POLICY NOTE

THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) (MISCELLANEOUS AMENDMENTS) ORDER 2025

SSI 2025/XXX

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 12(1) and 113(2), (4) and (5) of the Scotland Act 1998 and all other powers enabling them to do so.

In accordance with section 7(1) and (2)(g) of the Political Parties, Elections and Referendums Act 2000(b), the Scottish Ministers have consulted the Electoral Commission.

The instrument is subject to *affirmative procedure*.

Purpose of the instrument.

This Order makes changes to the Scottish Parliament (Elections etc.) Order 2015, the Representation of the People Act 1983 and the Political Parties, Elections and Referendums Act 2000. It increases the age that looked after or formerly looked after people can register to vote using a declaration of local connection from 15 years old and under to those aged under 21 years old. It clarifies the scope of Electoral Commission oversight of candidates for Scottish Parliament elections. It updates the definitions of notional expenditure and the offence of undue influence at Scottish Parliament elections. It reduces the dissolution period of the Scottish Parliament before a general election from 28 days to 20 days and makes consequential amendments to provisions linked to the dissolution date. It amends the limits on election expenses which apply where the date of the poll is changed. It updates the requirement for Returning Officers to provide equipment to assist electors to cast their votes. It also updates rules relating to proxy voting relating to some prisoners, those accompanying persons having medical treatment, and replacement of proxies where a nominated proxy is unable to vote. The changes will apply to all Scottish Parliament elections which take place on or after 7 May 2026.

Policy Objectives

1. The purpose of this instrument is to update the rules governing the conduct of elections of members of the Scottish Parliament. It does this by amending the Scottish Parliament (Elections etc.) Order 2015 ("the 2015 Order", SSI 2015/425). The instrument also makes changes to the Representation of the People Act 1983 ("the 1983 Act"), as regards the age of looked after children for registering using a declaration of local connection, and the Political Parties, Elections and Referendums Act 2000 (the 2000 Act) as regards the duty of the Electoral Commission to monitor and ensure compliance with restrictions and requirements in relation to elections expenses and donations to candidates and elections agents.

2. Section 3 to 10 of the Scotland Act 2016 ("the 2016 Act") transferred, from the Secretary of State for Scotland to the Scottish Ministers, the power to make provisions about electoral registration and the conduct of elections for, and the return of members to, the Scottish Parliament (insofar as they had not already been transferred by sections 1 and 3 of the Scotland Act 2012). Sections 3 to 10 of the 2016 Act were commenced by the Scotland Act 2016

(Commencement No. 6) Regulations 2017 (SI 2017/608) and came into force on 18 May 2017. This instrument exercises the powers of Scottish Ministers in these areas.

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 7 May 2026.

4. Most of the rules which governed the running of the Scottish Parliament general election held in May 2021 will remain the same. However, this instrument does include a number of changes which reflect developments since the last election.

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

Notional residence: declaration of local connection (Article 2)

6. Certain individuals who do not have a fixed or permanent address, may register by making a declaration of local connection. The effect of a declaration of local connection is that the declarant can be registered by reference to an address which may not be the one at which they normally reside. Section 7B of the 1983 Act also provides an additional ground for 14- and 15-year-old applicants to the local government register in Scotland, which is used for Scottish Parliament elections. Those applicants may apply to register using a declaration of local connection if they are, or have been, looked after by a Scottish local authority, or if they are or have been resident in secure accommodation (if they are "care experienced").

7. Following consultations with electoral administrators and other Governments within the UK, this Order will extend the right of care experienced persons to register by making a declaration of local connection to those aged under 21 years old. This change will assist care experienced individuals aged under 21 in registering to vote.

Duties of the Commission with respect to compliance with controls imposed by the Act etc. (Article 3)

8. Section 145 of the 2000 Act sets out the role of the Electoral Commission in monitoring and securing compliance with the restrictions and other requirements imposed by various sections of the 2000 Act, or some other enactments, relating to election expenses incurred, and donations received, on behalf of candidates. This includes the ability to produce and publish guidance on expenses rules. However, this monitoring and compliance duty does not apply to any election expenses or donation restrictions or requirements contained in an Act of the Scottish Parliament or secondary legislation made under such an Act.

