

2020 No. 426

CONSTITUTIONAL LAW

REPRESENTATION OF THE PEOPLE

**The Scottish Parliament (Elections etc.) (Miscellaneous
Amendments) Order 2020**

Made - - - - *10th December 2020*

Coming into force - - *11th December 2020*

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 12(1) and 113(2), (4) and (5) of the Scotland Act 1998(a) and sections 72A(1)(c), 85A(1)(c), 156(5), paragraph 4 of schedule 8 and paragraph 4 of schedule 8A of the Political Parties, Elections and Referendums Act 2000(b) and all other powers enabling them to do so.

In accordance with section 7(1) and (2)(g), paragraph 4(2) of schedule 8 and paragraph 4(2) of schedule 8A of the Political Parties Elections and Referendums Act 2000, the Scottish Ministers have consulted the Electoral Commission.

In accordance with section 115 and schedule 7 of the Scotland Act 1998(c) and section 156(4)(j) and (ja)(d) of the Political Parties, Elections and Referendums Act 2000, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

Citation, commencement and transitional provision

1.—(1) This Order may be cited as the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 and comes into force on the day after the day on which it is made.

(2) This Order has no effect for the purposes of any election for which the date of the poll is on or before 5 April 2021.

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- (a) 1998 c.46 (“the 1998 Act”). Section 12 was substituted by section 4(1) of the Scotland Act 2016 (c.11) (“the 2016 Act”). The powers in section 113(2), (4) and (5) of the 1998 Act apply to the exercise of the Scottish Ministers power under section 12 by virtue of section 113(1A) of that Act, which was inserted by section 3 of the Scotland Act 2012 (c.11) (“the 2012 Act”).
- (b) 2000 c.41 (“the 2000 Political Parties Act”). Section 72A was added to the 2000 Political Parties Act by section 7(2) of the 2016 Act and section 85A was added by section 7(3) of the 2016 Act. Section 156(5) of the 2000 Political Parties Act was amended by section 7(13) of the 2016 Act. The power in paragraph 4 of schedule 8A was added by schedule 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (c.4) (“the 2014 Act”). The powers in paragraph 4 of schedule 8 and paragraph 4 of schedule 8A are exercisable by the Scottish Ministers in accordance with sections 72A(1)(c) and 85A(1)(c) of the 2000 Political Parties Act.
- (c) Schedule 7 was amended by section 3 of the 2012 Act. There are other amendments that are not relevant to this Order.
- (d) Section 156(4)(ja) was added by section 26(13) of the 2014 Act. By virtue of section 156(4B)-(4D) an order falling within section 156(4) which is made by the Scottish Ministers is subject to the affirmative procedure. Section 156(4B)-(4D) were added by section 7(12) of the 2016 Act. The powers to make this Order are exercised together by virtue of section 33(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). The Order is subject to the affirmative procedure by virtue of section 33(3) of that Act.

Amendment of the Scottish Parliament (Elections etc.) Order 2015

2. The Scottish Parliament (Elections etc.) Order 2015(a) is amended in accordance with articles 3 to 19.

3. After article 3 (supply of electoral registers) insert—

“Register of electors etc.

3A. Subject to article 4(5) and sections 13AB (alteration of registers: interim publication dates)(b) and 13B (alteration of registers: pending elections)(c) of the 1983 Act, an alteration in a published version of the register of electors under section 13A or 56 of the 1983 Act (alteration of registers and registration appeals)(d) which is to take effect after the fifth day before the date of the poll for an election does not have effect for the purposes of that election.”.

4.—(1) Article 4 (absent voting appeals) is amended as follows.

(2) The heading of the article becomes “Registration and absent voting appeals”.

(3) In paragraph (3) after “this article” insert “or section 56 of the 1983 Act (registration appeals)”.

(4) In paragraph (5)—

(a) after “under this article” where first appearing, insert “or section 56 of the 1983 Act”,

(b) after “under this article” where second appearing, insert “or under section 13(5), 13A(2), 13AB(3) or 13B(3) or (3B) of the 1983 Act(e)”.

5.—(1) Article 21 (effect of registers) is amended as follows.

(2) In paragraph (1) after “A person” insert “registered as a local government elector or”.

