

2009 No. 1978 (S. 10)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

**The Scottish Parliament (Elections etc.) (Amendment) Order
2009**

Made - - - - - *20th July 2009*

Coming into force in accordance with Article 1

This Order is made in exercise of the powers conferred by sections 12(1) and 113(2) and (4) of the Scotland Act 1998(a).

The Secretary of State has consulted the Electoral Commission as required by section 7 of the Political Parties, Elections and Referendums Act 2000.

A draft of this Order has been laid before Parliament in accordance with section 115 of, and Schedule 7 to, the 1998 Act and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State for Scotland makes the following Order.

**PART 1
GENERAL**

Citation, commencement and savings provisions

1.—(1) This Order may be cited as the Scottish Parliament (Elections etc.) (Amendment) Order 2009 and shall come into force on the day five months after the day on which it is made.

(2) This Order does not have effect for the purpose of any election where the last day for publication of the notice of election in respect of that election precedes the coming into force of this Order.

Amendment of the Scottish Parliament (Elections etc.) Order 2007

2. The Scottish Parliament (Elections etc.) Order 2007(b) is amended in accordance with the provisions of this Order, and a reference to a numbered article or to a Schedule means the article or Schedule so numbered in that Order.

(a) 1998 c. 46. Section 12 was amended by the Political Parties and Referendums Act 2000 (c.41), Schedule 21, paragraph 13 and by the European Parliamentary Elections Act 2002 (c. 24), Schedule 3, paragraph 7.
(b) S.I. 2007/937, as amended by S.I. 2007/2262 and 2008/307.

PART 2

AMENDMENT OF ARTICLES OF THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) ORDER 2007

3. In article 46(3)(e) (statement of donations contained in return as to election expenses), for “2000 Political Parties Act” substitute “1983 Act”.

4. In article 50 (penalty for failure as respects return of declarations), omit “, nominating officer”.

5.—(1) Article 52 (authorised excuses for failure as to return and declarations) is amended as follows.

(2) In paragraph (1), omit “, a party’s nominating officer”.

(3) Omit paragraph (3)(c).

(4) Omit paragraph (4)(e).

(5) In paragraph (6)(a), omit “(or, in the case of a candidate on a party’s regional list, the party’s nominating officer)”.

(6) In paragraph (6), omit “or, as the case may be, nominating officer”.

6. In article 53(1) (court’s power to require information from election agent or sub agent), omit “or nominating officer”.

7.—(1) Article 55 (publication of time and place of inspection of returns and declarations) is amended as follows.

(2) In paragraph (1)(b)(ii), omit “and the nominating officers”.

(3) In paragraph (2) omit “and each nominating officer for a registered party submitting a regional list”.

(4) Omit paragraph (2)(b) and the word “or” immediately preceding it.

PART 3

AMENDMENT OF THE SCOTTISH PARLIAMENTARY ELECTION RULES

Provisions as to time

8.—(1) Schedule 2 (Scottish parliamentary election rules) is amended as follows.

(2) In rule 1(1) (timetable), in the first entry in the second column of the table, for “twenty-eighth” substitute “thirty-fifth” and for “twenty-first” substitute “twenty-eighth”.

(3) In rule 1(1), in the second entry in the second column, for “sixteenth” substitute “twenty-third”.

Stages common to contested and uncontested elections

9.—(1) Schedule 2 is further amended as follows.

(2) In rule 5(5)(a) (use of name of registered party as description on constituency nomination paper), add at the end “which may be preceded (disregarding, for this purpose, the word “the” where it is the first word of the registered name) by the word “Scottish” if that word is not used in the name so registered”.

(3) Omit rule 5(5)(b) (use of registered description on constituency nomination paper).

(4) After rule 5(5), insert—

“(5A) If any constituency nomination paper includes the name of a registered party that has been preceded by the word “Scottish” by virtue of paragraph 5(5)(a), then these Rules shall apply as if the name of the registered party of the relevant candidate included that word.”.

