

Draft Order in Council laid before Parliament and the Scottish Parliament under paragraphs 1 and 2 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament and of the Scottish Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

The Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015

Made - - - - 2015

Coming into force in accordance with article 2

At the Court at [] the [] day of []

Present,

The Queen's Most Excellent Majesty in Council

This Order is made by Her Majesty in Council in exercise of the powers conferred upon Her by sections 30(2), 63(1) and (3), 113(3), (4) and (5) and 124(2) of the Scotland Act 1998(1).

In accordance with paragraphs 1 and 2 of Schedule 7 to that Act(2), a draft of this Order has been—

- (a) laid before and approved by a resolution of each House of Parliament, and
- (b) laid before and approved by a resolution of the Scottish Parliament.

Accordingly Her Majesty, by and with the advice of Her Privy Council, makes the following Order:

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015.

2. This Order comes into force on the day after the day on which it is made.

(1) 1998 c. 46.

(2) Paragraphs 1 and 2 of Schedule 7 have been modified by paragraph 3(2) of schedule 4 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

Modification of Schedule 4 to the Scotland Act 1998

3. In Schedule 4 to the Scotland Act 1998 (enactments protected from modification by Act of the Scottish Parliament), in paragraph 4 (no modification of the Scotland Act 1998), after subparagraph (2) insert—

“(2A) This paragraph does not apply to any modifications of sections 11, 12, 12A and 113, and Schedule 7(3)—

- (a) for the purpose of reducing the minimum voting age to 16 at elections to the Parliament or local government elections (or both), or in consequence of any such provision, or
- (b) for the purpose of making provision about the registration of electors in order to give effect to provision reducing the minimum voting age at those elections to 16, or in consequence of any such provision about the registration of electors, including—
 - (i) provision for disregarding alterations in a register of electors,
 - (ii) provision about, or for purposes connected with, the content of a register or the effect of registration, and
 - (iii) provision about supplying or otherwise dealing with a register,
 but not including provision about the use of the digital service for applications for registration or for verifying information contained in applications for registration.

(2B) In sub-paragraph (2A) “digital service” has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001(4), as that regulation had effect on the date on which the Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 (S.I. 2015/) came into force.”.

Modification of Schedule 5 to the Scotland Act 1998

4.—(1) In Part 2 of Schedule 5 to the Scotland Act 1998, Section B3 (specific reservations: elections) is amended as follows.

(2) Before the interpretation provision insert—

“Exceptions

The reduction of the minimum voting age to 16 at elections to the Parliament and local government elections.

The registration of electors, in order to give effect to provision reducing the minimum voting age at those elections to 16, including—

- (a) disregarding alterations in a register of electors,
- (b) the content of a register and the effect of registration, and
- (c) supplying or otherwise dealing with a register,

but not including the use of the digital service for applications for registration or for verifying information contained in applications for registration..”.

(3) Section 12 of the Scotland Act 1998 is amended, and section 12A of that Act is inserted, by section 1 of the Scotland Act 2012 (c. 11). That section was not in force on the date this Order was laid before the Parliaments. Section 113 of and Schedule 7 to the Scotland Act 1998 are amended by section 3 of the Scotland Act 2012. That section was not in force on the date this Order was laid before the Parliaments. Other amendments have been made to sections 12 and 113 of and Schedule 7 to the Scotland Act 1998, but these are not relevant for the purposes of this Order.

(4) S.I. 2001/497; definition inserted by regulation 3(a) of the Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013 (S.I. 2013/3206).

(3) At the end of the interpretation provision insert—

““Digital service” has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001, as that regulation had effect on the date on which the Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers etc.) Order 2015 (S.I. 2015/) came into force.”.

Functions shared by the Scottish Ministers and a Minister of the Crown

5.—(1) The functions described in paragraph (3) are exercisable by the Scottish Ministers concurrently with a Minister of the Crown, so far as they are exercisable by the Minister of the Crown in or as regards Scotland.

(2) Those functions are exercisable by the Scottish Ministers—

- (a) only with the agreement of a Minister of the Crown; and
- (b) only in order to give effect to provision reducing the minimum voting age to 16 at elections to the Scottish Parliament or local government elections (or both).

(3) The functions are those conferred by the following enactments—

- (a) section 53(1) and (3) of the Representation of the People Act 1983(5);
- (b) paragraphs 1A, 3ZA and 8C of Schedule 2 to that Act(6),

so far as relating to the use of the digital service for applications for registration or for verifying information contained in applications for registration.

(4) In this article “digital service” has the meaning given by regulation 3(1) of the Representation of the People (Scotland) Regulations 2001, as that regulation had effect on the date on which this Order came into force.

