

EXPLANATORY NOTES

Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7)

£6.00

These notes relate to the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7) which received Royal Assent on 24 July 2015

SCOTTISH ELECTIONS (REDUCTION OF VOTING AGE) ACT 2015

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Scottish Elections (Reduction of Voting Age) Act 2015 ("the Act"). They do not form part of the Act and have not been endorsed by the Parliament.

2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act covers a range of issues associated with lowering the voting age at Scottish elections, set out under the following headings:

- reduction of voting age (section 1);
- registration of electors (sections 2 to 12);
- protection of information (sections 13 to 15);
- proxies (section 16);
- awareness and assistance (section 17);
- transitional provision (section 18); and
- general (sections 19 to 22).

COMMENTARY ON SECTIONS

4. The Act consists of 22 sections, which are largely modifications to existing electoral law, in particular the Representation of the People Act 1983 ("the 1983 Act") and the Representation of the People (Scotland) Regulations 2001 ("the 2001 Regulations"). The 2001 Regulations provide much of the operational detail of the registration system (amongst other things) and therefore reduction of the voting age requires modifications not just to the 1983 Act but to the detail of its operation. The Act includes a power (at section 20) to make further provision should either of these enactments be modified in future.

Reduction of the voting age

5. **Section 1** of the Act provides that the voting age in Scotland for local government electors is 16 years or over. It does so by amending section 2 of the 1983 Act, which sets out who is eligible to vote at local government elections. Section 11 of the Scotland Act 1998 provides that the franchise for local government elections in Scotland also applies at Scottish Parliament elections.

6. Section 1(2) specifies the dates from when the reduced voting age applies in relation to the various categories of elections to which section 2 of the 1983 Act applies. These are:

- Scottish Parliament elections on or after 5 April 2016; (section 2 of the 1983 Act applies to these elections by virtue of section 11 of the Scotland Act 1998);
- local government elections on or after 5 May 2016; and
- any other relevant poll (defined in section 1(3)) on or after 5 May 2016; the main example here is elections for membership of a National Park authority, to which section 2 of the 1983 Act applies through paragraph 3 of schedule 1 to the National Parks (Scotland) Act 2000.

Registration of electors

7. **Section 2** makes amendments to the existing annual household canvass process as set out in the 1983 Act and 2001 Regulations. Section 2(1) removes the requirement for an electoral registration officer to make house to house enquiries in respect of a 14 or 15 year old where a canvass form has not been returned, and section 2(2)(a) provides that the canvass form must require the date of birth of any person named on the form who is aged 14 or 15. Requiring the dates of birth of 14 and 15 year olds to be entered on the canvass form will allow the electoral registration officer to ensure that engagement with persons aged under 16 is treated in an appropriate manner. Section 2(2)(b) provides that, where an electoral registration officer is pre-printing information about persons on the local government register on a canvass form, the date of birth of anyone aged under 16 must not be included.

8. **Section 3** deals with invitations to register. Invitations to register are issued by electoral registration officers to any potential electors not currently registered who are identified on the household canvass form described above.

9. Section 3(1) provides that an electoral registration officer's ability under section 9E(7) of the 1983 Act to impose a civil penalty on someone who fails to respond to a requirement to register does not apply to anyone aged 14 or 15.

10. Regulation 32ZC(2) of the 2001 Regulations lists the things which an invitation to register must include. These are: the full name and address of the person to be invited; an explanation of how to make an application for registration; and a statement as to the circumstances in which a civil penalty may be imposed and the amount of that penalty (as discussed at paragraph 9 above, civil penalties will not be imposed on 14 and 15 year old applicants). Section 3(2) of the Act adds to this list that invitations to register issued to anyone under the age of 16 must include an explanation of how that person's information will be held

and used (protection of information is contained in sections 13 to 15, discussed at paragraphs 27 to 36 below).

11. Section 3(3) removes the requirement for an electoral registration officer to make a house visit to anyone who fails to respond to three invitations to register, where that person was under the age of 16 when given the invitation.

12. Section 3(4) amends regulation 32ZE of the 2001 Regulations to remove a requirement which is placed on registration officers before they can require a person under the age of 16 to register. This is the requirement to inform a person that a civil penalty may be imposed if they fail to respond to a requirement to register. The section also removes the need for the notice requiring a person to register to include information relating to the civil penalty.

