
EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out afresh the provisions as to the conduct of elections for, and the return of members to, the Scottish Parliament, established by the Scotland Act 1998. The Order replaces provision made by the Scottish Parliament (Elections etc.) Order 2010 (“the 2010 Order”). These Explanatory Notes explain the general effect of the Order and highlight some differences from the approach of the 2010 Order.

The Electoral Commission has been consulted on the draft of this Order, as required by section 7 of the Political Parties, Elections and Referendums Act 2000.

Part 1 of the Order (articles 1 and 2) contains general provisions concerning the citation, commencement and interpretation of the Order. The Order will not apply to any elections held on or before 4th April 2016.

Part 2 of the Order (articles 3 to 31) makes provision about the franchise for the Scottish Parliament and the exercise of that franchise. Article 10 provides for appointment of proxies for electors, including a requirement that, to be appointed, any proxy must be registered as a local government elector. Article 18 sets out fully the provision for payment of constituency returning officer and regional returning officer fees and charges, rather than by the approach taken in the 2010 Order which is to apply provision in the Representation of the People Act 1983. However, the effect is the same, other than to combine two of the subordinate instruments that the 2010 Order requires to be made into a single instrument. Article 31(7) makes it an offence to publish before the close of a poll any forecast of how voters have voted.

Part 3 of the Order (articles 32 to 81) deals with election campaigns and election expenses at Scottish Parliament elections. The amounts allowed as election expenses at Scottish Parliament ordinary general elections have been increased from the amounts allowable under the 2010 Order. Article 80 provides that expenditure incurred by a candidate, as a result of a disability that the candidate has, is to be regarded as personal expenditure, but is not to be included in the limits on personal expenditure that may be incurred.

Part 4 of the Order (article 82) along with Schedule 6, makes provision for legal proceedings.

Part 5 of the Order (articles 83 to 93) makes miscellaneous and supplementary provision.

Schedule 1 makes provision about the free supply and the sale of the register of local government electors to MSPs, their election agents and to candidates standing for election to the Scottish Parliament and also the election agents of registered political parties in respect of list MSP candidates. Paragraph 6 makes provision to protect information of persons under the age of 16 as a result of the reduction in voting age at Scottish Parliamentary elections to age 16.

Schedule 2 contains the Scottish Parliamentary Election Rules. They are substantially in the same form as the earlier Rules set out in Schedule 2 to the 2010 Order. There is no separate timetable for by-elections. Rules 4 and 5 allow candidates to use their commonly used names on ballot papers even if some of these names are the same as their given names (the 2010 Order only permits use of commonly used names if they differ from given names). Rules 36 and 54 prevent the employment as polling station or count staff of persons who are known to have been employed by a candidate or political party in an election campaign.

Schedule 3 contains provision about absent voting. This provision allows late applications for emergency proxy votes in specified circumstances.

Draft Legislation: This is a draft item of legislation and has not yet been made as a Scottish Statutory Instrument. This draft has been replaced by a new draft, The Scottish Parliament (Elections etc.) Order 2015 ISBN 978-0-11-102991-6

Schedule 4 makes provision about the issue and receipt of postal ballot papers. It enables these to be issued as soon as is practicable, unlike the 2010 Order which prevents issue until after 5 pm on the eleventh day before a poll. Provision is also made to allow earlier issue of replacement postal ballot papers, where these have been lost or the voter has not received them. Paragraph 20 provides that there will be 100% checking of voters' personal identifiers for all returned postal votes, rather than the 20% requirement in the 2010 Order.

Schedule 5 makes provision for the combination of the poll at a Scottish parliamentary election with the poll at a Scottish local government election.

Schedule 6 applies, with modifications, provisions of the Representation of the People Act 1983 concerning legal proceedings, for the purposes of Scottish parliamentary elections.

Schedule 7 provides for the use of rooms in school premises and meeting rooms for election meetings.

Schedule 8 makes provision about access to marked copies of the register and other documents retained by constituency returning officers after an election.

Schedule 9 revokes earlier legislation, including provisions in the 2010 Order that are replaced by this Order or that have no continuing purpose. However, provisions in that Order that remain the responsibility of the Secretary of State are not revoked.

The Appendix sets out forms for use at Scottish parliamentary elections. The layout of these has been updated from previous versions, and they have been renumbered to run in a consistent sequence, but the types of forms are unchanged from those provided by the 2010 Order.