9. This amendment extends the monitoring and compliance duty so that the Electoral Commission will also now have a statutory role in monitoring donations to and expenditure by candidates or their election agents which is controlled by requirements or restrictions contained in any Act of the Scottish Parliament or secondary legislation made under such an Act.

Payment of expenses through election agent: constituency and individual regional candidates (Article 5)

10. Article 5 amends article 38(4) of the 2015 Order the effect of which is that expenses incurred under article 41(1) by a third party authorised in writing by the election agent do not have to be paid by the election agent. The amendment ensures that third parties are able to both incur and pay for authorised expenses under article 38, rather than the expenses being paid through the agent of the candidate they are promoting. This is related to the change to notional expenditure in article 7 of this Order and achieves the same result as section 22 of the Elections

Act 2022 in relation to UK Parliament elections. This change was recommended by the Electoral Commission.

Limitation of election expenses (Article 6)

11. Section 2(5) of the Scotland Act 1998 allows that the Presiding Officer may propose a date that is up to 4 weeks earlier, or 8 weeks later from when an ordinary general election to the Scottish Parliament would otherwise have been scheduled. Under section 2(5E), which was introduced by the Scottish Elections (Representation and Reform) Act 2025 ("the 2025 Act"), the Presiding Officer may also, after proposing a new date under section 2(5), propose a further (new) date which is up to 8 weeks later than the date previously fixed. Taken together, this could have the overall effect of a postponement of up to 16 weeks.

12. Article 42(2A) of the 2015 Order states that where a poll is postponed under section 2(5) in this way the expenditure limit for political party campaign spending is increased by 50%, to allow for the increased expense of a longer campaign.

13. The Electoral Commission have highlighted that this increase in spending limits would apply after the first postponement by proclamation and but the limit would not change because of a second postponement by proclamation under section 2(5E). Following discussions with the Electoral Commission about the implications of a second increase, the Government has decided to ensure additional expenditure of up to 50% of the original limit can be permitted in the event of both a first and a second postponement.

14. In addition, the provision in article 42(7), that the maximum amount of election expenses is multiplied by two where the death of a candidate causes a poll to be abandoned or countermanded is amended such that the spending limit is instead increased by the addition of 100% of the original spending limit in the event that poll is abandoned or countermanded because of a candidate death.

15. Article 6(1)(b) adjusts the exemption for candidate campaign expenditure in relation to security. The Electoral Commission had highlighted that the current exemption only applies to security costs in relation to rallies or other public events and that is possible for candidates to incur security expenses in other ways (e.g. on cybersecurity and canvassing security). The new formulation is modelled on the provision for UK Parliament elections contained in the Political Parties, Elections and Referendums Act 2000.

16. Article 6(1)(d) sets out that any increase in election expenditure due to proclamations made by His Majesty or following the death of a candidate or candidates are cumulative to, and not multiples of, the original expenditure limit. For example where a poll is postponed once and then abandoned due to the death of a candidate, an increase of 50% of the original limit is applied (in respect of the postponement) and then an increase of 100% of the original limit (in respect of the death) such that the applicable limit is 250% of the original spending limit.

Notional expenses (Article 7)

17. The UK Elections Act 2022 updated the definition of notional expenditure in relation to UK parliamentary elections in Scotland (section 90(c)(1A) of the 1983 Act). It is considered that applying the same definition to Scottish Parliament and local government elections will help ensure the rules are clear and consistent for campaigners and candidates across all elections in Scotland.

18. The 2025 Act included provisions which update the definition of notional expenditure at local government elections, and of notional expenditure by political parties and third parties

at Scottish Parliament elections. Because the same changes to the definition of notional expenditure by candidates at Scottish Parliament elections could be made by secondary legislation they were not included in the 2025 Act.

19. In line with the changes already made in the 2025 Act, article 7 updates the definition of notional expenditure by candidates at Scottish Parliament elections so that it reflects the changes already made for local government elections and of notional expenditure by political parties and third parties at Scottish Parliament elections by the 2025 Act.

Undue influence (Article 8)

20. The existing offence of "undue influence" has been in place since the 19th century, and there is general agreement that the language requires revising and updating. By using modern terminology, and by clearly separating out the types of conduct that can cause undue influence the Scottish Government is clarifying what constitutes undue influence to make the legislation easier to interpret and enforce. This is consistent with changes made for UK parliamentary elections by the Elections Act 2022. This modernised wording does not change the scope of the offence.