13. **Section 4** provides that Scottish Ministers may make Regulations about invitations to register which are to be issued to those under the age of 16, including provision about the design and content of the invitation to register, how the invitations are to be given, and how they are combined with or accompanied by other registration forms or documents. Section 4(2) explains that Regulations made under this section may confer functions on the Electoral Commission, for example by requiring the Commission to design an invitation to register. The Scottish Ministers must consult the Electoral Commission before making any Regulations under this section, and those Regulations will be subject to the affirmative procedure in the Scottish Parliament.

14. **Section 5** makes amendments to the provisions in the 2001 Regulations which deal with applications for registration. Section 5(2) provides that where an applicant is unable to provide their date of birth, an application form must include a statement of whether the applicant is under the age of 16, 16 or 17, or 18 or over. It must also include information on how data on applicants under 16 will be handled. Section 5(2) also provides that where an applicant is authorised by a registration officer to provide information by telephone or in person, the registration officer is not obliged to provide an explanation of the edited register. This is because by virtue of section 12 no details of 14 and 15 year olds will be included in the edited register, which is an extract of the register that can be bought by any person or organisation. It also removes the requirement for an application from anyone under the age of 16 to include the person's national insurance number.

15. Section 5(3) deals with the registration officer's power to request additional evidence in support of an application for registration. It provides that a registration officer may not seek additional evidence in support of an application from a 14 or 15 year old where the registration officer is satisfied on the basis of educational records that the applicant is who they say they are and is eligible to register. Regulation 35 of the 2001 Regulations authorises a registration officer to inspect records kept by the council which appointed that officer and regulation 35A of those Regulations allows the council to disclose information from its records to that officer. These records would include those held by the council for educational purposes.

16. Section 5(4) removes the requirement for an application to register and any objection to such an application to be made available for inspection, where that application has been made by someone under the age of 16. The application details of those under the age of 16 will not be published.

17. Section 5(5) removes the need for registration officers to apply the standard verification procedures (sending the applicant's information to be checked against records held by the Department of Work and Pensions or Her Majesty's Revenue and Customs) to applications made by anyone aged under 16.

18. **Section 6** removes the requirement for a registration officer to publish for inspection details of a review, where the subject of that review is under the age of 16. This is a review of whether a person who has been registered was entitled to be registered, or has ceased to be registered at the address at which they are registered, or has otherwise ceased to satisfy the conditions to be registered.

19. **Section 7** deals with applications for anonymous registration by those under the age of 16. It extends the list of people who may attest such applications, to include any person authorised by a chief social work officer in Scotland. To register anonymously, a person has to satisfy a registration officer that their safety, or the safety of a member of their household, would be at risk if their name or address appeared on the register. Various court orders and interdicts can be used to support the application, or the applicant can produce an attestation signed by a chief social work officer amongst others. Section 7 allows that officer to delegate the function to other persons. For example, that officer might choose to delegate the function to social workers who work closely with young people.

20. **Section 8** amends provisions on declarations of local connection set out in section 7B of the 1983 Act. 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. Specifically, section 8 provides an additional ground for 14 and 15 year old applicants to the local government register in Scotland. 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 being kept in secure accommodation. Looked after children and secure accommodation are both defined under section 8(2) by reference to relevant legislation. Section 8(3) provides that the address given in such application declaration must be an address in Scotland at which the child has previously been resident. Section 8(4) clarifies that declarations made under this provision will not have effect at UK parliamentary elections, even when a person who has made such a declaration reaches the age at which they can register as a UK parliamentary elector.

21. **Section 9** amends the 1983 Act to allow eligible children of those with a service qualification to register to vote in Scottish elections via a service declaration of their own. The effect of a service declaration is to allow a declarant to register to vote by reference to an address in Scotland while they are posted abroad on service, generally military service. The rules around eligibility for a service qualification are contained in section 14 of the 1983 Act. Section 9(2) amends those rules so that, for the purposes of registration as a Scottish local government elector, they also apply to anyone who is under the age of 18; has a parent or guardian who has a service qualification; and who resides at a particular place to be with that parent or guardian.

