POLICY NOTE

THE SCOTTISH PARLIAMENT (ELECTIONS ETC.) ORDER 2015

SSI 2015/xxxx

1. The above instrument, if approved by the Scottish Parliament, will be made 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 the Scottish Ministers to do so. The instrument is subject to affirmative procedure.

Policy Objectives

2. The purpose of the instrument is to replace most of the Scottish Parliament (Elections etc.) Order 2010 ("the 2010 Order", SI 2010/2999) which provides the rules governing the conduct of elections of members of the Scottish Parliament.

3. This instrument makes provision in consequence of, and in connection with, the commencement of sections 1 and 3 of the Scotland Act 2012. Those sections transferred responsibility from the Secretary of State to the Scottish Ministers for making provisions about the conduct of elections for, and the return of members to, the Scottish Parliament (subject to some exceptions). Sections 1 and 3 of the Scotland Act 2012 were commenced by the Scotland Act 2012 (Commencement No. 5) Order 2015 (SI 2015/682) and came into force on 1 July 2015.

4. This draft Order mostly revokes and replaces the 2010 Order, with savings for the provisions in the 2010 Order which remains the responsibility of the Secretary of State. It makes provisions equivalent to those which applied to the conduct of previous Scottish parliamentary elections and which are also similar to those contained in the Representation of the People Act 1983 and the Representation of the People (Scotland) Regulations 2001 (SI 2001/497) which govern the running of UK parliamentary elections.

5. In terms of the Scotland Act 1998, the next ordinary general election to the Scottish Parliament is scheduled to take place on 5 May 2016.

6. Most of the provisions contained in this instrument are the same as those used at the ordinary general election to the Scottish Parliament held on 5 May 2011. However, the instrument does include a number of changes which reflect developments in the wider elections field since the last Scottish Parliament general election. The instrument also contains a number of minor technical changes which reflect the transfer of responsibility for making provisions from the Secretary of State to the Scottish Ministers and the lowering of the voting age from 18 to 16 years old.

7. The material differences from the provisions made by the 2010 Order or other electoral legislation are as follows:

Article 10(3) reflects the position that now applies at other UK elections that a person who is to be appointed as a proxy for an elector must themselves be registered,

or about to register, to vote (rather than the previous position, that they only had to be eligible to register).

Article 14(b) clarifies that the Scottish Ministers have the power to vary, amend and revoke any order appointing constituency returning officers.

Article 18 mainly replicates the 2010 Order position as regards payments to returning officers but, for the reader's ease, is written out in full rather than by reference to section 29 of the Representation of the People Act 1983 with modifications, as was previously the case. The opportunity has been taken to provide that one set of regulations can provide for calculation of allowable charges and for how accounts are to be submitted, rather than the 2010 Order's requirement for a set of regulations and a separate Order.

Article 21 makes provision about the effect of a person having an entry in the list of proxies. This should be read alongside paragraph 3(f) of the revocations (Schedule 9), which preserves the 2010 Order provision about the effect of a person having an entry in a local government electoral register.

Article 31 replicates provisions to protect the secrecy of a poll which were contained in the 2010 Order, but in addition mirrors provisions in other electoral legislation that prohibits the publication of exit polls before the close of poll.

Article 36(3) provides that donations to certain candidates are subject to controls and that failure to comply with those controls is an illegal practice. This is not new, but here, and elsewhere, the 2010 Order had to limit the statutory maximum penalty to less than that which applied at other polls. This was because previously section 113(10) of the Scotland Act 1998 set the maximum penalty that could be imposed as three months imprisonment or with a fine exceeding the amount specified as level 5 on the standard scale. Section 39 of the Scotland Act 2012 has increased that maximum penalty, so here, and elsewhere, the draft Order now aligns its penalty provisions with the penalties that apply at other polls in the UK.

Articles 42(2)(a) and (b) and 43(5)(a) and (b) set the amount that candidates may spend on election expenses. These have been increased in line with the amounts set for recent elections to the UK parliament.

