

**From:** [redacted]  
**Sent:** 25 September 2020 15:38  
**To:** [redacted]  
**Cc:** [redacted]  
**Subject:** RE: Catch up

[redacted]

Apologies for dropping off the call [redacted]  
Here is a briefing paper on the next Scottish Parliament election, which we would be grateful if you could handle on an 'in confidence' basis.

Regards

[redacted]  
[redacted] | Elections and FOI Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | [redacted]

-----Original Appointment-----

**From:** [redacted]  
**Sent:** 23 September 2020 14:32  
**To:** [redacted]  
**Subject:** Catch up  
**When:** 25 September 2020 14:30-15:00 (UTC+00:00) Dublin, Edinburgh, Lisbon, London.  
**Where:**

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[redacted]



**COSLA**

NOTE: You do not need to have Microsoft Teams on your device to join this meeting. When you click on the link choose the "Join on the Web instead" to open within your Browser.

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Our Business Address is : COSLA, Verity House, 19 Haymarket Yards, Edinburgh, EH12 5BH. t: +441314749200 w: <http://www.cosla.gov.uk>

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## SCOTTISH PARLIAMENT ELECTION 2021 AND COVID-19: BRIEFING PAPER

### Background

1. Contingency Planning for the Scottish Parliament Election 2021 in the context of Covid19 has been carried out in conjunction with the Electoral Management Board for Scotland (the “EMB”, which includes representatives of Electoral Registration Officers (EROs) and the Electoral Commission) and Scottish Parliament officials. Papers circulated ahead of previous meetings with MSPs are attached at Annexes A and B.

### Timing

2. Although some or all of the measures outlined below might not prove necessary, for them to be available primary legislation will be needed prior to the current date for dissolution of Parliament on 25 March 2021. After that date, Parliament cannot be recalled<sup>1</sup> and, with no change to the law, the only facility for any delay to the election would be the power of the Presiding Officer<sup>2</sup> to recommend a change of date by up to one month from the first Thursday in May. The need for some or all these measures may not become clear until very close to polling day (e.g. mid to late April 2021). Early commencement for the Bill will be pursued with a view to permitting commencement from late January 2021 onward.

### Proposed legal changes

3. It is proposed that a Bill be introduced in November containing the following measures:
  - a) modification to the deadline for new applications for a postal vote in order to allow processing of the anticipated increased volume of postal vote applications;
  - b) conferring power on Ministers to enable polling over two days;
  - c) a delay to the dissolution of Parliament to the day before polling;
  - d) provision to allow the new Parliament to convene more than 7 days after polling day<sup>3</sup>;

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<sup>1</sup> Once dissolved, the Parliament ceases to exist. In addition, section 13 of the Scotland Act 1998 (the “1998 Act”) provides that each MSP’s term of office ends with the dissolution of the Parliament. Accordingly it is impossible for Parliament to reconvene after dissolution has occurred. This has significant negative impacts - for example, a delay to polling day by six months arranged after dissolution (and which would itself require legislation, perhaps via an extension to the existing power of the Presiding Officer) would mean that there would be no sitting Parliament from the end of March until November.

<sup>2</sup> Under section 2(5) of the 1998 Act.

<sup>3</sup> Section 2(3)(b) of the 1998 Act requires Parliament to meet within the period of seven days beginning immediately after the day of the poll.

Possible additional measures include:

- e) provision to permit an all-postal ballot;
- f) to extend the existing power of the Presiding Officer to postpone the election nationally;
- g) to allow the Presiding Officer to postpone the election at a local level;
- h) provision to prevent MSPs seeking to use the privileges of MSP status during the period between 25 March and the postponed dissolution date (due to any actual or perceived advantage that continuing MSP status might provide to incumbent candidates).

Options (a) and (c) and (e) could be progressed under existing secondary legislation powers, but inclusion in the Bill would promote scrutiny of the proposals as a whole, and ensure that the required provisions can be enacted timeously. The other changes all require primary legislation. The Gould Principle<sup>4</sup> recommends introduction of electoral changes at least six months ahead of any election.

Further detail on these options is set out in the following table.

Required changes			
Option	Circumstances in which required	Additional possibilities	Other
a) Modification to the deadline <sup>5</sup> for new applications for a postal vote in order to allow processing of the anticipated increased volume of postal vote applications (although electoral professionals have asked that the deadline be brought forward to allow the additional applications to be processed).	All circumstances – an increase in postal voting from 18% of the electorate to at least 30% <sup>6</sup> is anticipated – each application has to be processed by both Returning Officers and EROs. They have indicated more time is needed to process the applications.	Modelling in discussion with EROs is underway to establish the optimal date – balancing the need to process applications with the need to ensure people can register.  This change could be made by secondary legislation.	Steps will be taken to encourage vulnerable voters to register for a postal vote early, but it is anticipated that there will be a substantial volume of postal voting applications close to the deadline, whenever it is set.

<sup>4</sup> Articulated at page 112 of [The independent review of the Scottish Parliamentary and local government elections 3 May 2007](#)

<sup>5</sup> The current deadline for postal vote applications is set for 5pm on 20 April (11 working days prior to the election and so excluding the May Day holiday).

<sup>6</sup> Recent Electoral Commission [polling](#) found that 38% of respondents said they would cast their vote by post if an election took place now

<p>b) Polling over two days, at the discretion of Ministers (by order) – changes to references to polling day and calculation of dates during the election period. Polling over WedThurs rather than Thurs-Fri has the advantage of a day of counting before the weekend but has the disadvantage of taking a day out of the timetable of processing time for administrators</p>	<p>Lockdown to Phase 2. Helpful if virus conditions necessitate a reduction in footfall at polling stations (with publicity highlighting the second day).</p>	<p>It is highly likely that it will not be clear until shortly before the election if polling over 2 days is necessary. The timetable needs to be clear for planning purposes and to take account of the regulated period. A late decision would cause cost and disruption issues (e.g. to schools used as polling places) – it may be preferable to decide upon 2 day polling well in advance.</p>	<p>The need to sanitise polling venues such as schools before and after polling could require use of the venue for up to four days. Electoral professionals have called for this change to be adopted in January if it is to be pursued so that they can plan accordingly. The EC have also called for clarity on the timetable in January.</p>
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Required changes			
Option	Circumstances in which required	Additional possibilities	Other
<p>c) A delay to the dissolution of Parliament from 25 March to the day before polling. This will allow Parliament to be recalled from recess in the event of a need to postpone the election in order to debate and pass appropriate further legislation and for it to continue to meet once any delay takes effect.</p>	<p>The virus situation in March may not provide any more clarity on any need to postpone an election in May than at present. As some form of change before dissolution is essential, it is recommended to simply make this change outright – and to the day before the election, rather than risk the uncertainty of a succession of postponed dissolution dates.</p>	<p>It would be possible to make the decision to move dissolution subject to a ‘trigger’ mechanism, under which the Presiding Officer<sup>7</sup> decides to recommend a change to dissolution. However, this retains the risk of Parliament having been dissolved at the point at which an issue emerges. [other options such as a modification to MSP status or facility to reconstitute the Parliament were discounted on 16/9/10].</p> <p>The dissolution change could be made by secondary legislation, but including it in the Bill would allow Parliament more scope to consider.</p>	<p>A form of recess would apply to allow for campaigning during the election period, but Parliament could be meet in emergency session (e.g. to postpone the election). As MSP status will remain, measures will be needed to restrict use of parliamentary resources and other benefits of MSP status.</p> <p>In the event of Parliament enacting legislation for a substantial delay, the Parliament could resume meeting on a more regular basis again until dissolution.</p>

<sup>7</sup> having consulted Scottish Ministers, the Parliamentary Bureau, the Electoral Commission, the EMB and healthcare professionals. A statement of reasons could also be required.

d) to allow the new Parliament to convene more than 7 days after polling day <sup>8</sup>	This is required to accommodate a prolonged count, which is expected to occur in all circumstances involving physical distancing	Avoiding a prolonged count whilst applying physical distancing would require significant resource (e.g. additional staff and venues)	Potential related change to section 19(1A)(b) of the 1998 Act, which requires a new Presiding Officer within 14 days of the election.
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Possible additional changes			
Option	Circumstances in which required	Additional possibilities	Other
e) Provision to permit an all-postal ballot - changes to statutory references to polling in person (secondary legislation) and a ‘trigger’ provision to activate this change, such as a decision by the Presiding Officer (primary legislation)	Lockdown or <a href="#">Phase 1</a> conditions. The removal of references to voting in person could be made by SSI. Primary legislation would be needed to make authorisation for an all postal ballot contingent on a decision by the Presiding Officer	A contingent measure in the event of an in person election proving impossible in the long term	An all postal election cannot be arranged in time for May 2021 <sup>9</sup>
f) to extend the existing power of the Presiding Officer <sup>9</sup> to postpone the election <u>nationally</u> up to a period of six months in total, having consulted Ministers, the Bureau, the Electoral Commission, the EMB and healthcare professionals. A statement of reasons could also be required.	Moving the dissolution date means that Parliament will be able to legislate itself for a delay, which appears to make this extension unnecessary – it could in theory be of assistance if the virus situation is such that Parliament cannot easily meet and there is no question that a delay is required.	A version of this power could be used in the event of a local lockdown occurring shortly before polling day – as set out in option (g).	

<sup>8</sup> Section 2(3)(b) of the 1998 Act requires Parliament to meet within the period of seven days beginning immediately after the day of the poll

<sup>9</sup> Under section 2(5) of the 1998 Act

<p>g) to allow the Presiding Officer to postpone the election at a <u>local level</u>, having consulted Ministers, the Bureau, the Electoral Commission, the EMB, the local Returning Officer and healthcare professionals. A statement of reasons could also be required.</p>	<p>This provision could be used in the event of a local lockdown occurring shortly before polling day, where the assessment is that conditions will prevent some people (e.g. shielders without a postal or proxy vote) from voting. A power to delay polling in a closely confined geographic area could be employed to prevent postponement of the entire election.</p>	<p>Alternative measures to resolve any local outbreak would include seeking to encourage vulnerable voters to register for postal voting in advance and the use of proxy voting for those who are unable to vote in person because of the virus conditions.</p>	<p>Any power for a local delay to polling would have to be accompanied by measures to allow the affected individuals vote as quickly as possible in order to reduce any impact on the calculation of regional seats.</p>
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Possible additional changes			
Option	Circumstances in which required	Additional possibilities	Other
<p>h) provision to prevent MSPs seeking to use the privileges of MSP status during the election period (due to any actual or perceived advantage that MSP status continuing (as a result of the delay to dissolution) might provide as incumbent candidates).</p>	<p>If considered appropriate, this would apply in the event of the dissolution date being moved.</p>	<p>Devising a workable sanction for a breach of this prohibition is likely to prove challenging, especially in the time available. Allowing an election result to be contested for a breach of these rules would appear excessive and a regulator-imposed financial penalty could be difficult to administer.</p>	<p>One option might involve the MSP Code of Conduct and scope for the new Parliament to consider any complaints, with the option of censuring any (successful) candidate.</p>

## ANNEX A – PAPER CIRCULATED FOR 3 SEPTEMBER MEETING

### SCOTTISH PARLIAMENT ELECTION 2021 AND COVID-19: BRIEFING PAPER

1. Contingency Planning for the Scottish Parliament Election 2021 in the context of Covid19 has been carried out in conjunction with the Electoral Commission and the Electoral Management Board for Scotland (EMB), which includes representatives of Electoral Registration Officers (EROs).

#### Local Government by-elections

2. The EMB has, with Public Health Scotland, produced guidance on delivering elections safely under COVID-19 conditions – this will be deployed in relation to the local government by-elections scheduled over October-November 2020 (most of which were originally scheduled for spring 2020). A summary of these measures is attached and an assessment of their operation will inform preparations for elections in 2021.

#### Postal Voting

3. At the 2016 Scottish Parliament election postal votes were issued to 17.7% of the total electorate and accounted for around 23.7% of all votes cast. EMB analysis carried out with EROs suggests that an increase in postal voting of up to 30-35% of the electorate and 40-45% of those voting in total could be feasible, but that this depends on encouraging the public to apply sufficiently far ahead of the election to allow time for processing. It would only be possible to process a maximum increase of 7.6% in the month before the election itself. Electoral Commission polling<sup>10</sup> found that 38% of respondents said they would cast their vote by post if an election took place now.
4. It is considered that an all-postal ballot could not be arranged in time for May 2021, both as a result of processing around 3.4 million postal vote applications (applications would still be required as part of the security check process) and also the capacity of suppliers to issue postal vote packs for the Scottish Parliament election in addition to the other elections being held on 6 May elsewhere in the UK.
5. Increasing postal voting levels is likely to have some adverse impact in terms of failed attempts to vote. At the 2016 election just over 3% of postal votes were not included in the count after checks on voters' personal identifiers were conducted<sup>11</sup>.

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<sup>10</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/publicattitudes-towards-voting-scotland-context-covid-19>

<sup>11</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/elections-and-referendums/past-elections-and-referendums/scottish-parliamentary-elections/results-and-turnout-2016-scottish-parliament-election>



## Legislation

6. The Government is preparing the Conduct Order for the Scottish Parliament Election 2021. A draft is out for consultation and a copy sent to all party leaders. The Order includes a number of changes which are not related to the impact of Covid-19. However, provisions for emergency proxies for those who are shielding and self-isolating are being included in the Order. Other provisions related to the impact of Covid-19 could be made by secondary legislation, but a number of potential changes have been identified that would require primary legislation.
7. Primary legislation would be required in order to achieve the following:
  - polling over two days;
  - an all postal voting election;
  - postponement of the election beyond the 1 month extension already available to the Presiding Officer<sup>12</sup>;
  - for the new Parliament to convene more than 7 days after polling day<sup>13</sup> (e.g. following a prolonged count, which is expected to be required in all circumstances involving physical distancing; and
  - to allow the current Parliament to meet if a decision to postpone the election for a lengthy period was made after dissolution.
8. Although some or all of these measures might not be required, for them to be available primary legislation would be needed prior to the dissolution of Parliament, expected to be around 25 March 2021. The need for some or all these changes may not be clear until very close to polling day (e.g. mid to late April 2021).

## Postponing the election

9. If Parliament had not been dissolved at the point at which it became clear that an extension was required, the Presiding Officer would be able to propose up to a month's delay to the Poll under existing legislation (the Order to do so being made by the Queen) or it would be possible to set a new election date by emergency primary legislation. The alternative would be to expand the Presiding Officer's ability to postpone the poll by more than a month. It is suggested that this be for a period of up to six months, and that the Presiding Officer would be obliged to consult with Scottish Ministers, the EMB, the Electoral Commission and appropriate expert healthcare advice in reaching any decision. A statement of reasons would also be required.

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<sup>12</sup> Under section 2(5) of the Scotland Act 1998 (the "1998 Act")

<sup>13</sup> Section 2(3)(b) of the 1998 Act requires Parliament to meet within the period of seven days beginning immediately after the day of the poll

## Reconvening Parliament

10. Section 13 of the Scotland Act 1998 provides that each MSP's term of office ends with the dissolution of the Parliament. Left unchanged, this would make it impossible for Parliament to reconvene after dissolution. For example, a delay to polling day by six months arranged after dissolution would mean that there would be no sitting Parliament from the end of March until November.
11. There appear to be two options to allow the current Parliament to sit in the event of such a postponement:
  - a) to delay dissolution of Parliament to a date sufficiently close to polling day so that any postponement to the election would also postpone dissolution. A form of recess would apply to allow for campaigning during an election period, but Parliament could be meet in emergency session (e.g. to postpone the election. This option has implications for the status of MSPs and their staff during the election period, although it would be possible to address these issues in the Bill; and
  - b) to allow dissolution to occur in late March with MSP status removed, but to make provision for former MSPs to be 'recalled' to office in the event of a postponement. This option would allow the pre-election period to operate as at present, but raises complex questions about re-instating MSP status.
12. A possible variant to option (a) would be to allow dissolution to occur in late March, but to modify its effect on MSP status so that remains for certain purposes such as permitting Parliament to be reconvened in certain specified circumstances (such as a delay). This would require provision on the circumstances in which Parliament could be recalled and would complicate the status of MSPs in the period in question.
13. At present, former MSPs can continue to deal with ongoing constituency casework during the dissolution period but are notified that correspondence must not give the impression they are a Member of Parliament. MSP salaries continue to be paid unless not standing again as a candidate (in which case a resettlement grant is paid)<sup>14</sup>. Former MSPs also face a number of restrictions on the use of parliamentary resources and on communications that refer to MSP status<sup>15</sup>. In Scottish Local Government elections, councillors do not lose their status until polling day, although are prohibited from using council resources for political purposes.

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<sup>14</sup> [https://www.parliament.scot/Allowancesandexpensesresources/Members\\_Salary\\_Scheme.pdf](https://www.parliament.scot/Allowancesandexpensesresources/Members_Salary_Scheme.pdf)

<sup>15</sup> For example, on IT and Parliamentary Services, offices, expenses, staff and communications, as set out by the SPCB for the [2016 election](#) and the [EU referendum](#).

14. The following table provides a comparison:

Issue	Delayed Dissolution	Recall MSPs after dissolution
Impact on pre-election period	<p>Continued payment of salaries for MSPs not seeking re-election and staff, continued ability to handle constituency business, implications for campaign material</p> <p>A need to establish how and to what extent normal election restrictions on former MSPs using parliamentary resources should apply during this recess/campaign period.</p>	None – all parliamentary mechanisms as regards MSP conduct continue to apply.
Legal issues	Change to dissolution period could be made by secondary legislation but the change could also be included in any Bill	Primary legislation needed. Complex issues on status as MSP and employment status of staff.
Other issues	<p>This would allow Parliament to meet during the recess/campaign period ahead of the election in the event of an emergency (e.g. to pass emergency legislation such as a Bill rescheduling the election).</p> <p>Dissolution could be delayed again in relation to any rescheduled polling day</p>	Potential complications if the delay to the election is relatively short (e.g. would it be worth recalling MSPs for a 2 month delay?) or if there were repeated postponements to polling day.
Employment of staff	A need to establish impact on MSP staff during the recess/campaign period (e.g. would normal leave of absence options be acceptable if Parliament could be recalled?)	Impact on MSP staff as for an election in normal circumstances (e.g. members of staff taking leave in order to campaign)

## ANNEX B – PAPER CIRCULATED FOR THE 16 SEPTEMBER MEETING

### SCOTTISH PARLIAMENT ELECTION 2021 AND COVID-19: OPTIONS AROUND DISSOLUTION OF PARLIAMENT

#### Issue

1. There is no facility in the current law for Parliament to be recalled after dissolution, which is expected to occur on or around 25 March 2021 (indeed, logic suggests it redundant to conceive of recalling an entity deemed no longer to exist). If a need arose after that date to postpone the election, the only option would be the existing ability of the Presiding Officer to recommend a one month delay to polling day<sup>16</sup>. This is because section 13 of the Scotland Act 1998 provides that each MSP's term of office ends with the dissolution of the Parliament. To provide a longer delay than a month in response to circumstances in April or May 2021 will require legislation, either to allow the Presiding Officer to propose a longer extension or to allow Parliament to meet after 25 March to legislate for a new polling day. Whichever option is adopted, it will also be necessary to ensure Parliament can resume business in light of a delay to the poll of more than a month.

#### The pre-election period

2. At present, former MSPs can continue to deal with ongoing constituency casework, but not take on any new cases, during the period after dissolution but are notified that correspondence must not give the impression they are a Member of Parliament. MSP salaries continue to be paid unless not standing again as a candidate. Members who stand down receive a resettlement grant which is normally paid the next available pay run after the election<sup>17</sup>. Staff of MSPs standing for re-election may be placed on notice of possible redundancy. Former MSPs also face a number of restrictions on the use of parliamentary resources and on communications that refer to MSP status<sup>18</sup>. In Scottish Local Government elections, councillors do not lose their status until polling day, although are prohibited from using council resources for political purposes.