22. Section 9(3) provides for the expiry of service declarations made by eligible children when the person who has made the declaration reaches the age of 18. As with declarations of local connection, service declarations made under the provisions of this Act will not have effect for the purposes of UK parliamentary elections, even when a person who has made such a

declaration reaches the age at which they can register as a UK parliamentary elector. Section 9(4) provides that a service declaration made under this section does not need to be attested. Section 9(5) makes a consequential change to a presumption that attaches to a service declaration that has been properly made and submitted. The presumption is that it was made by a person who has a service qualification. Section 9(5) provides that the presumption ceases when the person attains the age of 18.

23. **Section 10** deals with the contents of a service declaration under regulation 15 of the 2001 Regulations. Section 10(2) allows service declarations to be made by those who have a service qualification under the provision made by section 9(2). Section 10(3) lists additional information that such a service declaration must include. These include details of the applicant's parent or guardian who has a service qualification. For example, a declaration made on the basis of a parent or guardian who is a member of the armed forces must include the service, rank or rating, service number, and regiment or corps of that parent or guardian.

24. **Section 11** makes further provision about service declarations. Section 11(2) requires a registration officer to send a reminder to a person who has a service declaration under the provisions of this Act that their registration will cease on their 18th birthday. That reminder must be issued as soon as practicable in the three month period before the person turns 18.

25. Section 11(3) amends the rules contained in regulation 26B of the 2001 Regulations on the power of registration officers to request additional information in support of applications for registration. It provides that, in respect of service declarations made under the provision made by section 9(2), a registration officer may request a copy of the applicant's passport or identity card, certified by a relevant official (a relevant official is defined as a Crown Servant, an officer of the forces, or a British Council employee who is not the applicant's parent, guardian, spouse or civil partner).

26. **Section 12** inserts a new subsection into section 9 of the 1983 Act to provide that, where the register of parliamentary electors and the register of local government electors are combined, the combined register must show the date of attainment of age 18 of anyone who is aged 16 or 17 and is registered only as a local government elector. This means that the combined register will show dates of attainment for all electors who are not aged 18 or over, which assists some users (for example where the court service uses a combined register to select potential jurors).

Protection of Information

27. This portion of the Act makes provision about protecting information about children under 16 from publication, supply or disclosure. Sections 13 to 15 require to be read as a whole.

28. **Section 13** prevents electoral registration officers and persons assisting them (e.g. members of staff in their office or persons contracted to collect the information) from publishing, supplying or otherwise disclosing information relating to a young person under the age of 16. "Information" is any entry in the register of local government electors or in an absent voters record or list (as defined in subsection (2)), relating to the young person (typically their name, their address and the date they will attain the age of 16). Breach of this duty by a registration officer or their staff will be a criminal offence under section 63 of the 1983 Act.

29. **Section 14** sets out the circumstances in which the prohibition on publication, supply or disclosure of a young person's details does not apply. Under section 14(1) the information can be supplied by electoral registration officers in connection with registration and electoral processes. Specifically this is where the supply is necessary among registration officer staff and returning officers. Section 14(2) provides that it may also be supplied in a pre-populated canvass form sent to a household, subject to the restriction made by section 2(2)(b) of the Act. Section 14(3) allows the information to be supplied in accordance with various enactments authorising supply in particular electoral contexts, but only for the purposes of an election at which the young person will be eligible to vote. These are:

- the supply is to a local authority returning officer for the purposes of an election to a National Park authority. In this case, the information can only be used for the purposes of a National Park authority election;
- the supply is to the Electoral Commission. In this case, the Electoral Commission is only allowed to use the information in connection with its legal functions in relation to donation control and publication of information about electors, but the latter does not enable publication of the names and addresses of electors;
- the supply is to candidates standing for election to the Scottish Parliament or as a councillor in local government (in which case the candidate can only be supplied with information about the young person for electoral purposes or to comply with the rules on political donations);
- the supply is to returning officers for the purposes of Scottish Parliament or local government elections.

30. Under section 14(5), electoral registration officers may disclose information about a young person where the disclosure is necessary for the purposes of a criminal investigation or criminal proceedings (as long as the crime is connected with voter registration or the conduct of an election).

31. In the circumstances set out in section 14(1) or 14(5), the person to whom the information is disclosed commits a crime if they pass on the information to another person (unless that is specifically allowed under the provision in question).

