
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.