

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) Order 2015**

Made - - - -

Coming into force in accordance with article 1(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) and (4) 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.—(1) This Order may be cited as the Scotland Act 1998 (Modification of Schedules 4 and 5) 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

2. In Schedule 4 to the Scotland Act 1998 (enactments etc. protected from modification), in paragraph 4 (no modification of the Scotland Act 1998), after sub-paragraph (2B)(3) insert—

“(2C) This paragraph does not apply to modifying section 2(2) in relation to the first ordinary general election for membership of the Parliament after 2016.”.

Modification of Schedule 5 to the Scotland Act 1998

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

(2) Under the heading “Exceptions”—

- (a) above the exception beginning “The reduction of the minimum voting age” insert “*Exception 1*”;
- (b) above the exception beginning “The registration of electors” insert “*Exception 2*”;
- (c) after that exception insert—

Exception 3

The day of the poll at the first ordinary general election for membership of the Parliament after 2016.

That day must not be the same as the day of the poll at—

- (a) a parliamentary general election, other than an early parliamentary general election,
- (b) a European parliamentary general election, or
- (c) an ordinary local election.

If under section 3(3) the ordinary general election that would have been the first after 2016 is not held, this exception does not apply to any later election.”.

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

““Ordinary local election” has the meaning given by section 43(1C) of the Representation of the People Act 1983(5).”.

Consequential amendment

4. In section 2 of the Scotland Act 1998 (ordinary general elections) after subsection (5) insert—

“(5A) If, under this section as modified by virtue of an Act of the Scottish Parliament, the poll at an ordinary general election would, apart from subsection (5), be held on a day other than that provided by subsection (2) as originally enacted—

- (a) references in subsections (3) and (5) to the first Thursday in May are to be read as references to that other day (if it is not the first Thursday in May), and
- (b) subsection (5B) applies to any day proposed under subsection (5).

(5B) The day proposed must not be the same as the day of the poll at—

- (a) a parliamentary general election, other than an early parliamentary general election,
- (b) a European parliamentary general election, or

(3) Paragraph 4(2B) of Schedule 4 to the Scotland Act 1998 (c.46) was inserted by S.I. 2015/692, article 3.

(4) Exceptions provision was inserted into Section B3 by S.I. 2015/692, article 4(2).

(5) 1983 c.2; section 43(1C) was inserted by section 2(1) of the Scottish Local Government (Elections) Act 2002 (asp 1).

(c) an ordinary local election.

(5C) In subsection (5B) “ordinary local election” has the meaning given by section 43(1C) of the Representation of the People Act 1983.”.

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies Schedules 4 and 5 to the Scotland Act 1998 (c.46) (the “1998 Act”) and consequentially amends section 2 of that Act.

Article 2 amends paragraph 4 of Schedule 4 to the 1998 Act. Paragraph 4(1) provides that an Act of the Scottish Parliament cannot modify or confer power by subordinate legislation to modify the 1998 Act, subject to various exceptions at paragraph 4(2), (2A) and (2B). Article 2 excepts from paragraph 4(1) section 2(2) of the 1998 Act in relation to the first ordinary general election for membership of the Scottish Parliament after 2016.

Article 3 amends Section B3 of Part 2 of Schedule 5 to the 1998 Act. Schedule 5 to the 1998 Act defines reserved matters for the purposes of that Act (matters which are outside the legislative competence of the Scottish Parliament). Article 3, subject to certain limitations, excepts from the matters reserved by Section B3, the day of the poll at the first ordinary general election for membership of the Scottish Parliament after 2016.

The limitations are that the Scottish Parliament may not determine a day of the poll which is the same day as an ordinary parliamentary general election, a European parliamentary general election or an ordinary local election in Scotland. Article 3 also provides that the exception does not apply to any later election for membership of the Scottish Parliament, where, by virtue of section 3(3) of the 1998 Act, what would have been the first ordinary general election for membership of the Scottish Parliament after 2016 is not held.

Article 4 amends section 2 of the 1998 Act in connection with the modifications to Schedules 4 and 5 to the 1998 Act. It inserts a new subsection (5A)(a) to take account of the possibility that the day of the poll selected by the Scottish Parliament may not be the first Thursday in May. It also inserts a new sub-subsection (5A)(b) and subsections (5B) and (5C) to provide that the power of the Presiding Officer in section 2(5) of the 1998 Act to propose a day for the holding of the poll which is not more than one month earlier or one month later than the date selected by the Scottish Parliament is subject to the same limitations as article 3.

A full impact assessment has not been published for this instrument as it has no impact on the private sector and civil society organisations.