



The Scottish Parliament
Pàrlamaid na h-Alba

Devolution (Further Powers) Committee

1st Report, 2015 (Session 4)

Votes for 16-17 year olds: report on the Scotland Act 1998 (Modifications of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 [draft]

Published by the Scottish Parliament on 2 March 2015

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website -
www.scottish.parliament.uk

Any links to external websites in this report were working correctly at the time of publication.
However, the Scottish Parliament cannot accept responsibility for content on external websites.



The Scottish Parliament
Pàrlamaid na h-Alba

Devolution (Further Powers) Committee

Remit and membership

Remit:

To consider matters relating to The Scotland Act 1998 (Modification of Schedule 5) Order 2013, the Scottish Independence Referendum Act 2013, its implementation and any associated legislation. Furthermore, (i) until the end of November 2014 or when the final report of the Scotland Devolution Commission has been published, to facilitate engagement of stakeholders with the Scotland Devolution Commission and to engage in an agreed programme of work with the Commission as it develops its proposals; and (ii) thereafter, to consider the work of the Scotland Devolution Commission, the proposals it makes for further devolution to the Scottish Parliament, other such proposals for further devolution and any legislation to implement such proposals that may be introduced in the UK Parliament or Scottish Parliament after the Commission has published its final report.

Membership:

Bruce Crawford (Convener)
Linda Fabiani
Alex Johnstone
Alison Johnstone
Rob Gibson
Lewis Macdonald
Stewart Maxwell
Mark McDonald
Stuart McMillan
Duncan McNeil (Deputy Convener)
Tavish Scott

Committee Clerking Team:

Clerk to the Committee

Stephen Imrie

Senior Assistant Clerk

Stephen Herbert

Committee Assistant

Heather Galway



The Scottish Parliament
Pàrlamaid na h-Alba

Devolution (Further Powers) Committee

1st Report, 2015 (Session 4)

Votes for 16-17 year olds: report on the Scotland Act 1998 (Modifications of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 [draft]

The Committee reports to the Parliament as follows—

Background - Smith Commission recommendations on elections

1. On 18 September 2014, the people of Scotland voted in the Scottish Independence Referendum. Amongst them, for the first time in a nationwide ballot, were a proportion of the nearly 110,000, 16 to 17 year olds registered as eligible to vote according to the Electoral Commission¹. The ability to vote amongst this age group was a one-off and confined only to this Referendum.
2. Following the result of the Referendum, the UK Government announced the establishment of a Commission to draw up proposals for the devolution of further powers to the Scottish Parliament. The Commission was chaired by Lord Smith of Kelvin and became known as The Smith Commission.
3. The Smith Commission reported in November 2014 and made a number of recommendations in relation to elections including calling on the UK Parliament to devolve the relevant powers to the Scottish Parliament to decide whether to extend the franchise to 16 and 17 year olds in time for the 2016 Scottish Parliament election, and for all future elections to the Scottish Parliament and local authority elections in Scotland.
4. Since the publication of the Smith Commission's report, the Scottish and UK Governments agreed that the legislation to transfer powers to extend the franchise to 16 and 17 year olds should be brought forward before other areas recommended in the Smith Report. The legislative mechanism to achieve this transfer of powers is via an Order made under sections 30 and 63 of the Scotland Act 1998.

¹ Electoral Commission, *Scottish Independence Referendum: Report on the referendum held on 18 September 2014*, December 2014.

Draft Order

5. The [draft Order](#) was laid before the Scottish Parliament on 20 January 2015 and was referred to the Devolution (Further Powers) Committee for consideration as lead committee.

6. The draft Order provides for the modification of the elections reservation at Section B3 of Part 2 of Schedule 5 to the Scotland Act 1998.

7. This modification will enable legislation to be brought forward to reduce the minimum voting age at elections to the Scottish Parliament and local government elections to 16 years old.

Scrutiny by the UK Parliament

8. The House of Commons considered the draft Order during a [debate](#) on 2 February and passed the motion without a division. The House of Lords considered and agreed the draft Order on Thursday 26 February, with the Constitution Committee having produced a [report](#) on Monday 23 February.

9. The Constitution Committee's report into the draft Order is critical of the potential impact on elections held in the rest of the UK (namely elections to the UK Parliament and the European Parliament) and on the ability of the UK Parliament to scrutinise the passing of the relevant legislation. Its report concludes—

“The House may wish to consider whether sufficient consideration has been given to the effect of this proposal on the United Kingdom constitution as a whole.”²

and

“The use of secondary legislation makes it impossible for Parliament to scrutinise this proposal effectively. This is not an appropriate way to proceed with significant constitutional change.”³

Scrutiny by the Delegated Powers and Law Reform Committee

10. Subordinate legislation, such as a draft Order, is scrutinised initially in the Scottish Parliament by the Delegated Powers and Law Reform Committee. This Committee considered the draft Order at its meeting on 17 February 2015.

11. In its report to the Scottish Parliament, the Delegated Powers and Law Reform Committee drew the Order to the attention of the Parliament under reporting ground (h) as its meaning could be clearer:

“The Committee is satisfied that these restrictions on the scope of the functions which are to be shared with the Scottish Ministers are clearly

² House of Lords, Constitution Committee, Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015, paragraph 12.