Articles 64(3) and 65(3) have been amended to prevent any candidate claiming a right to use meeting rooms at the Scottish Parliament for public election meetings.

Article 80 amends the definition of "personal expenses" to allow for any expenditure incurred by a candidate which is attributable to a long term physical or mental impairment, which affects their ability to carry out normal day-to-day activities, to be excluded when calculating the maximum amount of election expenses they can incur.

Article 83 which makes provisions around the filling of constituency seats that fall vacant should be read along with the provisions at articles 86 and 87 of the 2010 Order, which provide for filling of vacancies that arise in regional

member seats. These are preserved by paragraphs 3(k) and 3(l) of the revocations (Schedule 9).

Article 87(3) provides the new option of using electronic means for submitting any application, notice or representation. This will end the need either to send these items by post or to deliver them by hand and will facilitate quicker delivery. It does not apply to nomination papers, only to applications, notices and representations.

Schedule 1, paragraph 6 reflects the lowering of the voting age to 16, this paragraph introduces restrictions on access to information contained in the electoral register and electoral notices that will be provided under the Order. Only information on those who will be 16 years or older on the date of poll will be made available on those registers and notices.

Schedule 2, rules 4(4) and 5(4) allow for a candidate to use a commonly used surname or forename instead of their given name. The 2010 Order required that this name had to be different from the person's other names, which prevented some candidates from using such a name on ballot papers, for example where a person was commonly known by a middle name.

Schedule 2, rules 27(3) and 28(3) require the official mark to appear on the front of the ballot paper and a unique identifying number to appear on the back (in addition to the ballot paper number). The unique identifying mark which previously appeared on the back of the ballot paper has been replaced by the unique identifying number.

Schedule 2, rule 34 and paragraph 7 of schedule 4 provide that postal ballot papers should be issued as soon as practicable, rather than the position in the 2010 Order which was that they could not be issued until after 5 pm on the eleventh working day before the date of poll.

Schedule 2, rule 46(6) allows for voters who may be in a queue at a polling station at the close of poll to be allowed to cast their vote, in line with other elections.

Schedule 2, rule 49(4) no longer includes an earliest time at which an elector who claims to have lost or not received their postal ballot paper can cast a tendered ballot paper on polling day.

Schedule 2, rule 54(1) states that the constituency returning officer must not knowingly appoint count staff who have been employed by or on behalf of a candidate or a registered party in connection with the election. This mirrors and extends a restriction in electoral legislation that applies to the appointment of presiding officers and clerks, as set out in rule 36(1), though that has also been qualified by "knowingly" in the draft Order.

Schedule 2, rule 66(8) sets out that any forfeited deposits are to be paid into the Scottish Consolidated Fund.

Schedule 2, rule 77(4) sets out what information should be recorded in the returns book when there is a vacancy in a regional member seat and (unlike the 2010 Order) makes provision for recording the name and party of the member returned to fill such a vacancy.

Schedule 3, paragraph 5(6)(b) lists which disability benefits entitle a person to apply for a proxy vote without the need to have their application attested. In line with other electoral legislation, it reflects recent changes to disability benefits.

Schedule 3, paragraphs 7(4) to 7(7) require that where an elector applies for an emergency proxy vote on the grounds of their occupation, service or employment after 5 pm on the sixth working day before a poll, it must be attested. This mirrors the emergency proxy provisions that operated for the 2015 UK parliamentary elections.

Schedule 3, paragraph 18(3) reflects the lowering of the voting age to 16, this provision restricts access to information supplied on absent voting lists on those aged under 16. Access is limited to those who require it for the purpose of, or in connection with, an election, and information can only be supplied on persons who will have attained age 16 by the date of the poll.

Schedule 3, paragraph 25 sets out the procedure that an electoral registration officer must follow to notify a postal voter where their postal voting statement was found not to be properly completed. These procedures will allow voters to make any necessary action to avoid future postal voting statements being rejected. These provisions mirror similar procedures for UK and European parliamentary elections and aim to reduce the risk of rejection of postal votes at future polls.

