

**EXPLANATORY MEMORANDUM TO**  
**THE SCOTLAND ACT 2016 (CONSEQUENTIAL AND SAVING PROVISIONS)**  
**REGULATIONS 2017**

**2017 No. 602**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office on behalf of the Scotland Office and is laid before Parliament Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The purpose of the Regulations is to make consequential amendments to the Representation of the People (Scotland) Regulations 2001(S.I. 2001/497) (“the 2001 Regulations”) in connection with the commencement of sections 3, 4 and 9 of the Scotland Act 2016. The Regulations also make saving provision in relation to certain provisions in the Scottish Parliament (Elections etc.) Order 2015 (S.S.I 2015/425) in connection with the commencement of sections 3 and 4 of the Scotland Act 2016.

**3. Matters of special interest to Parliament**

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

- 3.1 UK Government Ministers agreed with Scottish Ministers that they would take through the UK Parliament the Electoral Registration Pilot Scheme (Scotland) Order 2017 and the Representation of the People (Amendment) (Scotland) Regulations 2017 before the elections provisions in the Scotland Act 2016 were devolved to the Scottish Parliament. These instruments were approved by the House of Commons on 25 April. As this instrument and the Representation of the People (Amendment) (Scotland) Regulations 2017 both make amendments to the same provisions of the 2001 Regulations, it was not possible to make this instrument before those Regulations had been made.
- 3.2 Any delay to making this instrument and the Scotland Act 2016 (Commencement No. 6) Regulations 2017, due to the dissolution of Parliament, would delay the legislative programme of the Scottish Government. They have requested that the elections provisions in the Scotland Act 2016 are devolved to the Scottish Parliament at this time as they plan to introduce a Bill which includes a provision to make Na h-Eileanan an Iar a protected constituency for elections to the Scottish Parliament.

*Other matters of interest to the House of Commons*

- 3.3 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 The Scotland Act 2016 (Commencement No. 6) Regulations 2017 commence sections 3 to 12 of the Scotland Act 2016 on 18 May. By virtue of the coming into force of section 3 of that Act the legislative competence of the Scottish Parliament will include, amongst other matters, the registration of electors on the register of local government electors in Scotland, and subject to the reservations contained in section 3, the conduct of Scottish Parliamentary elections. The digital service for the registration of electors will remain reserved. Section 4 of the Scotland Act 2016 will substitute a new section 12 of the Scotland Act 1998, giving the Scottish Ministers powers to make provision in respect of the conduct of Scottish Parliamentary elections, and other specified matters. Section 9 of the Scotland Act 2016 transfers to the Scottish Ministers other functions of a Minister of the Crown, so far as those functions are exercisable within devolved competence by virtue of a provision in section 3 of that Act.
- 4.2 These Regulations amend provisions in the 2001 Regulations relating to certain electoral registration forms (provided for in regulations 26, 26A, 29(AA), 32ZA and 32ZC) in consequence of the coming into force of sections 3 and 9 of the Scotland Act 2016. The Regulations also amend regulations 26(9) of the 2001 Regulations in connection with the coming into force of section 3 of the Scotland Act 2016 and the reservation of the digital service and substitutes a new regulation 26(10) in relation to overseas applications made through the digital service.
- 4.3 The Regulations also make saving provision in connection with the commencement of sections 3 and 4 of the Scotland Act 2016.

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

- 5.1 The extent of this instrument is Scotland.
- 5.2 The territorial application of this instrument is Scotland.

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

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

#### **7. Policy background**

##### *What is being done and why*

- 7.1 Sections 3, 4 and 9 of the Scotland Act 2016 devolve certain powers concerning local government elections in Scotland and Scottish Parliamentary elections. Under the Act, the legislative competence of the Scottish Parliament will include the registration of local government electors in Scotland and, subject to some reservations, the conduct of Scottish Parliamentary elections. The Act also gives Scottish Ministers the power to make provision in respect of the conduct of Scottish Parliamentary elections.
- 7.2 The Regulations make amendments as a consequence of the commencement of these provisions of the Act to ensure that the devolution of these powers in relation to elections in Scotland operates effectively.
- 7.3 The Scottish Parliament's ability to legislate on electoral registration matters for Scottish local and Scottish Parliamentary elections will mean electoral registration

forms in Scotland will relate both to a devolved matter (registration for Scottish local government and Scottish Parliamentary elections) and a reserved matter (registration for UK Parliamentary elections). The 2001 Regulations set out that the Electoral Commission is responsible for designing a number of forms which are approved by the Minister for the Cabinet Office. These forms are the application to register and to change an address (regulation 26); the application in respect of a change of name (regulation 26A); the confirmation of a successful application (regulation 29(AA)); the annual canvass form (regulation 32ZA) and the invitation to register (regulation 32ZC). These forms will continue to be designed by the Electoral Commission for both registration as a parliamentary and local government elector in Scotland, and approved by the Minister for the Cabinet Office, following the commencement of the relevant provisions in the Scotland Act 2016.