(3) After paragraph (3) insert—

“(4) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, will, for any purpose of this Part relating to that person as elector, be conclusive that until the date given in the entry that person is not of voting age nor entitled to be treated as an elector except for the purposes of a Scottish parliamentary election at which the date fixed for the poll is that or a later date.

(5) Article 21(4) applies to an entry in the record of anonymous entries as it applies to an entry in the register of local government electors.”.

6. In article 22 (effect of misdescription) after “or place named” insert “in the register of electors, or”.

7. After article 23(2) (discharge of registration duties) insert—

(a) S.S.I. 2015/425.

(b) Section 13AB was added by section 16(3) of the Electoral Registration and Administration Act 2013 (c.6) (“the 2013 Act”) and amended by paragraph 4 of schedule 2 of the Recall of MPs Act 2015 (c.25) (“the 2015 Act”).

(c) Section 13B was added by paragraph 6 of schedule 1 of the Representation of the People Act 2000 (c.2) (“the 2000 Act”) and amended by section 11 of the Electoral Administration Act 2006 (c.22) (“the 2006 Act”), paragraph 13 of schedule 4 of the 2013 Act and paragraph 5 of schedule 2 of the 2015 Act.

(d) Section 13A was added by paragraph 6 of schedule 1 of the 2000 Act and amended by paragraph 3 of schedule 6 of the Political Parties and Elections Act 2009 (c.12) (“the 2009 Act”), paragraph 3 of schedule 1 and paragraph 12 of schedule 4 of the 2013 Act and para 3 of schedule 2 of the 2015 Act. It was also amended by section 1(4) of the Electoral Fraud (Northern Ireland) Act 2002 (c.13), by section 5(2) and paragraph 4 of schedule 4 of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33), section 14(1)(a)(iv) of the Northern Ireland (Miscellaneous Provision) Act 2014 (c.13) and by regulation 2(6) of the Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2018 (S.I. 2018/699). Section 56 is applied to Scotland, with modification, by section 57 of the 1983 Act. Section 56 was amended by section 11, 24 and 28, paragraph 1 of schedule 2, paragraph 16 of schedule 4 and schedule 5 of the Representation of the People Act 1985 (c. 50), paragraph 14 of schedule 1 and schedule 7 of the 2000 Act, sections 11, 12 and paragraph 8 of schedule 1 of the 2006 Act, section 16(5)(b) and paragraph 18 of schedule 4 of the 2013 Act and paragraph 8 of schedule 2 of the 2015 Act.

(e) Sections 13, 13A and 13B were substituted by paragraph 6 of schedule 1 of the 2000 Act. Section 13(5) was amended by paragraph 2 of schedule 6 of the 2009 Act. Section 13B(3B) was inserted by section 11(4) of the 2006 Act.

“(3) An ERO must comply with any general or specific directions which may be given by the Scottish Ministers, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the 2000 Political Parties Act (directions as to discharge of registration duties), with respect to the arrangements to be made by the ERO in carrying out the ERO’s functions under this Order.”.

8.—(1) Article 42 (limitation of election expenses: constituency and individual regional candidates) is amended as follows.

(2) After paragraph (2) insert—

“(2A) Notwithstanding paragraph (8), where the date of the poll at a Scottish parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998(a), the maximum amount will have effect in relation to any candidate at that election as if the amount specified in paragraph (2) were increased by one half.”.

(3) For paragraph (6) substitute—

“(6) Expenses incurred by or on behalf of the candidate which are—

- (a) personal expenses,
- (b) reasonable expenses incurred that are reasonably attributable to individuals’ disability,
- (c) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or
- (d) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English,

do not count towards the maximum amount.”.

(4) In paragraph (9) for “2014” substitute “2020”.

9.—(1) Article 43 (limitation of pre-candidacy election expenses: constituency and individual regional candidates at Scottish Parliament general elections) is amended as follows.

(2) After paragraph (5) insert—

“(5A) Where the date of the poll at a Scottish parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998(b), the permitted amount will have effect in relation to any candidate at that election as if the amount specified in paragraph (5) were increased by one half.”.