21. The activities listed in the revised article 77(4) of the 2015 Order are considered as being an undue influence, when carried out for the purpose of inducing a person to vote in a particular way, inducing them not to vote at all, or otherwise interfering with their free exercise of their vote.

Meaning of Candidate (Article 9)

22. Article 80(1)(a) of the 2015 Order sets out that a person becomes a candidate at a Scottish Parliament election for the purposes of the Order on the date of either:

(i) the dissolution of the Scottish Parliament; or

(ii) in the case of an election under section 9 of the 1998 Act (constituency vacancies), the occurrence of the vacancy,

if on or before that date the person has been declared (for example, announced by their party) to be a candidate at the election in question.

23. As the legislation currently stands, one of the consequences of the change to the minimum period for the dissolution of Parliament (see article 10), would be that a person who has already been declared a candidate would only become a candidate under this provision at 20 working days, rather than 28 working days, before the date of the poll.

24. Following discussions with the Electoral Commission, the Scottish Government has decided that the status quo should be maintained. Article 9 therefore removes the link between a person becoming a candidate and the dissolution of the Parliament, (as the date for that is changing) and replaces it with a specific reference to “28 days before the date of the poll”. This period is worked out in the same way as the dissolution date, excluding weekends and public holidays.

Dissolution of Parliament: minimum period (Article 9)

25. Currently, article 84 of the 2015 Order, taken together with section 2(3) of the Scotland Act 1998, requires that the Scottish Parliament must be dissolved a minimum of 28 working days before the date of the poll at a Scottish Parliament General Election (SPGE). Working

days for this purpose excludes weekends and public holidays in accordance with rule 2 of the Scottish Parliamentary Election Rules (computation of time).

26. Paragraphs 96 to 98 of the Policy Memorandum to the 2025 Act discuss the risk of a UK Parliament General Election (UKGE) being called on the same date as a scheduled SPGE. When the Prime Minister calls a UKGE, the House of Commons will dissolve 25 working days prior to polling date, which means that a snap UKGE could be called for a date on or close to a SPGE, after the Scottish Parliament has already been dissolved and is unable to react.

27. To allow the Scottish Parliament the opportunity to pass emergency legislation to move the SPGE date, should such a situation arise, article 9 of this Order reduces the 28 working day period to 20 working days. This is achieved by an amendment to article 84 of the 2015 Order. No change is intended to the election campaign period: while timing of any Parliamentary recess is a matter for the Scottish Parliament, it is envisaged that it will choose to go into a pre-election recess 28 working days prior to polling day, so as to avoid any overall change to the campaign period. Article 9 makes some incidental changes to the definition of candidate as a result of the change to the dissolution period.

Effect of demise of the Crown (Article 11)

28. As mentioned above, in describing article 6 on limitation of election expenses, section 2(5E) of the Scotland Act 1998 allows the Presiding Officer, to propose a second (new) date for a general election which is up to 8 weeks later than any date previously fixed which may result in a delay totalling 16 weeks.

29. This article makes a consequential amendment to allow any proclamation dissolving the Parliament, following the Presiding Officer proposing a second date for the holding of the poll, to remain valid if the demise of the Crown were to occur before the day of poll.

Supply of free copy of full register for electoral purposes (Article 12)

30. This is a further consequential change flowing from the change to the minimum period for the dissolution of Parliament (see above).

31. Currently, paragraph 1 of schedule 1 to the 2015 Order, taken together with paragraph 1(2)(a) of the same schedule, requires electoral registration officers to supply returning officers with the latest version of the electoral register as soon as practical after the dissolution of the Scottish Parliament. As is the case with the meaning of candidate (see above), the change to the minimum period for the dissolution of Parliament would have a consequential effect on when Electoral Registration Officers would pass copies of the electoral register to Returning Officers.

32. Following discussions with Electoral Registration Officers and Returning Officers, the Scottish Government has decided that the status quo should be maintained. This article therefore removes the link to the dissolution of the Parliament and replaces it with a specific reference to “28 days before the date of the poll”. This period is worked out in the same way as the dissolution date, excluding weekends and public holidays.

Provisions as to time (Article 13)

33. Article 1A of the 2015 Order sets out the duties of a Returning Officer if a poll is postponed. Article 13 makes amendments to article 1A of the 2015 Order to account for a

situation where proceedings at a Scottish parliamentary election are postponed twice by proclamation. This is a consequence of section 2(5E) of the Scotland Act 1998, which allows the Presiding Officer to propose a second postponement to the date of the poll at a Scottish Parliament election.

