POLICY NOTE

The Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021

SSI 2021/XXX

1. The above instrument was made in exercise of the powers conferred by sections 12(1) and 113(2), (4) and (5) of the Scotland Act 1998 ("the 1998 Act") and all other powers enabling the Scottish Ministers to do so. The instrument is subject to affirmative procedure.

Summary Box

This Order provides for an elector, who has already appointed a proxy to vote for them, to change their proxy if the original proxy would not now be able to vote in person because they are following Scottish Government or medical advice by shielding or self-isolating due to coronavirus.

In addition this opportunity is also being taken to correct a minor error which was identified during the drafting of this Order and to widen the interpretation of "disability" in relation to emergency proxies.

Policy Objectives

2. The purpose of this instrument is to amend the Scottish Parliament (Elections etc.) Order 2015 ("the 2015 Order", SSI 2015/425), which was recently amended by the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 ("the 2020 Order", SSI 2020/426). The 2015 Order provides the rules governing the conduct of elections of members of the Scottish Parliament.

3. In terms of section 2(2) of the 1998 Act (as amended by the Scottish Elections (Reform) Act 2020), the next ordinary general election to the Scottish Parliament is scheduled to take place on 6 May 2021.

4. If approved, this Order will apply to any election for which the date of the poll is on or after 5 April 2021, the same coming into force date as for the 2020 Order. The same date has been chosen as this Order amends some of the provisions contained in the 2020 Order and it is therefore sensible to have both orders coming into force at the same time.

5. The changes set out in these regulations are as follows:

Correction of cross reference *(Article 2(2))*

6. During the drafting process for this Order, an error in a cross-reference was picked up. Article 2(2) corrects this error. The reference to paragraph 7 of schedule 3 should refer to paragraph 8, the general proxy requirements.

Emergency appointment of proxy – disability *(Article 2(3))*

7. The 2020 Order included a new provision which allows for an "emergency" proxy appointment to be made in a situation where even though an elector's disability happened before the deadline for a "normal" proxy appointment the elector was unable to apply before that deadline. If such a situation were now to arise, the individual can apply but they must provide an explanation of why they were unable to apply before the normal deadline.

8. Subsequent to the making of the 2020 Order, the Electoral Commission alerted the Scottish Government to the risk that the definition of "disability" contained in the amending provision in the 2020 Order may limit the effect of the new provision in a way which was not intended. This opportunity is therefore being taken to delete that definition. The effect of deleting this definition is that the general definition of "disability" in article 2 of the 2015 Order will apply, as it does to other uses of "disability" in schedule 3. This will allow "disability" to take its "natural" meaning, and pick up short-term incapacitating events that otherwise may inadvertently have been excluded.

Emergency change of proxy: coronavirus *(Article 2(4) and 2(5))*

9. The Electoral Commission has expressed concerns that an elector who has already appointed a proxy to vote on their behalf may be denied their vote if their proxy has to subsequently shield or self-isolate due to coronavirus restrictions and therefore cannot attend the polling place. The 2020 Order allowed for an elector who has to shield or self-isolate to appoint a proxy, but it did not cover the situation of the appointed proxy having to self-isolate.

10. Therefore provision is being made for an elector to appoint a replacement person as their proxy, should their original proxy be unable to vote due to the need to follow either Scottish Government or medical advice in relation to coronavirus. An elector will be able to appoint a new proxy up until 5pm on the day of the poll, in line with the existing deadline for the appointment of emergency proxies. The new proxy must meet the usual requirements for appointment as a proxy.

11. The same sunsetting provisions as set out for the coronavirus proxy provisions in the 2020 Order have been applied, but with the specific date (10 December 2022) inserted instead of references to the date of the 2020 Order coming into force, since that date is now known.

Consultation

12. To ensure that this Order was in force in time for the May 2021 Scottish Parliament election, a brief consultation on the provisions was undertaken.

13. In addition to the statutory requirement to consult with the Electoral Commission, the following bodies and stakeholders were consulted on the draft Order:

    - Electoral Management Board for Scotland

- Association of Electoral Administrators
- Electoral Registration Committee of the Scottish Assessors Association
- Society of Local Authority Lawyers & Administrators in Scotland
- Society of Local Authority Chief Executives and Senior Managers
- COSLA
- Political Parties represented in the Scottish Parliament

Responses were received from:

- Electoral Commission; and
- Electoral Registration Committee of the Scottish Assessors Association

As a result of concerns expressed by Electoral Registration Officers over potential needs for change to electoral management systems, we revised our approach to the emergency change of proxy provisions in order to better fit with existing practices around proxy appointments.

Impact Assessments

14. The Scottish Government view is that this Order has no significant impact on child rights and wellbeing, equality, data protection, the environment, fairness or island communities and therefore no impact assessments are required for those areas.

Business and Regulatory Impact Assessment (BRIA)

15. The Scottish Government does not consider that a BRIA is necessary as the policy changes will not lead to any new costs or savings for business, third or public sector organisations, regulators or consumers. There is no new additional cost on the public sector as the Scottish Government will meet any costs of associated activity and there is no transfer of costs or benefits from one group to another.

Financial Implications

16. It is estimated that the cost of running the Scottish Parliament general election in May 2021 will be £25.6 million. However, this is subject to change depending on if the response to the pandemic changes over the coming months. This Order is not expected to result in any significant increased costs.

Scottish Government
Directorate for Constitution and Cabinet

February 2021