3. The following scenarios envisage a need to revise Scottish Parliament corporate policies on the use of parliamentary resources during the election period. Guidance will also be required on the conduct of Members' standing as candidates. In addition, there has to be a clear understanding of the rules on Government activity during the election period

#### Options

4. We have identified three options to allow the current Parliament to sit in the event of such a postponement to polling day of several months:

- c) to delay dissolution of Parliament to a date sufficiently close to polling day so that any postponement to the election would also postpone dissolution. A form of recess - agreed by the Parliament on a motion of the Parliamentary Bureau - would apply to allow for campaigning during an election period, but Parliament could

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<sup>16</sup> This power is expressly exercisable even if dissolution has already occurred (as per the amendment made by [section 3](#) of the Scottish Elections (Reform) Act 2020). That section also requires the Presiding Officer to consult with the Electoral Commission.

<sup>17</sup> [https://www.parliament.scot/Allowancesandexpensesresources/Members\\_Salary\\_Scheme.pdf](https://www.parliament.scot/Allowancesandexpensesresources/Members_Salary_Scheme.pdf)

<sup>18</sup> For example, on IT and Parliamentary Services, offices, expenses, staff and communications, as set out by the SPCB for the [2016 election](#) and the [EU referendum](#).

meet in emergency session (e.g. to postpone the election). This option has implications for the status of MSPs and their staff during the election period, although it would be possible to address these issues in the Bill;

- d) to allow dissolution to occur in late March, but to modify its effect on MSP status so that it remains for certain purposes such as permitting Parliament to be reconstituted in certain specified circumstances (such as a delay). This would require provision on the circumstances in which Parliament could be reconstituted and the status of MSPs in the period in question; and
- e) to allow dissolution to occur in late March with MSP status removed, but to make provision for former MSPs to be ‘recalled’ to office in the event of a postponement. This option would allow the pre-election period to operate as at present, but raises complex questions about re-instating MSP status.

5. We have discounted option (c) because of the complexities inherent in ‘restoring’ MSP status after it has been removed.

#### Option (a) – delaying dissolution

6. This option fits with the existing scheme of the Scotland Act 1998 as it preserves the status of dissolution without creating a half-way house where Parliament is dissolved but in which there may be circumstances in which dissolved status can be reversed. If a decision is taken to delay the election, no further changes would be needed for Parliament to resume ordinary business until the new dissolution date before the rearranged election. It also avoids complications around the status of MSPs.

7. If this option were favoured it might be preferable to postpone dissolution so that it technically only occurs on the day before polling day. This would seem to be clearer and less confusing than the potential alternative of permitting dissolution to be postponed in increments, which also creates a risk that there could be a decision to allow dissolution shortly (e.g. a week) before the election that could prove misguided in the face of a sudden spike in the virus.

#### Option (b) – modifying MSP status

8. This option is similar in effect to moving the dissolution date, but allows dissolution to occur and the ‘normal’ election period to apply. MSP status would remain in order to allow Parliament to meet in certain circumstances (e.g. at the discretion of the Presiding Officer, having consulted party leaders), but steps would otherwise be taken to dissuade MSPs from obtaining any advantage from MSP status during the election period. The normal restrictions on access to parliamentary assets could be applied. Potentially complex provision would be required to address how the dissolved Parliament could be capable of being reconstituted (for example, establishing the status of any outstanding business at the point of dissolution).

#### MSP status

9. Options (a) and (b) share a number of similarities. They both seek to continue MSP status into the election period so as to allow Parliament to decide on a postponement of polling and to resume meeting in the event of a delay. A central issue with both options

lies in restricting any actual or perceived advantage that continuing MSP status might provide to incumbent candidates. One possible option could be a statutory prohibition on seeking to use the privileges of MSP status during the dissolution period.

10. Devising a workable sanction for a breach of this prohibition is likely to prove challenging, especially in the time available. Allowing an election result to be contested for a breach of these rules would appear excessive and a regulator-imposed financial penalty could be difficult to administer. One option might involve the MSP Code of Conduct and scope for the new Parliament to consider any complaints, with the option of censuring any (successful) candidate.

Scottish Government  
September 2020

**From:** [redacted]

**Sent:** 22 October 2020 09:04

**To:** [redacted]

**Cc:** [redacted]

**Subject:** Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020

Dear colleagues

Further to Penny Curtis' letter of 14 August, which circulated a draft of the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 (please note the name change), I now enclose copies of the final Order and supporting documents which were laid in the Scottish Parliament yesterday.

The attached documents are the Order as laid, the policy note and the Keeling schedule which shows the amendments in context with the 2015 Order's original text. Please note that the Keeling schedule is for illustrative purposes only and does not supersede the changes made in the 2020 Order.

Please feel free to get in touch with me if you have any further questions.

Best wishes

[redacted]

[redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | [redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

## POLICY NOTE

### The Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020

#### SSI 2020/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 sections 72A(1)(c), 85A(1)(c), 156(5), paragraph 4 of schedule 8 and paragraph 4 of schedule 8A of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) and all other powers enabling them to do so. The instrument is subject to affirmative procedure.

#### Summary Box

This Order makes a number of changes to the rules which set out how Scottish Parliament elections should be run.

As well as technical changes, which reflect the transfer of responsibilities relating to electoral registration to the Scottish Parliament, which were set out in the Scotland Act 2016, changes are made in the following areas:

- Exclusion of certain items from expenditure limits;
- Increase of candidates’ expenditure limits if a poll is postponed;
- Advertising that candidates’ expenditure returns are available for inspection;
- Legibility of imprints on printed campaign materials;
- Procedures to be followed if a poll is postponement by the Presiding Officer;
- Address to be used by some prisoners for dispatch of poll cards and when applying for an absent vote;
- Minimum number of counting agents which can be appointed;
- Emergency proxies;
- Standardisation of the deadlines for replacement of spoilt or lost postal ballot papers; and
- Printing instructions for party names on the regional ballot paper.

#### 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 provides the rules governing the conduct of elections of members of the Scottish Parliament. The instrument also makes changes to the 2000 Act as regards certain exemptions from qualifying expenses at Scottish Parliament elections.
3. 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.

4. 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.
5. Most of the rules which governed the running of the Scottish Parliament general election held in May 2016 will remain the same. However, this instrument does include a number of changes which reflect developments since the last election. The instrument also contains a number of technical changes which reflect the transfer of responsibility for making provisions relating to electoral registration from the Secretary of State to the Scottish Ministers.
6. The changes set out in these regulations are as follows:

**Revocations and savings in the 2015 conduct order** (*Articles 3, 4, 6, 7, 12, 13, 15(6), 18 and the schedule*)

7. When the 2015 conduct order was drafted and made, the Scottish Parliament only had certain responsibilities in relation to administration of the Scottish Parliament elections and these powers did not extend to the franchise or electoral registration. Because of this, responsibility for the conduct of the 2016 Scottish Parliament election was effectively a joint issue for the Scottish and UK governments.
8. In practice, this was dealt with by replacing all non-registration provisions in the Scottish Parliament (Elections etc.) Order 2010 (“the 2010 order”) with a new Scottish Parliament order made by the Scottish Minister (the 2015 Order). The registration specific provisions were retained in the 2010 Order (made by the Secretary of State). This was achieved by retaining the relevant provisions when the rest of the 2010 conduct order was revoked by the 2015 order. These retentions are detailed in paragraph 3 of schedule 9 to the 2015 order. The Secretary of State did not make any changes in relation to the electoral registration provisions in the 2010 order.
9. The 2016 Act subsequently devolved the power to make provision for the registration of local government electors to the Scottish Parliament. In terms of section 11 of the 1998 Act, those who are eligible to vote as local government electors are eligible to vote in Scottish Parliament elections. Following the 2016 Act, there is now no policy reason for separately retaining the registration provisions for Scottish Parliament elections in the 2010 order. The opportunity has therefore been taken to use this order to incorporate most of the retained provisions of the 2010 Order into the 2015 Order. These changes are made by Articles 3, 4, 6, 7, 12, 13 and 15(6).

10. Whilst several provisions of the 2010 Order have been incorporated into the 2015 order, there are a number of provisions of the 2010 Order which were retained by paragraph 3 of schedule 9 of the 2015 Order for specific purposes and it is not necessary to incorporate these into the 2015 Order where the existing drafting in that Order is sufficient.

11. Accordingly, These provisions of the 2010 Order are revoked by this Order:

- article 15(2) (officers of councils to be placed at the disposal of a RRO), so far as relating to the functions of a RRO under the 2010 Order,
- article 16 (returning officers: discharge of functions), so far as relating to—
  - the power of a RRO to appoint persons to discharge the RRO's functions under the 2010 Order, and
  - the duty of RROs and CROs to co-operate in relation to the functions of a RRO under the 2010 Order,
- article 24 (payment of registration expenses),
- article 28 (breach of official duty),
- article 91 (sending of applications, notices etc.),
- article 92 (interference with notices), so far as relating to notices published in connection with the duties of an ERO under the 2010 Order, and
- article 94 (correction of procedural errors, so far as relating to the taking of steps by a RRO to correct the acts or omissions of a RRO in relation to the functions of a RRO under the 1998 Act or the 2010 Order

12. Two of the provisions in the 2010 Order which were retained by paragraph 3 of schedule 9 of the 2015 Order continue to be retained by this Order and are not revoked:

- article 87 (modification of section 10 of the 1998 Act), and
- schedule 2, rule 65 (equality of votes at poll for return of regional members)

This is because these provisions amend sections 10 and 8(7) of the Scotland Act 1998 which deal with the filling of a regional vacancy and the equality of votes at a regional election respectively.

### **Record of anonymous entries (Article 5)**

13. Article 21 of the 2015 Order sets out that a person on the list of proxies should not be excluded from voting due to certain grounds, for example not being of voting age (although that does not prevent the rejection of such a vote on a scrutiny). Article 21 of the 2010 Order (retained by paragraph 3(f) of schedule 9 of the 2015 Order) applied equivalent provision to other voters on the local government register. Article 5 of this Order consolidates these provisions in the 2015 Order.

14. The equivalent provision for UK parliamentary elections can be found in section 49 of the Representation of the People Act 1983. Paragraph 7 of schedule 1 of the Electoral Administration Act 2006 inserted a new sub-paragraph (4A) into section 49 which extended the provisions in the section to those with an entry on the record of anonymous entries at relevant elections.
15. We are therefore extending the prohibition against being excluded from voting so that it specifically applies to electors with an entry in the record of anonymous entries, in the same way as it applies to an entry in the register of local government electors or an entry in the list of proxies. This change brings the position in relation to Scottish Parliament elections into line with that at other elections in Scotland.

**Exemptions from expenditure limits and increase of expenditure limits where the poll is postponed by the Presiding Officer (Articles 8, 9, 21 and 22)**

16. Articles 8 and 9 make amendments to article 42 and 43 of the 2015 Order as regards candidate election expenses and pre-candidacy election expenses at Scottish Parliament election, in line with the position agreed by the Parliament for referendums in the Referendums (Scotland) Act 2020. Accordingly, reasonable additional costs incurred in connection with adapting campaign materials for those with disabilities, providing security at election events and translating election materials into other languages will not count against expenditure limits. However, the costs of providing these services will still have to be funded by campaigners and parties.
17. Disability related expenses include, but are not limited to, the cost of providing transport support for mobility impaired candidates or support workers, British Sign Language (BSL) interpretation for hearing impaired candidates during election campaigns and the transcription of campaign material into braille for visually impaired candidates. Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption.
18. The translation provision is intended to cover the reasonable additional costs of translating campaign material from English into other languages. It is not intended to cover the cost of adapting materials to take account of local dialects or regional variations.
19. The equivalent provisions for expenditure incurred by parties and by qualifying third parties can be found in paragraph 2 of schedule 8 of the 2000 Act and paragraph 2 of schedule 8A of the 2000 Act, respectively. Articles 21 and 22 of this Order makes amendments to those paragraphs to include similar exemptions from qualifying expenses, incurred at Scottish Parliament elections.
20. Provision has also been made in articles 8(2) and 9(2) of this Order for constituency and individual regional candidates' expenditure limits at Scottish Parliament election to be increased by 50% if a poll is postponed by the Presiding Officer under the powers set out in sections 2(5) and 3(2B) of the 1998 Act. This

is in line with the similar arrangements for postponement of UK parliamentary elections in the event of the demise of the Crown, as set out in section 20(5) of the Representation of the people Act 1985.

### **Publication of time and place for inspection of expenditure returns (Article 10)**

21. Articles 56(1) and (2) of the 2015 Order both include a requirement to “publish in not less than (X) newspapers” a notice of the time and place at which candidates’ returns and declarations can be inspected.
22. Concerns have been expressed that publication of notices in newspapers is expensive and, in the digital age, not the best way to publicise the opportunity to inspect expenditure returns. It is also not in line with the long term aim of encouraging returning officers to make expenditure returns available online, rather than just for physical inspection.
23. The Government’s view is that newspaper publication is no longer the most cost effective way of giving notice of the opportunity to inspect expense returns. All councils have alternative ways of publicising notices and similar documents, normally including online publicity and the placing of notices in libraries and other public buildings.
24. The requirement to publish in newspapers set out in article 56 is therefore replaced with a requirement for the returning officer to publicise the opportunity to inspect expenditure returns in such manner as they think fit.

### **Legibility of imprints (Article 11)**

25. Article 72 of the 2015 Order sets out that any election publication must have an imprint setting out details of the printer, promoter and publisher of the publication. This is required so that the reader knows the source of the information and views expressed in the publication and can make a reasoned judgement as to its content.
26. It has been suggested that, either unthinkingly or deliberately, the imprint on some publications has been included in such a way as to make it difficult to read, either due to its size or poor contrast between the font colour and the background. It has been suggested that a requirement to ensure that an imprint is legible should be added to the 2015 Order.
27. The Government is of the view that any imprint should fulfil the purpose it is designed to achieve and that an illegible imprint, although present, is not complying with the spirit of the legislation.
28. Our initial proposal was to add a requirement to article 72 that “the relevant details” required by sub-paragraphs (4) to (6) must be included in such a way that they are legible.
29. However, following discussions with the Electoral Commission about how legislation around legibility would work in practice, we have agreed that a

minimum type size, which depends of the size of the printed material or advertisement, should be specified in the legislation.

### **Supply of electoral register (Article 14)**

30. The change made by article 14 is a technical change to reflect the amendment of section 2(5)(a) of the 1998 Act, by section 3(2)(a) of the Scottish Elections (Reform) Act 2020 which sets out that the Presiding Officer's power to postpone a Scottish Parliament election applies even where the Parliament had already been dissolved in advance of an ordinary general election.

### **Procedures to be followed if an election is postponed (Article 15(2))**

31. Sections 2(5) and 3(2B) of the 1998 Act (as amended by section 3 of the Scottish Elections (Reform) Act 2020) make clear that the Presiding Officer's power to change the date of a Scottish Parliament poll can be exercised even if the Parliament has already been dissolved in the run up to an election (either ordinary or extraordinary).

32. Article 15(2) inserts a new rule 1A into the Scottish Parliamentary elections rules set out in schedule 2 of the 2015 Order which sets out the principles which should be followed where the date of the poll is postponed under section 2(5) or 3(2B) and the steps prior to the poll have already commenced as Parliament has been dissolved. The policy intention is to reduce the disruption and expense of any postponement of the poll whilst still allowing it to be run as closely to the normal procedure as possible. The new rule 1B makes provision which allows for materials produced or used in connection with the original poll date to be used for the revised poll date.

### **Issue of official poll cards to prisoners (Article 15(3))**

33. Part 3 of the Scottish Elections (Franchise and Representation) Act 2020 extended the franchise at devolved elections to convicted persons detained in a penal institution in Scotland for a term of 12 months or less. This change allows for a prisoner's official poll card to be sent to their prison address as opposed to their registered address.

### **Number of counting agents (Articles 15(4) and (5))**

34. Rule 39(2) and (3) of the Scottish Parliamentary elections rules currently set out that the returning officer may limit the number of counting agents as long as each candidate and party are entitled to the same number of counting agents. However there is no minimum level set for the number of counting agents which have to be appointed.

35. These amendments will bring practice at Scottish Parliament elections into line with that at other elections by still allow returning officers to limit the number of counting agents but setting out that the minimum number of counting agents per individual candidate and party must be:

- the same in the case of each candidate and party; and
- the number allowed to a candidate or party shall not (except in special circumstances) be less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.

**Registered address for detained prisoners who are applying for an absent vote (Article 16(3))**

36. Paragraph 1(4) of schedule 3 to the 2015 Order sets out, in relation to specific categories of elector, what address the applicant can be registered at, or be treated as having applied to be registered at, when applying for an absent vote.
37. The amendment made by article 16(3) specifies that, in the case of a detained prisoner who is eligible to vote, the address specified in their application for an absent vote can be the address shown on their declaration of local connection.

**Emergency proxies (Articles 16(4) – (6))**

38. Paragraph 7(2) of schedule 3 of the 2015 Order sets out additional requirements for applications for a proxy vote in respect of a particular election. Paragraph 9 of schedule 3 of the 2015 order makes provision as regards the closing date for proxy applications at Scottish Parliament elections.
39. Concerns have been expressed that if something were to occur to a potential voter, which would prevent them voting in person, shortly before the deadline for a normal proxy but, for good reasons, they were not able to apply for a proxy until after the proxy deadline, then they would not qualify for an emergency proxy (i.e. a proxy vote which is sought after 5 pm on the sixth day before the date of the poll). Such a situation might occur where an individual is involved in an incident, is hospitalised and is physically unable, perhaps due to being unconscious, to apply for a proxy vote before the deadline for a normal proxy.
40. Articles 16(4) and (5) introduce a new category of eligibility for an emergency proxy in these circumstances. This change will mean that in such a situation the individual can now apply for an emergency proxy but they must provide an explanation of why they were unable to apply before the normal deadline. As currently, the final decision on whether to grant an emergency proxy would lie with the Electoral Registration Officer.
41. Article 16(6) extends the categories of people that can apply for an emergency proxy to include individuals who cannot vote in person because they are following Scottish Government or medical advice by shielding or self-isolating due to coronavirus, and only become aware of the need to shield or self-isolate less than 6 days before polling day. This change is intended to be temporary. The provision will cease to have effect two years after coming into force and there is a duty on Scottish Ministers to review the need for the requirements after one year.

42. This provision mirrors the similar change for local government elections made in the Representation of the People (Absent Voting at Local Government Elections) (Amendment) (Coronavirus) (Scotland) Regulations 2020.

### **Standardising the deadline for replacement of spoilt or lost ballot papers** (Articles 17 and 19(3) to (7))

43. Paragraph 13(3) of schedule 4 to the 2015 Order sets out that the deadline for replacing spoilt postal ballot papers is “5pm on the day of poll”. Paragraph 14 of the same schedule sets out the procedure for replacing lost postal ballot papers but does not specify a deadline on the day of poll for applications. It has therefore been generally accepted that, in the absence of anything to the contrary, the deadline is the close of poll at 10pm.

44. There is no obvious reason why there are different deadlines for the replacement of postal ballot papers in these two circumstances and therefore the proposal is that the deadline for the replacement of spoilt ballot papers, currently 5pm, should be changed to 10pm on the day of poll. In order to clarify the position around replacement of lost/not received ballot papers, a specific deadline of 10pm is added for replacement to paragraph 14(6) of schedule 4.

45. Changes have also been made to the guidance provided on this issue on the postal voter’s poll cards and postal voting statements (forms K, L2, M2, T and U) as set out in article 19(3) to (7).

### **Printing of party name on regional ballot paper** (Article 19(2))

46. The instructions for printing regional ballot papers set out in form J of the appendix of forms to the 2015 Order, specify that certain kinds of type should be used for different entries. For example political parties’ and individuals candidates’ names must be in bold print. However whilst the printing instructions indicate that individual candidates’ surnames must be in capitals (direction 12 to form J), they are silent on whether capital or lower case should be used for political parties’ names. The example of the ballot paper set out in form J shows the political parties’ names as being in capitals.