Equipment of polling stations (Article 14)

34. This provision removes the detailed description of the tactile voting device which is currently set out in paragraph 38 of schedule 2 to the 2015 Order and replaces it with a broader requirement for returning officers to provide appropriate support to aid accessibility at polling stations. It also requires the Electoral Commission to provide guidance for returning officers on how they can comply with the new requirement. This is broadly in line with what the UK Government has already done for UK Parliamentary elections in the Elections Act 2022.

35. The Electoral Commission's "Guidance for Returning Officers - Assistance with voting for disabled voters" at UK Parliamentary elections includes a requirement that returning officer must provide a tactile voting devices which voters, who are visually impaired, can use to mark their vote on the ballot paper in the correct place. The Scottish Government expects a similar requirement is likely to feature in the Electoral Commission's equivalent guidance for Scottish Parliament elections.

36. The intention is to allow for more flexibility and to ensure that the accessibility support offered can be adapted and evolve to take account of future innovations. The Scottish Government is currently working with organisations representing people with visual impairments to design a tactile voting device which is easier to use.

Proxy voting (Article 15)

37. This article makes various amendments to absent voting provisions and allows for late applications for emergency proxy votes in certain circumstances.

38. The Scottish Government was asked by the Electoral Commission and electoral registration officers to consider expanding the categories of voters who are entitled to apply for an emergency proxy to include those who find themselves unable to vote in person, because they are acting as a companion for someone who needs to be accompanied to an unplanned medical appointment. In particular, this affects those who care for young or older people. This policy change was discussed in the Electoral Reform Consultation (see Consultation section) and was supported by 61% of respondents, including 100% of organisations.

39. In line with the support for this proposal, article 15(1)(a) amends the emergency proxy provisions contained in paragraph 7 of schedule 3 to the 2015 Order to allow anyone who cannot vote in person, due to them accompanying another person to attend medical care or treatment, to apply for an emergency proxy vote. Applications must be attested and signed by a person who is aged 16 years or over, knows the applicant, and is not related to the applicant. The person attesting must also state the reasons why the applicant was unable to make the application before 5 pm on the sixth day before the date of the poll. As for other emergency proxy votes, the deadline for applications will be 5 pm on the date of the poll.

40. Article 2(4) of the Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021 allowed for a voter who had appointed a proxy to change their proxy if the proxy would not be able to vote in person, due to having to follow Scottish Government advice or the advice of a registered medical practitioner in relation to coronavirus. The intention was to ensure that the voter would not lose their vote if their proxy were unable to vote due to

coronavirus restrictions. This article was covered by a sunsetting provision and no applications could be made under it on or after 10 December 2022.

41. The Scottish Government is of the view that no-one should lose their right to vote due to their chosen proxy not being able to vote on their behalf. Therefore article 15(1)(b) introduces a new provision that enables an elector with a proxy vote to appoint an alternative proxy, if the proxy cannot reasonably be expected to vote in person at the polling station allocated to the elector and they do not have a postal vote. The deadline for such an application will be 5 pm on the day of the poll at the election, as provided for in paragraph 9(3A) of schedule 3 to the 2015 Order. For people with a continuing proxy vote (for multiple elections) the new proxy will remain on the system until a new change is made. It will remain open to voters to make an application to change the identify of their proxy following the election.

42. Article 15(1)(c) amends the deadline for emergency applications made on grounds that the applicant is detained in prison, so that prisoners who are eligible to vote in Scottish Parliament elections can apply for an emergency proxy vote until 5 pm on the date of the poll. This deadline will apply irrespective of when the applicant was originally detained in prison.