- 7.4 Further, following the commencement of sections 3 and 9 of the Scotland Act 2016, the Scottish Parliament and the Scottish Ministers will be able to amend the requirements for an application to register to vote at a Scottish local government and Scottish Parliamentary election, and hence necessitate a change in the application form.
- 7.5 Regulations 3 and 5 to 8 of these Regulations, therefore, require the Minister for the Cabinet Office to consult Scottish Ministers before approving the specified electoral registration forms that will be used in Scotland as they will relate to both devolved and reserved matters.
- 7.6 Regulation 4 of the Regulations amends regulation 26(9) of the 2001 Regulations. This currently states that an application may be made through the Government's digital service. As a consequence of the reservation of the digital service in section 3 of the Scotland Act 2016 regulation 26(9) is amended to provide applications can only be made through the digital service where the Minister for the Cabinet Office has made arrangements for such applications to be made using the digital service. Regulation 26(10) of the 2001 Regulations, which relates to overseas elector applications being accepted through the digital service, is also amended as a consequence of the amendments to regulation 26(9). As a result, where an application in pursuance of an overseas elector's declaration is made via the digital service the registration officer may, but need not, accept the application through the digital service.
- 7.7 Regulation 9 makes saving provision in relation to article 82 of, and Schedule 6 to, the Scottish Parliament (Elections etc.) Order 2015 so far as those provisions apply in relation to sections 157, 160 and 173 of the Representation of the People Act 1983. The provisions, as applied in the Order, concern legal proceedings in respect of Scottish Parliamentary elections and in particular concern: appeals and jurisdiction (section 157), persons reported personally guilty of corrupt or illegal practices by an election court, including the penalties that apply to such persons (section 160), and the incapacities that apply to persons convicted of a corrupt or illegal practice (section 173). The provisions as they are applied to Scottish Parliamentary elections by the 2015 Order could affect membership of the House of Commons. As a result they would not fall within the competence of the Scottish Ministers in relation to the conduct of Scottish Parliamentary elections under new section 12 of the Scotland Act 1998 (as inserted by section 4 of the Scotland Act 2016), as this power will be limited to the legislative competence of the Scottish Parliament (as provided for in section 3 of the Scotland Act 2016) and matters

relating to membership of the House of Commons fall outside of this competence. As a result, without saving these provisions they would no longer be in force, and it is necessary that these provisions continue to apply for the purpose of Scottish Parliamentary elections.

### ***Consolidation***

- 7.8 The Law Commission is currently conducting a review into the desirability and feasibility of consolidating electoral law. In the meantime there are no plans at this time to consolidate amendments that have been made to the 2001 Regulations.

## **8. Consultation outcome**

- 8.1 The Electoral Commission and the Scottish Government have been consulted on the instrument and are content with the provisions contained in the Regulations.

## **9. Guidance**

- 9.1 The Electoral Commission issues guidance to electoral administrators relating to the registration of electors, and administration and conduct of elections, and will update the guidance as necessary to cover the changes set out in this instrument.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There will be limited impact on the public sector as these regulations place an additional burden on the Minister for the Cabinet Office to consult Scottish Ministers on new form designs to be used in Scotland and provide for arrangement as to applications which may be made via the Digital Service. The UK Government has previously consulted Scottish Ministers informally on these issues and, as such, we do not view the additional burdens as substantive.
- 10.3 An Impact Assessment has not been prepared for this instrument as no impact on business is foreseen

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The UK Government will work closely with the Scottish Government to ensure the provisions are implemented correctly.

## **13. Contact**

- 13.1 Peter Richardson at the Cabinet Office, Telephone: 020 7271 6433 or email: [peter.richardson@cabinetoffice.gov.uk](mailto:peter.richardson@cabinetoffice.gov.uk) and Paul Avard at the Cabinet Office, Telephone 020 7271 2938 or email: [paul.avard@cabinetoffice.gov.uk](mailto:paul.avard@cabinetoffice.gov.uk) can answer any queries regarding these instruments.