47. Concerns have been expressed that it is not clear whether or not the party name should be all in capitals or if it can be in lower case with only initial capitals. In order to clarify the position, the directions to the printing of the regional ballot paper are amended so that it is clear that the names of the political parties must appear in capitals. This would ensure that they match the surnames of individual candidates which must also appear in capitals, as set out in direction 12.

### **Consultation**

48. In addition to the statutory requirement to consult with the Electoral Commission, the following bodies and stakeholders were consulted during the preparation of 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
- Scottish Parliament Political Parties Panel
- Political Parties represented in the Scottish Parliament

Responses were received from:

- Electoral Commission
- Electoral Management Board for Scotland
- Electoral Registration Committee of the Scottish Assessors Association
- Scottish National Party
- Scottish Liberal Democrats

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

### **Impact Assessments**

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

### **Business and Regulatory Impact Assessment (BRIA)**

50. 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 any costs of associated activity and there is no transfer of costs or benefits from one group to another.

### **Financial Implications**

51. It is estimated that the cost of running the Scottish Parliament general election in May 2021 will be about £20.6 million. This amount is made up of two main elements: £12.5 million in respect of returning officers' charges for services rendered and expenses incurred; and £8.1 million 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. It should be noted that these costs are based on a "normal" general election and do not take account of any additional costs which may be necessary due to any restrictions or changes which are required to take account of public health measures which may be necessary due to the coronavirus pandemic.



52. 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.

53. At the May 2016 Scottish Parliament general election, returning officers charges amounted to £11.9 million. 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 December 2019 UK general election, £11.3 million was allocated to returning officers in Scotland, however this is for use of a single ballot paper and does not reflect that, at a Scottish Parliament election, each voter marks two ballot papers (for constituency and regional candidates) which then requires two separate counts.

Scottish Government  
Directorate for Constitution and Cabinet

21 October 2020

*This Keeling Schedule is prepared to assist in consideration of the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 and is for illustrative purposes only.*

S C O T T I S H   S T A T U T O R Y   I N S T R U M E N T S

1.    2015 No. 425

CONSTITUTIONAL LAW

REPRESENTATION OF THE PEOPLE

**The Scottish Parliament (Elections etc.) Order 2015**

Made: 15 December 2015

Coming into force in accordance with article 1(1)

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<sup>19</sup> and all other powers enabling them to do so.

In accordance with section 12(7) of that Act<sup>20</sup> they have consulted the Secretary of State.

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

In accordance with section 115 of, and Schedule 7 to, the Scotland Act 1998<sup>21</sup>, a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

PART 1

GENERAL

**Citation, commencement and transitional provision**

1.—(1) This Order may be cited as the Scottish Parliament (Elections etc.) Order 2015 and comes into force on the day after the day on which it is made.

(2) This Order has no effect for the purposes of any election for which the date of poll is on or before 4th April 2016.

**Interpretation**

2.—(1) In this Order, except where the context otherwise requires—

“*the 1983 Act*” means the Representation of the People Act 1983;

“*the 1998 Act*” means the Scotland Act 1998;

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<sup>19</sup> Section 12 was amended by the Political Parties, Elections and Referendums Act 2000 (c.41) (“the 2000 Political Parties Act”), Schedule 21, paragraph 13, by the European Parliamentary Elections Act 2002 (c.24), Schedule 3, paragraph 7 and by the Scotland Act 2012 (c.11), section 1. The powers in section 113(2), (4) and (5) of the Scotland Act 1998 are extended to the Scottish Ministers by section 113(1A) of that Act, which is inserted by section 3 of the Scotland Act 2012.

<sup>20</sup> Section 12(7) is inserted by section 1(7) of the Scotland Act 2012.

<sup>21</sup> Schedule 7 is amended by section 3 of the Scotland Act 2012; there are other amendments that are not relevant to this Order.

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*“the 2000 Act”* means the Representation of the People Act 2000;

*“the 2000 Political Parties Act”* means the Political Parties, Elections and Referendums Act 2000;

*“the 2001 Regulations”* means the Representation of the People (Scotland) Regulations 2001<sup>22</sup>;

*“the 2006 Act”* means the Electoral Administration Act 2006;

*“absent voter”* means an elector who is entitled to vote by proxy or an elector or proxy who is entitled to vote by post;

*“anonymous entry”*, in relation to the register of electors, shall be construed in accordance with section 9B of the 1983 Act<sup>23</sup> (anonymous registration);

*“appropriate returning officer”* means—

(a) in relation to a candidate for return as a constituency member (or to an election agent or sub-agent for such a candidate), the CRO for that constituency; and

(b) in relation to an individual candidate for return as a regional member or to a registered party submitting a regional list for a particular region (or to an election agent or sub-agent for such a candidate or such a registered party), the RRO for that region;

*“ballot paper”*, in relation to a general election for membership of the Scottish Parliament, shall be construed as a reference to both the constituency ballot paper and the regional ballot paper;

[...]<sup>24</sup>

*“CRO”* means the officer who, in accordance with article 14, is the constituency returning officer for a Scottish parliamentary election in a constituency;

*“disability”*, in relation to doing a thing, includes a short term inability to do it;

*“entitlement as an elector to an absent vote”* shall be construed in accordance with article 7(8);

*“ERO”* means an electoral registration officer within the meaning of the 1983 Act<sup>25</sup>;

*“list of proxies”* means the list of persons kept in pursuance of article 9(5)(b);

*“local authority”* means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

*“nominating officer”* means the person registered under the 2000 Political Parties Act as the officer with responsibility for the matters referred to in section 24(3) of that Act in respect of a registered party;

*“of voting age”* means 16 years of age or over;

*“ordinary local government election”* means an ordinary election of councillors for local government areas;

*“polling register”* means—

(a) the document provided by an ERO under paragraph 1(3) of Schedule 1 including any notices issued under

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<sup>22</sup> Relevant amending enactments are the Counter-Terrorism Act 2008 (c.28) and S.I. 2002/1872, S.I. 2006/594, S.I. 2007/925, S.I. 2008/305, S.I. 2008/1901, S.I. 2010/980, and S.I. 2013/3206.

<sup>23</sup> Section 9B was added by section 10 of the Electoral Administration Act 2006 (c.22) (“the 2006 Act”) and is relevantly amended by Schedule 4, paragraph 7 of the Electoral Registration and Administration Act 2013 (c.6).

<sup>24</sup> Definitions revoked by Scottish Parliament (Elections etc.) Amendment Order 2020/179 (Scottish SI) art.3(a) (August 3, 2020)

<sup>25</sup> Electoral registration officers are appointed under section 8 of the 1983 Act. In terms of section 8(1) they are referred to as “registration officers” in the 1983 Act.

*This Keeling Schedule is prepared to assist in consideration of the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 and is for illustrative purposes only.*

sections 13AB(2), or 13B(3B) or (3D) of the 1983 Act<sup>26</sup> (alteration of registers) after that document was produced; or

(b) where no such document has been provided, the register of electors, including copies of any notices issued under sections 13A(2), 13AB(2), or 13B(3), (3B) or (3D) of the 1983 Act<sup>27</sup> (alteration of registers) in respect of alterations to the register; and, where a notice has been so issued, any reference to an entry, name or number stated in the polling register is to be taken to be a reference to the entry, name or number stated in that notice;

*“postal ballot box”* means the ballot box referred to in paragraph 17(1)(b) of Schedule 4;

*“the postal voters list”* means the list of persons kept in pursuance of article 9(5)(a), showing persons whose applications to vote by post have been granted;

*“the proxy postal voters list”* means the list of persons kept in pursuance of article 11(7);

[*“qualifying foreign national”* has the same meaning as in section 202(1) of the 1983 Act<sup>28</sup>];<sup>29</sup>

*“record of anonymous entries”* means the record prepared in pursuance of regulations made by virtue of paragraph 8A of Schedule 2 to the 1983 Act<sup>30</sup>;

*“RRO”* means a regional returning officer for the purposes of the 1998 Act<sup>31</sup>;

*“register of electors”* means the register of local government electors maintained under section 9(1)(b) of the 1983 Act;

*“registered emblem”* means an emblem registered by a political party under section 29(2) of the 2000 Political Parties Act<sup>32</sup>;

*“registered party”* means a party registered under section 28(4) of the 2000 Political Parties Act<sup>33</sup>;

*“Scottish parliamentary election”* means an election for membership of the Scottish Parliament and *“Scottish parliamentary general election”* shall be construed accordingly;

*“Scottish Parliamentary Election Rules”* means the rules set out in Schedule 2; and

*“service voter”* means a person who has made a service declaration in accordance with section 15 of the 1983 Act<sup>34</sup> and is registered or entitled to be registered in pursuance of it;

*“universal postal service provider”* means a universal service provider within the meaning of Part 3 of the Postal

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<sup>26</sup> Section 13AB was added by the Electoral Registration and Administration Act 2013 (c.6), section 16(3). Section 13B was added by the Representation of the People Act 2000 (c.2) (“the 2000 Act”), Schedule 1, paragraph 6 and amended by the 2006 Act, section 11.

<sup>27</sup> Section 13A was added by the 2000 Act, Schedule 1, paragraph 6.

<sup>28</sup> The definition of “qualifying foreign national” is added to section 202(1) of the Representation of the People Act 1983 (c.2) by section 1(9) of the 2020 Act.

<sup>29</sup> Definition inserted by Scottish Parliament (Elections etc.) Amendment Order 2020/179 (Scottish SI) art.3(b) (August 3, 2020)

<sup>30</sup> Paragraph 8A was inserted by the 2006 Act, Schedule 1, paragraph 15(6).

<sup>31</sup> See section 12(6) of the 1998 Act, which was amended by the Scotland Act 2012 (c.11), section 1(6).

<sup>32</sup> Section 29(2) was amended by the 2006 Act, Schedule 1, paragraph 142.

<sup>33</sup> Section 28(4) was amended by the 2006 Act, section 48.

<sup>34</sup> Section 15 was amended by the 2000 Act, Schedule 1, paragraph 8(2) and (4) and Schedule 7, paragraph 1; the 2006 Act, sections 12(7) and 13(1), section 9 of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7) and S.I. 1995/1948, Schedule 2, paragraph 4(b).

*This Keeling Schedule is prepared to assist in consideration of the Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 and is for illustrative purposes only.*

Services Act 2011 (regulation of postal services).

(2) For the purposes of this Order, a person shall be deemed not to have attained a given age until commencement of the relevant anniversary of the day of his or her birth.

## PART 2

### THE FRANCHISE AND ITS EXERCISE

#### Supply of electoral registers

3. Schedule 1 (which makes provision in connection with supply of electoral registers) has effect.

#### Register of electors etc

**3A.** Subject to article 4(5) and section 13AB (alteration of registers: interim publication dates)<sup>(35)</sup> and 13B (alteration of registers: pending elections)<sup>(36)</sup> of the 1983 Act, an alteration in a published version of the register of electors under section 13A or 56 of the 1983 Act (alteration of registers and registration appeals)<sup>(37)</sup> which is to take effect after the fifth day before the date of the poll for an election shall not have effect for the purposes of that election.

#### Registration and absent voting appeals

**4.—**(1) An appeal lies to the sheriff from any decision under this Order of the ERO disallowing a person's application to vote—

(a) by proxy or by post as elector; or

(b) by post as proxy,

in any case where the application is not made for a particular Scottish parliamentary election only.

(2) An appeal lies on any point of law from any decision of the sheriff under this article to the court of three judges constituted under section 57(2) of the 1983 Act (Registration Appeal Court) ("the registration appeal court").

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<sup>35</sup> Section 13AB was added by section 16(3) of the Electoral Registration and Administration Act 2013 (c.6) ("the 2013 Act") and amended by paragraph 4 of schedule 2 of the Recall of MPs Act 2015 (c.25) ("the 2015 Act").

<sup>36</sup> Section 13B was added by paragraph 6 of schedule 1 of the Representation of the People Act 2000 (c.2) ("the 2000 Act") and amended by section 11 of the Electoral Administration Act 2006 (c.22) ("the 2006 Act"), paragraph 13 of schedule 4 of the 2013 Act and paragraph 5 of schedule 2 of the 2015 Act.

<sup>37</sup> Section 13A was added by paragraph 6 of schedule 1 of the 2000 Act and amended by paragraph 3 of schedule 6 of the Political Parties and Elections Act 2009 (c.12) ("the 2009 Act"), paragraph 3 of schedule 1 and paragraph 12 of schedule 4 of the 2013 Act and para 3 of schedule 2 of the 2015 Act. It was also amended by section 1(4) of the Electoral Fraud (Northern Ireland) Act 2002 (c.13), by section 5(2) and paragraph 4 of schedule 4 of the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33), section 14(1)(a)(iv) of the Northern Ireland (Miscellaneous Provision) Act 2014 (c.13) and by regulation 2(6) of the Representation of the People (Electronic Communications and Amendment) (Northern Ireland) Regulations 2018 (S.I. 2018/699). Section 56 is applied to Scotland, with modification, by section 57 of the 1983 Act. Section 56 was amended by section 11, 24 and 28, paragraph 1 of schedule 2, paragraph 16 of schedule 4 and schedule 5 of the Representation of the People Act 1985 (c. 50), paragraph 14 of schedule 1 and schedule 7 of the 2000 Act, sections 11, 12 and paragraph 8 of schedule 1 of the 2006 Act, section 16(5)(b) and paragraph 18 of schedule 4 of the 2013 Act and paragraph 8 of schedule 2 of the 2015 Act.

(3) An appeal made by virtue of this article or section 56 of the 1983 Act (registration appeals) which is pending when notice of an election is given shall not prejudice the operation as respects that election of the decision appealed against, and anything done in pursuance of the decision shall be as good as if no such appeal had been brought and shall not be affected by the decision of the appeal.

(4) The sheriff clerk (or clerk to the registration appeal court) shall send to the ERO, by recorded delivery, notice of the decision of the sheriff (or of the registration appeal court) on any appeal by virtue of this article, and the ERO must make such alterations in the—

(a) record kept under article 8(4) (absent voters); or

(b) record kept under article 11(5) (proxy voters),

as may be required to give effect to the decision.

(5) Where, as a result of the decision on an appeal under this article or section 56 of the 1983 Act, an alteration in the register of electors is made which takes effect under this article or under section 13(5), 13A(2), 13AB(3) 13B(3) or (3B) of the 1983 Act<sup>(38)</sup> (effective dates of register published following conclusion of canvass and notices of alteration of register) on or before the date of the poll for an election, paragraph (3) does not apply to that appeal as respects that election.

[...]

### Effect of registers

21.—(1) A person registered as a local government elector, or entered in the list of proxies must not be excluded from voting at a Scottish parliamentary election on any of the grounds set out in paragraph (2); but this shall not prevent the rejection of the vote on a scrutiny, or affect that person's liability to any penalty for voting.

(2) The grounds referred to in paragraph (1) are that the person—

(a) is not of voting age;

(b) is not, or, on the relevant date or the date of the person's appointment (as the case may be), was not—

(i) a Commonwealth citizen;

(ii) a citizen of the Republic of Ireland;

(iii) [a qualifying foreign national;]<sup>39</sup>

(c) is, or, on the relevant date or the date of the person's appointment (as the case may be), was, otherwise subject to any other legal incapacity to vote.

(3) In paragraph (2), the "relevant date" means—

(a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act<sup>40</sup> (requirement to publish the revised register following annual canvass by 1st December), the 15th October immediately preceding the date of publication of the register;

(b) in relation to any other person registered in the register, the relevant date for the purposes of section 4 of the 1983 Act<sup>41</sup> (entitlement to be registered as parliamentary or local government elector).

(4) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, will for any

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<sup>38</sup> Sections 13, 13A and 13B were substituted by paragraph 6 of schedule 1 of the 2000 Act. Section 13(5) was amended by paragraph 2 of schedule 6 of the 2009 Act. Section 13B(3B) was inserted by section 11(4) of the 2006 Act.

<sup>39</sup> Words substituted by Scottish Parliament (Elections etc.) Amendment Order 2020/179 (Scottish SI) art.4 (August 3, 2020).

<sup>40</sup> Section 13 was substituted by the 2000 Act, Schedule 1, paragraph 6.

<sup>41</sup> Section 4 was substituted by the 2000 Act, section 1(2) and amended by the 2006 Act, Schedule 1, paragraph 3.

purpose of this Part relating to that person as elector be conclusive that until the date given in the entry that person is not of voting age nor entitled to be treated as an elector except for the purposes of a Scottish parliamentary election at which the date fixed for the poll is that or a later date.

(5) Article 21(4) applies to an entry in the record of anonymous entries as it applies to an entry in the register of local government electors.

### **Effect of misdescription**

22. No misnomer or inaccurate description of any person or place named in the register of electors, or in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Order affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

### **Discharge of registration duties**

23.—(1) Any of the duties and powers of an ERO under this Order may be performed and exercised by any depute for the time being approved by the local authority which appointed the ERO, and the provisions of this Order apply to any such depute so far as respects any duties or powers to be performed or exercised by that depute as they apply to the ERO.

(2) It shall be the duty of each local authority to assign such officers to assist the ERO appointed by that authority as may be required for carrying out the ERO's functions under this Order.

(3) An ERO shall comply with any general or specific directions which may be given by the Scottish Ministers, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the 2000 Political Parties Act (directions as to discharge of registration duties), with respect to the arrangements to be made by the ERO in carrying out the ERO's functions under this Order.

[...]

### **Limitation of election expenses: constituency and individual regional candidates**

42.—(1) The election expenses incurred by or on behalf of—

- (a) a candidate for return as a constituency member; or
- (b) an individual candidate for return as a regional member,

at an election must not in the aggregate exceed the maximum amount specified in this article.

(2) The maximum amount is (in a case other than that to which paragraph (3) applies)—

- (a) for a candidate for return as a constituency member for a county constituency, £8,700 together with an additional 9p for every entry in the register of electors;
- (b) for a candidate for return as a constituency member for a burgh constituency, £8,700 together with an additional 6p for every entry in the register of electors; and
- (c) for an individual candidate for return as a regional member, a sum calculated by adding together the maximum amounts (calculated in accordance with sub-paragraphs (a) and (b)) for a single candidate for return as a constituency member in each constituency included in the region.

(2A) Notwithstanding paragraph (8), where the date of the poll at a Scottish parliamentary election has been postponed by

proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998<sup>(42)</sup>, the maximum amount shall have effect in relation to any candidate at that election as if the amount specified in paragraph (2) were increased by one half.

(3) The maximum amount for a candidate at an election under section 9 of the 1998 Act (constituency vacancies) is £100,000.

(4) Where any election expenses are incurred in excess of the maximum amount specified in paragraph (2) or, as the case may be, paragraph (3), any candidate or election agent who—

(a) incurred, or authorised the incurring of, the election expenses, and

(b) knew or ought reasonably to have known that the expenses would be incurred in excess of that maximum amount,

shall be guilty of an illegal practice.

(5) In paragraph (2) “*the register of electors*” means the register of local government electors, for the area in question as it has effect on the last day for publication of notice of the election.

(6) Expenses incurred by or on behalf of the candidate which are—

(a) personal expenses,

(b) reasonable expenses incurred that are reasonably attributable to individuals’ disability,

(c) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or

(d) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English,

do not count towards the maximum amount

(7) Where a poll for the return of a constituency member is countermanded or abandoned by reason of a candidate’s death, the maximum amount of election expenses shall, for any of the other candidates who then remain validly nominated, be twice, or if there has been a previous increase under this paragraph, three times what it would have been but for any increase under this paragraph.

(8) The maximum amount specified in paragraph (2) or (3) for a candidate shall not be affected by a change in the timing of a Scottish parliamentary election or of any step in the proceedings at such an election.

