



# Scotland Act 1998

## 1998 CHAPTER 46

### PART I

#### THE SCOTTISH PARLIAMENT

##### *General elections*

## 2 Ordinary general elections.

<sup>F1</sup>(1) .....

(2) [<sup>F2</sup>The day on which the poll at an ordinary general election for membership of the Parliament is to be held is the first Thursday in May in the fifth] calendar year following that in which the previous ordinary general election was held, unless

- [<sup>F3</sup>(a) subsection (2A) prevents the poll being held on that day, or
- (b) the day of the poll is determined by a proclamation under subsection (5).]

[<sup>F4</sup>(2A) The poll shall not be held on the same date as the date of the poll at—

(a) a parliamentary general election <sup>F5</sup> ..., <sup>F6</sup> ...

<sup>F6</sup>(b) .....

(2B) Where subsection (2A) prevents the poll being held on the day specified in subsection (2), the poll shall be held on such day, subject to subsection (2A), as the Scottish Ministers may by order specify, unless the day of the poll is determined by a proclamation under subsection (5) as modified by subsection (5ZA).]

(3) If the poll is to be held on the first Thursday in May [<sup>F7</sup>, or on the day specified by an order under subsection (2B)] , the Parliament—

- (a) is dissolved by virtue of this section at the beginning of the minimum period which ends with that day, and
- (b) shall meet within the period of seven days beginning immediately after the day of the poll.

*Changes to legislation: There are currently no known outstanding effects for the Scotland Act 1998, Cross Heading: General elections. (See end of Document for details)*

- (4) In subsection (3), “the minimum period” means the period determined in accordance with an order under section 12(1).
- (5) [<sup>F8</sup>Subject to subsection (2A),] if the Presiding Officer proposes a day for the holding of the poll which is not more than one month earlier, nor more than one month later, than the first Thursday in May, Her Majesty may by proclamation under the Scottish Seal—
- dissolve the Parliament [<sup>F9</sup>(unless the Parliament is already dissolved)],
  - require the poll at the election to be held on the day proposed, and
  - require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.
- [<sup>F10</sup>(5ZZA) Before proposing a day for the holding of the poll under subsection (5), the Presiding Officer must consult the Electoral Commission.]
- [<sup>F11</sup>(5ZA) Where a day is specified by order under subsection (2B), subsection (5) applies as if the reference to the first Thursday in May were a reference to that day.]
- <sup>F12</sup>(5A) .....
- <sup>F12</sup>(5B) .....
- <sup>F12</sup>(5C) .....
- (6) In this Act “the Scottish Seal” means Her Majesty’s Seal appointed by the Treaty of Union to be kept and used in Scotland in place of the Great Seal of Scotland.