Schedule 4, paragraph 14 allows for a replacement postal ballot paper to be requested at any time, though the constituency returning officer can ask the voter to allow more time for delivery. The 2010 Order did not permit a person who claimed to have lost or not to have received a postal ballot paper to seek a replacement earlier than the fourth (working) day before a poll. This paragraph takes account of postal ballot papers being issued earlier than previously.

Schedule 4, paragraph 15 addresses the possibility that an elector may cancel or change their absent voting choice after a postal ballot paper has been issued to them. It sets out the procedures that constituency returning officers must follow to ensure that any postal ballot papers which have been issued to that elector are cancelled.

Schedule 4, paragraphs 20 and 22 require 100% checking of the personal identifiers provided on postal voting statements for all Scottish Parliament elections, rather than specifying a lesser percentage. This is in line with the 2015 UK parliamentary elections.

Schedule 4, paragraph 25 requires the constituency returning officer to record the reasons why any postal voting statements are rejected. This list is then provided to the electoral registration officer so that they can inform voters of

those reasons (see Schedule 3, paragraph 25 and Schedule 4, paragraph 30). The record is made available for public inspection for research and electoral purposes, but subject to the restrictions that apply to other marked registers, lists and documents (see Schedule 8, paragraph 3(1)).

Appendix of forms The forms have been updated from those in the 2010 Order to reflect changes to the provisions in the draft Order and current best electoral practice. Many of the voter-facing forms have been revised to reduce wording, the intention being to make them less cluttered and easier to read. The types of form are exactly the same as those provided in the 2010 Order, though they have been renumbered to a more consistent sequence.

Consultation

8. In addition to the statutory requirement to consult with the Secretary of State for Scotland and the Electoral Commission, the following bodies and stakeholders were specifically consulted during the preparation of the draft Order:

Electoral Management Board for Scotland
Society of Local Authority Lawyers and Administrators
Association of Electoral Administrators
Electoral Registration Committee of the Scottish Assessors Association
Scottish Parliament Political Parties Panel
Royal Mail
Royal National Institute of Blind People (RNIB) Scotland
ENABLE
Scotland Electoral Reform Society
Political Parties represented in the Scottish Parliament

9. Responses were received from both statutory consultees and from:

Electoral Management Board for Scotland
Society of Local Authority Lawyers and Administrators
Electoral Registration Committee of the Scottish Assessors Association
Royal National Institute of Blind People (RNIB) Scotland
Scottish National Party
Scottish Conservative and Unionist Party

Their responses to the consultation have helped informed the content of the draft Order.

Impact Assessments

10. The Scottish Government has completed an Equality Impact Assessment which is attached to this Note. The Order has no impact on the environment, privacy or children's rights and therefore no Impact Assessments are required for those areas.

Business Regularity Impact Assessment (BRIA)

11. The Scottish Government do not consider that 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 the costs of associated activity and there is no transfer of costs or benefits from one group to another.

Financial Implications

12. It is estimated that the cost of running the Scottish Parliament general election in May 2016 will be about £17.9m, of this, about £8.2m will be paid in this financial year while the remaining £9.7m will be spent in 2016-17. This amount is made up of two main elements: £10.9m in respect of returning officers' charges for services rendered and expenses incurred; and £7.0m in respect of 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 and referendums across the UK.

13. Under article 18 of the 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.

14. At the May 2011 Scottish Parliament general election, returning officers charges amounted to £7.1m. 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 and the introduction of 100% checking of absent voter identifiers, will result in increased costs. For comparison purposes, at the May 2015 UK general election, £11.3m was allocated to returning officers in Scotland.

15. The payments to Royal Mail are still subject to negotiations on the cost of sending individual addressed and unaddressed items on behalf of candidates. At the May 2011 election 11.4m addressed and 12.7m unaddressed items were sent by candidates at a cost of £6.4m. The estimated increase of £0.6m since 2011 is based on the amounts negotiated by the UK government for candidates' mailings at the UK general election in May 2015 but this amount is likely to increase in line with any general increase in postage rates in April 2016.

Scottish Government
Directorate for Strategy and Constitution

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