Replacement postal ballot papers (Article 16)

43. Following representations from returning officers about the practical difficulties associated with being required to make provision for the issuing of replacement postal ballot packs up to 10 pm on the day of poll, the Government has agreed that the deadline for issuing replacements for lost or spoilt postal ballot packs should be brought forward to 5 pm on the day of poll. This change reflects that few, if any, replacement ballot packs were requested between 5 pm and 10 pm at either the Scottish Parliament elections in May 2021 or the local government elections in May 2022. It also allows for more consistent messaging to voters by aligning the deadline for replacement postal ballot packs with that for requesting an emergency proxy.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

44. The Scottish Ministers have made the following statement regarding children's rights.

> In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

45. This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

46. The Scottish Government's Electoral Reform Consultation ran between 14 December 2022 and 15 March 2023. The consultation requested views on a number of issues, including the following:

- Notional expenses
- Undue influence
- Dissolution of Parliament: minimum period
- Equipment of polling stations
- Proxy voting for carers

47. 517 responses to the consultation were received, 94% from individuals, and 6% from organisations. The Scottish Government published an independent analysis of the consultation on 31 July 2023. Copies of the consultation, responses and the analysis are available on the Scottish Government's website.

48. Proposed secondary legislation on Scottish Parliament elections was discussed by the Scottish Parliament during the passage of the Scottish Elections (Representation and Reform) Act 2025. Electoral Administrators, including returning officers and electoral registration officers, and other external stakeholders, such as the Royal National Institute of Blind People for Scotland and the Scottish Parliament Corporate Body, have been involved in discussions on relevant aspects of this Order.

49. As well as the general consultations, the following bodies and stakeholders were specifically consulted during the finalisation of the draft Order:

- Electoral Commission
- Electoral Management Board for Scotland
- Association of Electoral Administrators
- Electoral Registration Committee of the Scottish Assessors Association
- COSLA
- Scottish Parliament Political Parties Panel
- Scottish Parliament officials
- The Information Commissioner

50. The responses to these consultations have helped informed the content of the draft Order.

51. The Electoral Commission were consulted extensively during the drafting of this Order and, in accordance with section 7(1) and (2)(g) of the Political Parties, Elections and Referendums Act 2000(b), the Scottish Ministers have also formally consulted the Electoral Commission on the finalised order.

Impact Assessments

52. The Scottish Government has prepared a Child Rights and Wellbeing Impact Assessment (CRWIA). The CRWIA notes that the provision allowing for looked after or formally looked after children and young people to register to vote by declaration of local connection has a positive impact on the rights of the child, albeit for a small cohort of children and young people. The rest of the Order has no impact on the rights of the child.

53. An Equalities Impact Assessment (EQIA) has been prepared, outlining the impacts on groups with protected characteristics. There is minimal differential impact on these groups, and where there are differences, the EQIA finds that there is a positive impact.

54. This Order makes some amendments relating to processing of data in an electoral context. Electoral Registration Officers continue to be data controllers of the electoral register and related data, and the changes made in this Order ensure that the data collected is consistent with existing practice. Scottish Government have consulted the Information Commissioner on these changes, and no concerns have been raised to date. A Data Protection Impact Assessment (DPIA) has not been completed as there will be no change to the data held by the Scottish Government as a result of this Order.

55. The Scottish Government view is that this Order has no significant impact on data protection, the environment, fairness; island communities and therefore no impact assessments are required for those areas.

Business and Regulatory Impact Assessment (BRIA)

56. The Minister for Parliamentary Business confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Financial Implications

57. There are no specific significant costs associated with the changes made in this order, however it is estimated that the cost of running the Scottish Parliament general election in May 2026 will be about £30 million. This amount is made up of two main elements: returning officers' charges for services rendered and expenses incurred; and payments to Royal Mail for the delivery of candidates' election material. These estimated costs are based on comparisons with the cost of delivering previous elections across the UK. The expected cost of holding the election will not be impacted by the changes made in this Order.

58. Under article 18 of the 2015 Order, returning officers will be entitled to recover their costs and fees in respect of the election from the Scottish Government. The total amount that returning officers will be entitled to recover for delivery of the poll and the count will be set out in a separate fees and charges order. These costs will initially be borne by local authorities but will be reimbursed by the Scottish Government. Following normal practice at other elections, advance payments of up to 75% of returning officers' expenses may be made prior to the poll, with the remaining balance being paid once individual returning officers' accounts have been submitted and verified.

59. At the May 2021 Scottish Parliament general election, returning officers charges amounted to about £19.1 million, of which about £3.7 million was for costs specifically identified as relating to the Covid pandemic. Since then, there has been an increase in registration levels and political engagement which, together with increases in the number of electors voting by post, will result in increased costs. For comparison purposes, at the May 2016 Scottish Parliament general election, returning officers charges amounted to £11.9 million.

Scottish Government
Directorate for Constitution

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