(3) For paragraph (8) substitute—

“(8) Expenses incurred by or on behalf of the candidate which are—

- (a) personal expenses,
- (b) reasonable expenses incurred that are reasonably attributable to individuals’ disability,
- (c) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or
- (d) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English,

do not count towards the permitted amount.”.

10.—(1) Article 56 (publication of time and place of inspection of returns and declarations) is amended as follows.

(a) 1998 c.46 (“the 1998 Act”). Section 2(5) of the 1998 Act was amended by section 5(5) of the Scotland Act 2016 (c.11) (“the 2016 Act”) and section 3(2)(a) of the Scottish Elections (Reform) Act 2020 (asp 12) (“the 2020 Act”). Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

(b) Section 2(5) of the 1998 Act was amended by section 5(5) of the 2016 Act and section 3(2)(a) of the 2020 Act. Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

(2) In paragraph (1) for “not less than two newspapers circulating in the constituency for which the election was held” substitute “such manner as the CRO thinks fit”.

(3) In paragraph (2) for “not less than three newspapers circulating in the region” substitute “such manner as the RRO thinks fit”.

11.—(1) Article 72 (details to appear on election publications) is amended as follows.

(2) After paragraph (3) insert—

“(3A) Subject to paragraph (3B), for the purposes of paragraphs (4) to (6), the relevant details (as defined in paragraph (3)) must conform to the following specifications—

- (a) type size of at least 11 points as measured in font ‘Times New Roman’ not narrowed, and
- (b) space between text lines of at least 3mm.

(3B) Paragraph (3A) does not apply where—

- (a) in the case of paragraph (4) or (5), the document consists (or consists principally) of material which is less than the size of A4 paper, or
- (b) in the case of paragraph (6), the advertisement contained in the newspaper or periodical covers a total space which is less than the size of one sheet of A4 paper,

and in such cases, the relevant details must be in type size of at least 9 points as measured in font ‘Times New Roman’ not narrowed and the space between text lines must be at least 2mm.”.

(3) In paragraph (13) before the definition of “print” insert—

““address” means postal address;”.

12. In article 82(3)(b) (application of certain provisions for Scottish parliamentary elections) omit “(except the reference in section 160(4) of the 1983 Act)”.

13. After article 83 (vacancies: constituency seats) insert—

“Vacancies: regional member seats

83A.—(1) Where it comes to the notice of the Presiding Officer of the Scottish Parliament that the seat of a regional member who was returned from a registered party’s regional list is vacant, the Presiding Officer must forthwith send a notice in accordance with paragraph (2) to the RRO for that region.

(2) A notice under paragraph (1) must—

- (a) state that a vacancy exists, and
- (b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose regional list that person’s name is included.

(3) On receipt of a notice under paragraph (1), the RRO must ascertain the name of the person, if any, who is to fill the vacancy in accordance with section 10 of the 1998 Act(a) (regional vacancies).”.

14. In paragraph 1(2)(a)(ii) of schedule 1 (supply of free copy of full register for electoral purposes)—

- (a) after “or 3(2)” insert “or (2B)”,
- (b) for “intention to dissolve the Parliament” substitute “proclamation in terms of section 2(5) or 3(2) or (2B)”.

15.—(1) Schedule 2 (Scottish parliamentary election rules) is amended as follows.

(a) Section 10 was amended by S.I. 2010/2999.

(2) After rule 1 (timetable) insert—

“Application of timetable where proceedings at a Scottish parliamentary election are postponed

1A.—(1) Paragraph (2) applies where—

- (a) a notice of election which specifies the date of the poll in an election has been published in accordance with the timetable in rule 1 of this schedule but the statement of persons nominated has not been published,
- (b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act^(a), and
- (c) the date proposed by proclamation (“the new date”) is less than five days after the date of the poll specified in the notice of election.

(2) The CRO or RRO must—

- (a) publish a notice stating that the date has changed and specifying the new date, and
- (b) comply with the requirements of this schedule in accordance with the new date.

(3) Paragraphs (4) and (5) apply where—

- (a) a notice of election which specifies the date of the poll in an election has been published in accordance with the timetable in rule 1 of this schedule but the statement of persons nominated has not been published,
- (b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act, and
- (c) the date proposed by proclamation (“the new date”) is five days or more after the date of the poll specified in the notice of election.