(9) In this article—

“*county constituency*” means a constituency designated as such in Schedule 1 to the Scottish Parliament (Constituencies and Regions) Order 2020 or a constituency described in paragraph (10); and

“*burgh constituency*” means a constituency designated as such in that Schedule.

(10) For the purposes of this article [ the constituency of Na h-Eileanan an Iar,]<sup>43</sup> the constituency of the Orkney Islands and the constituency of the Shetland Islands are county constituencies.

## Limitation of pre-candidacy election expenses: constituency and individual regional candidates at Scottish Parliament

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<sup>42</sup> 1998 c.46. Section 2(5) of the 1998 Act was amended by section 5(5) of the Scotland Act 2016 (c.11) (“the 2016 Act”) and section 3(2)(a) of the Scottish Elections (Reform) Act 2020 (asp 12) (“the 2020 Act”). Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

<sup>43</sup> Words inserted by Islands (Scotland) Act 2018 asp 12 (Scottish Act) Pt 4 s.18(3) (October 4, 2018).



## general elections

43.—(1) This article applies where election expenses are incurred by or on behalf of a candidate for return as a constituency member or an individual candidate for return as a regional member at an election under—

- (a) section 2 of the 1998 Act (ordinary general elections); or
- (b) section 3 of that Act (extraordinary general elections),

and the expenses are incurred in respect of a matter which is used during the period beginning with the appropriate date and ending with the date on which the person becomes a candidate at that election.

(2) For the purposes of this article, article 58(1) (meaning of election expenses) has effect with the omission of “after the date when the candidate becomes a candidate at the election”.

(3) In paragraph (1) “*the appropriate date*” for an election under section 2 of the 1998 Act means the date which falls four months before the date of the poll where—

- (a) the date of the poll is that determined by section 2(2) of the 1998 Act ;
- (b) no less than five months before the day on which the poll would have taken place under section 2(2) of that Act, the date of the poll is brought forward under section 2(5) of that Act; or
- (c) no less than four months before the day on which the poll would have taken place under section 2(2) of that Act, the date of the poll is postponed under section 2(5) of that Act;

but where the date of the poll is brought forward or postponed otherwise than as mentioned in sub-paragraph (b) or (c) “*the appropriate date*” means the date which falls four months before the date when the poll would have taken place under section 2(2) of that Act.

(4) In paragraph (1) “*the appropriate date*” for an election under section 3 of the 1998 Act means the date on which the Presiding Officer proposes a day for the poll for the election under section 3(1) of that Act.

(5) Election expenses incurred as mentioned in paragraph (1) must not in the aggregate exceed the permitted amount, which is—

- (a) for a candidate for return as a constituency member for a county constituency, £21,500 plus 6.3p for every entry in the register of electors;
- (b) for a candidate for return as a constituency member for a burgh constituency, £21,500 plus 4.2p for every entry in the register of electors; and
- (c) for an individual candidate for return as a regional member, a sum calculated by adding together the maximum amounts (calculated in accordance with sub-paragraphs (a) and (b)) for a single candidate for return as a constituency member in each constituency included in the region.

(5A) Where the date of the poll at a Scottish parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998<sup>(44)</sup>, the permitted amount shall have effect in relation to any candidate at that election as if the amount specified in paragraph (5) were increased by one half.

(6) In paragraph (5) “*the register of electors*” means the register of local government electors for the area in question as it has effect on the last day for publication of the notice of the election.

(7) Where election expenses are incurred as mentioned in paragraph (1) in excess of the permitted amount, any candidate or election agent who—

- (a) incurred, or authorised the incurring of, the election expenses, and

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<sup>44</sup> Section 2(5) of the 1998 Act was amended by section 5(5) of the 2016 Act and section 3(2)(a) of the 2020 Act. Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

(b) knew or ought reasonably to have known that the election expenses would be incurred in excess of that amount, shall be guilty of an illegal practice.

(8) Expenses incurred by or on behalf of the candidate which are—

(a) personal expenses,

(b) reasonable expenses incurred that are reasonably attributable to individuals' disability,

(c) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or

(d) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English,

do not count towards the permitted amount.

(9) Paragraphs (9) and (10) of article 42 apply to this article as they do to that article.

[...]

#### **Publication of time and place of inspection of returns and declarations**

**56.**—(1) At a Scottish parliamentary election, the CRO shall, within 10 days after the end of the time allowed for delivering to the CRO returns as to election expenses, publish in **such manner as the CRO thinks fit**, and shall send to each of the election agents, a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(2) At a Scottish parliamentary election, the RRO shall, within 10 days after the end of the time allowed for delivering to the RRO returns as to election expenses, publish in **such manner as the RRO thinks fit**, and shall send to the election agents for each individual candidate for return as a regional member and for each registered party submitting a regional list in relation to that region, a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(3) But if any return or declaration has not been received by the appropriate returning officer before the notice is dispatched for publication, the notice shall so state and the like notice about that return and declaration, if afterwards received, shall within 10 days after the receipt be published in like manner and sent to each of the election agents (other than an agent who is in fault or is agent for the candidate in fault).

[...]

#### **Details to appear on election publications**

**72.**—(1) This article applies to any material which can reasonably be regarded as intended to promote or procure the election of a candidate at an election (whether or not it can be so regarded as intended to achieve any other purpose as well) other than material to which section 143 of the 2000 Political Parties Act<sup>45</sup> (details to appear on election material) applies.

(2) No material to which this article applies shall be published unless—

(a) in the case of material which is, or is contained in, such a document as is mentioned in paragraph (4), (5) or (6), the requirements of that paragraph are complied with; or

(b) in the case of any other material, any requirements falling to be complied with in relation to the material by virtue of

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<sup>45</sup> Section 143 was amended by the 2000 Act, section 66(2).

regulations under paragraph (7) are complied with.

(3) For the purposes of paragraphs (4) to (6), the following details are “the relevant details” in the case of any material falling within paragraph (2)(a), namely—

- (a) the name and address of the printer of the document;
- (b) the name and address of the promoter of the material; and
- (c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(3A) For the purposes of paragraphs (4) to (6), the relevant details (as defined in paragraph 3) must conform to the following specifications—

- (a) type size of at least 11 points as measured in font ‘Times New Roman’ not narrowed, and
- (b) space between text lines of at least 3mm.

(3B) Paragraph (3A) does not apply where—

- (a) in the case of paragraph (4) or (5), the document consists (or consists principally) of material which is less than the size of A4 paper, or
- (b) in the case of paragraph (6), the advertisement contained in the newspaper or periodical covers a total space which is less than the size of one sheet of A4 paper, and in such cases, the relevant details must be in type size of at least 9 points as measured in font ‘Times New Roman’ not narrowed and the space between text lines must be at least 2mm.

(4) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(5) Where the material is a printed document other than one to which paragraph (4) applies, the relevant details must appear either on the first or the last page of the document.

(6) Where the material is an advertisement contained in a newspaper or periodical—

- (a) the name and address of the printer of the newspaper or periodical must appear either on its first or last page; and
- (b) the relevant details specified in paragraph (3)(b) and (c) must be included in the advertisement.

(7) The Scottish Ministers may, after consulting the Electoral Commission, by regulations make provision for and in connection with the imposition of requirements as to the inclusion in material falling within paragraph (2)(b) of the following details, namely—

- (a) the name and address of the promoter of the material; and
- (b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(8) Regulations under paragraph (7) may in particular specify—

- (a) the manner and form in which such details must be included in any such material for the purpose of complying with any such requirement;
- (b) circumstances in which—
  - (i) any such requirement does not have to be complied with by a person of any description specified in the regulations, or

(ii) a breach of any such requirement by a person of any description so specified is not to result in the commission of an offence under this article by that person or by a person of any other such description;

(c) circumstances in which material is, or is not, to be taken for the purposes of the regulations to be published or (as the case may be) published by a person of any description so specified.

(9) Where any material falling within paragraph (2)(a) is published in contravention of paragraph (2), then (subject to paragraphs (11) and (12))—

- (a) the promoter of the material,
- (b) any other person by whom the material is so published, and
- (c) the printer of the document,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Where any material falling within paragraph (2)(b) is published in contravention of paragraph (2), then (subject to regulations made by virtue of paragraph (8)(b) and to paragraph (11) and (12))—

- (a) the promoter of the material, and
- (b) any other person by whom the material is so published,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) It shall be a defence for a person charged with an offence under this article to prove—

- (a) that the contravention of paragraph (2) arose from circumstances beyond that person's control; and
- (b) that that person took all reasonable steps, and exercised all due diligence, to ensure that that contravention would not arise.

(12) Any candidate or election agent who would (apart from this paragraph) be guilty of an offence under paragraph (9) or (10), shall instead be guilty of an illegal practice.

(13) In this article—

*"address"* means postal address;

*"print"* means print by whatever means, and *"printer"* shall be construed accordingly;

*"the promoter"*, in relation to any material to which this article applies, means the person causing the material to be published;

*"publish"* means make available to the public at large, or any section of the public, in whatever form and by whatever means (including by electronic means).

(14) For the purpose of determining whether any material is material such as is mentioned in paragraph (1), it is immaterial that it does not expressly mention the name of any candidate.

(15) Regulations under paragraph (7) shall be subject to the negative procedure.

[...]

PART 4  
LEGAL PROCEEDINGS

**Application of certain provisions for Scottish parliamentary elections**

82.—(1) The provisions of the 1983 Act which are specified in the left hand column of Part 1 of Schedule 6 shall apply—

- (a) as if amended in accordance with the modifications and exceptions specified in relation to those provisions in the right hand column of that Schedule;
- (b) subject to paragraph (3); and
- (c) as if amended in accordance with such modifications as are necessary in consequence of those provisions,

for the purposes of a Scottish parliamentary election but only in relation to the election or return of a constituency member of the Scottish Parliament.

(2) The provisions of the 1983 Act which are specified in the left hand column of Part 2 of Schedule 6 shall apply—

- (a) as if amended in accordance with the modifications and exceptions specified in relation to those provisions in the right hand column of that Schedule;
- (b) subject to paragraph (3); and
- (c) as if amended in accordance with such modifications as are necessary in consequence of those provisions,

for the purposes of a Scottish parliamentary election but only in relation to the election or return of a regional member of the Scottish Parliament.

(3) Unless the context otherwise requires, in the provisions applied by Schedule 6—

- (a) any provision relating to a local government election or local government electors and associated references (including a reference to a petition questioning an election under the Local Governance (Scotland) Act 2004) shall be disregarded;
- (b) any reference to a parliamentary election shall be construed as a reference to a Scottish parliamentary election (~~except the reference in section 160(4) of the 1983 Act<sup>46</sup>~~) and any reference to a general election shall accordingly be construed as a reference to a Scottish parliamentary general election;
- (c) any reference to a constituency (or parliamentary constituency) shall be construed—
  - (i) in relation to any election or return of a constituency member, as a reference to a Scottish parliamentary constituency;
  - (ii) in relation to any election or return of a regional member, as a reference to a region;
- (d) any reference to promoting or procuring the election of a candidate shall be construed as a reference to promoting or procuring the giving of a vote for a particular candidate or registered party at the election;
- (e) any reference to a candidate, other than the one referred to in sub-paragraph (d), shall be construed as a reference to either—

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<sup>46</sup> Section 160(4) was substituted by the 2000 Political Parties Act, Schedule 17, paragraph 8.

(i) a candidate on a registered party's regional list; or

(ii) an individual candidate,

as the case may be;

(f) any reference to a parliamentary elector shall be construed as a reference to an elector at a Scottish parliamentary election;

(g) any reference to a member in the context of a Member of Parliament shall be construed as a reference to a member of the Scottish Parliament;

(h) any reference to a parliamentary election petition (except in the context of the rota for the trial of parliamentary election petitions) shall be construed as a reference to a Scottish parliamentary election petition;

(i) any reference to the High Court shall be construed as a reference to the Court of Session and any reference to the County Court or a judge of that Court shall be construed as a reference to the sheriff;

(j) any reference to the Director of Public Prosecutions or the Attorney General shall be construed as a reference to the Lord Advocate;

(k) any reference to a return in the context of a return to the writ of election (and the return to Parliament) shall be construed as a reference to the declaration of the result by the returning officer under rule 62 or, as the case may be, rule 65 of the Scottish Parliamentary Election Rules;

(l) any reference to an enactment or instrument made under an enactment shall be construed as a reference to that enactment or instrument as applied by this Part of this Order; and

(m) any reference to an offence under the 1983 Act or to a practice, payment, employment or hiring made corrupt or illegal by any provision of that Act shall be construed, subject to any necessary modifications, as a reference to the offence under, or practice, payment, employment or hiring made illegal by, the corresponding provision of this Order.

## PART 5 MISCELLANEOUS AND SUPPLEMENTAL

### **Vacancies: constituency seats**

**83.** Where the seat of a constituency member is vacant and the date of the poll at an election to fill that vacancy is fixed by the Presiding Officer of the Parliament under section 9 of the 1998 Act (constituency vacancies), the Presiding Officer shall forthwith send a notice to the CRO for that constituency stating—

(a) that the vacancy exists; and

(b) the date fixed for the poll at the election to fill that vacancy.

### **Vacancies: regional member seats**

**83A.—(1)** Where it comes to the notice of the Presiding Officer of the Scottish Parliament that the seat of a regional member who was returned from a registered party's regional list is vacant, the Presiding Officer shall forthwith send a notice in accordance with paragraph (2) to the RRO for that region.

**(2)** A notice under paragraph (1) shall—

(a) state that a vacancy exists, and

(b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose regional list that person's name is included.

(3) On receipt of a notice under paragraph (1), the RRO shall ascertain the name of the person, if any, who is to fill the vacancy in accordance with section 10 of the 1998 Act<sup>(47)</sup> (regional vacancies).

[...]

*JOE FITZPATRICK*

Authorised to sign by the Scottish Ministers

St Andrew's House,

Edinburgh

15th December 2015

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<sup>47</sup> Section 10 was amended by S.I. 2010/2999.

## SCHEDULE 1

### SUPPLY OF ELECTORAL REGISTERS

#### Supply of free copy of full register for electoral purposes

1.—(1) As soon as practicable after the relevant date, an ERO shall supply free of charge to the returning officer for the local authority or, as the case may be, each local authority for the registration area as many printed copies of—

- (a) the latest revised version of the register of electors published under section 13(1) or (3) of the 1983 Act<sup>48</sup>, as the case may be;
- (b) any notice setting out an alteration to the version of the register of electors published under sections 13A(2), 13AB(2) or 13B(3), (3B) or (3D) of that Act<sup>49</sup>; and
- (c) any record of anonymous entries,

as the returning officer may reasonably require for the purposes of a Scottish Parliamentary election.

(2) In sub-paragraph (1)—

(a) “*relevant date*” means—

- (i) in the case of a general election of members of the Scottish Parliament, the date of the dissolution of the Parliament as provided for at section 2(3)(a) of the 1998 Act;
- (ii) where the Presiding Officer has proposed a day for the holding of the poll under section 2(5) or 3(2) or (2B) of the 1998 Act, the announcement of Her Majesty’s **proclamation in terms of section 2(5) or 3(2) or (2B)**; or
- (iii) the date on which a vacancy occurs in a constituency seat;

(b) the duty to supply as many printed copies of the register and notices as the returning officer may reasonably require includes a duty to supply one copy of each in data form.

(3) The duty under sub-paragraph (1) may be discharged by supplying copies of a consolidated document showing the entries in the version of the register referred to in sub-paragraph (1)(a) as altered by any notice referred to in sub-paragraph (1)(b) and the entries in the record referred to in sub-paragraph (1)(c) together with a copy of that document in data form.

(4) No person to whom a copy of the register of electors, a notice or a record has been supplied under this paragraph may—

- (a) supply a copy of that register, that notice or that record to any person;
- (b) disclose any information contained in any of them (that is not contained in the edited register); or
- (c) make use of any such information,

except for the purposes of an election<sup>50</sup>.

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<sup>48</sup> Section 13 was substituted by the 2000 Act, Schedule 1, paragraph 6.

<sup>49</sup> Sections 13A and 13B were added by the 2000 Act, Schedule 1, paragraph 6. Section 13AB was added by the Electoral Registration and Administration Act 2013 (c.6), section 16(3). Section 13B was amended by the 2006 Act, section 11(2) to (4).

<sup>50</sup> This is the “permitted purpose” for the purposes of regulation 95(2) of the Representation of the People (Scotland) Regulations 2001 (“the 2001 Regulations”), S.I. 2001/497. Regulation 115 of the 2001 Regulations makes provision for offences in respect of contraventions of provisions including regulation 95(2).



[...]

SCHEDULE 2

SCOTTISH PARLIAMENTARY ELECTION RULES

PART 1

PROVISION AS TO TIME

**Timetable**

1.—(1) The proceedings at a Scottish parliamentary election shall be conducted in accordance with the following Table—

<i>Proceeding</i>	<i>Time</i>
Publication of notice of election.	Not earlier than the thirty-fifth day before the date of the poll and not later than the twenty-eighth day before the date of the poll.
Delivery of nomination papers.	Not later than 4 pm on any day after the date of the publication of the notice of election but not later than the twenty-third day before the date of the poll.
The making of objections to nomination papers.	During the hours allowed for delivery of nomination papers on the last day for their delivery and the hour following, but—
	(a) no objection may be made in the afternoon of that last day except to a nomination paper delivered within 24 hours of the last time for its delivery, and in the case of a nomination paper so delivered no objection may be so made to the sufficiency or nature of the particulars of a candidate unless made at or immediately after the time of the delivery of the nomination paper; and
	(b) the foregoing provisions do not apply to objections made in pursuance of rule 21 or 22.
Delivery of notice of withdrawal of candidature.	Within the time for the delivery of nomination papers at the election.
Publication of statement of persons nominated.	(a) If no objections to nomination papers are made, at the close of the time for doing so, or
	(b) if any such objections are made, not before they are disposed of but not later than 24 hours after the last time for delivery of nomination papers.
Polling	Between the hours of 7 am and 10 pm on the date of the poll.

(2) In the Table in paragraph (1) a reference to “*nomination papers*” includes constituency nomination papers, individual nomination papers and regional lists.

**Application of timetable where proceedings at a Scottish parliamentary election are postponed.**

1A.—(1) Sub-paragraph (2) applies where—

(a) a notice of election which specifies the date of the poll in an election has been published in accordance with the

timetable in rule 1 of this schedule but the statement of persons nominated has not been published,

(b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act<sup>(51)</sup>, and

(c) the date proposed by proclamation (“the new date”) is less than five days after the date of the poll specified in the notice of election.

(2) The CRO or RRO must—

(a) publish a notice stating that the date has changed and specifying the new date, and

(b) comply with the requirements of this schedule in accordance with the new date.

(3) Sub-paragraph (4) and (5) apply where—

(a) a notice of election which specifies the date of the poll in an election has been published in accordance with the timetable in rule 1 of this schedule but the statement of persons nominated has not been published,

(b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act and

(c) the date proposed by proclamation (“the new date”) is five days or more after the date of the poll specified in the notice of election.

(4) The CRO or RRO must—

(a) publish a notice stating that the date has changed and specifying the new date,

(b) comply with the requirements of this schedule in accordance with the new date.

(5) Notwithstanding sub-paragraph (4)(b), nomination papers, objections to nomination papers and notices of withdrawal of candidature already received by the CRO or RRO in accordance with the timetable in rule 1 of this schedule prior to the postponement of the poll shall be valid in relation to the poll to be held on the new date.

(6) Sub-paragraph (7) and (8) apply where—

(a) the statement of persons nominated been published in accordance with the timetable in rule 1 of this schedule, and

(b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the 1998 Act.

(7) The CRO or RRO must—

(a) publish a notice stating that the date has changed and specifying the new date,

(b) publish a new statement of persons nominated as candidates for return as a constituency member required by rule 18 or, as the case may be, statement of persons and parties nominated for return as regional members required by rule 19,

(c) publish a new notice of poll to accompany the statements of persons nominated as required by rule 33, and

(d) comply with the requirements of this Schedule in accordance with the new date.

