

**EXPLANATORY MEMORANDUM TO**  
**THE SCOTLAND ACT 2012 (SAVING AND CONSEQUENTIAL PROVISIONS)**  
**ORDER 2015**

**2015 No. 683**

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

2. **Purpose of the instrument**

This Order makes provision in consequence of, and in connection with, the commencement of sections 1 and 3 of the Scotland Act 2012 (c. 11) (“the 2012 Act”). Those sections will (subject to some exceptions) transfer from the Secretary of State to the Scottish Ministers responsibility for making provision about the conduct of elections for, and the return of members to, the Scottish Parliament. This Order ensures that the transfer will not apply to any elections with a date of poll on or before 4th April 2015, and that relevant legislation reflects the transfer of responsibility.

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

None.

4. **Legislative Context**

4.1 The Scotland Act 2012 (Commencement No. 5) Order 2015 (S.I. 2015 No. 682) will commence sections 1 and 3 of the 2012 Act. Section 1 transfers certain of the executive functions in section 12 of the Scotland Act 1998 (“the 1998 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 and governed the conduct of the Scottish Parliament elections where the date of poll was on or after 5 April 2011, including the ordinary general election to the Scottish Parliament which took place on 5 May 2011. Section 3 makes supplementary and transitional provisions about Scottish Parliament elections. In particular subsections (7) to (12) make transitional and savings provisions in connection with the transfer of powers in section 12 of the 1998 Act from the Secretary of State to the Scottish Ministers.

4.2 In addition to this order, the Scotland Office is preparing a number of instruments revoking other instruments in connection with Scottish Parliament elections. These instruments relate to areas (such as returning officers charges and accounts and where constituencies or regions cover more than one local authority area) where the power to make provisions about Scottish Parliament elections will be transferred to Scottish Ministers. These instruments will be made very shortly.

4.3 This Order:

- provides for the transfer of responsibility under section 1 of the 2012 Act not to apply to elections which have a date of poll on or before 4th April 2016 (5th April 2016 being the earliest possible date of the next ordinary general election

to the Scottish Parliament). Elections with polls before then will continue to be governed by the pre-commencement arrangements.

- revokes spent provisions in the Scotland Act 1998 (Agency Arrangements) (Specification) Order 1999 (S.I. 1999 No. 1512) which previously permitted the Secretary of State to enter into agency arrangements with the Scottish Ministers for the performance of some elections functions. Once the functions are transferred to the Scottish Ministers these arrangements, and the provision underpinning them, will be unnecessary.
- allows for any references in section 29 of the Representation of the People Act 1983 (c.2) (Payments by and to returning officer) to the Secretary of State and the Consolidated Fund to be construed as referring to the Scottish Ministers or the Scottish Consolidated Fund respectively. This reflects the transfer of the responsibility for the funding of Scottish Parliament elections from the Secretary of State to Scottish Ministers.
- removes the requirement for HM Treasury to consent to subordinate legislation concerning the charges of returning officers.
- removes provision on the loan of equipment to returning officers including the determination of terms and conditions by the Secretary of State.
- allows for the cost of candidates free mailings at Scottish Parliament elections, which are currently met from the Consolidated Fund, to be met from the Scottish Consolidated Fund.
- allows for subordinate legislation made by the Scottish Ministers to be subject to procedure in the Scottish Parliament and not in the UK Parliament.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 The 2012 Act makes changes to the devolution settlement for Scotland and gives effect to many of the recommendations set out in the Commission on Scottish Devolution's (Calman Commission) final report, *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century* which was published in June 2009. The 2012 Act followed the Coalition Government's commitment to 'implement the proposals of the Calman Commission' in *The Coalition: Our Programme for Government* published in May 2010. One of the Calman Commission's recommendations was that responsibility for the administration of elections should be devolved.

7.2 The Scotland Act 2012 (Commencement No. 5) Order 2015 commences sections 1 and 3 of the 2012 Act on 1st July 2015. The present Order is being made in consequence of those sections and in connection with their coming into force.

7.3 In discussion with the Scottish Government, we have agreed that the changes in this Order will not take effect for any polls which take place before the 5 April 2016. The 5 April 2016 is the earliest date, in accordance with section 2 of the 1998 Act, on which the next ordinary general election to the Scottish Parliament can take place. This is in line with past practice where significant changes have only been brought into force for the next Scottish Parliament ordinary general election. This also allows for any by-elections to be run on the existing rules.

7.4 Most of the changes made by this Order are procedural and relate to ensuring that technical matters, such as parliamentary procedure and references to “Consolidated Fund” or “Scottish Consolidated Fund”, are correct.

7.5 The removal of the requirement for Treasury consent in relation to payments by and to returning officers is consistent with section 55 of the 1998 Act which removes any requirement for Scottish Ministers to obtain the consent of another Minister of the Crown when exercising a function transferred by section 53 of the 1998 Act.

7.5 The decision to remove the provision about the lending of equipment to returning officers was made because it was not thought appropriate for Scottish Ministers to determine the terms and conditions attached to the loan of equipment bought using money provided by Parliament. The Scotland Office and Scottish Government are considering arrangements around the shared use of election equipment for all elections and referendums.

## **8. Consultation outcome**

8.1 This instrument was not the subject of a separate public consultation since it only provides for minor and technical consequential amendments which flow from the implementation of primary legislation, which was the subject of earlier consultation.

8.2 The Scotland Office and the Office of the Office Advocate General for Scotland have worked closely with the Scottish Government in preparing this Order so that there will be a smooth transfer of powers from the Secretary of State to Scottish Ministers. The Scottish Government have indicated that they are content with the terms of this Order.

8.3 The Electoral Commission was also consulted and they were content with the terms of the Order.

## **9. Guidance**

No guidance is being prepared in respect of this instrument. However, steps are being taken to ensure that election practitioners are made aware of the transitional arrangements provided for in this Order.

## **10. Impact**

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

10.2 The impact on the public sector is minimal as this instrument only relates to the transfer of existing powers to make provision for Scottish Parliament elections from the Secretary of State to Scottish Ministers.

10.3 An impact assessment has not been prepared for this instrument.

**11. Regulating small business**

The legislation does not apply to small business.

**12. Monitoring & review**

Since the purpose of this instrument is to make provision in consequence of, and in connection with, the commencement of sections 1 and 3 of the 2012 Act, no monitoring or review by the UK Government is necessary. As required under section 5 of the Political Parties, Elections and Referendums Act 2000 (c.41), the conduct of the Scottish Ministers in running Scottish Parliamentary elections will be subject to the normal scrutiny by the Electoral Commission.

**13. Contact**

Roddy Angus at the Scotland Office Tel: 0131 244 9005 or email: [Roddy.Angus@scotlandoffice.gsi.gov.uk](mailto:Roddy.Angus@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.