#### Textual Amendments

- F1** S. 2(1) repealed (S.) (1.10.2020) by [Scottish Elections \(Reform\) Act 2020 \(asp 12\)](#), **ss. 1(1)(a)(i)**, 35; [S.S.I. 2020/278](#), [reg. 2](#), [sch.](#)
- F2** Words in s. 2(2) substituted (S.) (1.10.2020) by [Scottish Elections \(Reform\) Act 2020 \(asp 12\)](#), **ss. 1(1)(a)(ii)**, 35; [S.S.I. 2020/278](#), [reg. 2](#), [sch.](#)
- F3** S. 2(2)(a)(b) substituted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 5(2)**, 72(4)(a); [S.I. 2017/608](#), [reg. 2\(1\)\(c\)](#)
- F4** S. 2(2A)(2B) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 5(3)**, 72(4)(a); [S.I. 2017/608](#), [reg. 2\(1\)\(c\)](#)
- F5** Words in s. 2(2A)(a) omitted (24.3.2022) by virtue of [Dissolution and Calling of Parliament Act 2022 \(c. 11\)](#), s. 6(3), **Sch. para. 11**
- F6** S. 2(2A)(b) and preceding word omitted (31.12.2020) by virtue of [European Union \(Withdrawal\) Act 2018 \(c. 16\)](#), s. 25(4), **Sch. 3 para. 7** (with s. 19, [Sch. 8 para. 37](#)); [S.I. 2020/1622](#), [reg. 3\(1\)](#) (with [regs. 10, 22](#))
- F7** Words in s. 2(3) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 5(4)**, 72(4)(a); [S.I. 2017/608](#), [reg. 2\(1\)\(c\)](#)
- F8** Words in s. 2(5) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 5(5)**, 72(4)(a); [S.I. 2017/608](#), [reg. 2\(1\)\(c\)](#)
- F9** Words in s. 2(5)(a) inserted (S.) (1.10.2020) by [Scottish Elections \(Reform\) Act 2020 \(asp 12\)](#), **ss. 3(2)(a)**, 35; [S.S.I. 2020/278](#), [reg. 2](#), [sch.](#)
- F10** S. 2(5ZZA) inserted (S.) (1.10.2020) by [Scottish Elections \(Reform\) Act 2020 \(asp 12\)](#), **ss. 3(2)(b)**, 35; [S.S.I. 2020/278](#), [reg. 2](#), [sch.](#)
- F11** S. 2(5ZA) inserted (18.5.2017) by [Scotland Act 2016 \(c. 11\)](#), **ss. 5(6)**, 72(4)(a); [S.I. 2017/608](#), [reg. 2\(1\)\(c\)](#)
- F12** S. 2(5A)-(5C) omitted (18.5.2017) by virtue of [Scotland Act 2016 \(c. 11\)](#), **ss. 5(7)**, 72(4)(a); [S.I. 2017/608](#), [reg. 2\(1\)\(c\)](#)

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#### Modifications etc. (not altering text)

- C1 S. 2(2) modified (15.9.2011) by Fixed-term Parliaments Act 2011 (c. 14), ss. 4(2), 7(2) (with s. 6)
- C2 S. 2(2) modified (31.3.2016) by Scottish Elections (Dates) Act 2016 (asp 13), ss. 1(2), 3 (with s. 1(1))
- C3 S. 2(3)-(5ZA) excluded (30.1.2021) by Scottish General Election (Coronavirus) Act 2021 (asp 5), ss. 2, 15 (with s. 12)
- C4 S. 2(5) excluded (11.3.1999) by S.I. 1999/787, arts. 1, 96

### 3 Extraordinary general elections.

- (1) The Presiding Officer shall propose a day for the holding of a poll if—
  - (a) the Parliament resolves that it should be dissolved and, if the resolution is passed on a division, the number of members voting in favour of it is not less than two-thirds of the total number of seats for members of the Parliament, or
  - (b) any period during which the Parliament is required under section 46 to nominate one of its members for appointment as First Minister ends without such a nomination being made.
- (2) If the Presiding Officer makes such a proposal, Her Majesty may by proclamation under the Scottish Seal—
  - (a) dissolve the Parliament and require an extraordinary general election to be held,
  - (b) require the poll at the election to be held on the day proposed, and
  - (c) require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.

[<sup>F13</sup>(2A) Subsection (2B) applies if a proclamation is made under subsection (2).

- (2B) If the Presiding Officer proposes another day for the holding of the poll at the extraordinary general election which is not more than one month later than the day on which the poll is required to be held under the proclamation, Her Majesty may by further proclamation under the Scottish Seal—
  - (a) require the poll at the election to be held instead on the day proposed under this subsection, and
  - (b) require the Parliament to meet within the period of seven days beginning immediately after the day of the poll.
- (2C) Before proposing a day for the holding of the poll under subsection (2B), the Presiding Officer must consult the Electoral Commission.”. Scottish local government elections]
- (3) If a poll is held under this section within the period of six months ending with the day on which the poll at the next ordinary general election would be held (disregarding section 2(5)), that ordinary general election shall not be held.
- (4) Subsection (3) does not affect the year in which the subsequent ordinary general election is to be held.