(8) Notwithstanding sub-paragraphs (7)(b) to (d), nomination papers, objections to nomination papers and notices of withdrawal of candidature already received by the CRO or RRO in accordance with the timetable in rule 1 of this schedule prior to the postponement of the poll shall be valid in relation to the postponed poll to be held on the new date.

(9) In this paragraph—

(a) “Nomination papers” includes constituency nomination papers, individual nomination papers and regional lists.

(b) Any reference to a period of time is to be interpreted in accordance with rule 2 (computation of time).

### **Use of printed election materials where proceedings at a Scottish Parliamentary election are postponed.**

**1B.** Where a Scottish Parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the

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<sup>51</sup> Section 2(5) was amended by section 5(5) of the Scotland Act 2016 (c.11) (“the 2016 Act”) and section 3(2)(a) of the Scottish Elections (Reform) Act 2020 (asp 12) (“the 2020 Act”). Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

Scotland Act 1998<sup>(52)</sup>, the CRO or RRO may, as they see fit, make use of materials printed for use at the originally scheduled date in accordance with the rules provided in this schedule for the purposes of the new date.

### Computation of time

2. In computing any period of time for the purposes of the Table in rule 1(1)—

- (a) a Saturday or Sunday;
- (b) Christmas Eve, Christmas Day, Good Friday or Easter Monday;
- (c) a day which is a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971; or
- (d) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll nor shall a CRO be obliged to proceed with the counting of votes on such a day.

[...]

### Issue of official poll cards

37.—(1) The CRO shall as soon as practicable after the publication of notice of the election send to each elector and proxy an official poll card.

(2) An elector's official poll card shall be sent or be delivered to the elector's qualifying address (within the meaning of article 8(11)), and a proxy's to the proxy's address as shown in the list of proxies.

(2A) Paragraph (2) does not apply to an elector to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies; and the CRO may send such an elector's official poll card to the place where the elector is detained in legal custody.

(3) The official poll card shall be in the form set out in the Appendix, and—

- (a) except where sub-paragraph (e) applies, the official poll card issued to an elector shall be in form L1;
- (b) the official postal poll card issued to an elector shall be in form L2;
- (c) the official poll card issued to the proxy of an elector shall be in form M1;
- (d) the official postal poll card issued to the proxy of an elector shall be in form M2;
- (e) the official poll card issued to an elector who has appointed a proxy shall be in form M3.

(4) The official poll card may, in addition to the matters in the form, set out such other information, not relating to any candidate or registered party, as the CRO considers appropriate, and different additional information may be provided to different electors or descriptions of elector.

(5) In this rule, "*elector*" —

- (a) means a person who is registered in the register of electors for the constituency and the region on the last day for publication of notice of the election; and

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<sup>52</sup> Section 2(5) was amended by section 5(5) of the Scotland Act 2016 (c.11) ("the 2016 Act") and section 3(2)(a) of the Scottish Elections (Reform) Act 2020 (asp 12) ("the 2020 Act"). Section 3(2B) of the 1998 Act was added by section 3(3) of the 2020 Act.

(b) includes a person then shown in that register or in the record of anonymous entries as below voting age if (but only if) it appears from the register or record that the person will be of voting age on the day fixed for the poll.

### **Equipment of polling stations**

**38.**—(1) The CRO shall provide each presiding officer with such number of ballot boxes and ballot papers as in the CRO's opinion may be necessary and at a Scottish parliamentary general election separate ballot boxes shall be provided for the constituency ballot papers and for the regional ballot papers.

(2) Every ballot box shall be so constructed that the ballot papers can be put in it, but cannot be withdrawn from it, without the box being opened.

(3) The CRO shall provide each polling station with—

- (a) materials to enable voters to mark the ballot papers;
- (b) copies of the polling register or such part of it as contains the entries relating to electors allotted to the station;
- (c) the parts of any list of proxies prepared for the election corresponding to the polling register or the part of it provided under sub-paragraph (b);
- (d) a list containing that part of the list prepared under rule 29 which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station (“corresponding number list”);
- (e) copies of forms and declarations and other documents required for the purpose of the poll; and
- (f) at least one list showing the names of the candidates who appear on the regional list of each party shown on any regional ballot paper, followed by the names of the individual candidates, as given in the statement prepared under rule 19 and arranged in the order in which their names appear on that list.

(4) The CRO shall also provide each polling station with—

- (a) at least one enlarged sample copy of a constituency ballot paper and any regional ballot paper for display at the station and at least one enlarged hand-held sample copy of that or those ballot papers for the assistance of voters who are partially sighted (in each case marked as required by article 86); and
- (b) a device of the description set out in paragraphs (5) to (10), for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion (within the meaning of rule 48(1)).

(5) The device referred to in paragraph (4)(b) shall be such that—

- (a) it satisfies the conditions in paragraphs (6) to (10);
- (b) a ballot paper can—
  - (i) be inserted into, and removed from, it; or
  - (ii) be attached to, and detached from, it; and
- (c) the ballot paper will remain firmly in place once inserted into, or attached to, the device.

(6) There shall be sufficient space to allow the particulars of each candidate and, where appropriate, registered party named on the ballot paper to be clearly shown.

(7) There shall be a separate hole in the device for each candidate and, where appropriate, registered party, named on the ballot paper.

- (8) Each hole in the device shall be of equal size.
- (9) Each hole shall be positioned to frame the space to the right of the particulars of the candidate or registered party (as the case may be) on which the vote may be marked (“the relevant space”).
- (10) Each hole shall be sufficiently large to allow a voter to mark a cross in the relevant space on the ballot paper.
- (11) A notice in the form N1 set out in the Appendix, giving directions for the guidance of the voters in voting, shall be printed in conspicuous characters and exhibited inside and outside every polling station.
- (12) At a Scottish parliamentary general election a notice in the form O set out in the Appendix, giving information for voters, shall be exhibited in every compartment of every polling station.
- (13) The statements required by rule 18 (statement of persons nominated as candidates for return as a constituency member) and (except in the case of a poll to fill a vacancy in the seat of a constituency member) rule 19 (statement of persons and parties nominated for return as regional members) shall be printed in conspicuous characters and exhibited inside or outside every polling station and may be exhibited both inside and outside any polling station.

### **Appointment of polling and counting agents**

**39.—**(1) Each candidate for return as a constituency member, each individual candidate for return as a regional member, and the election agent of each registered party standing nominated may, before the commencement of the poll, appoint—

- (a) polling agents to attend at polling stations for the purpose of detecting personation; and
- (b) counting agents to attend at the counting of the votes.

(2) The CRO may limit the number of counting agents for candidates for return as a constituency member, but the limit set shall be the same for each candidate.

**(2A) The CRO may not limit the number of counting agents under paragraph (2) so that the number allowed to a candidate for return as a constituency member is (except in special circumstances) less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.**

(3) The CRO may limit the number of counting agents for individual candidates for return as regional members and for registered parties standing nominated, but the limit set shall be the same for each individual candidate and registered party.

**(3A) The CRO may not limit the number of counting agents under paragraph (3) so that the number allowed to an individual candidate for return as regional member or registered party standing nominated is (except in special circumstances) less than the number obtained by dividing the number of clerks employed on the counting by the total number of individual candidates for return as regional members and registered parties standing nominated.**

(4) Notice in writing of an appointment, stating the names and addresses of the persons appointed, shall be given by the person making the appointment to the CRO and shall be so given not later than the fifth day (computed like any period of time in the Table in rule 1(1)) before the day of the poll.

(5) If an agent dies, or becomes incapable of acting, the person who appointed that agent may appoint another agent in the first agent’s place, and shall forthwith give to the CRO notice in writing of the name and address of the agent appointed.

(6) Any appointment authorised by this rule may be made, and the notice of appointment given, to the CRO by the election agent instead of by the candidate.

(7) In the following provisions of these Rules references to polling and counting agents shall be taken as references to agents—

- (a) whose appointments have been duly made and notified; and
- (b) where the number of agents is restricted, who are within the permitted number.

(8) Any notice required to be given to a counting agent by the CRO may be delivered at or sent by post to the address stated in the notice of appointment.

(9) Any candidate (or, in the case of a registered party standing nominated, the election agent of that party) may do any act or thing which any polling or counting agent, if appointed by, or on behalf of, the candidate would have been authorised to do, or may assist such agent in doing any such act or thing.

(10) An election agent for a candidate or registered party standing nominated may do or assist in doing anything which a polling or counting agent of that candidate or party is authorised to do; and anything required or authorised by these Rules to be done in the presence of the polling or counting agents may be done in the presence of such an election agent instead of such polling or counting agents.

(11) Where by these Rules any act or thing is required or authorised to be done in the presence of the polling or counting agents, the non-attendance of any agents or agent at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

[...]

### **Constituency election: death of party candidate**

**74.—**(1) This rule applies if—

(a) at a contested constituency election proof is given to the CRO's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate on the ballot paper has died; and

(b) that person is standing in the name of a registered party.

(2) The CRO must—

(a) countermand the notice of poll; or

(b) if polling has begun, direct that the poll be abandoned.

(3) At a Scottish parliamentary general election, the CRO must forthwith notify the RRO for the region containing that constituency that the notice of the poll at that constituency election has been countermanded or, as the case may be, that the poll has been abandoned and that no member is returned for that constituency.

(4) The proceedings with reference to the election must be commenced afresh subject to the following provisions of this rule.

(5) A new notice of the election ("the new notice") must be published on the first working day after the end of the period of seven days starting on the day the proof is given to the CRO.

(6) No fresh nomination is necessary in the case of a person shown in the previous statement of persons nominated.

(7) No other nomination may be made except for a person standing in the name of the same registered party in whose name the deceased candidate was standing.

(8) The time before which a nomination mentioned in paragraph (7) may be delivered is 4 pm on the seventh working day after the day on which the new notice is published.

(9) The time before which a notice of withdrawal of candidature by a person who stands nominated by virtue of paragraph (6) or in pursuance of paragraph (7) may be delivered is 4 pm on the seventh working day after the day on which the new notice is published.

(10) Subject to paragraphs (11) and (12), the poll is to be held on a day fixed by the CRO, which day must be in the period ("the first period") which starts 21 working days after the day on which the new notice is published and ends 28 working

days after that day.

(11) If a day in the first period is 22nd December or 3rd January, the CRO may fix the day of the poll to be held in the period which starts 25 working days after the day on which the new notice is published and ends 32 working days after that day.

(12) If the last day of the first period would fall within the period of three months referred to in section 9(4) of the 1998 Act, then no poll is to be held.

(13) For the purposes of this rule—

(a) a person stands in the name of a registered party if that person's nomination paper contains a description which is the name of a registered party;

(b) a working day is a day which is not a day specified in rule 2; and

(c) "*previous statement of persons nominated*" means the statement of persons nominated and standing nominated published under rule 18 in operation at the time of the death of the deceased candidate.

### **Regional election: effect of countermand or abandonment of constituency poll**

**74A.**—(1) This rule applies where at a Scottish parliamentary general election there is a contested election for return of regional members and the poll or declaration of result at a constituency election for a constituency in that region is postponed in accordance with rule 72 or 74.

(2) For the purposes of rule 64(1) (allocation of seats), the RRO is to be treated as having received the statements prepared under rule 61 (conveying results of count etc. to RRO) and the notifications under rule 62(3) (notification of constituency member returned) from each CRO in that region when the RRO has received those statements and notifications in respect of the constituencies in the region for which the polls or declarations of result have not been so postponed.

(3) Section 7(1) of the 1998 Act (calculation of regional figures) shall apply with the modification that the reference in that subsection to "constituencies included in the region" must be read as excluding the constituencies for which the polls or declarations of result have been so postponed.

(4) The subsequent election of a candidate for the constituency will have no effect upon the validity of the election and return of any regional member



SCHEDULE 3  
ABSENT VOTING

**General requirements for applications**

1.—(1) Applications under article 8, 9, 10 or 11 (absent votes) must be made and sent or delivered in accordance with article 87, must be dated and must state—

- (a) the applicant's name in full;
- (b) except in the case of an application under article 11, the address in respect of which the applicant is registered or has applied to be (or is treated as having applied to be) registered in the register of electors;
- (c) in the case of an application under article 11, the address of the applicant, together with the name of the elector for whom the applicant will act as proxy and the address of that elector in respect of which the elector is registered or has applied to be (or is treated as having applied to be) registered in the register of electors;
- (d) in the case of an application to vote by proxy, the grounds on which the elector claims to be entitled to an absent vote;
- (e) in the case of an application to vote by post (including an application under article 11), the address to which the ballot paper should be sent;
- (f) in the case of a person who is unable to provide a signature, the reasons for the person's request for waiver of any requirement under article 8, 9, 10 or 11 to provide a signature and the name and address of any person who has assisted the person to complete the application; and
- (g) where the applicant has, or has applied for, an anonymous entry, that fact.

(2) Where an application is required to contain a signature and date of birth, the information must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning by configuring the information as follows—

- (a) the signature shall appear against a background of white unlined paper at least five centimetres long and two centimetres high; and
- (b) the applicant's date of birth shall be set out numerically configured in the sequence of date, month and year, namely [d][d][m][m][y][y][y][y].

(3) Where the application contains a request that the ERO waive the requirement for a signature, sub-paragraph (2)(a) shall not apply.

(4) For the purposes of sub-paragraph (1)(b), the address in respect of which the applicant is or has applied to be (or is treated as having applied to be) registered includes—

- (a) in the case of a service voter, the address given in the service declaration in accordance with section 16(1)(d) of the 1983 Act<sup>53</sup> (contents of a service declaration);
- (b) in the case of a voluntary mental patient, the address of the mental hospital or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act<sup>54</sup> (notional residence: declaration of local connection);

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<sup>53</sup> Section 16(1)(d) was amended by the 2000 Act, sections 8 and 15(2), Schedule 1, paragraphs 1 and 9(c) and Schedule 7, Part 1. The existing text was renumbered as subsection (1), and a further subsection added, by section 9 of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7).

<sup>54</sup> Section 7B was inserted by the 2000 Act, section 6, and is amended by section 8 of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7).

(c) in the case of a person remanded in custody, the address of the place at which the person is detained or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act; ~~and~~

(d) in the case of a homeless person, within the meaning of section 7B(2)(c) of the 1983 Act, or of a person to whom section 7B(2A) of the 1983 Act<sup>55</sup> applies, the address shown on the declaration of local connection in accordance with section 7B(3)(d) of that Act; ~~and~~

(e) in the case of a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, the address shown on the declaration of local connection in accordance with section 7B(3)(d) of that Act.

(5) An application under article 9(1), (2) or (4), 10(7) or 11(4) or (6) shall specify the election in respect of which it is made.

(6) An application under article 9(1), (2) or (4) shall also specify whether it is for an indefinite period or for a particular period specified in the application.

(7) An application to vote by proxy under article 8(2) or (7) or 9(2) or (4) shall include an application for the appointment of a proxy which meets the requirements of paragraph 7.

(8) An application under article 8, 9, 10 or 11 shall comply with such further requirements of this Schedule as apply to such an application including the requirements as to time set out by paragraph 9.

### **Checking of signatures**

2. The ERO may be satisfied that an application under article 8, 9, 10 or 11 meets any requirements that it has been signed by the applicant and states the applicant's date of birth by referring to any signature and date of birth previously provided by the applicant to—

(a) the ERO or a returning officer; or

(b) the local authority by which the ERO was appointed, if held by that local authority in records which the ERO is authorised to inspect for the purposes of the ERO's registration duties.

### **Provision of fresh signatures**

3.—(1) A person who remains on the record kept under article 8(4) or article 11(5) may, at any time, provide the ERO with a fresh signature.

(2) Anything required or authorised to be done for the purposes of this Order in relation to a signature required to be provided in pursuance of this Order must be done in relation to a signature provided as mentioned in sub-paragraph (1) instead of in relation to a signature provided on any earlier occasion.

### **Additional requirements for applications for ballot papers to be sent to different address from that shown in the record kept under article 8(4) or 11(5) (records of absent voters)**

4.—(1) Sub-paragraph (3) applies to an application under—

(a) article 9(4)(a) by a person shown as voting by post in the record kept under article 8(4); or

(b) article 11(6) by a person shown as voting by post in the record kept under article 11(5),

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<sup>55</sup> Section 7B(2A) is inserted by section 8 of the Scottish Elections (Reduction of Voting Age) Act 2015; it allows persons under the age of 16 to register using a declaration of local connection if they are or have been looked after by a local authority or are being kept in secure accommodation.

for the person's ballot paper to be sent to a different address from the address shown in that record.

(2) Sub-paragraph (3) also applies where—

(a) in the case of an application to vote by post under article 8(1) or (7) or article 9(1), the address stated in accordance with paragraph 1(1)(b) and the address stated in accordance with paragraph 1(1)(e) are different;

(b) in the case of an application by a proxy to vote by post under article 11(4) the proxy's address stated in accordance with paragraph 1(1)(c) and the address stated in accordance with paragraph 1(1)(e) are different.

(3) Subject to sub-paragraph (4), the application must set out why the applicant's circumstances will be or are likely to be such that the applicant requires the ballot paper to be sent to that address.

(4) This paragraph does not apply where an applicant has, or has applied for, an anonymous entry.

### **Additional requirements for applications for proxy vote on grounds of disability**

**5.—**(1) An application to vote by proxy under article 8(2), as read with article 8(3)(c) (application by reason of blindness or other disability), must specify the disability by reason of which the application is made.

(2) Subject to sub-paragraphs (3) and (6), such an application shall be attested and signed by—

(a) a registered medical practitioner;

(b) a nurse registered on the register maintained by the Nursing and Midwifery Council under article 5 of the Nursing and Midwifery Order 2001<sup>1</sup> by virtue of qualifications in nursing;

(c) a registered dentist as defined by section 53(1) of the Dentists Act 1984;

(d) a registered dispensing optician or a registered optometrist as defined by section 36(1) of the Opticians Act 1989<sup>56</sup>;

(e) a registered pharmacist as defined in article 3(1) of the Pharmacy Order 2010<sup>57</sup>;

(f) a registered osteopath as defined by section 41 of the Osteopaths Act 1993<sup>58</sup>;

(g) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994<sup>59</sup>;

(h) a Christian Science practitioner;

(i) a person registered as a member of a profession to which the [Health Professions Order 2001 for the time being extends]<sup>60</sup>;

(j) the person managing a care home service registered under Part 5 of the Public Services Reform (Scotland) Act 2010<sup>61</sup>;

(k) the warden of premises forming one of a group of premises provided for persons of pensionable age or disabled persons for which there is a resident warden, where the applicant states that the applicant resides in such premises;

(l) a manager (or a person on behalf of a manager) within the meaning of section 329 of the Mental Health (Care and

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<sup>56</sup> The definitions of "registered dispensing optician" and "registered optometrist" were inserted by S.I. 2007/3101, regulation 187(e).

<sup>57</sup> To which there are amendments not relevant to this Order.

<sup>58</sup> The definition of "registered osteopath" was amended by S.I. 2007/3101, regulation 214(c).

<sup>59</sup> The definition of "registered chiropractor" was amended by S.I. 2007/3101, regulation 226(c).

<sup>60</sup> Words substituted by Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019/1094 Sch.3 para.35 (December 2, 2019 being the day on which 2017 c.16 s.39(1) comes into force).

<sup>61</sup> The definition of "managers" was amended by S.S.I. 2011/211, schedule 2, paragraph 8(5)(b).

Treatment) (Scotland) Act 2003 responsible for the administration of a hospital within the meaning of that section; or

(m) a person registered as a social worker in the register maintained in accordance with section 44 of the Regulation of Care (Scotland) Act 2001<sup>62</sup>.