(5) In rule 7(2) (inclusion of name of registered party or registered description on regional list), for “or” where that word first appears substitute “and, if desired,”.

(6) In rule 7(2), for “name or description” substitute “name and, where applicable, description”.

(7) After rule 7(2) insert—

“(2A) The name of the registered party authorised by the nominating officer in accordance with paragraph (2) may be preceded (disregarding, for this purpose, the word “the” where it is the first word of the name) by the word “Scottish” if that word is not used in the name of the party registered under section 28 of the 2000 Political Parties Act.

(2B) If the name of any registered party authorised by the nominating officer has been preceded by the word “Scottish” in accordance with paragraph (2A), then these Rules shall apply as if the name of the registered party included that word.”.

(8) In rule 20(2) (order of names, etc. of parties and party candidates on statement of persons and parties nominated for return as regional members), for “or” substitute “and”.

(9) In rule 20(5) (order of names, etc. of individual candidates on statement of persons and parties nominated for return as regional members), for “names or descriptions” substitute “names and descriptions”.

Contested elections

10.—(1) Schedule 2 is further amended as follows.

(2) In rule 28(3)(a) (regional ballot paper to contain names or descriptions of parties), for “or, as the case may be,” substitute “and, where applicable,” and omit “(being, in each case, the name or description by which that party wishes to be known for the purposes of the election)”.

(3) In rule 28(4) (order in which names or descriptions of parties and individual candidates are to appear on the regional ballot paper), omit “or, as the case may be, descriptions”.

(4) In rule 28(5) (placement of a registered party’s registered emblem), omit both occurrences of “or description”.

(5) Omit rules 28(7) (printing of regional and constituency ballot papers on same sheet) and 28(8) (layout where regional and constituency ballot papers printed on same sheet).

(6) In rule 30(1) (the official mark), omit from “, but at a Scottish parliamentary general election” to the end.

(7) In rule 38(1) (equipment of polling stations: ballot boxes), omit “if the constituency ballot paper and the regional ballot paper are not printed on the same sheet,”.

(8) In rule 38(13) (equipment of polling stations: notice describing method of voting), for “paragraphs (14) and (15)” substitute “paragraph (14)”.

(9) Omit rule 38(15) (equipment of polling stations: notice describing method of voting for combined constituency and regional ballot papers).

(10) In rule 46(1) (voting procedure: application for ballot papers), omit “if the constituency ballot paper and regional ballot paper are not printed on the same sheet,”.

(11) In rule 46(7) (voting procedure: marking of copy of register of electors), omit “if the constituency ballot paper and regional ballot paper are not printed on the same sheet,”.

(12) In rule 47(5) (marking of list of votes marked by the presiding officer), omit “if the constituency ballot paper and regional ballot paper are not printed on the same sheet,”.

(13) In rule 48(9) (marking of list of voters with disabilities assisted by companions), omit “if the constituency ballot paper and regional ballot paper are not printed on the same sheet,”.

(14) In rule 53(3) (the ballot paper account), for “if at a Scottish parliamentary general election the constituency ballot paper and regional ballot paper are not printed on the same sheet,” substitute “,except in the case of a poll to fill a vacancy in the seat of a constituency member,”.

(15) For rule 55(1)(a) (the count: opening ballot boxes and recording number of ballot papers), substitute the following—

“(a) in the presence of the counting agents appointed for the purposes of the election open each ballot box and count and record separately the number of constituency ballot papers and the number of regional ballot papers there are in each box;”.

(16) For rule 55(1)(c) (the count: recording returned postal ballot papers), substitute the following—

“(c) count such of the postal ballot papers as have been duly returned and record separately the number of constituency postal ballot papers counted and the number of regional postal ballot papers counted.”.

