



Scotland Act 2012

2012 CHAPTER 11

PART 1

THE PARLIAMENT AND ITS POWERS

The Scottish Parliament

1 Administration of elections

- (1) Section 12 of the 1998 Act (power to make provision about elections) is amended as follows.
- (2) In subsection (1)—
 - (a) for “Secretary of State” substitute “Scottish Ministers”;
 - (b) after paragraph (a) insert “and”;
 - (c) omit paragraph (c) and the “and” before it.
- (3) In subsection (2)—
 - (a) after “subsection (1)(a)” insert “does not include provision that may be made by the Secretary of State under section 12A but, subject to that,”;
 - (b) for paragraph (a) substitute—
 - “(a) about supplying or otherwise dealing with a register of electors,”;
 - (c) omit paragraph (b);
 - (d) after paragraph (c) insert “and”;
 - (e) in paragraph (d) after “other elections” insert “, if the conduct of the other election falls within the legislative competence of the Parliament.”;
 - (f) omit paragraphs (e) and (f).
- (4) Omit subsection (3).
- (5) In subsection (4) omit paragraphs (b) and (c).
- (6) In subsection (6) for “Secretary of State” substitute “Scottish Ministers”.

Status: This is the original version (as it was originally enacted).

(7) After that subsection insert—

“(7) Before making an order under this section the Scottish Ministers must consult the Secretary of State.”

(8) In the heading of the section, after “Power” insert “of the Scottish Ministers”.

(9) After that section insert—

“12A Power of the Secretary of State to make provision about elections

(1) The Secretary of State may by regulations make provision—

- (a) about the registration of electors,
- (b) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded),
- (c) for modifying section 8(7) to ensure the allocation of the correct number of seats for the region, and
- (d) as to the return of members of the Parliament otherwise than at an election.

(2) The provision that may be made under subsection (1)(a) includes—

- (a) provision for disregarding alterations in a register of electors, and
- (b) other provision about, or for purposes connected with, the content of a register or the effect of registration,

but subject to that it does not include provision about supplying or otherwise dealing with a register.

(3) The provision that may be made under subsection (1)(d) includes, in particular, provision modifying section 10(4) and (5).

(4) Regulations under subsection (1) may—

- (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and
- (b) so far as may be necessary in consequence of any provision made by this Act or regulations under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors.

(5) Before making regulations under this section the Secretary of State must consult the Scottish Ministers.”

2 Combination of polls at Scottish Parliamentary and other reserved elections

(1) Section 15 of the Representation of the People Act 1985 (combination of polls at parliamentary, European Parliamentary and local elections) is amended as follows.

(2) In subsection (1)—

- (a) after paragraph (b) omit “or”;
- (b) after paragraph (c) insert—

- “(d) a Scottish Parliamentary general election and a parliamentary general election; or
- (e) a Scottish Parliamentary general election and a European Parliamentary general election.”.

(3) In subsection (3), after “includes” insert “Scottish Parliamentary elections and”.

(4) After subsection (3) insert—

“(3ZA) But subsection (2) does not confer power on a returning officer to determine that a Scottish Parliamentary election and a local government election in Scotland are to be taken together.”

(5) After subsection (5B) insert—

“(5C) Before making provision under subsection (5) in connection with the combination of polls where one of the elections is a Scottish Parliamentary election or a local government election in Scotland, the Secretary of State must consult the Scottish Ministers.”

(6) In the heading of the section, before “European” insert “Scottish Parliamentary”.

3 Supplementary and transitional provision about elections

(1) In section 113 of the 1998 Act (subordinate legislation: scope of powers) after subsection (1) insert—

“(1A) Subsections (2) to (11), except subsection (9), apply also to the power of the Scottish Ministers to make an order under section 12.”

(2) Schedule 7 to the 1998 Act (procedure for subordinate legislation) is amended as follows.

(3) In paragraph 1—

- (a) in the entry for section 12(1) for “Type C” substitute “Type L”;
- (b) after that entry insert—

“Section 12A | Type C”.

(4) In paragraph 2 at the end insert—

“**Type L:** The legislation shall be subject to the affirmative procedure.”

(5) In section 7 of the Political Parties, Elections and Referendums Act 2000 (Electoral Commission to be consulted on changes to electoral law), in subsection (2)(g) after “12(1) or (6)” insert “or regulations under section 12A(1)”.

(6) In section 8 of that Act (powers with respect to elections exercisable only on Commission recommendation) in subsection (2) for “the Secretary of State” substitute “the person on whom the function is conferred”.

(7) An order made before the commencement of section 1 under section 12(1) of the 1998 Act has effect after that commencement as if made by the Scottish Ministers, to the extent that they would have power to do so.

(8) To the extent that subsection (7) does not apply, any provision of such an order—
(a) continues to have effect, but

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- (b) may be revoked by regulations under section 12A(1).
- (9) A reference to the Secretary of State in such an order is to be read as a reference to the Scottish Ministers.
- (10) Without prejudice to subsections (7) to (9), section 1 does not affect the validity of anything done by or in relation to a Minister of the Crown before that section comes into force.
- (11) Anything (including legal proceedings) which, at the time when that section comes into force, is in the process of being done by or in relation to a Minister of the Crown under an order under section 12(1) may be continued by or in relation to the Scottish Ministers.
- (12) Anything done by or in relation to a Minister of the Crown for the purposes of or in connection with a function under such an order, if in force at the time when section 1 comes into force, has effect as if done by or in relation to the Scottish Ministers in so far as that is required for continuing its effect after that time.

