

## **POLICY NOTE**

### **THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULES 4 AND 5) ORDER 2015**

#### **SI 2015/1764**

The above instrument will be made in exercise of the powers conferred by sections 30(2) and (4) of the Scotland Act 1998(a). This instrument will extend throughout the United Kingdom.

#### **Policy Objectives**

The purpose of this Order is to amend Schedules 4 and 5 to the Scotland Act 1998 (“the 1998 Act”) to devolve power to the Scottish Parliament to legislate to determine a date for the poll of the first ordinary general election for membership of the Scottish Parliament after that scheduled to be held on 5 May 2016.

#### *Effect of Instrument*

Section 1(2) of the Fixed-term Parliaments Act 2011 determines that the next UK Parliamentary general election is due to be held on 7 May 2020, while section 4(2) of that same Act determines that the next Scottish Parliamentary ordinary general election is due to be held on 5 May 2016. Section 2(2) of the 1998 Act provides for the poll at Scottish Parliament ordinary general elections to be held on the first Thursday in May every fourth year and, accordingly, the following Scottish Parliamentary ordinary general election would occur on 7 May 2020, the same date that the UK Parliamentary general election is due to be held. The Scottish Government and the UK Government are committed to take action to avoid this clash in 2020.

Schedule 4 to the 1998 Act lists enactments which are protected from modification by the Scottish Parliament. Much of the 1998 Act itself is included in this list. Therefore, this Order will amend Schedule 4 to the 1998 Act to allow an Act of the Scottish Parliament to modify section 2(2) in relation to the first Scottish Parliamentary ordinary general election after 2016.

Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Amongst other things, Section B3 of Part 2 of Schedule 5 reserves elections for membership of the Scottish Parliament. This Order will amend Schedule 5 by providing a further exception to section B3 so that the day of the poll at the first Scottish Parliamentary ordinary general election after 2016, will not be a reserved matter.

The Order also provides for certain limitations on this exception to the reservation. The day of the poll, as determined by the Scottish Parliament, must not be the same as the day of the poll at a UK Parliamentary general election (other than an early parliamentary general election), European Parliamentary general election or ordinary local government election in Scotland. Section 3(3) of the 1998 Act provides that where the poll at an extraordinary general election for membership of the Scottish Parliament is held within the 6 months before the poll at the next Scottish Parliamentary ordinary general election is due to be held, that ordinary general election will not

be held. If these circumstances arise in relation to the ordinary general election for which the Scottish Parliament determines the date using the competence given in the Order, that competence cannot be used in relation to that ordinary general election following the extraordinary general election (which would then be the first **ordinary** general election after 2016).

Section 2(5) of the 1998 Act provides for a limited alteration in the date to be set for a Scottish Parliamentary ordinary general election. If the first Thursday in May is deemed inappropriate for the holding of a poll, the Presiding Officer may propose an alternative day for the election to Her Majesty. However, the proposed date may not be more than one month earlier or one month later than the first Thursday in May. This Order provides that the Presiding Officer will retain the ability to propose this limited alteration in the date of the poll, in relation to the first Scottish Parliament ordinary general election after 2016. However, any date so proposed must not be the same as the day of the poll at a UK Parliamentary general election (other than an early parliamentary general election), European Parliamentary general election or ordinary local government election in Scotland.

The instrument has no financial effect and no Human Rights issues arise. There is no impact on business, charities, or the public or voluntary sectors.

### *Policy Background*

The Scottish Government and UK Government have agreed that electors should be aware of the term of the Scottish Parliament to which they are electing members and so, as the next scheduled Scottish Parliamentary ordinary general election is due to take place on 5 May 2016, legislation to determine the duration of that Parliament should be made before the current Scottish Parliament dissolves for the May 2016 election.

Amendments were taken forward in the last UK Parliament to change the term lengths of the Welsh and Northern Ireland Assemblies from four to five years on a permanent basis so as to avoid a clash with UK Parliamentary general elections. The Scotland Bill, recently introduced to the Westminster Parliament, will if enacted give the Scottish Parliament, subject to certain specific limitations, the ability to determine the dates of its future elections.

Since devolving the power to determine the duration of the next Scottish Parliamentary session to the Scottish Parliament is consistent with the Smith Commission's recommendation that the Scottish Parliament should have all powers in relation to its own elections, and powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament, this approach has the support of both the UK Government and the Scottish Government. The Presiding Officer of the Scottish Parliament confirmed that this approach also has the support of all Party Leaders in Scotland.

While giving the Scottish Parliament the power to avoid a clash in 2020, the section 30 Order will prevent the day of the poll determined by the Scottish Parliament being on the same day as a UK Parliamentary general election, European Parliamentary general election or ordinary local government election in Scotland, consistent with the Smith Commission's recommendation.

## **Consultation**

Although, because of time constraints, there has been no general consultation specific to this Order, the Order has been agreed by all the relevant areas within the UK government and the Scottish Government.

Scottish Government

June 2015