(4) The CRO or RRO must—

- (a) publish a notice stating that the date has changed and specifying the new date, and
- (b) comply with the requirements of this schedule in accordance with the new date.

(5) Notwithstanding sub-paragraph (4)(b), nomination papers, objections to nomination papers and notices of withdrawal of candidature already received by the CRO or RRO in accordance with the timetable in rule 1 of this schedule prior to the postponement of the poll will be valid in relation to the poll to be held on the new date.

(6) Paragraphs (7) and (8) apply where—

- (a) the statement of persons nominated has been published in accordance with the timetable in rule 1 of this schedule, and
- (b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act.

(7) The CRO or RRO must—

- (a) publish a notice stating that the date has changed and specifying the new date,
- (b) publish a new statement of persons nominated as candidates for return as a constituency member required by rule 18 or, as the case may be, statement of persons and parties nominated for return as regional members required by rule 19,
- (c) publish a new notice of poll to accompany the statements of persons nominated as required by rule 33, and
- (d) comply with the requirements of this schedule in accordance with the new date.

(8) Notwithstanding sub-paragraph (7)(b) to (d), nomination papers, objections to nomination papers and notices of withdrawal of candidature already received by the CRO

^(a) Section 2(5) was amended by section 5(5) of the Scotland Act 2016 (c.11) and section 3(2)(a) of the Scottish Elections (Reform) Act 2020 (asp 12) (“the 2020 Act”). Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

or RRO in accordance with the timetable in rule 1 of this schedule prior to the postponement of the poll will be valid in relation to the postponed poll to be held on the new date.

(9) In this rule—

- (a) “nomination papers” includes constituency nomination papers, individual nomination papers and regional lists,
- (b) any reference to a period of time is to be interpreted in accordance with rule 2 (computation of time).

Use of printed election materials where proceedings at a Scottish parliamentary election are postponed.

1B. Where a Scottish parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act^(a), the CRO or RRO may, as they see fit, make use of materials printed for use at the originally scheduled date in accordance with the rules provided in this schedule for the purposes of the new date.”.

(3) After paragraph (2) of rule 37 (issue of official poll cards) insert—

“(2A) Paragraph (2) does not apply to an elector to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies and the CRO may send such an elector’s official poll card to the place where the elector is detained in legal custody.”.

(4) After paragraph (2) of rule 39 (appointment of polling and counting agents) insert—

“(2A) The CRO must not limit the number of counting agents under paragraph (2) so that the number allowed to a candidate for return as a constituency member is (except in special circumstances) less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.”.

(5) After paragraph (3) of rule 39 insert—

“(3A) The CRO must not limit the number of counting agents under paragraph (3) so that the number allowed to an individual candidate for return as regional member or registered party standing nominated is (except in special circumstances) less than the number obtained by dividing the number of clerks employed on the counting by the total number of individual candidates for return as regional members and registered parties standing nominated.”.

(6) After rule 74 (constituency candidate: death of party candidate) insert—

“Regional election: effect of countermand or abandonment of constituency poll

74A.—(1) This rule applies where at a Scottish parliamentary general election there is a contested election for return of regional members and the poll or declaration of result at a constituency election for a constituency in that region is postponed in accordance with rule 72 or 74.

(2) For the purposes of rule 64(1) (allocation of seats), the RRO is to be treated as having received the statements prepared under rule 61 (conveying results of count etc. to RRO) and the notifications under rule 62(3) (notification of constituency member returned) from each CRO in that region when the RRO has received those statements and notifications in respect of the constituencies in the region for which the polls or declarations of result have not been so postponed.

(3) Section 7(1) of the 1998 Act (calculation of regional figures) will apply with the modification that the reference in that subsection to “constituencies included in the region”

(a) Section 2(5) was amended by section 5(5) of the Scotland Act 2016 (c.11) and section 3(2)(a) of the Scottish Elections (Reform) Act 2020 (asp 12) (“the 2020 Act”). Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

must be read as excluding the constituencies for which the polls or declarations of result have been so postponed.

(4) The subsequent election of a candidate for the constituency will have no effect upon the validity of the election and return of any regional member.”.

16.—(1) Schedule 3 (absent voting) is amended as follows.

(2) In paragraph 1(4)(c) (general requirements for applications), omit “and”.

