

## SCOTLAND ACT 2012

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### EXPLANATORY NOTES

#### COMMENTARY ON SECTIONS (AND SCHEDULES)

##### **Part 1: the Parliament and Its Powers**

##### *Section 1: Administration of elections*

9. This section transfers certain of the executive functions in section 12 of the Scotland Act relating to the conduct and administration of Scottish Parliament elections, which are currently exercisable by the Secretary of State, to the Scottish Ministers. These powers have most recently been exercised in the Scottish Parliament (Elections etc.) Order 2010 (S.I. 2010 No. 2999 (S. 9)), which was made on 16 December 2010.
10. *Subsection (2)* amends section 12(1)(a) and (b) to give the Scottish Ministers power to make provisions on the conduct of the Scottish Parliament elections, the questioning of such elections and the consequences of irregularities. The Scottish Ministers are required to consult the Secretary of State before exercising these powers (see *subsection (7)*). The powers of the Scottish Ministers do not extend to those provisions (in particular, in relation to the franchise) which the Secretary of State may make under new section 12A. Section 12(1)(c) is omitted, as the Secretary of State will retain the power to make provisions on the return of Scottish Parliament members other than at an election (see section 12A(1)(d), inserted by *subsection (9)*).
11. *Subsection (3)* amends section 12(2) which clarifies the scope of the order-making powers of the Scottish Ministers to make provisions under section 12(1)(a). Section 12(2)(d) allows Scottish Ministers to combine polls of the Scottish Parliament with other devolved elections where the polls are held on the same day. The powers to combine polls of the Scottish Parliament with UK Parliament or European parliamentary elections are dealt with in section 2 and are retained by the Secretary of State. The provisions in section 12(2)(b), (e) and (f), which are omitted by this section, are also retained by the Secretary of State (see sections 12A(1)(b) and (c) and 12A(2)(a) inserted by *subsection (9)*).
12. *Section 12(4)(a)*, which is not amended by this section, enables the Scottish Ministers to apply established statutory procedures for elections to Scottish Parliament elections, subject to any necessary alterations. Section 12(4)(b) and (c) are replaced by new section 12A(4).
13. *Subsection (6)* enables the Scottish Ministers to make orders as regards the designation of regional returning officers.
14. *Subsection (9)* introduces new section 12A, which sets out the powers to make provisions about elections that continue to be exercisable by the Secretary of State.
15. Section 12A(1) provides that the Secretary of State may make provision about the registration of electors. By virtue of section 12A(2), this includes disregarding the alterations in a register of electors and other provisions about the content of a register

or the effect of registration, but does not include provision about supply or dealing with the register, which may be made by the Scottish Ministers under section 12(2)(a).

16. The Secretary of State may also make provision for modifying the application of section 7(1) of the 1998 Act where a constituency poll is abandoned or notice of it countermanded (equivalent of the current section 12(2)(e)), for modifying section 8(7) to ensure the allocation of the correct number of seats for the region (equivalent of the current section 12(2)(f)), and as to the return of members otherwise than at an election (equivalent of the current section 12(1)(c)).
17. Under section 12A(3), modifications may be made to section 10(4) and (5) of the 1998 Act (which relate to the procedure for replacing regional MSPs who stood on a regional party list). This is the equivalent of current section 12(3).
18. Sections 12A(4)(a) and (b) confer on the Secretary of State the powers about the application and modification of electoral law which are currently provided under sections 12(4)(a) and (c) of the 1998 Act.
19. Section 12A(5) provides that the Secretary of State must consult the Scottish Ministers before making regulations under this section.

