

**EXPLANATORY MEMORANDUM TO  
THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) (AMENDMENT) ORDER 2009**

**2009 No. 1978 (S. 10)**

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 The Order removes references to “nominating officer”; increases the time between close of nominations and the date of poll for a general election to 23 days; requires the use of the registered party name on nomination papers, with the option to include the word “Scottish” if so desired; removes the option of having one ballot paper for both the constituency and regional ballot papers; and removes the option of electronic counting. In addition the Order amends a few errors in the Scottish Parliament (Elections etc.) Order 2007.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Context**

4.1 This Order amends the Scottish Parliament (Elections etc.) Order 2007. The purpose of the Order is to implement some of the recommendations contained in the Gould report on the Scottish Elections 2007. The Order is made under sections 12 and 113 of the Scotland Act 1998.

5. **Territorial Extent and Application**

5.1 This instrument has UK extent, being the same as the Order it amends.

6. **European Convention on Human Rights**

The Parliamentary Under Secretary of State at the Scotland Office, Ann McKechnie MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Scottish Parliament (Elections etc.) (Amendment) Order 2009 are compatible with the Convention rights.”

## 7. Policy background

### **Background**

7.1 There were a number of problems with the elections to the Scottish Parliament held in May 2007. The Electoral Commission asked Ron Gould, a Canadian expert in elections administration, to carry out an independent review (the Gould Report). The Gould Report was published on 23 October 2007 and on 13 November 2007 David Cairns MP, then Minister of State at the Scotland Office, confirmed that the Scotland Office would be launching a consultation paper as well as a series of meetings with political and other interested parties. The consultation document, *Sorting the Ballot: Improving the Elections to the Scottish Parliament*, was issued on 13 December 2007 with the aim of soliciting views on suggestions and options to improve voting at future elections to the Scottish Parliament. However the responses to the consultation document did not demonstrate that the views of individual voters had been adequately covered and therefore research was undertaken to find out the views of individual voters. This research was carried out between 28 May 2008 and 13 June 2008 using focus groups to investigate voters' views on various areas of the administration of elections.

An analysis of the responses to the *Sorting the Ballot* consultation paper can be found at

<http://www.scotlandoffice.gov.uk/scotlandoffice/files/Analysis%20of%20responses%20to%20questions%20in%20Sorting%20the%20Ballot.pdf>

and the full report on the focus group research can be found at

<http://www.scotlandoffice.gov.uk/scotlandoffice/files/Research%20report%20on%20focus%20groups.pdf>

7.2 On 24 June 2008, the Government issued its response to the Gould report. In reaching its decisions on the Gould recommendations, the Government considered the responses to the consultation paper; the discussions with political parties, the Electoral Commission and electoral administrators; and the views of voters. The full response can be found on the Scotland Office website at

<http://www.scotlandoffice.gov.uk/scotlandoffice/files/Gould%20formal%20response%20WMS%20240608.pdf>

7.3 The Order amends the Scottish Parliament (Elections etc.) Order 2007 (the 2007 Order) to implement some of the accepted recommendations contained in the Gould Report. The remaining accepted recommendations will be implemented in the consolidated order which will be prepared for the 2011 Scottish Parliament elections. The Scotland Office is also taking this opportunity to amend some other minor errors which were contained in the 2007 Order.

## Details of changes

### Correction of a reference to the Political Parties, Elections and Referendums Act 2000

7.4 Article 3 corrects an error in article 46(3)(e) of the 2007 Order which refers to Schedule 2A to the Political Parties, Elections and Referendums Act 2000 instead of Schedule 2A to the Representation of the People Act 1983.

### Removal of references to nominating officers

7.5 Articles 4 to 7 remove unnecessary references in articles 50, 52, 53 and 55 to nominating officers. These articles are about returns and declarations in connection with candidates' election expenses and nominating officers do not have a role in these matters.