(3) A person (“P”) who qualifies—

(a) by virtue of any of paragraphs (a) to (i) of sub-paragraph (2) may not attest an application for these purposes unless—

(i) P is treating the applicant for the disability specified in the application; or

(ii) the applicant is receiving care from P in respect of that disability; or

(b) by virtue of paragraph (m) of sub-paragraph (2) may not attest an application for these purposes unless—

(i) P is treating the applicant for the disability specified in the application;

(ii) the applicant is receiving care from P in respect of that disability; or

(iii) P has arranged care or assistance for the applicant in respect of that disability.

(4) The person (“Q”) attesting an application under sub-paragraph (2), other than a person attesting by virtue of sub-paragraph (2)(l), shall state—

(a) Q’s name and address and the qualification by virtue of which Q attests the application;

(b) where Q is a person referred to in sub-paragraph (3)(a), that Q is treating the applicant for the disability specified in the application or that the applicant is receiving care from Q in respect of that disability;

(c) where Q is a person referred to in sub-paragraph (3)(b), that Q is treating the applicant for the disability specified in the application, that the applicant is receiving care from Q in respect of that disability, or that Q has arranged care or assistance for the applicant in respect of that disability;

(d) that, to the best of Q’s knowledge and belief, the applicant has the disability specified in the application and that the applicant cannot reasonably be expected to go in person to the applicant’s allotted polling station or to vote unaided there, by reason of that disability; and

(e) that, to the best of Q’s knowledge and belief, the disability specified in the application is likely to continue either indefinitely or for a period specified by Q.

(5) A manager (or a person on behalf of a manager) attesting an application under sub-paragraph (2)(l) shall state—

(a) the name of the manager attesting the application;

(b) that the manager is authorised to attest the application;

(c) the position of the manager in the hospital at which the applicant is liable to be detained or at which the applicant is receiving treatment;

(d) the statutory provision under which the applicant is detained, or liable to be detained, at the hospital, where applicable;

(e) that, to the best of the manager’s knowledge and belief, the applicant has the disability specified in the application and that the applicant cannot reasonably be expected to go in person to the applicant’s allotted polling station or to vote unaided

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<sup>62</sup> Section 44 was amended by S.I. 2007/3101, regulation 257.

there, by reason of that disability; and

(f) that, to the best of the manager's knowledge and belief, the disability specified in the application is likely to continue either indefinitely or for a period specified by the manager attesting the application.

(6) Sub-paragraphs (2) to (5) shall not apply where—

(a) the application is based on the applicant's blindness and the applicant is registered as a blind person by a local authority, which is specified in the application; or

(b) the application states that the applicant is in receipt of the higher rate of the mobility component of a disability living allowance (payable under section 73 of the Social Security Contributions and Benefits Act 1992), armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>63</sup> or the enhanced rate of the mobility component of personal independence payment (payable under section 79(2) of the Welfare Reform Act 2012) because of the disability specified in the application.

(7) The fact that an applicant is registered as a blind person with a local authority shall be deemed sufficient evidence that the applicant is eligible to vote by proxy on the grounds set out in article 8(3)(c).

(8) In this paragraph and paragraphs 6 and 7, "*the applicant's allotted polling station*", in relation to an elector, means the polling station allotted or likely to be allotted to the elector under this Order.

#### **Additional requirements for applications for a proxy vote based on occupation, service, employment or attendance on a course**

6.—(1) An application to vote by proxy for a particular or indefinite period under article 8(2), as read with article 8(3)(d), (application by reason of occupation, service, employment or attendance on a course provided by an educational institution) must state—

(a) whether the occupation, service or employment, in respect of which it is made, is that of the applicant or the applicant's spouse or civil partner or, as the case may be, it is the applicant or the applicant's spouse or civil partner who is attending the course provided by an educational institution in respect of which the application is made;

(b) the nature of the occupation, service, employment or course provided by an educational institution giving rise to the application;

(c) where the person in respect of whose occupation, service or employment it is made (in this paragraph referred to as "*the employed person*") is self-employed, that fact and, in any other case, the name of that person's employer; and

(d) the reason relevant to the general nature of the employment, service or occupation in question or the course provided by an educational institution, why the applicant cannot reasonably be expected to go in person to the applicant's allotted polling station.

(2) Such an application shall be attested and signed—

(a) where the employed person is self-employed, by a person who—

(i) is aged 16 years or over;

(ii) knows the employed person; and

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<sup>63</sup> Which is relevantly amended by S.I. 2013/436.

(iii) is not related to the employed person;

(b) by the employer of the employed person or by another employee to whom this function is delegated by the employer; and

(c) in the case of a course provided by an educational institution, by the director or tutor of that course or by the principal or head of that institution or an employee to whom this function is delegated by the principal or head.

(3) For the purposes of this paragraph and paragraph 7 one person is related to another if the person is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the other.

(4) The person (“P”) attesting an application under sub-paragraph (2) shall—

(a) where the applicant is the employed person or the person attending the course, certify that the statements included in the application in accordance with the requirements of sub-paragraph (1)(a) to (d) are true; or

(b) where the applicant is the spouse or civil partner of the employed person or the person attending the course, certify that the statements included in the application in accordance with the requirements of sub-paragraphs (1)(a) to (c) are true.

(5) P shall also state—

(a) in the case of a person who attests an application under sub-paragraph (2)(a), P’s name and address, and that P is aged 16 years or over, knows the employed person, but is not related to the employed person;

(b) in the case of a person who attests an application under sub-paragraph (2)(b), either that P is the employer of the employed person or the position P holds in the employment of that employer; or

(c) in the case of a person who attests under sub-paragraph (2)(c), the post P holds at the institution.

#### **Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution**

**6A.** An application to vote by proxy for a particular or indefinite period under article 8(3)(f) (application by offender sentenced to term not exceeding 12 months) must state—

(a) that the applicant is eligible to vote by proxy at Scottish parliamentary elections on grounds relating to the applicant’s detention in a penal institution, and

(b) the name of the penal institution at which the applicant is detained.]<sup>64</sup>

#### **Additional requirements for applications for a proxy vote in respect of a particular election**

**7.—**(1) An application under article 9(2) to vote by proxy at a particular election shall set out why the applicant’s circumstances on the date of the poll for that election will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the applicant’s allotted polling station.

(2) Where such an application is made on the grounds of the applicant’s disability and it is made after 5 pm on the sixth day before the date of a poll at the election for which it is made—

(a) the requirements of paragraph 5 as to the matters to be specified and the attestation shall apply; and

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<sup>64</sup> Added by Scottish Elections (Franchise and Representation) Act 2020 asp 6 (Scottish Act) Sch.1 para.2(5)(a) (April 2, 2020).

(b) the person who attests the application shall also state, to the best of the person's knowledge and belief, the date upon which the applicant became disabled.

(2A) Sub-paragraph (2B) applies where such an application (or an application under article 10(7) made by virtue of that application) is made after 5 pm on the sixth day before the date of a poll at the election for which it is made and on the grounds that the applicant cannot reasonably be expected to vote in person at the applicant's allotted polling station because—

(a) of a disability suffered before that date, in circumstances where the disability means that the application could not reasonably have been made before that date, or

(b) (of a disability suffered after that date.

(2B) The application must, in addition to providing the information required by sub-paragraph (1),—

(a) 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 at the election for which it was made, and

(b) satisfy the requirements of paragraph 5(2).

(2C) In sub-paragraph (2A) "disability" has the same meaning as in the Equality Act 2010<sup>(65)</sup> (see section 6 of that Act).

(3) Where such an application is made by a person to whom paragraph 2(5A) of Schedule 4 to the 2000 Act<sup>66</sup> (mental patients who are not detained offenders) applies and it is made after 5 pm on the sixth day before the date of a poll at the election for which it is made—

(a) the requirements of paragraph 5 as to the matters to be specified and the attestation shall apply;

(b) the application shall additionally state the name and address of the hospital at which the applicant is liable to be detained; and

(c) the application shall be attested by a manager (or a person on behalf of a manager) within the meaning of section 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 responsible for the administration of the hospital at which the applicant is liable to be detained, and the attestation shall state—

(i) the name of the manager attesting the application;

(ii) that the manager is authorised to attest the application;

(iii) the position of the manager in the hospital at which the applicant is liable to be detained; and

(iv) the statutory provision under which the applicant is liable to be detained at the hospital.

(4) Where such an application is made on grounds relating to the applicant's occupation, service or employment and it is made after 5 pm on the sixth day before the date of a poll at the election for which it is made—

(a) the application must, in addition to providing the information required by sub-paragraph (1), state—

(i) where the applicant is self-employed, that fact, and, in any other case, the name of the applicant's employer;

(ii) that the reason provided in accordance with sub-paragraph (1) relates to the applicant's occupation, service or employment; and

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<sup>(65)</sup> 2010 c.15.

<sup>66</sup> Paragraph 2(5A) was inserted by the 2006 Act, section 35.

(iii) the date on which the applicant became aware of that reason; and

(b) the application must be attested in accordance with sub-paragraphs (5) to (7), unless the applicant is or will be registered as a service voter.

(5) An application to which sub-paragraph (4) applies must be attested and signed—

(a) where the applicant is self-employed, by a person who—

(i) is aged 16 years or over;

(ii) knows the applicant; and

(iii) is not related to the applicant;

(b) where the applicant is not self-employed, by the applicant's employer or by another employee to whom this function is delegated by the employer.

(6) The person ("P") attesting an application under sub-paragraph (5) must certify that the statements required by sub-paragraph (4)(a) and the information required by sub-paragraph (1) are true to the best of P's knowledge and belief.

(7) P shall also state—

(a) P's name and address;

(b) where the applicant is self-employed, that fact and that P is aged 16 years or over and that P knows, but is not related to, the applicant; and

(c) where the applicant is not self-employed, that P is the applicant's employer or the position P holds in the employment of P's employer.

[(7A) Sub-paragraph (7B) applies where an application under article 9(2) to vote by proxy at a particular election—

(a) is made on grounds relating to the applicant's detention in a penal institution, and

(b) is made after 5pm on the sixth day before the date of a poll at the election for which it is made.

(7B) The application must, in addition to providing the information required by sub-paragraph (1), state—

(a) that the applicant is detained in a penal institution, and

(b) the name of the penal institution at which the applicant is detained.]<sup>67</sup>

(8) This paragraph does not apply where an applicant has an anonymous entry.

### **Additional requirements for applications for appointment of a proxy**

**8.** An application for the appointment of a proxy under article 10(6) or (7) shall state the full name and address of the person whom the applicant wishes to appoint as the applicant's proxy, together with the person's family relationship, if any, with the

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<sup>67</sup> Added by Scottish Elections (Franchise and Representation) Act 2020 asp 6 (Scottish Act) Sch.1 para.2(5)(b) (April 2, 2020).



applicant, and—

- (a) if it is signed only by the applicant, shall contain a statement by the applicant that the applicant has consulted the person so named and that that person is capable of being and willing to be appointed to vote as the applicant's proxy; or
- (b) if it is also signed by the person to be appointed, shall contain a statement by that person that the person is capable of being and willing to be appointed to vote as the applicant's proxy.

### **Closing dates for applications**

**9.**—(1) An application—

- (a) to vote by post under article 8(1);
- (b) to vote by proxy under article 8(7);
- (c) to vote by post under article 8(7); or
- (d) from a proxy to vote by post under article 11(4),

shall be disregarded for the purposes of any particular election, and an application by a postal voter for the voter's ballot papers to be sent to a different address or to vote instead by proxy at a particular election under article 9(4) shall be refused, if it is received by the ERO after 5 pm on the eleventh day before the date of the poll at that election.

(2) An application—

- (a) to vote by proxy under article 8(2);
- (b) for the appointment of a proxy under article 10(6),

shall be disregarded for the purposes of any particular election if it is received by the ERO after 5 pm on the sixth day before the date of the poll at that election.

(3) An application (other than an application to which sub-paragraph (4) applies)—

- (a) to vote by proxy under article 9(2);
- (b) for the appointment of a proxy under article 10(7),

shall be refused if it is received by the ERO after 5 pm on the sixth day before the date of the poll at the election for which it is made.

(4) Where an application to vote by proxy under article 9(2) is made—

(a) on the grounds set out in paragraph 7(2) or (2A) and the applicant—

(i) became disabled after 5 pm on the sixth day before the date of the poll at the election for which it is made, or

(ii) could not be reasonably expected to have made an application before 5 pm on the sixth day before the date of the poll at the election for which it is made by virtue of a disability suffered before that date, or

(b) on the grounds set out in paragraph 7(4) and the applicant became aware of those grounds after 5 pm on the sixth day before the date of the poll at the election for which it is made, or

(c) on the grounds set out in paragraph 7(7A) and the applicant became detained in a penal institution after 5 pm on the sixth day before the date of the poll at the election for which it is made, or

(d) on the ground set out in sub-paragraph (4A) of this paragraph and the applicant became aware of that ground after

5 pm on the sixth day before the date of the poll at the election for which it is made, or

(e) by a person to whom paragraph 2(5A) of schedule 4 of the 2000 Act (mental patients who are not detained offenders) applies,

the application, or an application under article 10(7) made by virtue of that application, shall be refused if it is received after 5 pm on the day of the poll at that election.

(4A) The ground is that the applicant's circumstances on the date of the poll will or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under the appropriate rules as a result of following Scottish Government advice or the advice of a registered medical practitioner in relation to coronavirus.

(4B) In sub-paragraph (4A) "coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

(4C) The Scottish Ministers must review the need for the provision made by sub-paragraph (4A) and (4B) at least once every year, with the first review being carried out within one year of Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2020 coming into force.

(4D) Sub-paragraphs (4A) and (4B) cease to have effect at the end of the period of 2 years beginning with the day on which that Order comes into force.

(5) An application—

(a) to vote by post under article 9(1);

(b) from a proxy postal voter for the voter's ballot papers to be sent to a different address at a particular election under article 11(6),

shall be refused if it is received by the ERO after 5 pm on the eleventh day before the date of the poll at the election for which it is made.

(6) The following, namely—

(a) an application under article 8(5)(a) by an elector to be removed from the record kept under article 8(4);

(b) an application under article 11(9)(a) by a proxy to be removed from the record kept under article 11(5); and

(c) a notice under article 10(9) of the cancellation of a proxy's appointment,

shall be disregarded for the purposes of a particular election if it is received by the ERO after 5 pm on the eleventh day before the date of the poll at that election.

(7) In computing a period of days for the purposes of this paragraph—

(a) a Saturday or a Sunday;

(b) Christmas Eve, Christmas Day, Good Friday or Easter Monday; or

(c) a day which is a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971,

shall be disregarded.

[...]

## SCCHEDULE 4

### ISSUE AND RECEIPT OF POSTAL BALLOT PAPERS

[...]

#### **Spoilt ballot paper**

**13.**—(1) If a postal voter has inadvertently dealt with that voter’s postal ballot paper or postal voting statement in such a manner that it cannot be conveniently used as a ballot paper (referred to as “*a spoilt ballot paper*”) or, as the case may be, a postal voting statement (referred to as “*a spoilt postal voting statement*”) the postal voter may return (either by hand or by post) to the CRO the spoilt ballot paper or, as the case may be, the spoilt postal voting statement.

(2) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter shall also return—

- (a) the postal ballot paper or, as the case may be, the postal voting statement, whether spoilt or not;
- (b) where two or more postal ballot papers have been issued together to the postal voter (whether at a Scottish parliamentary general election or under paragraph 2), all other ballot papers so issued, whether spoilt or not; and
- (c) the envelopes supplied for the return of the documents mentioned in sub-paragraph (1) or paragraph (a) or (b).

(3) Subject to sub-paragraph (4), on receipt of the documents referred to in sub-paragraphs (1) and (2) the CRO shall issue a replacement ballot paper or, as the case may be, papers except where those documents are received after **10 pm** on the day of the poll.

(4) Where the CRO receives the documents referred to in sub-paragraphs (1) and (2) after 5 pm on the day before the day of the poll, the CRO shall only issue another postal ballot paper or, as the case may be, ballot papers if the postal voter returns the documents by hand.

(5) Paragraphs 4, 5, 6 and 8 to 12 shall apply to the issue of postal ballot papers under sub-paragraph (3).

(6) Any postal ballot paper and the postal voting statement, whether spoilt or not, returned in accordance with sub-paragraphs (1) and (2) shall be immediately cancelled.

(7) The CRO, as soon as practicable after cancelling those documents, shall make up those documents in a separate packet and shall seal the packet; and if on any subsequent occasion documents are cancelled as mentioned above, the sealed packet shall be opened and the additional cancelled documents included in it and the packet shall be again made up and sealed.

(8) Where a postal voter applies in person—

- (a) by 5 pm on the day before the day of the poll, the CRO may hand a replacement postal ballot paper to the postal voter;
- (b) after 5 pm on the day before the day of the poll, the CRO may only hand a replacement postal ballot paper to the postal voter;

instead of delivering it in accordance with paragraph 11.

(9) The CRO shall enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)—

- (a) the name and number of the elector as stated in the polling register (or in the case of an elector who has an anonymous entry, the elector’s electoral number alone);
- (b) the number of the postal ballot paper (or papers) issued under this paragraph; and
- (c) where the postal voter whose ballot paper is spoilt is a proxy, the proxy’s name and address.

### Lost postal ballot paper

14.—(1) Where a postal voter claims either to have lost or not to have received—

- (a) the postal voter’s postal ballot paper;
- (b) the postal voting statement; or
- (c) one or more of the envelopes supplied for their return,

the postal voter may apply (whether or not in person) to the CRO for a replacement ballot paper.

(2) Such an application shall include evidence of the voter’s identity.

(3) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter shall return—

- (a) the documents referred to in sub-paragraph (1)(a) to (c); and
- (b) where two or more postal ballot papers have been issued together to the postal voter (whether at a Scottish parliamentary general election or under paragraph 2), all other ballot papers so issued,

which the postal voter has received and which have not been lost.

(4) Any postal ballot paper and the postal voting statement returned in accordance with sub-paragraph (3) shall be immediately cancelled.

(5) The CRO, as soon as practicable after cancelling those documents, shall make up those documents in a separate packet and shall seal the packet; and if on any subsequent occasion documents are cancelled as mentioned above, the sealed packet shall be opened and the additional cancelled documents included in it and the packet shall be again made up and sealed.

(6) Subject to sub-paragraphs (7) and (8), where the CRO is satisfied as to the voter’s identity, the CRO shall issue another postal ballot paper or, as the case may be, postal ballot papers **except where those documents are received after 10 pm on the day of the poll.**

(7) The CRO may refuse to issue another postal ballot paper if the CRO—

- (a) has reason to doubt that the postal voter has either lost or has not received the original postal ballot paper or the postal voting statement or one or more of the envelopes provided for their return, or
- (b) considers that it is reasonable for the voter to allow further time for delivery of the documents in accordance with paragraph 11.

(8) Where the application under sub-paragraph (1) is received by the CRO after 5 pm on the day before the day of the poll, the CRO shall only issue another postal ballot paper, or as the case may be, ballot papers if the postal voter applies in person.

(9) The CRO must keep a list of lost postal ballot papers, containing—

- (a) the name and number of the elector as stated in the polling register (or, in the case of an elector who has an anonymous entry, the elector’s electoral number alone);
- (b) the number of the lost postal ballot paper, the numbers of any ballot papers returned along with it, and the numbers of all replacement ballot papers issued under this paragraph; and
- (c) where the postal voter is a proxy, the proxy’s name and address.

(10) Paragraphs 4, 5, 6 and 8 to 12 shall apply to the issue of replacement postal ballot papers under sub-paragraph (6).

(11) Where a postal voter applies in person—

- (a) by 5 pm on the day before the day of the poll, the CRO may hand a replacement postal ballot paper to the postal voter;
- or

(b) after 5 pm on the day before the day of the poll, the CRO may only hand a replacement postal ballot paper to the postal voter,

instead of delivering it in accordance with paragraph 11.