(3) After paragraph 1(4)(d) (general requirements for applications) insert—

“(e) in the case of a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, the address shown on the declaration of local connection in accordance with section 7B(3)(d) of that Act.”.

(4) After paragraph 7(2) (additional requirements for applications for a proxy vote in respect of a particular election) insert—

“(2A) Sub-paragraph (2B) applies where such an application (or an application under article 10(7) made by virtue of that application) is made after 5 pm on the sixth day before the date of a poll at the election for which it is made and on the grounds that the applicant cannot reasonably be expected to vote in person at the applicant’s allotted polling station because—

- (a) of a disability suffered before that date, in circumstances where the disability means that the application could not reasonably have been made before that date, or
- (b) of a disability suffered after that date.

(2B) The application must, in addition to providing the information required by sub-paragraph (1)—

- (a) state the reasons why the applicant was unable to make the application before 5 pm on the sixth day before the date of the poll at the election for which it was made, and
- (b) satisfy the requirements of paragraph 5(2).

(2C) In sub-paragraph (2A) “disability” has the same meaning as in the Equality Act 2010(a) (see section 6 of that Act).”.

(5) For paragraph 9(4) (closing date for applications) substitute—

“(4) Where an application to vote by proxy under article 9(2) is made—

- (a) on the grounds set out in paragraph 7(2) or (2A) and the applicant—
 - (i) became disabled after 5 pm on the sixth day before the date of the poll at the election for which it is made, or
 - (ii) could not be reasonably expected to have made an application before 5 pm on the sixth day before the date of the poll at the election for which it is made by virtue of a disability suffered before that date,
- (b) on the grounds set out in paragraph 7(4) and the applicant became aware of those grounds after 5 pm on the sixth day before the date of the poll at the election for which it is made,
- (c) on the grounds set out in paragraph 7(7A) and the applicant became detained in a penal institution after 5 pm on the sixth day before the date of the poll at the election for which it is made,
- (d) on the ground set out in sub-paragraph (4A) and the applicant became aware of that ground after 5 pm on the sixth day before the date of the poll at the election for which it is made, or

(a) 2010 c.15.

(e) by a person to whom paragraph 2(5A) of schedule 4 of the 2000 Act (mental patients who are not detained offenders) applies,

the application, or an application under article 10(7) made by virtue of that application, must be refused if it is received after 5 pm on the day of the poll at that election.”.

(6) After paragraph 9(4) insert—

“(4A) The ground referred to in sub-paragraph (4)(d) is that the applicant’s circumstances on the date of the poll will or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under the appropriate rules as a result of following Scottish Government advice or the advice of a registered medical practitioner in relation to coronavirus.

(4B) In sub-paragraph (4A) “coronavirus” means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(4C) The Scottish Ministers must review the need for the provision made by sub-paragraphs (4A) and (4B) at least once every year, with the first review being carried out within one year of the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020(a) coming into force.

(4D) Sub-paragraphs (4A) and (4B) cease to have effect at the end of the period of 2 years beginning with the day on which that Order comes into force.”.

17.—(1) Schedule 4 (issue and receipt of postal ballot papers) is amended as follows.

(2) In paragraph 13(3) (spoilt ballot paper) for “5 pm” substitute “10 pm”.

(3) In paragraph 14(6) (lost postal ballot paper) after “ballot papers” insert “except where those documents are received after 10 pm on the day of the poll”.

18.—(1) Schedule 6 (legal proceedings) is amended as follows.

(2) In the table in Part 1 (election and return of constituency member)—

(a) in the right hand column of the entry for section 160—

(i) omit “omit paragraph (a)(i) and,”,

(ii) for “subsections (4A) and” substitute “subsection”,

(b) in the right hand column of the entry for section 173—

(i) omit “omit paragraph (a)(i) and,”,

(ii) omit “Omit subsection (2).”,

(c) after the entry in the table for section 180 (evidence by certificate of holding of elections) insert a new entry—

“Section 180A (evidence by certificate of electoral registration)”.

