

SCOTLAND ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS (AND SCHEDULES)

Part 1: the Parliament and Its Powers

Section 1: Administration of elections

9. This section transfers certain of the executive functions in section 12 of the Scotland 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.
10. *Subsection (2)* amends section 12(1)(a) and (b) to give the Scottish Ministers power to make provisions on the conduct of the Scottish Parliament elections, the questioning of such elections and the consequences of irregularities. The Scottish Ministers are required to consult the Secretary of State before exercising these powers (see *subsection (7)*). The powers of the Scottish Ministers do not extend to those provisions (in particular, in relation to the franchise) which the Secretary of State may make under new section 12A. Section 12(1)(c) is omitted, as the Secretary of State will retain the power to make provisions on the return of Scottish Parliament members other than at an election (see section 12A(1)(d), inserted by *subsection (9)*).
11. *Subsection (3)* amends section 12(2) which clarifies the scope of the order-making powers of the Scottish Ministers to make provisions under section 12(1)(a). Section 12(2)(d) allows Scottish Ministers to combine polls of the Scottish Parliament with other devolved elections where the polls are held on the same day. The powers to combine polls of the Scottish Parliament with UK Parliament or European parliamentary elections are dealt with in section 2 and are retained by the Secretary of State. The provisions in section 12(2)(b), (e) and (f), which are omitted by this section, are also retained by the Secretary of State (see sections 12A(1)(b) and (c) and 12A(2)(a) inserted by *subsection (9)*).
12. *Section 12(4)(a)*, which is not amended by this section, enables the Scottish Ministers to apply established statutory procedures for elections to Scottish Parliament elections, subject to any necessary alterations. Section 12(4)(b) and (c) are replaced by new section 12A(4).
13. *Subsection (6)* enables the Scottish Ministers to make orders as regards the designation of regional returning officers.
14. *Subsection (9)* introduces new section 12A, which sets out the powers to make provisions about elections that continue to be exercisable by the Secretary of State.
15. Section 12A(1) provides that the Secretary of State may make provision about the registration of electors. By virtue of section 12A(2), this includes disregarding the alterations in a register of electors and other provisions about the content of a register

*These notes refer to the Scotland Act 2012 (c.11)
which received Royal Assent on 1st May 2012*

or the effect of registration, but does not include provision about supply or dealing with the register, which may be made by the Scottish Ministers under section 12(2)(a).

16. The Secretary of State may also make provision for modifying the application of section 7(1) of the 1998 Act where a constituency poll is abandoned or notice of it countermanded (equivalent of the current section 12(2)(e)), for modifying section 8(7) to ensure the allocation of the correct number of seats for the region (equivalent of the current section 12(2)(f)), and as to the return of members otherwise than at an election (equivalent of the current section 12(1)(c)).
17. Under section 12A(3), modifications may be made to section 10(4) and (5) of the 1998 Act (which relate to the procedure for replacing regional MSPs who stood on a regional party list). This is the equivalent of current section 12(3).
18. Sections 12A(4)(a) and (b) confer on the Secretary of State the powers about the application and modification of electoral law which are currently provided under sections 12(4)(a) and (c) of the 1998 Act.
19. Section 12A(5) provides that the Secretary of State must consult the Scottish Ministers before making regulations under this section.