(17) For rule 55(4) (the count: mixing of ballot papers), substitute the following—

“(4) The constituency returning officer shall not count the votes given on any ballot papers until—

- (a) in the case of constituency postal ballot papers, they have been mixed with constituency ballot papers from at least one ballot box;
- (b) in the case of constituency ballot papers from a ballot box, they have been mixed with constituency ballot papers from at least one other ballot box;
- (c) in the case of regional postal ballot papers; they have been mixed with regional ballot papers from at least one ballot box; and
- (d) in the case of regional ballot papers from a ballot box, they have been mixed with regional ballot papers from at least one other ballot box.”.

(18) Omit rule 58(2) (rejection of combined constituency and regional ballot papers).

(19) Omit rule 58(3) (checking of official mark or unique identifying mark).

(20) In rule 58(6) (recording of rejected ballot papers and objections), omit “or an electronic copy thereof”.

Disposal of Documents

11.—(1) Schedule 2 is further amended as follows.

(2) In rule 68(1) (sealing up of ballot papers), omit sub-paragraph (a), and in paragraph (b) omit “where the votes have been counted by manual means,”.

(3) Omit rule 68(3) (removal of original electronic data and records from an electronic counting system).

(4) In rule 69(1) (delivery of documents to the sheriff clerk), in sub-paragraph (g), at the end add “and”.

(5) In rule 69(1)(h), omit “; and” at the end.

(6) Omit rule 69(1)(i).

(7) In rule 70(1) (orders by Court of Session or sheriff for production of documents and records), in sub-paragraph (a) at the end, insert “or”.

(8) In rule 70(1)(b), omit “or” at the end.

(9) Omit rule 70(1)(c).

(10) In rule 70(2) (orders by election court for production of documents and records), omit sub-paragraph (b).

(11) In rule 70(6) (evidence that the produced documents relate to specified election), for “document, record or electronic copy of information” substitute “document or record” and in sub-paragraph (a) for each occurrence of “document, record or electronic copy” substitute “document or record”.

(12) In rule 70(7A) (requirement by Electoral Commission for production of documents and records), omit “and of any sealed packet containing an electronic copy of information made pursuant to rule 68(1)(a)”.

(13) In rule 70(7B) (care, resealing and destruction of copies of documents and records produced to Electoral Commission), omit “or records” and both occurrences of “and records”.

(14) In rule 70(8) (prohibition of inspecting rejected or counted ballot papers, etc.), omit from “, or to examine” to the end.

(15) In rule 71(1) (retention of documents), omit “and records”.

(16) Omit rule 71(3) (electronic copy of information stored on electronic counting system not to be open to public inspection).

PART 4

AMENDMENT OF PROVISIONS ON COMBINATION OF POLLS

12.—(1) Paragraph 18 of Schedule 5 (modification of rule 55 (the count)) is amended as follows.

(2) In paragraph (1)(b) of the substituted rule, omit “if the votes at a Scottish parliamentary election and the local government election are not both being counted by electronic means,”.

(3) In paragraph (1)(c) of the substituted rule, omit “if the votes at a Scottish parliamentary election and the local government election are not both being counted by electronic means,”.

(4) for paragraph (1)(d) of the substituted rule, substitute the following—

“(d) in the presence of the election agents appointed for the purpose of the Scottish parliamentary election, record separately the number of constituency ballot papers there are in each box and the number of regional ballot papers there are in each box;”.

(5) for paragraph (1)(f) of the substituted rule, substitute the following—

“(f) count such of the constituency postal ballot papers and regional postal ballot papers as have been duly returned and record separately the number of constituency postal ballot papers counted and the number of regional postal ballot papers counted;”.

(6) for paragraph (1A)(a) of the substituted rule, substitute the following—

“(a) on receipt of containers from the returning officer who does discharge those functions, and after the time specified in the notice given under rule 54(1A) above (as substituted by paragraph 17(1) of Schedule 5), in the presence of the counting agents open each container and record separately the number of constituency ballot papers there are in each container and the number of regional ballot papers there are in each container;”.

(7) for paragraph (1A)(c) of the substituted rule, substitute the following—

“(c) count such of the postal ballot papers as have been duly returned and record separately the number of constituency ballot papers counted and the number of regional ballot papers counted.”.