(3) In the table in Part 2 (election and return of regional member)—

(a) after the entry for section 157 (appeals and jurisdiction) insert a new entry—

“Section 160 (persons reported personally guilty of corrupt or illegal practices)	Omit subsection (1) to (3) and (6). In subsection (4)— (a) for the words “reported by an election court personally guilty” substitute “convicted”, (b) after “Kingdom” insert “or election to the Scottish parliament”, and (c) after “Commons” in each place where it occurs, insert “or the Scottish Parliament”.”
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(b) after the entry in the table for section 180 (evidence by certificate of holding of elections) insert a new entry—

“Section 180A (evidence by certificate of electoral registration)”.

19.—(1) The Appendix (Appendix of Forms) is amended as follows.

(2) In Form J (Regional ballot paper), in the “Directions as to the printing of the regional ballot paper” after direction 14 insert:

“**15.** The name of each political party must appear in capitals.”

(3) In Form K (postal voting statement), in the third bullet in the box entitled “Getting Help” for “5 pm” where it first appears substitute “10 pm”.

(4) In Form L2 (official poll card (to be sent to an elector voting by post)) on the back of card in the second bullet point following the words “If you lose your postal vote or make a mistake” in bold for “5 pm” substitute “10 pm”.

(5) In Form M2 (official poll card (to be sent to a proxy voting by post)) on the back of card in the second bullet point following the words “If you lose your postal vote or make a mistake” in bold for “5 pm” substitute “10 pm”.

(6) In Form T (postal voting statement), in the third bullet in the box entitled “Getting Help” for “5 pm” where it first appears substitute “10 pm”.

(7) In Form U (postal voting statement), in the third bullet in the box entitled “Getting Help” for “5 pm” where it first appears substitute “10 pm”.

Revocations and saving provisions

20.—(1) The provisions of the Scottish Parliament (Elections etc.) Order 2010(a) and the Scottish Parliament (Elections etc.) Order 2015(b) specified in the schedule (revocations) are revoked, to the extent specified in the schedule.

(2) The provisions revoked by paragraph (1) continue to have effect on and after the day on which they are revoked as they had effect immediately before that day for the purposes of any election to be held on or before 5 April 2021.

(a) S.I. 2010/2999 which was amended by S.I. 2011/2085, S.I. 2012/1479 and S.I. 2015/683 and partially revoked by S.S.I. 2015/425.

(b) S.S.I. 2015/425.

Amendment of schedule 8 of the Political Parties, Elections and Referendums Act 2000

21. After paragraph 2(2) of schedule 8 of the Political Parties, Elections and Referendums Act 2000 (campaign expenditure: qualifying expenses)(a) insert—

“(3) In relation to polls at elections for membership of the Scottish Parliament, nothing in paragraph 1 is to be taken as extending to—

- (a) reasonable expenses incurred that are reasonably attributable to individuals’ disability,
- (b) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or
- (c) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English.

(4) In sub-paragraph (3)(a), “disability” has the same meaning as in the Equality Act 2010(b) (see section 6 of that Act).”.

Amendment of schedule 8A of the Political Parties, Elections and Referendums Act 2000

22. After paragraph 2(2) of schedule 8A of the Political Parties, Elections and Referendums Act 2000 (controlled expenditure: qualifying expenses)(c) insert—

“(3) In relation to polls at elections for membership of the Scottish Parliament, nothing in paragraph 1 is to be taken as extending to reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English.”.

GRAEME DEY

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th December 2020

(a) 2000 c.41 (“the 2000 Political Parties Act”). Paragraph 2(2) of schedule 8 was added by S.I. 2004/366.

(b) 2010 c.15.

(c) Schedule 8A of the 2000 Political Parties Act was added by paragraph 1 of schedule 3 of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (c.4).

SCHEDULE

Article 20(1)

Revocations

- 1.** In this schedule—
 - “the 2010 Order” means the Scottish Parliament (Elections etc.) Order 2010,
 - “the 2015 Order” means the Scottish Parliament (Elections etc.) Order 2015.
- 2.** Subject to paragraph 3, the 2010 Order is revoked.
- 3.** The following provisions of the 2010 Order are not revoked—
 - (a) article 87 (modification of section 10 of the 1998 Act),
 - (b) in schedule 2, rule 65 (equality of votes at poll for return of regional members).
- 4.** In schedule 9 of the 2015 Order, paragraphs 1 to 3 are revoked.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes various amendments to the Scottish Parliament (Elections etc.) Order 2015 (“the 2015 Order”). The 2015 Order sets out provisions relating to the conduct of election for, and the return of members to, the Scottish Parliament. The changes made by this Order will not apply to any elections held on or before 5 April 2021.

