and aim to create the same overall effect, but the different powers granted by the Section 30/63 Order afford opportunities to do things slightly differently, and to act on lessons learned. In addition, the fact that this is a permanent reduction in the voting age and the transition across the UK to a system of Individual Electoral Registration mean that a different approach is required in some areas. Where changes make sense for the elector and electoral administrators and the elector, we have made them.

The child protection and data protection arrangements provided for by the Bill are central to the arrangements. Ultimately, the registration details of 14 and 15 year old voters will only be visible to Electoral Registration Officers (EROs) and their staff, the individual themselves, or for the purposes of a criminal investigation or proceedings in relation to an electoral offence. No information on 14 or 15 year olds will appear on any version of the electoral register that is published or otherwise made available. The only exception to this is the version of the register which will be supplied to those who need it around six weeks before an electoral event. That version of the register – which will be supplied only to returning officers, the Electoral Commission and candidates – will by necessity have to contain the details of a very small number of 15 year olds who will turn 16 by the date of the electoral event so that they will be able to vote. It will not contain anything that would indicate the date of birth of anyone aged under 16 (so this youngest group will not be separately identifiable from other voters), and access will be subject to offences for any unauthorised use (i.e. any use other than for electoral purposes, or any unauthorised sharing of the data).

Notwithstanding the stringent rules around this, there are of course still circumstances in which, to ensure even greater security, a young person should be able to register to vote without disclosing their name and address. Normal arrangements for making an application through a 'declaration of local connection' (where an individual does not use their current address to register) or registering anonymously will apply to those aged under 16, with certain enhancements to reflect the particular needs of this younger group of voters.

The versions of the Household Enquiry Form and Invitation to Register used in Scotland will be modified to point individuals towards their Electoral Registration Officer if they have any concerns for their safety.

In developing our proposals on protection of information, the Scottish Government was careful to ensure we took advice from the relevant experts and interest groups. My officials held a stakeholder meeting with child protection and youth groups and the Information Commissioner's Office (a list of attendees is attached at Annex A) to discuss the proposals in the Bill. The response to the proposals at that meeting was positive, and stakeholders were content with the safeguards the Bill puts in place. A key suggestion was made in that regard: that registration forms should include information explaining that a small number of 15 year olds may be included on an electoral register, if they turn 16 in the weeks immediately preceding poll. I am pleased to say that we have taken that suggestion forward, and a paragraph to that effect will be included on both the Household Enquiry Form and the Invitation to Register which have been designed and tested by the Electoral Commission. Furthermore, we have asked the UK Government to ensure that paragraph will also be shown on screen when a 14 or 15 year old applies through the online service.

We have also discussed the data protection proposals extensively with EROs. EROs are of course accustomed to dealing with sensitive data on a day to day basis, and they and their staff are subject to basic disclosure checks as standard. As the Committee will be aware from the written and oral evidence they have taken, EROs are satisfied that the provisions in the Bill provide adequate safeguards to ensure the security of data on young voters, while integrating them into existing systems.

As I have noted, the Bill tries to strike a balance between the secure handling of information on young voters, and the integrity of the electoral process. I believe that by restricting the provision of data on 14 and 15 year olds to those who absolutely need it, we achieve that balance. I am confident that the extensive consultation we have carried out, and the helpful suggestions we have taken on board on the basis of that consultation, mean that our proposals have the support of child protection experts and electoral administrators alike. I therefore remain confident in the provisions set out in the Bill.

Y- 901
JN

JOHN SWINNEY