

EXPLANATORY MEMORANDUM TO
THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULES 4 AND 5) ORDER
2015

2015 No. [XXXX]

1. This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The purpose of this Order is to amend Schedules 4 and 5 to the Scotland Act 1998 (“the 1998 Act”) to devolve power to the Scottish Parliament to legislate to determine a date for the poll at the first ordinary general election for membership of the Scottish Parliament after that scheduled to be held on 5 May 2016.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 Section 1(2) of the Fixed-term Parliaments Act 2011 determines that the next UK Parliamentary general election is due to be held on 7 May 2020, while section 4(2) of that same Act determines that the next Scottish Parliamentary ordinary general election is due to be held on 5 May 2016. Section 2(2) of the 1998 Act provides for the poll at Scottish Parliamentary ordinary general elections to be held on the first Thursday in May every fourth year and, accordingly, the following Scottish Parliamentary ordinary general election would occur on 7 May 2020, the same date that the UK Parliamentary general election is due to be held. The UK Government has always committed to take action to avoid this clash in 2020.

4.2 Schedule 4 to the 1998 Act lists enactments which are protected from modification by the Scottish Parliament. Much of the 1998 Act itself is included in this list. Therefore, this Order will amend Schedule 4 to the 1998 Act to allow an Act of the Scottish Parliament to modify section 2(2) in relation to the first Scottish Parliamentary ordinary general election after 2016.

4.3 Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Amongst other things, section B3 of Part 2 of Schedule 5 reserves elections for membership of the Scottish Parliament. This Order will amend Schedule 5 by providing a further exception to section B3 so that the day of the poll at the first Scottish Parliamentary ordinary general election after 2016, will not be a reserved matter.

4.4 The Order also provides for certain limitations on this exception to the reservation. The day of the poll, as determined by the Scottish Parliament, must not be the same as the day of the poll at a UK Parliamentary general election (other than an early general election), European parliamentary general election or an ordinary local government election in Scotland. Section 3(3) of the 1998 Act provides that where the poll at an extraordinary general election of the Scottish Parliament is held within the 6 months before the poll at the next Scottish Parliamentary ordinary general election is due to be held, that ordinary general election will not to be held. If these circumstances arise in relation to the ordinary general election for which the Scottish Parliament determines the date using the powers transferred in the Order, those powers cannot be used in relation to that ordinary general election following the extraordinary general election (which would then be the first **ordinary** general election after 2016).

4.5 Section 2(5) of the 1998 Act provides for a limited alteration in the date to be set for a Scottish Parliamentary ordinary general election. If the first Thursday in May is deemed inappropriate for the holding of a poll, the Presiding Officer of the Scottish Parliament may propose an alternative day for the election to Her Majesty. However, the proposed date may not be more than one month earlier or one month later than the first Thursday in May. This Order provides that the Presiding Officer will retain the ability to propose this limited alteration in the date of the poll. However, any date so proposed must not be the same as the day of the poll at a UK Parliamentary general election, European Parliamentary general election or ordinary local government election in Scotland.

5. Territorial Extent and Application

This instrument extends throughout the United Kingdom.

6. European Convention on Human Rights

6.1 No Human Rights issues arise.

6.2 The Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 are compatible with the Convention rights.”

7. Policy background

7.1 As mentioned in paragraph 4.1, as a consequence of the combination of the Fixed-term Parliaments Act 2011 and section 2(2) of the 1998 Act, there are due to be elections to both the UK and Scottish Parliaments on 7 May 2020. The UK Government has always committed to take action to avoid a clash in 2020. Further, the Scottish Government and UK Government have agreed that electors should be aware of the term of the Scottish Parliament to which they are electing members and so, as the next scheduled Scottish

Parliamentary ordinary general election is due to take place on 5 May 2016, legislation to determine the duration of that Parliament should be made before the current Scottish Parliament dissolves for the May 2016 election.

7.2 While amendments were taken forward in the last Parliament to change the term lengths of the Welsh and Northern Ireland Assemblies from four to five years on a permanent basis so as to avoid a clash with UK Parliamentary general elections, the UK and Scottish Governments agreed that action to resolve the clash in Scotland in 2020 should be postponed until after the Scottish independence referendum had taken place.

7.3 Since devolving the power to determine the duration of the next Scottish Parliamentary session to the Scottish Parliament is consistent with the Smith Commission's recommendation that the Scottish Parliament should have all powers in relation to its own elections, and powers to make decisions about all matters relating to the arrangements and operations of the Scottish Parliament, this approach has the support of both the UK Government and the Scottish Government. The Presiding Officer of the Scottish Parliament confirmed that this approach has the support of the leaders of all the parties represented in the Scottish Parliament.

7.4 While giving the Scottish Parliament the power to avoid a clash in 2020, the section 30 Order will prevent the day of the poll determined by the Scottish Parliament being on the same day as a UK Parliamentary general election, European Parliamentary general election or ordinary local government election in Scotland. This is consistent with the Smith Commission's recommendation.

8. Consultation outcome

8.1 Although, because of time constraints, there has been no general consultation specific to this Order, the Order has been agreed by all the relevant departments within the UK government and the Scottish Government.

8.2 On wider consultation, since the UK Government published the draft clauses (which form the Scotland Bill) in January 2015, there has been wide engagement on those clauses, with the Scotland Office holding a number of events across Scotland.

8.3 This Order is being brought forward as a consequence of recommendations made by the Smith Commission which was convened on 19 September 2014 to take forward the further devolution commitment made by the Conservative, Labour and Liberal Democrat parties. The Commission invited submissions from political parties, a wide range of business and civic organisations and the wider public to help guide its consideration of what further powers should be devolved to the Scottish Parliament. On 27 November 2014 the Commission published its report detailing Heads of Agreement on further devolution of powers to the Scottish Parliament. The Smith Commission Report can be viewed here: http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

9. Guidance

No additional guidance is required for this Order.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

As the purpose of this Order is to amend the legislative competence of the Scottish Parliament, no monitoring or review of the effects of this Order are required by the UK Government. Any primary or secondary legislation introduced in the Scottish Parliament will be scrutinised in the normal way.

13. Contact

Emma Lopinska at the Scotland Office Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk can answer any queries regarding the instrument.