The 2015 Order revoked several provisions contained in the Scottish Parliament (Elections etc.) Order 2010 (“the 2010 Order”). However, the 2015 Order did not revoke provisions in the 2010 Order that remained the responsibility of the Secretary of State at the time the 2015 Order was passed. Section 3 of the Scotland Act 2016 (“the 2016 Act”) amended Paragraph B3 of Part 2 of schedule 5 of the Scotland Act 1998 (“the 1998 Act”), enhancing the competence of the Scottish Parliament as regards Scottish parliamentary and Scottish local government elections, including competence relating to the franchise at those elections.

Accordingly, it is now possible for Scottish Ministers to revoke additional provisions in the 2010 Order and consolidate these into the 2015 Order. Article 20 and the schedule of this Order specify the revocations made by this Order to the 2010 Order. Article 87 and rule 65 of schedule 2 of the 2010 Order are not revoked because these provisions make amendment to the 1998 Act. Articles 3, 4, 5, 6, 7, 13 and 15(6) of this Order replicate certain provisions made by the 2010 Order and insert them into the 2015 Order.

Article 12 makes amendment to article 82 of the 2015 Order which modifies the effect of the application of section 160(4) of the Representation of the People Act 1983 (“the 1983 Act”) in the context of Scottish parliamentary elections. Article 82(1) provides that the provisions of the 1983 Act which are listed in the left hand column of Part 1 of schedule 6 of the 2015 Order will apply to Scottish parliamentary elections subject to the modifications listed in the right hand column of Part 1 of schedule 6, subject to article 82(3) and subject to such other consequential modifications as are necessary. Section 160 of the 1983 Act (persons reported personally guilty of corrupt or illegal practices) provides that a person found guilty of certain electoral offences will for a specified period be incapable of registering as an elector for UK parliamentary elections or any local government elections in Great Britain. Currently, by virtue of Part 1 of schedule 6 and article 82(3)(b) of the 2015 Order, section 160 is applied to Scottish parliamentary elections by deleting section 160(4)(a)(i) and reading “or the Scottish Parliament” into the remaining provisions. This means that a person found guilty of certain electoral offences, as specified in section 160 of the 1983 Act, will be incapable of being elected to the Scottish Parliament or, if already elected, will vacate the seat from the date of the report of the offence to the election court. The amendment made by article 12 of this Order, read alongside the amendment made by article 18(1)(a)(i), expands the application of section 160(4) of the 1983 Act in the context of Scottish parliamentary elections to provide that a person found personally guilty of a corrupt or illegal practice will also be incapable of being registered as an elector or voting at a Scottish parliamentary election.

In addition to the change made by article 18(1)(a)(i), article 18 generally makes a series of amendments to schedule 6 of the 2015 Order which modifies the effect of the application of certain provisions of the 1983 Act in the context of Scottish parliamentary elections. These changes are made in consequence of the transfer of competence as regards the franchise at Scottish parliamentary elections made by the 2016 Act.

Articles 8, 9, 10, 11, 14, 15(1)-(5), 16, 17 and 19 of this Order make further amending provision to the 2015 Order.

Article 8(2) amends article 42 of the 2015 Order to provide that where a Scottish parliamentary election has been postponed under section 2(5) or 3(2B) of the 1998 Act, the maximum amounts of election expenses set out in article 42(2) of the 2015 Order which must not be exceeded by constituency or individual regional candidates at the election will be increased by one half. Article 8(3) expands article 42(6) of the 2015 Order to provide additional categories of expenses which do not count towards the maximum amounts set out in article 42(2). Article 8(4) makes a consequential modification as a result of the revocation of the Scottish Parliament (Constituencies

and Regions) Order 2014 and the enactment of the Scottish Parliament (Constituencies and Regions) Order 2020.

Article 9 makes equivalent changes to article 43 of the 2015 Order, which applies to pre-candidacy election expenses, as are made by article 8(1) and (2) to article 42 of the 2015 Order.