(12) Where the CRO issues another postal ballot paper or, as the case may be, postal ballot papers under sub-paragraph (6), the lost or unreceived ballot paper shall be void and of no effect.

[...]

SCHEDULE 5  
COMBINATION OF POLLS

[...]

SCHEDULE 6  
LEGAL PROCEEDINGS

PART 1  
ELECTION AND RETURN OF CONSTITUENCY MEMBER

<i>Provision applied</i>	<i>Modification</i>
Section 120 (method of questioning parliamentary election)	
Section 121 (presentation and service of parliamentary election petition)	
Section 122 (time for presentation or amendment of parliamentary election petition)	
Section 123 (constitution of election court and place of trial)	
Section 125 (judges' expenses and reception: Scotland)	In paragraph (b) for "the Treasury, out of moneys provided by Parliament" substitute "the Scottish Ministers, out of the Scottish Consolidated Fund".
Section 126 (attendance of House of Commons shorthand writer)	In subsection (1) for the words from the beginning to "deputy" substitute "A shorthand writer".
	In subsection (2) for "Speaker" substitute "Clerk of the Scottish Parliament".
Section 136 (security for costs)	
Section 137 (petition at issue)	
Section 138 (list of petitions)	
Section 139 (trial of petition)	In subsection (3) the words from "the acceptance" to "notwithstanding", in the third place where it occurs, shall be omitted.
	In subsection (6), the reference to the parliamentary election rules shall be construed as a reference to the Scottish Parliamentary Election Rules.
Section 140 (witnesses)	Omit subsection (6).
	In subsection (7), omit the words "Subsection (6) above does

	not apply to Scotland, and in Scotland”.
Section 141 (duty to answer relevant questions)	
Section 143 (expenses of witnesses)	
Section 144 (conclusion of trial of parliamentary election petition)	In subsections (2), (4) and (6), for “Speaker” substitute “Clerk of the Scottish Parliament”.
	Omit subsections (5) and (7).
Section 146 (special case for determination of High Court)	In subsection (2) for “Speaker” substitute “Clerk of the Scottish Parliament”.
Section 147 (withdrawal of petition)	
Section 154 (costs of petition)	
Section 155 (neglect or refusal to pay costs)	
Section 156 (further provision as to costs)	
Section 157 (appeals and jurisdiction)	Omit subsections (1), (4), (6) and (8).
	For subsection (2) substitute— “(2) Subject to the provisions of this Act and the rules made under it, the principles, practice and rules on which election courts act in dealing with parliamentary election petitions shall be observed, so far as appropriate having regard to the different system of election, by the Court of Session and election court in the case of Scottish parliamentary election petitions.”.
	In subsection (7), omit the words from the beginning to “omitted, but”.
Section 158 (report as to candidate guilty of corrupt or illegal practice)	
Section 159 (candidate reported guilty of corrupt or illegal practice)	
Section 160 (persons reported personally guilty of corrupt or illegal practices)	In subsection (4), <del>omit paragraph (a)(i) and</del> , after “Commons” in each place where it occurs, insert “or the Scottish Parliament”.
	<del>Omit subsection (6).</del>
Section 161 (justice of the peace)	
Section 162 (member of legal and certain other professions)	
Section 163 (holder of licence or certificate under Licensing Acts)	

Section 164 (avoidance of election for general corruption etc.)	
Section 165 (avoidance of election for employing corrupt agent)	Omit subsection (4).
Section 166 (votes to be struck off for corrupt or illegal practices)	
Section 167 (application for relief)	Omit subsection (5).
Section 168 (prosecutions for corrupt practices)	
Section 169 (prosecutions for illegal practices)	After “exceeding” insert “the amount specified as”.
Section 170 (conviction of illegal practice on charge of corrupt practice etc.)	
Section 173 (incapacities on conviction of corrupt or illegal practice)	In subsection (1) <del>omit paragraph (a)(i) and</del> , after “Commons”, in both places where it occurs, insert “or the Scottish Parliament”.
	<del>Omit subsection (2).</del>
	In subsection (7) after “Commons” insert “, the Scottish Parliament” and after “functions”, where it second occurs, insert “as a member of the Scottish Parliament or”.
	Omit subsection (10).
Section 173A (incapacity to hold public or judicial office in Scotland)	
Section 174 (mitigation and remission etc.)	
Section 175 (illegal payments etc.)	
Section 176 (time limit for prosecutions)	Omit subsections (2A) to (2G).
Section 178 (prosecution of offences committed outside United Kingdom)	
Section 179 (offences by associations)	
Section 180 (evidence by certificate of holding of elections)	
<del>Section 180A (evidence by certificate of electoral registration)</del>	
Section 181 (Director of Public Prosecutions)	Omit subsections (2) to (6).
Section 183 (costs)	
Section 184 (service of notices)	
Section 185 (interpretation of Part 3)	
Section 186 (computation of time for purposes of Part 3)	The reference to “ <i>section 119 above</i> ” shall be construed as a



reference to article 81 and the reference to “*Part II of this Act*” shall be construed as a reference to Part 3 of this Order.

PART 2

ELECTION AND RETURN OF REGIONAL MEMBER

<i>Provision applied</i>	<i>Modification</i>
Section 120 (method of questioning parliamentary election)	At the end insert— “(3) No election petition may be brought on the grounds of the commission of corrupt or illegal practices or of illegal payments, employments or hirings.  (4) No election petition may be brought in any case in which an application may be made under section 18 of the Scotland Act 1998.”
Section 121 (presentation and service of parliamentary election petition)	For subsection (2) substitute— “(2) If the petition complains of the conduct of— (a) the regional returning officer,  (b) any constituency returning officer,  the officer (or officers) in question shall be deemed to be the respondent (or respondents), together with any regional member returned at the election.”
Section 122 (time for presentation or amendment of parliamentary election petition)	For the section substitute— “ <b>122.</b>  An election petition shall be presented within 21 days after the day on which the result of the election was declared under rule 65 of the Scottish Parliamentary Election Rules in Schedule 2 to the Order.”
Section 123 (constitution of election court and place of trial)	Omit subsections (3) and (4).
Section 125 (judges’ expenses and reception: Scotland)	In paragraph (b) for “the Treasury, out of moneys provided by Parliament” substitute “the Scottish Ministers, out of the Scottish Consolidated Fund”.
Section 126 (attendance of House of Commons shorthand writer)	In subsection (1) for the words from the beginning to “deputy” substitute “A shorthand writer”.

	In subsection (2) for “Speaker” substitute “Clerk of the Scottish Parliament”.
Section 136 (security for costs)	
Section 137 (petition at issue)	
Section 139 (trial of petition)	In subsection (3) for the words from “the acceptance” to the end substitute “that one (or more) of the respondents is no longer a member of the Scottish Parliament.”.
	Omit subsection (4).
	In subsection (6), the reference to the parliamentary elections rules shall be construed as a reference to the Scottish Parliamentary Election Rules.
Section 140 (witnesses)	Omit subsection (6).
	In subsection (7), omit the words “Subsection (6) above does not apply to Scotland, and in Scotland”.
Section 141 (duty to answer relevant questions)	
Section 143 (expenses of witnesses)	
Section 144 (conclusion of trial of parliamentary election petition)	In subsection (1) for the words from “the member” to “void” substitute— “(a) the member or members whose election is complained of was or were duly elected,  (b) some other person or persons should have been declared to be elected, or  (c) the election of all members for that region was void.”.  In subsection (2) for “Speaker” substitute “Clerk of the Scottish Parliament”.
	For subsection (3) substitute— “(3) If the judges constituting the election court differ as to any matter which they are required to determine, they shall certify that difference and, except to the extent that the judges are agreed otherwise, the result of the election shall stand.”.
	Omit subsections (4) to (7).
Section 154 (costs of petition)	
Section 155 (neglect or refusal to pay costs)	

Section 157 (appeals and jurisdiction)	Omit subsections (1), (4), (6) and (8).
	For subsection (2) substitute— “(2) Subject to the provisions of this Act and the rules made under it, the principles, practice and rules on which election courts act in dealing with parliamentary election petitions shall be observed, so far as appropriate having regard to the different system of election, by the Court of Session and election court in the case of Scottish parliamentary election petitions.”.
	In subsection (7), omit the words from the beginning to “omitted, but”.
	Omit subsections (1) to (3) and (6).
	In subsection (4)— “(a) for the words “reported by an election court personally guilty” substitute “convicted”;  (b) omit paragraph (a)(i); and  (c) after “Commons”, in each place where it occurs, insert “or the Scottish Parliament”.
	Omit subsection (4A).
	In subsection (5) for the words “reported personally guilty” in both places where they appear substitute “convicted”.
	In subsection (5A) for the words “reported by an election court personally guilty” substitute “convicted”.
	Omit subsection (6).
Section 160 (persons reported personally guilty of corrupt or illegal practices)	Omit subsections (1) to (3) and (6).
	In subsection (4)— (a) for the words “reported by an election court personally guilty” substitute “convicted”;  (b) after “Kingdom” insert “or election to the Scottish Parliament”; and  (c) after “Commons”, in each place where it occurs, insert “or the Scottish Parliament”
Section 167 (application for relief)	Omit subsection (5).
Section 168 (prosecutions for corrupt practices)	

Section 169 (prosecutions for illegal practices)	For the words from the beginning to “prosecution” substitute—  “A person who is guilty of an illegal practice shall be liable—  (a) in the case of an illegal practice under article 42 or 48 of the Order (as applied by article 82 of the Order), on conviction on indictment to a fine;  (b) in the case of any illegal practice (including the ones mentioned in paragraph (a)), on summary conviction, to a fine not exceeding the amount specified as level 5 on the standard scale; and on a prosecution”.
Section 170 (conviction of illegal practice on charge of corrupt practice etc.)	
Section 173A (incapacity to hold public or judicial office in Scotland)	
Section 174 (mitigation and remission etc.)	Omit subsections (1) to (4).
	In subsection (5) omit— (a) “or of the report of an election court”; and (b) “or report”, in both places where the words occur.
Section 175 (illegal payments etc.)	In subsection (2) omit the words from “and if” to the end.
Section 176 (time limit for prosecutions)	Omit subsections (2A) to (2G).
Section 178 (prosecution of offences committed outside United Kingdom)	
Section 179 (offences by associations)	
Section 180 (evidence by certificate of holding of elections)	Omit paragraph (b).
	After paragraph (ii) insert—  “and  (iii) that a registered party named in the certificate submitted a regional list at the election.”.
Section 180A (evidence by certificate of electoral registration)	
Section 181 (Director of Public Prosecutions)	Omit subsections (2) to (6).
Section 183 (costs)	

Section 184 (service of notices)	
Section 185 (interpretation of Part 3)	At the end, insert— ““ <i>the Order</i> ” means the Scottish Parliament (Elections etc.) Order 2015.”
Section 186 (computation of time for purposes of Part 3)	The reference to “ <i>section 119 above</i> ” shall be construed as a reference to article 81 and the reference to “ <i>Part II of this Act</i> ” shall be construed as reference to Part 3 of this Order.

[...]

<https://www.legislation.gov.uk/sdsi/2020/9780111046906/data.pdf>

**From:** [redacted]

**Sent:** 14 August 2020 11:36

**To:** [redacted]

**Cc:** [redacted]

**Subject:** Scottish Parliament elections - Letters to electoral administrators

**Importance:** High

Dear colleagues

Please see the attached letter and draft Scottish Parliament election amendment order for your consideration.

Please get in touch if you have any questions.

Best wishes

[redacted]

[redacted] | Elections and Constitution Division | Scottish Government | Area 2 West | St Andrews House | Regent Road | Edinburgh | EH1 3DG | [redacted]

I am working from home at the moment but feel free to contact me by email or on my mobile.

*Draft Order laid before the Scottish Parliament under section 115 and schedule 7 of the Scotland Act 1998 and section 156(4)(j) of the Political Parties, Elections and Referendums Act 2000 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2020 No.**

**CONSTITUTIONAL LAW**

**REPRESENTATION OF THE PEOPLE**

**The Scottish Parliament (Elections etc.) Amendment (No. 2)  
Order 2020**

*Made* - - - - - 2020

*Coming into force in accordance with article 1*

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(a) and paragraph 4 of schedule 8 of the Political Parties, Elections and Referendums Act 2000(b) 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, the Scottish Ministers have consulted the Electoral Commission.

In accordance with section 115 and schedule 7 of the 1998 Act(c) and section 156(4)(j) of the 2000 Act(d), a draft of this Order has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation, commencement and transitional provision**

—(1) This Order may be cited as the Scottish Parliament (Elections etc.) Amendment (No. 2) Order 2020 and comes into force on the day after the day on which it is made.

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<sup>(a)</sup> 1998 (c.46) (“the 1998 Act”). Section 12 was substituted by section 4(1) of the Scotland Act 2016 (c.11) (“the 2016 Act”). The powers in section 113(2), (4) and (5) of the 1998 Act are extended to the Scottish Ministers by section 113(1A) of that Act, which is inserted by section 3 of the Scotland Act 2012 (c.11) (“the 2012 Act”).

<sup>(b)</sup> 2000 (c.41) (“the 2000 Act”). The power in paragraph 4 of schedule 8 is exercisable by the Scottish Ministers in accordance with section 72A(1)(c) of the 2000 Act. Section 72A was added to the 2000 Act by section 7(2) of the 2016 Act.

<sup>(c)</sup> Schedule 7 is amended by section 3 of the 2012 Act. There are other amendments that are not relevant to this Order.

<sup>(d)</sup>



This Order has no effect for the purposes of any election for which the date of the poll is on or before 5 April 2021.

### **Amendment of the Scottish Parliament (Elections etc.) Order 2015**

The Scottish Parliament (Elections etc.) Order 2015(a) is amended in accordance with articles [ ] to [ ].

After article 3 (supply of electoral registers) insert—

#### **“Register of electors etc**

**3A.** Subject to article [4(5)] and section 13B of the 1983 Act(b) (alteration of registers: pending elections), an alteration in a published version of the register of electors under section 13A or 56 of the 1983 Act(c) (alteration of registers and registration appeals) which is to take effect after the fifth day before the date of the poll for an election shall not have effect for the purposes of that election.”.

The title of article 4 becomes “Registration and absent voting appeals”.

In article 4(3) after “this article” insert “or section 56 of the 1983 Act (registration appeals)”.

In article 4(5)—

after “under this article” where it first appears insert “or section 56 of the 1983 Act”,  
after “under this article” where it second appears insert “or under section 13(5), 13A(2), 13B(3) or (3B) of the 1983 Act(d) (effective dates of register published following conclusion of canvass and notices of alteration of register)”.

In article 21 (effect of registers)—

in article 21(1) after “A person” insert “registered as a local government elector, or”,  
after article 21(3) insert—

“(4) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, shall for any purpose of this Part relating to that person as elector be conclusive that until the date given in the entry that person is not of voting age nor entitled to be treated as an elector except for the purposes of a Scottish parliamentary election at which the date fixed for the poll is that or a later date.

(5) Article 21(4) applies to an entry in the record of anonymous entries as it applies to an entry in the register of local government electors.”

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(a) S.S.I. 2015/425 (“the 2015 Order”).

(b) Section 13B was substituted by paragraph 1 of schedule 6 the Representation of the People Act 2000 (c.2) (“the 2000 Act) and amended by section 11(2) of the Electoral Administration Act 2006 (c.22) (“the 2006 Act”), paragraph 13 of schedule 4 of the Electoral Registration and Administration Act 2013 (c.6) (“the 2013 Act”) and paragraph 5 of schedule 2 of the Recall of MPs Act 2015 (c.25) (“the 2015 Act”).

(c) Section 13A was substituted by paragraph 1 of schedule 6 of the 2000 Act and is amended by paragraph 3 of schedule 6 of the Political Parties and Elections Act 2009 (c.12) (“the 2009 Act”), paragraph 3 of schedule 1 and paragraph 12 of schedule 4 of the 2013 Act, para 3 of schedule 2 of the 2015 Act. Section 56 is applies to Scotland, with modification, by section 57 of the 1983 Act. Section 56 was amended by paragraph 18 of schedule 4 of the 2013 Act, sections 11 and 12 and paragraph 8 of schedule 1 of the 2006 Act, paragraph 18 of schedule 4 of the 2013 Act and paragraph 8 of schedule 2 of the 2015 Act.

(d)

In article 22 (effect of misdescription) after “or place named” insert “in the register of electors, or”.

After article 23(2) (discharge of registration duties) insert—

“(3) An ERO shall comply with any general or specific directions which may be given by the Scottish Ministers, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the 2000 Political Parties Act (directions as to discharge of registration duties), with respect to the arrangements to be made by the ERO in carrying out the ERO’s functions under this Order.”

In article 42 (limitation of election expenses: constituency and individual regional candidates)—after paragraph (2) insert—

“(2A) Where the date of the poll at Scottish parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998, the maximum amount shall have effect in relation to any candidate at that election as if the amount specified in paragraph (2) were increased by one half.”,

for paragraph (6) substitute—

“(6) Expenses incurred by or on behalf of the candidate which are—

- (a) personal expenses,
- (b) reasonable expenses incurred that are reasonably attributable to individuals’ disability,
- (c) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or
- (d) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English,

do not count towards the maximum amount.”.

In article 43 (limitation of pre-candidacy election expenses: constituency and individual regional candidates at Scottish Parliament general elections)—

after paragraph (5) insert—

“(5A) Where the date of the poll at Scottish parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998, the permitted amount shall have effect in relation to any candidate at that election as if the amount specified in paragraph (5) were increased by one half.”,

for paragraph (8) substitute—

“(8) Expenses incurred by or on behalf of the candidate which are—

- (a) personal expenses,
- (b) reasonable expenses incurred that are reasonably attributable to individuals’ disability,
- (c) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or
- (d) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English,

do not count towards the permitted amount.”.

In article 56 (publication of time and place of inspection of returns and declarations)—

in paragraph (1) for “not less than two newspapers circulating in the constituency for which the election was held” substitute “such manner as the CRO thinks fit”,

in paragraph (2) for “not less than three newspapers circulating in the region” substitute “such manner as the CRO thinks fit”.

After article 72(6) (details to appear on elections publications) insert—

“(6A) For the purposes of paragraphs (4) to (6), the relevant details which appear on election publications must conform to the following specifications—

- (a) type size of at least 11 points as measured in font ‘Times New Roman’ not narrowed; and
- (b) space between text lines of at least 3mm.”.

In article 82(3)(b) (application of certain provisions for Scottish parliamentary elections) the words “(except the reference in section 160(4) of the 1983 Act)” are repealed.

After article 83 (vacancies: constituency seats) insert—

**“83A. Vacancies: regional member seats**

(1) Where it comes to the notice of the Presiding Officer of the Scottish Parliament that the seat of a regional member who was returned from a registered party's regional list is vacant, the Presiding Officer shall forthwith send a notice in accordance with paragraph (2) to the RRO for that region.

(2) A notice under paragraph (1) shall—

- (a) state that a vacancy exists; and
- (b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose regional list that person's name is included.

(3) On receipt of a notice under paragraph (1), the RRO shall ascertain the name of the person, if any, who is to fill the vacancy in accordance with section 10 of the 1998 Act (regional vacancies).

In sub-paragraph 1(2)(a)(ii) of schedule 1 (supply of electoral registers) for “intention to dissolve the Parliament” substitute “proclamation in terms of section 2(5) or 3(2);”.

In schedule 2 (Scottish parliamentary election rules)—

after paragraph 1 (timetable) insert—

**“1A. Application of timetable where proceedings at a Scottish parliamentary election are postponed.**

(1) Subsection (2) applies where—

- (a) notice of the date for the poll for the election has been published under paragraph 1 of this Schedule,
- (b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998, and
- (c) the date proposed by proclamation (“the new date”) is less than five days after the date of the poll specified in the notice of election.

(2) The CRO or RRO must—

- (a) publish a notice stating that the date has changed and specifying the new date, and
- (b) comply with the requirements of this Schedule in accordance with the new date.

