

Draft Order laid before the Scottish Parliament under section 115 and schedule 7 of the Scotland Act 1998 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2021 No.

CONSTITUTIONAL LAW
REPRESENTATION OF THE PEOPLE

The Scottish Parliament (Elections etc.)
Amendment (Coronavirus) Order 2021

Made - - - - 2021
Coming into force - - 2021

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 12(1) and 113(2), (4) and (5) of the Scotland Act 1998⁽¹⁾ and all other powers enabling them to do so. In accordance with section 7(1) and (2)(g) of the Political Parties Elections and Referendums Act 2000⁽²⁾, the Scottish Ministers have consulted the Electoral Commission. In accordance with section 115 and schedule 7 of the Scotland Act 1998⁽³⁾, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and transitional provision

- 1.—(1) This Order may be cited as the Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021 and comes into force on the day after the day on which it is made.
- (2) This Order has no effect for the purposes of any election for which the date of the poll is on or before 5 April 2021.

Amendment of the Scottish Parliament (Elections etc.) Order 2015

- 2.—(1) Schedule 3 (absent voting) of the Scottish Parliament (Elections etc.) Order 2015⁽⁴⁾ is amended as follows.

(1) 1998 c.46 (“the 1998 Act”). Section 12 was substituted by section 4(1) of the Scotland Act 2016 (c.11). The powers in section 113(2), (4) and (5) of the 1998 Act apply to the exercise of the Scottish Ministers’ power under section 12 by virtue of section 113(1A) of that Act, which was inserted by section 3 of the Scotland Act 2012 (c.11) (“the 2012 Act”).

(2) 2000 c.41.

(3) Schedule 7 was amended by section 3 of the 2012 Act. There are other amendments that are not relevant to this Order.

(4) S.S.I. 2015/425.

(2) In paragraph 1(7) (general requirements for applications) for “paragraph 7” substitute “paragraph 8”.

(3) In paragraph 7 (additional requirements for applications for a proxy vote in respect of a particular election) omit sub-paragraph (2C)(5).

(4) After paragraph 7 insert—

“Emergency change of proxy: coronavirus

7A.—(1) This paragraph applies where—

- (a) a proxy is appointed to vote for a person (“the elector”) at a forthcoming Scottish parliamentary election (whether or not the proxy is appointed only for that particular election),
- (b) the proxy is not entitled to vote by post at that election, and
- (c) the circumstances of the proxy on the date of the poll will or are likely to be such that they cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the elector under the appropriate rules as a result of following Scottish Government advice or the advice of a registered medical practitioner in relation to coronavirus.

(2) Where this paragraph applies, the elector may apply to the ERO for an alternative person to be appointed as their proxy under article 10(6) (appointment of a proxy for an indefinite period or for a period specified in the application) or article 10(7) (appointment of a proxy for the particular election).

(3) Where the ERO refuses an application described in sub-paragraph (2), or rejects it as invalid, the decision of the ERO is final and is not to be questioned in any proceedings whatsoever, but the refusal or rejection of an application does not prevent the elector from submitting a further application.

(4) In sub-paragraph (1)(c) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(5) The Scottish Ministers must review the need for the provision made by this paragraph at least once every year, with the first review being carried out no later than 10 December 2021.

(6) No application may be made under this paragraph on or after 10 December 2022.”.

(5) After paragraph 9(3) (closing date for applications)(6) insert—

“(3A) Sub-paragraphs (2) and (3) do not apply to the application permitted by paragraph 7A(2) and sub-paragraph (6) does not apply to any notice under article 10(9) for cancellation of the related proxy appointment, but that application must be refused if it is made later than 5 pm on the day of the poll at the election.”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by the Scottish Ministers

(5) Sub-paragraphs (2A) to (2C) were inserted by [S.S.I. 2020/426](#). There is another amendment to paragraph 7 that is not relevant to this Order.

(6) Paragraph 9 was amended by [S.S.I. 2020/426](#).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Scottish Parliament (Elections etc.) Order 2015 (“the 2015 Order”). The 2015 Order sets out provisions relating to the conduct of elections for, and the return of members to, the Scottish Parliament.

The changes made by this Order will not apply to any elections held on or before 5 April 2021. The next ordinary general election for membership of the Scottish Parliament is due to be held on 6 May 2021.

Article 2(2) amends an erroneous cross-reference in the 2015 Order.

Article 2(3) revokes a definition of “disability” in relation to applications for proxy votes at a particular election. The effect is to replace it with the definition at article 2 of the 2015 Order, so that applications can be made based on a short-term inability to do something.

Article 2(4) allows an elector to apply to change the proxy appointed to vote for them where their existing proxy cannot reasonably attend a polling station at an election for reasons related to coronavirus and is not a proxy voter who votes by post. Provision is also made for review of the need for these applications and for them to cease on 10 December 2022.

Article 2(5) disapplies the cut-off date that would usually apply to applications for appointment of a proxy (which is 5 pm on the sixth day before the poll) and allows the application to be made up to 5 pm on the day of the poll.