Modification of section 53 of the Representation of the People Act 1983

6. In its application to functions transferred to the Scottish Ministers by virtue of article 5, section 53 of the Representation of the People Act 1983 (power to make regulations as to registration etc.) has effect as if, in subsections (5) to (7), the references to the Secretary of State were references to the Scottish Ministers.

General modifications of enactments

7.—(1) Section 117 of the Scotland Act 1998 (general modifications of enactments: Ministers of the Crown) applies in relation to the exercise of functions by the Scottish Ministers by virtue of article 5 as it applies in relation to the exercise of functions by the Scottish Ministers within devolved competence.

(2) In the application of that section by virtue of this article, the reference in it to a pre-commencement enactment is to be read as a reference to any enactment.

Parliamentary procedure

8.—(1) Regulations made by the Scottish Ministers by virtue of article 5 are subject to the affirmative procedure, subject to paragraph (2).

(5) 1983 c. 2. Section 53(1)(b) was substituted by paragraph 13(b) of Schedule 1 to the Representation of the People Act 2000 (c. 2). Section 53(3) was amended by paragraph 13(b) of Schedule 4 to the Representation of the People Act 1985 (c. 50) and paragraph 1 of Schedule 7 to the Representation of the Peoples Act 2000.

(6) Paragraph 1A of Schedule 2 was inserted by paragraph 2 of Schedule 2 to the Electoral Registration and Administration Act 2013 (c. 6). Paragraph 3ZA of Schedule 2 was inserted by section 2(3) of the Electoral Registration and Administration Act 2013. Paragraph 8C of Schedule 2 was inserted by paragraph 3 of Schedule 2 to the Electoral Registration and Administration Act 2013.

(2) Regulations made by the Scottish Ministers for the purposes only of omitting a particular kind of evidence from the kinds of evidence that a person is or may be required to provide by virtue of regulations under paragraph 3ZA(3) of Schedule 2 to the Representation of the People Act 1983 are subject to the negative procedure instead.

Supplementary provision etc.

9. Regulations made by the Scottish Ministers by virtue of article 5 may—
- (a) make different provision for different cases, circumstances or areas;
 - (b) contain such incidental, supplemental, saving or transitional provision as the Scottish Ministers think fit.

Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

Articles 3 and 4 of this Order modify Schedules 4 and 5 to the Scotland Act 1998 (c. 46). Schedule 5 to that Act defines reserved matters (matters which are outside the legislative competence of the Scottish Parliament) for the purposes of that Act. Article 4 of the Order provides exceptions to the reservation of elections under Section B3 of Schedule 5 so that the reduction of the minimum voting age to 16 at elections to the Scottish Parliament and Scottish local government elections is not a reserved matter, and nor is the registration of electors, in order to give effect to provision reducing the minimum voting age. The use of the Individual Electoral Registration Digital Service to make an application for registration, or to verify information contained in an application, continues to be a reserved matter.

Schedule 4 to the Scotland Act 1998 prevents Acts of the Scottish Parliament from modifying various enactments, including the Scotland Act 1998 itself. An Act of the Scottish Parliament that reduced the minimum voting age to 16 at elections to the Scottish Parliament or local government elections and made related provision about the registration of electors might need to amend sections 11, 12 and 12A of the Scotland Act 1998, as these sections make provision about the franchise and conduct of elections to the Scottish Parliament. Minor additional changes might be needed to section 113 and Schedule 7 to the Scotland Act 1998. Article 3 of the Order therefore allows an Act of the Scottish Parliament to amend these provisions for the purpose of reducing the minimum voting age or making consequential provision, or for making related provision about registration of electors.

Article 5 of this Order provides for certain functions of a Minister of the Crown relating to the Individual Electoral Registration Digital Service, so far as they are exercisable in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Minister. The functions are exercisable by the Scottish Ministers only with the agreement of a Minister of the Crown and only in order to enable effect to be given to provision reducing the minimum voting age to 16 at elections to the Scottish Parliament or local government elections.

Article 6 modifies section 53(5) to (7) of the Representation of the People Act 1983 so that the requirements there (such as consultation) apply in relation to the exercise by the Scottish Ministers of the power in paragraph 1A of Schedule 2 to that Act.

Article 7 makes certain general modifications of enactments in connection with the transfer of functions made by article 5. Article 8 provides for the procedure in the Scottish Parliament applicable to regulations made by the Scottish Ministers by virtue of article 5. Article 9 allows any such regulations to make different provision for different cases etc. and to include supplementary etc. provision.