13.—(1) Paragraph 36 of Schedule 5 (modification of rule 42 of the local election rules (the count)) is amended as follows.

(2) In paragraph (1)(b) of the substituted paragraphs, omit “if the votes at the local government election and the Scottish parliamentary election are not both being counted by electronic means,”.

(3) In paragraph (1)(c) of the substituted paragraphs, omit “if the votes at the local government election and the Scottish parliamentary election are not both being counted by electronic means,”.

PART 5
AMENDMENT OF FORMS

14.—(1) The Appendix of Forms is amended as follows.

(2) In Form C (return as to election expenses), after “Registered party” insert “(as specified on the ballot paper)”.

(3) In Form E (declaration to be made by a candidate on a registered political party’s list in respect of election expenses), for “Name of registered political party” substitute “Name of (a) registered political party and (b) registered political party as specified on the ballot paper”.

(4) In Form H (election of regional list member):

(a) In the first paragraph omit “or description”; and

(b) For the words “*Insert either the name*” to “*used in the ballot paper*” substitute—

“Insert the name of the registered party in terms of section 28 of the Political Parties, Elections and Referendums Act 2000 that shall be used in the ballot paper preceded, if desired, by the word “Scottish” (except if “the” is the first word of the registered name, in which case “Scottish” may instead follow “the” if desired), and, if desired, one description of the party registered under section 28A of that Act, being the name and description that shall be used on the ballot paper.”

(5) In Form I (certification in relation to constituency or regional nomination paper):

(a) omit “either”;

(b) after “Referendums Act 2000”, insert “, preceded, if desired, by the word “Scottish” (except if “the” is the first word of the registered name, in which case “Scottish” may instead follow “the” if desired),”; and

(c) for “or” where it occurs for the second time, substitute “and, if desired,”.

(6) In Form K (form of the regional ballot paper), in the part entitled “Directions as to the printing of the regional ballot paper”:

(a) for paragraph 2(h) substitute the following—

“(h) no word shall be printed on the face except:

(i) the name (or one of the names) of each political party registered in terms of section 28 of the Political Parties, Elections and Referendums Act 2000 submitting a list;

(ii) for each party, if being used, one description registered under section 28A of that Act;

(iii) the names and, if being used, descriptions of the individual candidates;

(iv) words forming part of emblems;

(v) the words “Scottish Parliament Region” and the name of the region; and

(vi) the words “vote once only (X)”.

(b) in paragraph 2(i), for “or” substitute “and”;

(c) in paragraph 2(j), for “names or descriptions and particulars” substitute “names and particulars or, in the case of parties, names and descriptions”;

(d) in paragraph 4, omit “or description”;

(e) in paragraph 4(k), omit “or description” on both occasions where it occurs; and

(f) at the end add:

“7. The names of the political parties included on the ballot paper as permitted by paragraph 2(h)(i) must include the word “Scottish” where that has been added under rule 7(2A).”.

(7) In Form L (postal voting statement), in the part entitled “Instructions to Voters”, for paragraph 1 substitute “You have two ballot papers: a constituency ballot paper coloured [insert colour] and a regional ballot paper coloured [insert colour].”.

(8) In Form L, in the part entitled “Instructions to Voters, in paragraph 2, omit “(Or, in the case of a constituency ballot paper and a regional ballot paper which are printed on the same sheet of paper, replace with “Vote only once on each part of the sheet.”)”.

(9) In Form M (official poll card: elector voting in person), in the part entitled “Scottish Parliament Elections”, omit from “(Or, in the case of a constituency ballot paper” to “once on each part”)

(10) In Form O (guidance for voters), omit part O2.

(11) In Form O, in part O3, omit from “(*Where the Scottish Parliamentary constituency ballot paper” to the end of that part.

(12) In Form P (Scottish Parliament election: information for voters), omit part P2.