#### Textual Amendments

- F13 S. 3(2A)-(2C) inserted (S.) (1.10.2020) by Scottish Elections (Reform) Act 2020 (asp 12), ss. 3(3), 35; S.S.I. 2020/278, reg. 2, sch.

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#### **4 Calculating time for meeting of the Parliament.**

In calculating any period of days for the purposes of section 2(3)(b) or (5)(c) or section 3(2)(c), Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday in Scotland or a day appointed for public thanksgiving or mourning shall be disregarded.

#### **5 Candidates.**

- (1) At a general election, the candidates may stand for return as constituency members or regional members.
- (2) A person may not be a candidate to be a constituency member for more than one constituency.
- (3) The candidates to be regional members shall be those included in a list submitted under subsection (4) or individual candidates.
- (4) Any registered political party may submit to the regional returning officer a list of candidates to be regional members for a particular region (referred to in this Act, in relation to the region, as the party’s “regional list”).
- (5) A registered political party’s regional list has effect in relation to the general election and any vacancy occurring among the regional members after that election and before the next general election.
- (6) Not more than twelve persons may be included in the list (but the list may include only one person).
- (7) A registered political party’s regional list must not include a person—
  - (a) who is included in any other list submitted under subsection (4) for the region or any list submitted under that subsection for another region,
  - (b) who is an individual candidate to be a regional member for the region or another region,
  - (c) who is a candidate to be a constituency member for a constituency not included in the region, or
  - (d) who is a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party.
- (8) A person may not be an individual candidate to be a regional member for a particular region if he is—
  - (a) included in a list submitted under subsection (4) for the region or another region,
  - (b) an individual candidate to be a regional member for another region,
  - (c) a candidate to be a constituency member for a constituency not included in the region, or
  - (d) a candidate of any registered political party to be a constituency member for a constituency included in the region.
- (9) In this Act, “registered political party” means a party registered under [F14Part II of the Political Parties, Elections and Referendums Act 2000] .

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#### Textual Amendments

**F14** Words in s. 5(9) substituted (16.2.2001) by 2000 c. 41, s. 158(1), **Sch. 21 para. 13(2)** (with s. 156(6)); S.I. 2001/222, art. 2, **Sch. 1 Pt. I**

#### Modifications etc. (not altering text)

**C5** S. 5(2) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(iii)**

**C6** S. 5(7) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(iv)**

**C7** S. 5(8) extended (11.3.1999) by S.I. 1999/787, arts. 1, 6, **Sch. 2 Pt. II para. 9(4)(b)(v)**

## 6 Poll for regional members.

- (1) This section and sections 7 and 8 are about the return of regional members at a general election.
- (2) In each of the constituencies for the Parliament, a poll shall be held at which each person entitled to vote as elector may give a vote (referred to in this Act as a “regional vote”) for—
  - (a) a registered political party which has submitted a regional list, or
  - (b) an individual candidate to be a regional member for the region.
- (3) The right conferred on a person by subsection (2) is in addition to any right the person may have to vote in any poll for the return of a constituency member.

#### Modifications etc. (not altering text)

**C8** S. 6 applied (31.12.2020) by Regulation (EC) No 648/2004, Art. 15(7) (as inserted by **The Detergents (Safeguarding) (Amendment) (EU Exit) Regulations 2019** (S.I. 2019/671), regs. 1, **3(4)**; 2020 c. 1, Sch. 5 para. 1(1))

## 7 Calculation of regional figures.

- (1) The persons who are to be returned as constituency members for constituencies included in the region must be determined before the persons who are to be returned as the regional members for the region.
- (2) For each registered political party which has submitted a regional list, the regional figure for the purposes of section 8 is—
  - (a) the total number of regional votes given for the party in all the constituencies included in the region,  
divided by
  - (b) the aggregate of one plus the number of candidates of the party returned as constituency members for any of those constituencies.
- (3) Each time a seat is allocated to the party under section 8, that figure shall be recalculated by increasing (or further increasing) the aggregate in subsection (2)(b) by one.
- (4) For each individual candidate to be a regional member for the region, the regional figure for the purposes of section 8 is the total number of regional votes given for him in all the constituencies included in the region.