Article 10 amends article 56 of the 2015 Order to provide that the Constituency Returning Officer (“CRO”) or Regional Returning Officer (“RRO”) is able to publish a notice regarding the inspection of returns and declarations as to expenses at the election in such a manner as they see fit.

Article 11(2) amends article 72 of the 2015 Order to provide new specifications for the relevant details (as defined in article 72(3)) which are to be included in election material (in the forms specified in articles 72(4)-(6)) which can be reasonably regarded as intended to promote or procure the election of a candidate at a Scottish parliamentary election. Article 11(3) adds a definition of “address” into article 72.

Article 14 makes a change to paragraph 1(2)(a)(ii) of schedule 1 of the 2015 Order in consequence of amendments made to section 2 and 3 of the 1998 Act by section 3 of the Scottish Elections (Reform) Act 2020 (“the 2020 Act”). The amendments by the 2020 Act made clear that a proclamation by Her Majesty following a proposal by the Presiding Officer to modify the date of a Scottish parliamentary election does not require to dissolve the Scottish Parliament where the Parliament has already been dissolved.

Article 15(2) inserts new rules 1A and 1B into schedule 2 of the 2015 Order (Scottish parliamentary elections rules). Rule 1A makes provision for application of the timetable at a Scottish parliamentary election where the date of the poll has been postponed under section 2(5) or section 3(2B) of the 1998 Act. Rule 1B provides that, where a Scottish parliamentary election has been so postponed, the CRO or RRO may make such use of materials printed for the original date as they see fit.

Article 15(3) amends rule 37 of the Scottish parliamentary elections rules to provide that, where the elector is an enfranchised prisoner, the CRO may issue an official poll card to the place where they are detained in legal custody. Article 15(4) and (5) amend rule 39 to restrict the power of the CRO to limit the number of counting agents per candidate appointed to attend at the counting of votes.

Article 16(2) inserts new sub-paragraph (4)(e) into paragraph 1 of schedule 3 of the 2015 Order to provide that the address which may be specified on an application for an absent vote at a Scottish parliamentary election can include, in the case of an enfranchised prisoner, the address shown on their declaration of local connection in terms of section 7B(3)(d) of the 1983 Act.

Article 16(3) introduces a new category of eligibility in paragraph 7 of schedule 3 for a proxy vote in respect of a particular election when the application is made after 5 pm on the sixth day before the poll. That category covers individuals who suffered a disability before the cut-off date and could not have reasonably made an application before that date or where the disability is suffered after the cut-off date.

Article 16(4) amends paragraph 9(4) of schedule 3, stating the closing date for proxy applications on certain specified grounds. An application on these grounds will be refused if it is received after 5 pm on the day of the poll at the election for which it are made. The new ground specified in paragraph 9(4A), as inserted by article 16(5), is included in this category. This ground applies to individuals who cannot reasonably be expected to vote in person at the polling station as a result of following Scottish Government or medical advice in relation to coronavirus. This would include individuals shielding or self-isolating.

Article 17 amends paragraphs 13(3) and 14(6) of schedule 4 to provide that in the case of a spoilt ballot paper or a lost postal ballot paper, the CRO will not issue a replacement after 10 pm on the date of the poll.

Article 19(1) makes an amendment to standard Form J (regional ballot paper) to provide that the name of each political party on the paper should appear in capitals. Articles 19(2)-(6) make amendments to standard forms consequential to the amendment made by article 17.

Schedule 8 of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) sets out what are qualifying expenses for the purposes of campaign expenditure within the meaning of Part 5 of that Act. Article 21 adds new exclusions from qualifying expenses in relation to Scottish parliamentary elections into paragraph 2 of schedule 8. Schedule 8A of the 2000 Act sets out what are controlled expenses by recognised third parties within the meaning of Part 6 of the 2000 Act. Article 22 adds a new exclusion from controlled expenses in relation to Scottish parliamentary elections for reasonable expenses incurred in the translation of anything into languages other than English.

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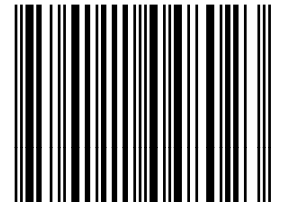
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