

SCOTTISH GENERAL ELECTION (CORONAVIRUS) ACT 2021

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Other arrangements for 2021 election

Section 6: Dissolution of current Parliament

18. The effect of section 13 of the Scotland Act 1998 is that when the Parliament dissolves before a general election, members of the Parliament (MSPs) cease to hold office, and the Parliament cannot be convened to debate or pass legislation. For previous general elections, dissolution (which is set by secondary legislation) has usually lasted 28 days.
19. However, the possibility exists that, once the Parliament dissolves, there is an event connected with the coronavirus pandemic (such as a spike or surge of coronavirus infections) that could potentially endanger the general election being safely held on 6 May.
20. The purpose of this section is therefore to provide a kind of insurance policy against that situation occurring by making dissolution happen on 5 May 2021. This means that MSPs will still retain office until a single day before the election, and therefore up to that point the Parliament would be able to debate and pass an emergency Bill to postpone or alter arrangements for the election, if coronavirus were to threaten the election occurring as normal. It is anticipated that the Parliament will instead go into recess for the campaign 27 days prior to the election (although it is ultimately for the Parliamentary Bureau to decide on this after discussions with the business managers of the different political parties), but this would not prevent the Parliament from being recalled to sit as required.
21. Subsection (2) reflects that if the election is postponed by the Presiding Officer under section 11(1), the date of dissolution will also be postponed, under section 11(8).

Section 7: Dissolution of current Parliament: consequential modifications

22. This section makes adjustments to certain provisions of the 2015 Order in consequence of the change to the timing of dissolution made by section 6.
23. Article 80(1) of the 2015 Order provides that a person becomes a “candidate”, in relation to a Scottish Parliamentary election, on the dissolution of the Parliament. Subsection (2) of section 7 modifies this to 27 working days before 6 May 2021 – this is expected to be 25 March, which is also anticipated to be the point at which the Parliament enters recess for the election campaign. A person would then remain a candidate from then on (barring deselection or resignation) even if the election were to be postponed – in other words, they would not become a candidate in legal terms for a second time.
24. Another effect of this provision of the 2015 Order, in combination with section 7 of the Act, is that a number of individuals will be both serving MSPs and election candidates from 25 March until 4 May (if the election is not postponed by the Presiding Officer, in

which case section 11(8) of the Act would also postpone dissolution). However, MSPs will remain subject to the MSP Code of Conduct in terms of their use of Parliamentary privileges and resources during this period, meaning that it will be possible for the new Parliament to consider any complaints against a successful candidate who was alleged to have abused their position as a sitting MSP in this period.

25. This provision also has implications for the “regulated period” for campaign expenditure for an election under the Political Parties, Elections and Referendums Act 2000, which covers expenditure by political parties and others in the run up to a poll date. The regulated period is split into the “long” and “short” campaigns, each having different rules for the recording of expenditure for the purposes of returns that require to be submitted to the Electoral Commission. The long campaign will commence on 6 January 2021. The short campaign commences the day after a person becomes a candidate – by the operation of section 7(2) of the Act, the short campaign is expected to commence on 26 March 2021.
26. Paragraph 1(2) of schedule 1 of the 2015 Order links the supply of electoral registers, by electoral registration officers to local authority returning officers, to the date of dissolution. Section 7(3) of the Act changes this to 27 working days before the election takes place. If the election were to be postponed, the duty on electoral registration officers to supply the register as soon as practicable after that date would be reactivated.
27. For the purpose of calculating the dates mentioned in this section, the Scottish Parliamentary Election Rules are set out in schedule 2 of the 2015 Order, with paragraph 2 the relevant provision on the computation of time.

Section 8: Power to provide for polling on additional days

28. This section gives the Scottish Ministers the power to specify in regulations one or more additional days over which the poll for the 2021 election is to take place. The purpose of this provision is to allow for the possibility that in-person voting will take longer than normal due to the imposition of physical distancing and other measures to prevent the transmission of coronavirus. The power may be exercised whether or not the day of the poll for the 2021 election is postponed by the Presiding Officer under section 11.
29. It is important to note that the Scottish Ministers may make the regulations only if to do so gives effect to a recommendation of the convener of the Electoral Management Board for Scotland. The Board, established under section 1 of the Local Electoral Administration (Scotland) Act 2011, has the general function of co-ordinating the administration of Scottish parliamentary elections and local government elections in Scotland. In addition, the Scottish Ministers must consider that making regulations to give effect to the Board’s recommendation is necessary for a reason relating to coronavirus.
30. Subsection (2) limits what may be recommended by the convener of the Board. Unless there is a reason to recommend otherwise, there is not to be a break in the polling days specified – so, for example, a three day poll commencing on a Thursday would continue to the Saturday. In addition, no polling can occur later than on the eighth day following the day fixed for the poll, as defined in subsection (3).
31. Subsection (4) provides that the regulations may specify particular days or times when certain descriptions or categories of persons eligible to vote in person may do so. This would, for example, allow provision to be made requiring voters of a particular age, or in a particular area, who do intend to exercise their right to vote, to do so only on specified days or at specified times.
32. The effect of subsection (5) is that regulations may be made only if a draft of the regulations has been laid before, and then approved by a resolution of, the Parliament. At the same time as laying draft regulations, the Scottish Ministers must – under subsection (6) – lay a statement of the reasons for the regulations.

*These notes relate to the Scottish General Election (Coronavirus)
Act 2021 (asp 5) which received Royal Assent on 29 January 2021*

33. Before making regulations under subsection (1), subsection (7) provides that the Scottish Ministers must consult the Presiding Officer of the Parliament, the Electoral Commission, the convener of the Electoral Management Board for Scotland and the Chief Medical Officer of the Scottish Administration. Information on what the consultees say must be included in the statement of reasons mentioned above.
34. Subsection (8) has the effect that regulations under subsection (1) do not prevent the exercise of the power to postpone the election conferred on the Presiding Officer of the Parliament by section 11. If that power were exercised, the convener of the Electoral Management Board would need to consider whether to make a fresh recommendation of additional days in respect of the election occurring on the new date fixed by the Presiding Officer.
35. Subsection (9) allows the Scottish Ministers to make regulations modifying the meaning of references to the day or date of the poll in any enactment or document (e.g. the 2015 Order) as regards the 2021 election, if regulations under subsection (1) are in force. But otherwise such references are unaffected and are still to be read as references to 6 May 2021 (or the date fixed by the Presiding Officer under section 11 of the Act in the event that the 6 May poll date is postponed).
36. This confirms, for example, that despite the poll taking place over a number of days, 6 May (or the day fixed by the Presiding Officer under section 11) is the relevant date for determining eligibility to vote on the basis of a person's age. By virtue of section 2 of the Representation of the People Act 1983 and section 11 of the Scotland Act 1998, a person must be at least 16 years of age on the day of the poll to be eligible to vote at an election for membership of the Parliament.