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**Modifications etc. (not altering text)**

- C9** S. 7(1) applied (with modifications) (30.12.2010 with effect as mentioned in art. 1(2)(3) of the modifying S.I.) by [The Scottish Parliament \(Elections etc.\) Order 2010 \(S.I. 2010/2999\)](#), arts. 1(1), 6(4), [Sch. 2 rule 76\(3\)](#)
- C10** S. 7(1) applied (with modifications) by S.S.I. 2015/425, sch. 2 rule 74A(3) (as inserted (S.) (11.12.2020) by [The Scottish Parliament \(Elections etc.\) \(Miscellaneous Amendments\) Order 2020 \(S.S.I. 2020/426\)](#), arts. 1(1), **15(6)** (with art. 1(2)))

**8 Allocation of seats to regional members.**

- (1) The first regional member seat shall be allocated to the registered political party or individual candidate with the highest regional figure.
- (2) The second and subsequent regional member seats shall be allocated to the registered political party or individual candidate with the highest regional figure, after any recalculation required by section 7(3) has been carried out.
- (3) An individual candidate already returned as a constituency or regional member shall be disregarded.
- (4) Seats for the region which are allocated to a registered political party shall be filled by the persons in the party's regional list in the order in which they appear in the list.
- (5) For the purposes of this section and section 10, a person in a registered political party's regional list who is returned as a member of the Parliament shall be treated as ceasing to be in the list (even if his return is void).
- (6) Once a party's regional list has been exhausted (by the return of persons included in it as constituency members or by the previous application of subsection (1) or (2)) the party shall be disregarded.
- (7) If (on the application of subsection (1) or any application of subsection (2)) the highest regional figure is the regional figure of two or more parties or individual candidates,
  - <sup>F15</sup>(a) the subsection in question shall apply to each of them; or
  - (b) if paragraph (a) would result in more than the correct number of seats for the region being allocated, the subsection in question shall apply as if the regional figure for each of those parties or candidates had been adjusted in accordance with subsection (8).
- (8) The regional figure for a party or candidate is adjusted in accordance with this subsection by—
  - (a) adding one vote to the total number of regional votes given for the party or candidate in all the constituencies included in the region; and
  - (b) (in the case of a party) recalculating the regional figure accordingly.
- (9) If, on the application of the subsection in question in accordance with subsection (7) (b), seats would be allocated to two or more parties or individual candidates and that would result in more than the correct number of seats for the region being allocated, the regional returning officer shall decide between them by lot.]

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### Textual Amendments

**F15** S. 8(7)(a)(b)(8)(9) substituted (11.3.1999) for words by [S.I. 1999/787, art. 6, Sch. 2 rule 63](#) (which S.I. was revoked (20.11.2002 except for specified purposes) by [S.I. 2002/2779, arts. 1, 2](#)); and those same sub-provisions substituted (20.11.2002 except for specified purposes) for words by virtue of [S.I. 2002/2779, arts. 1, 7\(4\), Sch. 2 rule 64](#) (which S.I. was revoked (15.3.2007 except for specified purposes) by [S.I. 2007/937, arts. 1, 2](#)); and those same sub-provisions substituted (15.3.2007 except for specified purposes) for words by virtue of [S.I. 2007/937, arts. 1, 7\(4\), Sch. 2 rule 65](#) (which S.I. was revoked (30.12.2010 except for specified purposes) by [S.I. 2010/2999, art. 97, Sch. 9](#)); and those same sub-provisions substituted (30.12.2010 except for specified purposes) for words by virtue of [S.I. 2010/2999, arts. 1, 6\(4\), Sch. 2 rule 65](#)

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