### ***Section 2: Combination of polls at Scottish Parliamentary and other reserved elections***

20. This section amends section 15 of the Representation of the People Act 1985 so as to require that, where Scottish Parliamentary general elections and UK or European Parliamentary general elections are held on the same day, they are to be taken together. Under section 15(5), the Secretary of State is given the power to make such provision as he thinks fit in connection with the combination of polls. This might include making modifications to the rules which would otherwise apply to the conduct of those elections to ensure that the two polls being taken together are subject to consistent rules. As a result of the amendment made by section 2, this power extends to a combination of polls which includes a Scottish Parliamentary general election. *Subsection (3)* amends section 15(3) so that the elections which returning officers have discretion to combine under section 15(2) include Scottish Parliamentary elections. This would allow, for example, the combination of the poll for a Scottish Parliamentary by election with the poll at a general election to the House of Commons.
21. *Subsection (4)* inserts new subsection (3ZA) into section 15; this provides that the discretion of returning officers under subsection (2) does not extend to determining that a Scottish Parliamentary election and a local government election in Scotland are to be taken together.
22. *Subsection (5)* inserts new subsection (5C) to section 15, requiring the Secretary of State to consult Scottish Ministers before making combination rules under subsection (5) where one of the elections is a Scottish Parliamentary election or a local government election in Scotland.

### ***Section 3: Supplementary and transitional provision about elections***

23. *Subsection (1)* inserts section 113(1A) of the 1998 Act so that that section also applies to Scottish Ministers' new powers to make subordinate legislation about the administration of Scottish Parliament elections under section 12 of the 1998 Act (provided for by section 1 of the Act). Section 113 makes supplementary provision about the scope of subordinate legislation powers in the 1998 Act.
24. *Subsections (3) and (4)* make procedural provision in relation to the subordinate legislation powers which are conferred on the Scottish Ministers and Secretary of State under section 1. An order made by the Scottish Ministers under section 12 of the 1998 Act is subject to the affirmative procedure set out in section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010. This means that it may not be made unless

it has been laid in draft before, and approved by, the Scottish Parliament. Regulations made by the Secretary of State under new section 12A may not be made unless a draft of the regulations has been laid before, and approved by, both Houses of the Westminster Parliament. This is consistent with the procedure which applies to orders made by the Secretary of State under the current section 12 of the 1998 Act.

25. *Subsection (5)* amends section 7(2)(g) of the Political Parties, Elections and Referendums Act 2000 ('PPERA') so that Scottish Ministers and the Secretary of State are both required to consult the Electoral Commission before exercising the powers to make subordinate legislation in sections 12 and 12A of the 1998 Act which are conferred by section 1.
26. *Subsection (6)* amends section 8(2) of PPERA so that Scottish Ministers may only exercise their powers under section 12(2)(c) in relation to the limitation of election expenses on the recommendation of the Electoral Commission. This constraint is subject to an exception in relation to provision which is made purely to take account of inflation.
27. *Subsections (7) to (12)* make transitional and savings provisions in connection with the transfer of powers in section 12 from the Secretary of State to the Scottish Ministers.

#### ***Section 4: Presiding Officer and deputies***

28. This section amends section 19 of the 1998 Act to allow the Parliament, at any time, to elect one or more deputies in addition to the two deputies who have to be appointed by virtue of section 19(1). This will allow the Parliament to elect additional deputies if and when it is appropriate, for example, if a deputy or the Presiding Officer is ill. These additional deputies may hold office for a shorter period than deputies appointed under section 19(1) (see *subsection (4)*).
29. This section also relaxes the existing requirement in section 19(1) on the Parliament to appoint a Presiding Officer and two deputies at its first meeting. Instead, it requires that the Parliament must appoint these officers before it conducts any other proceedings (other than its members taking the oath of allegiance) and, in any event, within 14 days of the election.
30. This section also amends Schedule 3 to the 1998 Act to require the standing orders to make provision to ensure that all the available officers (that is, those of the Presiding Officer and the deputies who are at any time able to act) do not all represent the same political party.

#### ***Section 5: Scottish Parliamentary Corporate Body***

31. This section amends section 21(2)(b) of the 1998 Act to allow for a minimum of four members of the Scottish Parliament (MSP) to be appointed as members of the Scottish Parliamentary Corporate Body (SPCB). Currently, the number of MSP members of the SPCB is fixed at four. Any increase in the number of SPCB members will be implemented by a change to the standing orders of the Scottish Parliament.

#### ***Section 6: Bills: statements as to legislative competence***

32. This section amends section 31(1) of the 1998 Act so as to require anyone in charge of a Bill, not just Ministers, to make a statement on or before introduction of the Bill, that the Bill is within the Parliament's legislative competence. The new requirement will apply to backbench MSPs introducing Members Bills, committee convenors introducing Committee Bills and private individuals and organisations introducing Private Bills.