4 Presiding Officer and deputies

- (1) Section 19 of the 1998 Act (Presiding Officer) is amended as follows.
- (2) In subsection (1) omit “at its first meeting”.
- (3) After subsection (1) insert—
 - “(1A) The Parliament must do so—
 - (a) before it conducts any other proceedings, except the taking by its members of the oath of allegiance (see section 84), and
 - (b) in any event, within the period of 14 days beginning immediately after the day of the poll at the election.
 - (1B) The Parliament may, at any time, elect from among its members one or more additional deputies.”
- (4) After subsection (2) insert—
 - “(2A) But standing orders may make provision for additional deputies to hold office for a shorter time than provided by subsection (2).”
- (5) In subsection (3), after “deputy” insert “elected under subsection (1)”.
- (6) In Schedule 3 to that Act (standing orders), for paragraph 5 substitute—
 - “5 (1) The standing orders shall include provision for ensuring that the available officers do not all represent the same political party.
 - (2) The available officers are—
 - (a) the Presiding Officer and the deputies appointed under section 19(1), except in the case where one or more of them is unable to act and there is at least one additional deputy;
 - (b) in that case, such of the Presiding Officer and deputies as are for the time being able to act.”

5 Scottish Parliamentary Corporate Body

In section 21 of the 1998 Act (Scottish Parliamentary Corporate Body) in subsection (2)(b) before “four” insert “at least”.

6 Bills: statements as to legislative competence

In section 31(1) of the 1998 Act (statement by member of the Parliament in charge of a Bill), for “A member of the Scottish Executive” substitute “A person”.

7 Members’ interests

(1) Section 39 of the 1998 Act (members’ interests) is amended as follows.

(2) For subsections (5) to (7) substitute—

“(4A) Any requirement or prohibition (however expressed) imposed by provision made in pursuance of subsections (2) to (4) may be subject to such exceptions as are specified in the provision.

(5) Provision may be made for—

- (a) excluding a member from the proceedings of the Parliament,
- (b) imposing on a member such other sanctions as the Parliament considers appropriate,

if the member fails to comply with, or contravenes, any provision made in pursuance of subsections (2) to (4) or this subsection.

(5A) Provision made under subsection (5) may include provision that a sanction is not to be imposed in such circumstances as are specified in the provision.

(6) Provision made under subsection (5) may include provision that the member is guilty of an offence.

(7) A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

(3) After the commencement of subsection (2), subsections (5) to (7) as originally enacted continue to have effect until the coming into force of the first provision made in pursuance of those subsections as substituted by subsection (2).

8 Constituencies, regions and regional members

(1) In the Scottish Parliament (Constituencies) Act 2004, omit section 1(2) and (3) and Schedule 2 (modification of Schedule 1 to the 1998 Act).

(2) Schedule 1 contains—

- (a) amendments reproducing the effect of the modifications contained in Schedule 2 to the Scottish Parliament (Constituencies) Act 2004, and
- (b) other minor amendments of Schedule 1 to the 1998 Act.

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Legislative competence

9 Continued effect of provisions ceasing to be within legislative competence

(1) In section 30 of the 1998 Act (legislative competence: supplementary) after subsection (4) insert—

“(5) Subsection (6) applies where any alteration is made—

- (a) to the matters which are reserved matters, or
- (b) to Schedule 4,

(whether by virtue of the making, revocation or expiry of an Order in Council under this section or otherwise).

(6) Where the effect of the alteration is that a provision of an Act of the Scottish Parliament ceases to be within the legislative competence of the Parliament, the provision does not for that reason cease to have effect (unless an enactment provides otherwise).”

(2) After section 29(4) of that Act (legislative competence) insert—

“(5) Subsection (1) is subject to section 30(6).”

(3) In section 92 of that Act (Queen’s Printer for Scotland), after subsection (4A) (inserted by section 13) insert—

“(4B) If, following an alteration such as is mentioned in section 30(5)—

- (a) subordinate legislation is made, confirmed or approved under a provision which continues to have effect by virtue of section 30(6), and
- (b) the making, confirmation or approval would be within devolved competence but for the alteration,

the subordinate legislation is to be regarded for the purposes of this section as being made, confirmed or approved within devolved competence.”

10 Air weapons

In Part 2 of Schedule 5 to the 1998 Act, in Section B4 (specific reservations: firearms) at the end insert—

“Exception

The regulation of air weapons within the meaning given by section 1(3)(b) of the Firearms Act 1968 (which is subject to the following which remain powers of the Secretary of State—

- (a) the power to make rules under section 53 of that Act for the purposes of that provision (specially dangerous weapons requiring firearms certificate), and
- (b) the power to make an order under section 1(4) of the Firearms (Amendment) Act 1988 (specially dangerous weapons to be prohibited).”

11 Antarctica

- (1) In Part 2 of Schedule 5 to the 1998 Act, under Head L (miscellaneous) at the end insert—

“L7. Antarctica

Regulation of activities in Antarctica.

Interpretation

“Antarctica” has the meaning given by section 1 of the Antarctic Act 1994.”

- (2) The provision inserted by subsection (1) is to be regarded as having been included in Schedule 5 to the 1998 Act since the day on which that Schedule came into force.