### Changes to the timetable for a Scottish Parliament general election.

7.6 One of the major findings in the Gould report was that the lack of time between the closing of the nomination process and the date of poll contributed to the problems which occurred at the May 2007 elections. In particular the short time available to finalise the design of the ballot paper, arrange printing of the ballot papers and issue postal ballot papers caused particular problems. Ron Gould recommended that the time between the close of nominations and the date of the poll should be increased.

7.7 Article 8(2) and (3) amend the timetable for the Scottish Parliament general election to increase the time between the close of nominations and the date of the poll from 16 days to 23 days. This will allow returning officers more time to finalise and print the ballot papers and to arrange for the dispatch of postal ballot papers.

### Use of registered political party name and inclusion of the word "Scottish" within the registered political party name

7.8 Following Scottish Parliament elections in May 2007, concerns were raised that the option to use party descriptions on ballot papers might be used to gain positional advantage on the ballot paper, which is ordered alphabetically. Following the consultation, the Government accepted the Gould report's recommendation on the use of the registered party name. This will allow electors to clearly identify which party they are voting for. However some concerns were expressed that political parties which were registered on a UK basis but still had a distinctive Scottish element would be disadvantaged by the restriction of using the registered political party name. Therefore the Government decided that political parties should be allowed the option of including the word "Scottish" within the registered party name for use on nomination and ballot papers.

7.9 Articles 9 and 10(2) to (4) give effect to the Government's commitment and remove candidates' and parties' option of using a party description on nomination and ballot papers and requires them to use the registered political party name, which may include the word "Scottish" if they so desire. On the regional ballot paper, parties can continue to use a registered party description but the registered political party name

must appear first followed by the description. Candidates who are not attached to a specific political party may continue to use the description “Independent”.

### Separate ballot papers

7.10 The Gould report found that the combination of the regional and constituency ballots on a single paper caused voter confusion. The major concerns were that a significant percentage of voters either only voted in one ballot, as opposed to both, or cast both votes in one ballot. The Government agreed that, in order to reduce the risk of confusion, separate ballot papers should be used for the regional and constituency ballots. Articles 10(5) to (16) and (18) and 12(4) to (7) remove the option to combine the ballot papers, therefore making separate ballot papers mandatory, and deal with consequential minor amendments to the counting procedures.

### Electronic counting

7.11 For the May 2007 elections the option of using electronic counting of votes was introduced. The main reason behind the introduction of electronic counting was the introduction of the single transferrable voting (STV) system for local government elections. The Scottish Parliament is in the process of considering a Bill which will move the date of Scottish local government elections. This will mean that Scotland wide Scottish Parliament and local government elections will not fall on the same day. With the separation of the two elections, there is no significant advantage to counting electronically and therefore the Government has decided that the Scottish Parliament elections will revert to manual counting for the 2011 elections.

7.12 Articles 10(17), (19) and (20), 11, 12(2) and (3) and 13 remove the option to count the ballot papers electronically and deal with consequential amendments to the counting process.

### Forms

7.13 Article 14 deals with consequential amendments to the forms contained in the 2007 Order as a result of the above changes.

## **8. Consultation outcome**

8.1 In accordance with section 7(1) and (2)(g) of the Political Parties, Elections and Referendums Act 2000 the Electoral Commission have been consulted on the Order. The Commission have made a number of observations which were considered when finalising the Order.

## **9. Guidance**

9.1 The Electoral Commission has the responsibility for providing guidance to returning officers and others on the conduct of elections. The Commission will be updating its guidance as part of its normal preparations for the 2011 Scottish Parliament general election.

9.2 The Scotland Office meets regularly with electoral administrators and will provide any guidance that is required.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is limited to changes to the rules that Returning Officers must apply when dealing with Scottish parliament elections.

10.3 An Impact Assessment has not been prepared for this instrument as these changes will have no impact on the private or voluntary sector.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The Scottish Parliament election rules are monitored by the Scotland Office and the Electoral Commission. Any recommendations for changes to the rules will form part of the Commission's report on the conduct of general and by-elections.

## **13. Contact**

Roddy Angus at the Scotland Office email: [rodgy.angus@scotlandoffice.gsi.gov.uk](mailto:rodgy.angus@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.