(13) In Form S (certification by the constituency returning officer in respect of the election of a member for a Scottish Parliament constituency):

(a) for “description if applicable, or name of registered political party” substitute “name of registered political party*”; and

(b) at the end add “* Use the name of the party as registered. Do not include the word “Scottish” where that has been added under rule 7(2A).”.

(14) In Form T (certification by the regional returning officer in respect of the poll for members for a Scottish Parliament electoral region):

(a) for each occurrence of “description, if applicable, or name of registered political party” substitute “name of registered political party*”; and

(b) at the end add “* Use the name of the party as registered. Do not include the word “Scottish” where that has been added under rule 7(2A).”.

(15) In Form U (postal voting statement for a postal vote at a Scottish Parliament election which is taken with a local government election and the proceedings on the issue and receipt of postal ballot papers in respect of each election are taken together), in the part entitled “Instructions to Voters”, in paragraph 1 omit from “(Or, in the case of a constituency ballot paper” to the end of that paragraph.

(16) In Form U, in the part entitled “Instructions to Voters”, in paragraph 2, omit from “(Or, in the case of a constituency ballot paper” to the end of that paragraph.

(17) In Form U, in the part entitled “Instructions to Voters”, in paragraph 6, omit “(or both, as appropriate)”.

(18) In Form V (postal voting statement for a postal vote at a Scottish Parliament election which is taken with a local government election but the proceedings on the issue and receipt of postal ballot papers in respect of each election are not taken together), in the part entitled “Instructions to Voters”, in paragraph 2, omit from “(Or, in the case of a constituency ballot paper” to the end of that paragraph.

(19) In Form V, in the part entitled “Instructions to Voters”, in paragraph 3, omit “(Or, in the case of a constituency ballot paper and a regional ballot paper which are printed on the same sheet of paper, replace with “Vote only once on each part of the sheet.”)” and “(or “on the sheet, as the case may be)”.

(20) In Form X (notice providing further information for voters at polling stations at a Scottish Parliament election which is taken with a local government election), omit part X2.

Signed by authority of the Secretary of State

ANN McKECHIN
Parliamentary Under Secretary of State
Scotland Office

Dover House,
London
20th July 2009

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes amendments to the Scottish Parliament (Elections etc.) Order 2007 (S.I. 2007/937) (“the Conduct Order”).

Article 3 corrects an erroneous reference to the Political Parties, Elections and Referendums Act 2000.

Articles 4 to 7 remove superfluous references to nominating officers from Articles 50, 52, 53 and 55 of the Conduct Order. Those articles of the Conduct Order concern matters where political parties’ nominating officers do not have a role, namely returns and declarations as to election expenses.

Articles 8 to 11 make changes to the Scottish Parliamentary Election Rules contained in Schedule 2 to the Conduct Order as follows:

Article 8(2) and (3) make changes to the timetable for the election.

Candidates’ descriptions which appear on the nomination papers and ballot papers for a constituency ballot may no longer be political parties’ registered descriptions but must be either the registered name of the political party or the word “independent”. (Article 9(3)).

The registered names of political parties must be used in the regional ballot. The political party will also have the option of using a registered description in addition to the registered name if desired. (Article 9(5), (6), (8) and (9) and article 10(2), (3) and (4)).

Where the word “Scottish” does not form part of the registered name of a political party, it can be added to the registered name for use on nomination papers and the ballot papers for both constituency and regional ballots. (Article 9(2), (4) and (7)).

In elections to the Scottish Parliament separate ballot papers will be used for the constituency ballot and for the regional ballot and references to combined papers are therefore removed. (Article 10(5) to (16) and (18) and article 12(4) to (7)).

The provisions for electronic counting of votes are removed. (Articles 10(17), (19) and (20), 11, 12(2) and (3) and 13).

Article 14 makes changes to the Appendix of Forms to reflect the above changes.

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STATUTORY INSTRUMENTS

2009 No. 1978 (S. 10)

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DEVOLUTION, SCOTLAND

**The Scottish Parliament (Elections etc.) (Amendment) Order
2009**

£5.50