32. The final circumstances in which electoral registration officers may disclose information about a young person is where the disclosure is to the young person themselves (section 14(6)), or to a person appointed by a young person as proxy to vote for them (section 14(8)). Section 14(7) provides that a registration officer must supply a young person's information, if it is requested by the young person for the purposes of verifying that they are a permissible donor under the terms of section 54(2)(a) of the Political Parties, Elections and Referendums Act 2000. That section provides that a person is a permissible donor if they are registered in an electoral register in the UK. This provides a means for a person who is under 16 to demonstrate that they are registered, should the person wish to be a donor.

33. **Section 15(1)** allows the Scottish Ministers to make regulations for or about the disclosure of information about young people.

34. Section 15(2) sets out a non-exhaustive list of the things that the regulations can include. These are:

- the persons who can receive the information;
- the allowable purposes for a disclosure;
- restrictions on disclosure to, and access for, third parties or use for other purposes;
- restrictions for those compiling the full register of electors.

35. Section 15(3) allows the regulations to change the circumstances set out in section 14 and to create criminal offences.

36. Section 15(5) and (6) require the Scottish Ministers to consult the Electoral Commission before making any regulations, which are subject to affirmative procedure in the Scottish Parliament

Proxies

37. **Section 16** amends Schedule 4, paragraph 6 of the Representation of the People Act 2000 to provide that a person can vote as a proxy in local government elections in Scotland from the age of 16.

Local authority duty to promote awareness and provide assistance

38. **Section 17(1)(a)** requires each of Scotland's 32 local authorities to promote awareness of how to register as local government electors for "relevant young people". This means those young people that are "looked after" by that council (who can be up to the age of 18). Legally, "looked after" children in these circumstances are children that:

- the council is providing living accommodation for because no-one has parental responsibility for the child, the child is lost or abandoned, or the person who had previously been caring for the child cannot provide suitable accommodation or care;
- the council is required to supervise under a "supervision requirement" of a children's panel or a sheriff;
- the council has responsibilities for under a legal order, authorisation or warrant issued, in Scotland, by a children's hearing or sheriff, or in the rest of the UK, by a court.

39. The "relevant young people" to whom the duties in this section apply also include persons to whom a local authority is providing continuing care or after care under section 26A or section 29 of the Children (Scotland) Act 1995.

40. Section 17(1)(b) requires each council to do things they think are needed to help these "relevant young people" to register to vote in the local government electoral register.

Transitional provision

41. **Section 18** provides that notices of alteration in the register of local government electors which would otherwise be issued under section 13A of the 1983 Act need not be issued in respect of persons who will not be aged 18 before 1 December 2015. The effect is that the first young voter registrations will appear in the register published on 1 December 2015 and thereafter they will appear in notices of alterations in the way provided for by section 13A of the 1983 Act.

General

42. **Section 19** defines different terms used in the Act.

43. **Section 20** gives the Scottish Ministers powers to make regulations in consequence of, or to give full effect to, the Act (or changes that are made to legislation relating to the registration of voters).

44. **Section 21** states when commencement occurs.

45. **Section 22** gives the short title of the Act.

PARLIAMENTARY HISTORY

46. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which proceedings at that Stage took place, and the references to the official report of those proceedings. It also shows the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports and other papers.

Proceedings and Report	***Reference***
Introduction	
Bill as introduced – 2 April 2015	Bill as Introduced
Stage One	
(a) Devolution (Further Powers) Committee Oral Evidence Heard- 12th Meeting. 23 April 2015 13th Meeting, 30 April 2015	 12th Meeting, 23 April 2015 13th Meeting, 30 April 2015
(b) Consideration by the Parliament Stage one Debate – 28 May 2015	Official Record Columns 49-85
Stage Two	
Devolution (Further Powers) Committee 17th Meeting 11 June 2015	17th Meeting, 11th June 2015

Proceedings and Report	***Reference***
Stage Three	
Consideration by Parliament Stage Three Debate – 18 June 2015 Bill as Passed – 18 June 2015	 Official Record, Column 67-89 Bill as Passed
Royal Assent 24 July 2015	 Scottish Elections (Reduction of Voting Age) Act 2015

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Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland.



Published by TSO (The Stationery Office), part of Williams Lea,
and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
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ISBN 978-0-10-590304-8