³ House of Lords, Constitution Committee, Draft Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015, paragraph 15.

set out in the order. However the Committee takes the view that the drafting of article 5 of the order could be clearer in describing the extent of the functions which are to be exercisable subject to these restrictions.”

12. However, in doing so the Delegated Powers and Law Reform Committee noted—

“that the Scottish Government does not consider this to present a problem for the order’s practical application or to prevent the Government from achieving the overarching policy objective in the event that the Scottish Parliament were to exercise the additional legislative competence which this order would confer if made.”⁴

Scrutiny by the Devolution (Further Powers) Committee

13. As lead Committee, the Devolution (Further Powers) Committee considered the draft Order at its meeting on 26 February 2015. The Committee took evidence from the Deputy First Minister and relevant officials in the Scottish Government. The evidence taken is set out below.

14. However, in addition to the evidence heard during our Committee meeting, the Committee also held a series of informal events with 16 and 17 year old school pupils in Fort William and Levenmouth who had voted for the first time at the Independence Referendum. These events were held as part of the wider Parliament Days.

15. The key finding from our discussion with first-time voters was that the pupils believed they had shown they were fully capable of making an informed decision at the Independence Referendum and that a significant majority attending agreed that the franchise should be extended to allow them to vote in future Scottish Parliament elections.

16. The Committee also produced an online survey, aimed at 16 and 17 year old voters from across Scotland who had participated in the Independence Referendum, asking for their views on their experience⁵. The Committee received 1,025 responses to this survey, with 85% agreeing that it was right to allow 16 and 17 year-olds to vote in the Referendum and 79% agreeing that 16 and 17 year-olds should be allowed to vote in elections to the UK Parliament (House of Commons), the Scottish Parliament and local authorities.

17. The Committee also invited school pupils and young adults from across Scotland to send their views via short video clips and we received seven submissions from the following schools and community groups⁶:

Kilsyth Academy;

⁴ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/86854.aspx>

⁵ The full results of the online survey can be found here:
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83973.aspx>

⁶ All seven video submissions can be viewed here:
<https://www.youtube.com/playlist?list=PL4l0q4AbG0mmrD1apjAxjFP-9T7yi5b8T>

Knightswood Secondary School;
North Berwick High School;
Bannerman High School;
Lockerbie Academy;
Dunbar Grammar School; and
Votes at 16 Action Research Group, Edinburgh

18. The Committee expresses its thanks to the pupils and young adults of Lochaber High School, Buckhaven High School, Kirkland High School and those above for their views and evidence.

19. As stated, at its meeting on 26 February 2015, the Committee took evidence from John Swinney, Deputy First Minister, Stephen Sadler, Head of Elections, and Neel Mojee, Principal Legal Officer, from the Scottish Government.

20. Members raised the following issues:

- The clarity of drafting in the instrument
- The extension of the franchise to also include local authority elections in Scotland
- Data protection issues
- The process and timetable for agreement of the instrument in the UK Parliament

21. The Official Report of this meeting is available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83010.aspx>

Conclusions and recommendation to the Scottish Parliament, and next steps

22. The Committee welcomes the proposals to transfer power to the Scottish Parliament to legislate to give the vote at Scottish Parliament and local authority elections to eligible 16 and 17 year olds in time for the next Scottish Parliament election

23. The Committee welcomes the support of all five political parties represented in the Scottish Parliament for this approval and notes the agreement of the House of Commons on 2 February and the House of Lords on 26 February to this draft Order.

24. The Committee rejects the criticisms made by the House of Lords' Constitution Committee that there has been insufficient scrutiny of this proposal and notes that any bill introduced in the Scottish Parliament will receive the appropriate level of consideration in the coming months. The Committee considers that any extension of the voting franchise for elections to the UK or European parliaments would be a matter for the UK Parliament and would undoubtedly be a matter of careful consideration and we therefore disagree with the findings of their Lordships in that respect.

25. After consideration of the evidence received and motion S4M-12439, the Committee recommends that the Scottish Parliament gives its approval to the Scotland Act 1998 (Modifications of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 [draft].

26. Such an approval paves the way for the transfer of powers to enable the Scottish Government to introduce a bill to set out the detail of how the arrangements can be put in place to give eligible 16 and 17 year olds the right to vote at the next and future elections to the Scottish Parliament and to Scottish local authorities.

27. The Committee suggests that for a bill to be passed by the summer 2015 recess, a deadline necessary for the relevant arrangements for registration and voting to be put in place by May 2016, it would be preferable for the bill to be introduced by April 2015.

28. The Committee is likely to be designated lead committee for the Bill, subject to the decision of the Parliamentary Bureau, and is set to begin its scrutiny with immediate effect following introduction and will issue an open call for written evidence shortly after the introduction of the Bill.

Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland

All documents are available on
the Scottish Parliament website at:

www.scottish.parliament.uk

For details of documents available to
order in hard copy format, please contact:
APS Scottish Parliament Publications on 0131 629 9941.

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

ISBN 978-1-78568-049-6