#### ***Section 7: Members' Interests***

33. This section amends section 39 of the 1998 Act to give greater flexibility to the Scottish Parliament when making provision for a members' interests regime.

*These notes refer to the Scotland Act 2012 (c.11)  
which received Royal Assent on 1st May 2012*

34. **Section 39** imposes a statutory duty upon the Scottish Parliament to make provision by or under an Act of the Scottish Parliament about members' interests. Provision is currently made in the **Interests of Members of the Scottish Parliament Act 2006 (asp 12)**.
35. **Subsection (2)** substitutes new subsections for subsections (5) to (7) of section 39.
36. New subsection (4A) confers on the Scottish Parliament the power to create exceptions to the requirements or prohibitions imposed by the provisions made in pursuance of section 39(2) to (4). For example, this would enable the Scottish Parliament to make provision, if an excuse for non-compliance is considered to be reasonable by the Parliament, that there may be a finding that there has not been a failure to comply or a contravention.
37. New subsection (5) allows the Scottish Parliament to make provision to impose on a member such sanctions as it considers appropriate if a member fails to comply with or contravenes any provision made in pursuance of subsections (2) to (5). It continues to be able to make provision to exclude members from the proceedings of the Parliament in similar circumstances.
38. New subsection (5A) allows provision made under subsection (5) to include provision that a sanction is not to be imposed in certain specified circumstances. For example, this would enable the Scottish Parliament to make provision, if it considers it appropriate to do so, for a defence of reasonable excuse where there is a failure to comply or a contravention of the requirements stated under section 39(2) to (5).
39. **Section 39(6)** currently provides that any Member of Parliament who contravenes provision made in pursuance of subsections (2) to (4) is guilty of an offence. New subsection (6) replaces this with a power for the Parliament to make provision in this regard. The penalty for the offence remains the same (see new subsection (7)).

***Section 8: Constituencies, regions and regional members***

40. This section repeals sections 1(2) and (3) and Schedule 2 of the Scottish Parliament (Constituencies) Act 2004 ('the 2004 Act') as these transitional provisions are no longer required.
41. **Subsection (2)** introduces Schedule 1 which contains amendments reproducing the effect of modifications contained in Schedule 2 to the 2004 Act and makes some other minor amendments to Schedule 1 to the 1998 Act.

***Section 9: Continued effect of provisions ceasing to be within legislative competence***

42. This section amends section 30 of the 1998 Act to provide that where there is an alteration to the matters which are reserved matters or to Schedule 4 of that Act, the effect of which is that a provision of an Act of the Scottish Parliament ceases to be within legislative competence, the provision does not for that reason cease to have effect, unless an enactment provides otherwise.

***Section 10: Air weapons***

43. This section amends Section B4 of Part 2 of Schedule 5 to the 1998 Act to create an exception to that reservation. Section B4 reserves the subject matter of Firearms Acts 1968 to 1997.
44. The amendment gives legislative competence to the Scottish Parliament in relation to the regulation of air weapons within the meaning of section 1(3)(b) of the Firearms Act 1968.

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which received Royal Assent on 1st May 2012*

45. The Secretary of State retains the power under section 53 of the Firearms Act 1968 and section 1(4) of the Firearms (Amendment) Act 1988 to make rules and orders relating to specially dangerous weapons.

***Section 11: Antarctica***

46. This section re-reserves the regulation of activities in Antarctica. The effect of this section is that it will no longer be within the legislative competence of the Scottish Parliament to pass Acts which relate to the regulation of activities in Antarctica. The Scottish Parliament has never in fact exercised this competence.
47. *Subsection (2)* provides that the amendment to Schedule 5 takes effect retrospectively, so that it is regarded as having effect from the date that Schedule 5 came into force. The effect of this provision is that executive functions in relation to the regulation of activities in Antarctica are regarded as never having transferred to the Scottish Ministers under section 53 of the 1998 Act (where they would otherwise have been exercisable within devolved competence) and always having been exercisable by Ministers of the Crown.