(3) Subsections (4) and (5) apply where—

- (a) notice of the date for the poll for the election has been published under paragraph 1 of this Schedule but the statement of persons nominated has not been published,
- (b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998, and
- (c) the date proposed by proclamation (“the new date”) is five days or more after the date of the poll specified in the notice of election.

(4) The CRO or RRO must—

- (a) publish a notice stating that the date has changed and specifying the new date,

(b) comply with the requirements of this Schedule in accordance with the new date.

(5) Notwithstanding sub-paragraph (4)(b), nomination papers, objections to nomination papers and notices of withdrawal of candidature already received by the CRO or RRO in accordance with the table in paragraph (1) prior to the postponement of the poll shall be valid in relation to the postponed poll to be held on the new date.

(6) Subsection (7) and (8) apply where—

- (a) the statement of persons nominated been published under paragraph 1 of this Schedule, and
- (b) the date of the poll has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998.

(7) The CRO or RRO must—

- (a) publish a notice stating that the date has changed and specifying the new date,
- (b) publish a new statement of persons nominated as candidates for return as a constituency member required by rule 18 or, as the case may be, statement of persons and parties nominated for return as regional members required by rule 19,
- (c) publish a new notice of poll to accompany the statements of persons nominated as required by rule 33, and
- (d) comply with the requirements of this Schedule in accordance with the new date.

(8) Notwithstanding sub-paragraph (7)(b)-(d), nomination papers, objections to nomination papers and notices of withdrawal of candidature already received by the CRO or RRO in accordance with the table in paragraph (1) prior to the postponement of the poll shall be valid in relation to the postponed poll to be held on the new date.

(9) In this paragraph—

- (a) “Nomination papers” includes constituency nomination papers, individual nomination papers and regional lists.
- (b) Any reference to a period of time is to be interpreted in accordance with paragraph 2 (computation of time).

**1B. Use of printed election materials where proceedings at a Scottish Parliamentary election are postponed.**

(1) Where a Scottish Parliamentary election has been postponed by proclamation under section 2(5) or section 3(2B) of the Scotland Act 1998, the CRO or RRO may, as they consider appropriate, make use of materials printed for use at the originally scheduled date in accordance with the rules provided in this Schedule for the purposes of the new date.”.

after paragraph 37(2) (issue of official poll cards) insert—

“(2A) Sub-paragraph (2) does not apply to an elector to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies; and the CRO may send such an elector’s official poll card to the place where the elector is detained in legal custody.”

after paragraph 39(2) (appointment of polling and counting agents) insert—

“(2A) The CRO may not limit the number of counting agents under sub-paragraph (2) so that the number allowed to a candidate for return as a constituency member is (except in special circumstances) less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.”,

after paragraph 39(3) insert—

“(3A) The CRO may not limit the number of counting agents under sub-paragraph (3) so that the number allowed to an individual candidate for return as regional member or registered party standing nominated is (except in special circumstances) less than the number obtained by dividing the number of clerks employed on the counting by the total number of individual candidates for return as regional members and registered parties standing nominated.”,

after paragraph 74 (constituency candidate: death of party candidate) insert—

**“74A. Regional election: effect of countermand or abandonment of constituency poll**

(1) This rule applies where at a Scottish parliamentary general election there is a contested election for return of regional members and the poll or declaration of result at a constituency election for a constituency in that region is postponed in accordance with rule 72 or 74.

(2) For the purposes of rule 64(1) (allocation of seats), the RRO is to be treated as having received the statements prepared under rule 61 (conveying results of count etc. to RRO) and the notifications under rule 62(3) (notification of constituency member returned) from each CRO in that region when the RRO has received those statements and notifications in respect of the constituencies in the region for which the polls or declarations of result have not been so postponed.

(3) Section 7(1) of the 1998 Act (calculation of regional figures) shall apply with the modification that the reference in that subsection to “constituencies included in the region” must be read as excluding the constituencies for which the polls or declarations of result have been so postponed.

(4) The subsequent election of a candidate for the constituency shall have no effect upon the validity of the election and return of any regional member.”.

In schedule 3 (absent voting)—

after paragraph 1(4)(d) (general requirements for applications) insert—

“(e) in the case of a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, the address shown on the declaration of local connection in accordance with section 7B(3)(d) of that Act.”

after paragraph 7(2) (additional requirements for applications for a proxy vote in respect of a particular election) insert—

“(2A) Sub-paragraph (2B) applies where such an application (and an application under article 10(7) for the appointment of a proxy contained in such an application to vote by proxy) is made—

(a) after 5 pm on the sixth day before the date of a poll at the election for which it is made and on the grounds that the applicant cannot reasonably be expected to vote in person at the applicant’s allotted polling station because—

(i) of a disability suffered before that date, in circumstances where the disability means that the application could not reasonably have been made before that date, or

(ii) of a disability suffered after that date.

(2B) The application must, in addition to providing the information required by sub-paragraph (1),—

(a) 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 at the election for which it was made, and

(b) satisfy the requirements of paragraph 5(2).”

in paragraph 9(4) (closing dates for applications) after “sub-paragraph (2),” insert “(2A),”.

In schedule 4 (issue and receipt of postal ballot papers)—

in paragraph 13(3) (spoilt ballot paper) for “5 pm” substitute “10 pm”,

in paragraph 14(6) (lost postal ballot paper) after “ballot papers” insert “except where those documents are received after 10 pm on the day of the poll”.

In schedule 6 (legal proceedings)—

In paragraph 1 of Part 1 (application of provisions of the 1983 Act to the election or return of constituency members)—

in the right hand column of the entry for section 160 of the 1983 Act—  
omit the words “omit paragraph (a)(i) and,” and  
for “Omit subsections (4A) and (6).” substitute “Omit subsection (6).”  
in the right hand column of the entry for section 173 of the 1983 Act—  
omit the words “omit paragraph (a)(i) and,” and  
omit the words “omit subsection (2)”,  
after the entry in the table for section 180 (evidence by certificate of holding of elections)  
insert a new entry, “Section 180A (evidence by certificate of electoral  
registration)”.

In paragraph 1 of Part 2 (application of provisions of the 1983 Act to the election or return of  
regional members)—

after the entry in the table for section 157 (appeals and jurisdiction) insert a new entry,  
“Section 160 (persons reported personally guilty of corrupt or illegal practices)”  
and in the corresponding right hand column for the new entry insert—  
“Omit subsections (1) to (3) and (6).

In subsection (4)—

(a) for the words “reported by an election court personally guilty” substitute  
“convicted”;

(b) after “Kingdom” insert “or election to the Scottish Parliament”; and

(c) after “Commons”, in each place where it occurs, insert “or the Scottish  
Parliament”, and

after the entry in the table for section 180 (evidence by certificate of holding of elections)  
insert a new entry, “Section 180A (evidence by certificate of electoral  
registration)”.

In the Appendix (Appendix of Forms),

in Form J (Regional ballot paper), in the “Directions as to the printing of the regional  
ballot paper” after direction 14 insert:

“**15.** The name of each political party must appear in capitals.”,

in Form K (postal voting statement), in the third bullet in the box entitled “Getting Help”  
for “5 pm” where it first appears substitute “10 pm”,

in Form L2 (official poll card (to be sent to an elector voting by post)) on the back of  
card in the second bullet point following the words “If you lose your postal vote or  
make a mistake” in bold for “5 pm” substitute “10 pm”,

in Form M2 (official poll card (to be sent to an elector voting by post)) on the back of  
card in the second bullet point following the words “If you lose your postal vote or  
make a mistake” in bold for “5 pm” substitute “10 pm”,

in Form T (postal voting statement), in the third bullet in the box entitled “Getting Help”  
for “5 pm” where it first appears substitute “10 pm”,

in Form U (postal voting statement), in the third bullet in the box entitled “Getting Help”  
for “5 pm” where it first appears substitute “10 pm”.

## Revocations

—(2) The Orders specified in Schedule [1] (revocations) are revoked, to the extent specified in  
that Schedule.

The Orders revoked by paragraph (1) shall continue to have effect on and after the day on which  
they are revoked as they had effect immediately before that day, for the purposes of any election to  
be held on or before 5 April 2021.

**Amendment of Part I of Schedule 8 of the Political Parties, Elections and Referendums Act 2000**

After paragraph 2(2) of schedule 8 of the 2000 Act insert—

“(3) In relation to polls at elections for membership of the Scottish Parliament, nothing in paragraph 1 shall be taken as extending to—

- (a) reasonable expenses incurred that are reasonably attributable to individuals’ disability,
- (b) reasonable expenses incurred in providing for the protection of persons of property at rallies or other public events, or
- (c) reasonable expenses incurred that are reasonably attributable to the translation of anything into languages other than English.”.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
Authorised to sign by the Scottish Ministers

# SCHEDULE

Ref

## Revocations

**1.** In this schedule, “the 2010 Order” means the Scottish Parliament (Elections etc.) Order 2010<sup>(a)</sup> and “the 2015 Order” means the Scottish Parliament (Elections etc.) Order 2015.

Subject to paragraph 3, the 2010 Order is revoked.

The following provisions of the 2010 Order are not revoked—

article 87 (modification of section 10 of the 1998 Act), and

in Schedule 2, rule 65 (equality of votes at poll for return of regional members).

The following sub-paragraphs of paragraph 3 (provisions of the 2010 Order which are not revoked) of schedule 9 (revocations) of the 2015 Order are revoked—

sub-paragraphs (a) to (k),

sub-paragraphs (m) to (o),

in sub-paragraph (p), the words “and rule 76 (regional election: effect of countermand or abandonment of constituency poll),”

sub-paragraph (q) and

sub-paragraph (r).

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<sup>(a)</sup> S.I. 2010/2999 which was amended by S.I. 2011/2085, S.I. 2012/1479 and S.I. 2015/683 and partially revoked by schedule 9 of the 2015 Order.



**EXPLANATORY NOTE**

*(This note is not part of the Order)*



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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  
(By email)

14 August 2020

Dear Colleague

**SCOTTISH PARLIAMENT (ELECTIONS ETC.) AMENDMENT (NO. 2) ORDER 2020**

Please find enclosed a copy of the draft Scottish Parliament (Elections etc.) Amendment (No. 2) Order 2020 and, in the attached annex, an explanation of the proposed changes to the conduct rules for the May 2021 Scottish Parliament Election.

These changes have been informed by feedback on, and analysis of, previous electoral events and stakeholder engagement.

As I am sure you will appreciate, the Covid-19 situation has affected the Scottish Government's programme of elections work, ensuring that Scottish electoral law enables by-elections to take place during the pandemic, and we are working with the Electoral Management Board to ensure that there are contingency plans in place for the Scottish Parliament elections in May 2021. This has meant that we have limited changes to the draft Order to those that are essential, can be implemented relatively easily and will bring the greatest benefit to voters.

One specific change I would like to highlight is standardising the deadline for the replacement of spoilt or lost postal ballot papers. We appreciate that the 10pm deadline on polling day for the replacement of spoilt and lost postal ballot papers is not universally supported and the Electoral Management Board and the Association of Electoral Administrators have already expressed their views about the practicalities of providing this service. Under the existing legislation, Returning Officers already have to provide replacements for lost ballot papers until 10pm on polling night and we consider that extending this existing service to spoilt ballot papers is consistent and will create a fairer system for voters. The additional burden on administrators, while recognised and appreciated, needs to be balanced against the added flexibility for a postal voter who, with the intention of handing in their postal ballot paper at a polling station, inadvertently spoils their ballot paper on the evening of polling day and needs a replacement in order to exercise their right to vote.

In relation to the impact of Covid-19, the Scottish Government expects the Scottish Parliament Election scheduled for 6 May 2021 to go ahead. We are in active discussions with the Electoral

Management Board for Scotland, the Electoral Commission and other partners about a range of options for running the election in different circumstances from the norm.

Detailed consideration is being given as to how to run a physically distanced poll for the Scottish Parliament Election and local government by-elections. This work is drawing upon public health advice on how in-person voting can be done as safely as possible. At this point in time, we are not intending to run elections on an all-postal basis because it should still be possible to provide the voter with the choice of how to vote even though some restrictions in relation to Coronavirus are in place.

We expect that the demand for postal votes will increase and we are working with the Electoral Management Board and other partners to look at how the increased demand can be met both in terms of applications and the production and issue of postal voting packs.

The intention is that any further changes to legislation which might be necessary to safely run a physically distanced poll will be brought forward separately. This order does not, therefore, include any changes which are solely related to the Covid-19 situation.

We would welcome comments on the attached proposals as set out in the draft order. The order may be subject to change, particularly due to any recommendations which may be made by the Electoral Commission in response to the statutory consultation. The proposals set out in the attached order should not, therefore, be taken as reflecting the Scottish Government's final position.

The intention is that, once finalised, the order will be laid in the Scottish Parliament in late October and that it will have effect for the May 2021 elections. I would be very grateful if you could let us have any comments by **Friday 4 September 2020**. Please send your comments to [Roddy.Angus@gov.scot](mailto:Roddy.Angus@gov.scot).

Yours sincerely

Penny Curtis  
Head of Elections and Freedom of Information Division

## Annex

### **Scottish Parliament (Elections etc.) Amendment (No. 2) Order 2020 - Background to changes**

#### **Revocations and savings in the 2015 conduct order** (*Articles 3, 4, 5, 6, 8, 9, 14, 15, 17(5) and 20*)

When the 2015 conduct order was drafted and made, the Scottish Parliament only had certain responsibilities in relation to administration of the Scottish Parliament elections and these powers did not extend to the electoral registration aspects of the order. Because of this restriction, responsibility for the conduct order for the 2016 Scottish Parliament election was effectively a joint issue for the Scottish and UK governments.

In practice this was dealt with by replacing all non-registrations provisions in the 2010 conduct order by a new Scottish parliament order, the 2015 conduct order, while retaining the registration specific provisions in the 2010 conduct order. This was achieved by retaining the relevant provisions when the rest of the 2010 conduct order was revoked. These retentions are detailed in paragraph 3 of schedule 9 to the 2015 conduct order. The SofS for Scotland did not make any changes in relation to the electoral registration provisions in the 2010 conduct order.

The Scotland Act 2016 subsequently devolved the power to make provision for the registration of local government electors to the Scottish Parliament and there is now no policy reason for retaining the registration provisions in the 2010 conduct order separately.

The opportunity has been taken to use this order to incorporate some of the retained provisions of the 2010 Order into the 2015 Order.

In carrying over provisions which are still in force in the 2010 Order into the 2015 Order there was a number which were identified where there is not a need to copy them into the new Order as they are already covered by the existing drafting. The following provisions of schedule 9, paragraph 3 of the 2015 Order don't need to be replicated:

- article 15(2) (officers of councils to be placed at the disposal of a RRO), so far as relating to the functions of a RRO under the 2010 Order,
- article 16 (returning officers: discharge of functions), so far as relating to—
- the power of a RRO to appoint persons to discharge the RRO's functions under the 2010 Order, and
- the duty of RROs and CROs to co-operate in relation to the functions of a RRO under the 2010 Order,
- article 24 (payment of registration expenses),
- article 28 (breach of official duty),
- article 91 (sending of applications, notices etc.),
- article 92 (interference with notices), so far as relating to notices published in connection with the duties of an ERO under the 2010 Order,

#### **Record of anonymous entries** (*Article 7*)

Article 21 of the 2015 conduct order sets out that a person on the list of proxies should not be excluded from voting due to certain grounds, for example not being of voting age. However this need to be read together with article 21 of the 2010 conduct order, as set out in sub-paragraph 3(f) of schedule 9 to the 2015 conduct order, which also applies the same provisions to other voters on the register.

The equivalent provision for UK parliamentary elections can be found in section 49 of the Representation of the People Act 1983.

Paragraph 7 of schedule 1 to the Electoral Administration Act 2006 inserted a new sub-paragraph (4A) into section 49 which extended the provisions in the section to those with an entry on the record of anonymous entries at relevant elections.

We are extending the prohibition against being excluded from voting so that it specifically applies to an entry in the record of anonymous entries, in the same way as it applies to an entry in the register of local government electors.

### **Exemptions from expenditure limits and increase of expenditure limits where the poll is postponed by the Presiding Officer (*Articles 10, 11 and 23*)**

The referendums (Scotland) Act 2020 introduce exemptions for costs associated with an individual's disability, security costs for public events and translation of materials from counting towards a permitted participant's expenditure limit. The proposal is that costs associated with disabilities, security and translations should not count towards expenditure limits.

Similar recommendations were made, and accepted, in relation to the Referendums Bill. Sub-paragraphs 12(2)(c), (d) & (e) of schedule 3 to the Referendums (Scotland) Act 2020 exempt reasonable costs incurred in connection with adapting campaign materials for those with disabilities, providing security at election events and translating election materials into other languages from counting towards expenditure limits. The costs involved still have to be funded by campaigners, they just don't count against expenditure limits.

Article 42 of the 2015 conduct order sets out limitations on election expenses for constituency and individual regional candidates. The only area currently exempt from the expenditure limit is a candidate's personal expenses (paragraph (6)). The equivalent provisions for parties can be found in paragraph 2 of schedule 8 to PPERA 2000.

The policy is that the new exemptions introduced for permitted participants' expenditure at referendums in Scotland should be extended to constituency candidates, individual regional candidates and parties at Scottish Parliament elections.

Provision has also been made in articles 10(1) and 11(1) for constituency and individual regional candidates' expenditure limits to be increased by 50% if a poll is postponed by the Presiding Officer under the powers set out in sections 2(5) and 3(2B) of the Scotland Act 1998. This is in line with the similar arrangements for postponement of UK parliamentary elections in the event of the demise of the Crown, as set out in section 20(5) of the Representation of the people Act 1985.

### **Publication of time and place for inspection of expenditure returns (*Article 12*)**

Articles 56(1) and (2) of the 2015 conduct order both include a requirement to "publish in not less than X newspapers" a notice of the time and place at which candidates' returns and declarations can be inspected.

Concerns have been expressed that publication of notices in newspapers is expensive and, in the digital age, not the best way to publicise the opportunity to inspect expenditure returns. It is also not in line with the aim of encouraging returning officers to make expenditure returns available online, rather than just for physical inspection.

Similar concerns were expressed around the publication in newspapers of proposals around boundary change and this resulted in an amended requirement “to publish in “such manner as it thinks fit” being included at section 33 of the Scottish Elections (Reform) Act 2020.

The Government’s view is that newspaper publication is no longer the most cost effective way of giving notice of the opportunity to inspect expense returns. All councils have alternative ways of publicising notices and similar documents, normally including online publicity and the placing of notices in libraries and other public buildings.

The proposal is therefore that the requirement to publish in newspapers set out in article 56 should be replaced with a requirement for the returning officer to publicise the opportunity to inspect expenditure returns in such manner as they think fit.

### **Legibility of imprints** (*Article 13*)

#### Background

Article 72 sets out that any election publication must have an imprint setting out details of the printer, promoter and publisher of the publication. This is required so that the reader knows the source of the information and views expressed in the publication and can make a reasoned judgement as to its content.

It has been suggested that, either unthinkingly or deliberately, the imprint on some publications has been included in such a way as to make it difficult to read, either due to its size or poor contrast between the font colour and the background. It has been suggested that a requirement to ensure that an imprint is legible should be added to the legislative requirement.

The Government is of the view that any imprint should fulfil the purpose it is designed to achieve and that an illegible imprint, although present, is not complying with the spirit of the legislation.

Our initial proposal was to add a requirement to article 72 that “the relevant details” required by subparagraphs (4) to (6) must be included in such a way that they are legible.

However, following discussions with the Electoral Commission about how legislation around legibility would work in practice, we have agreed that a minimum type size should be specified in the legislation.

This is viewed as a temporary solution pending further consideration by the Government and the Electoral Commission on how legibility might be better defined or set out in legislation.

### **Supply of electoral register** (*Article 16*)

This is a technical change to reflect the amendment of section 2(5)(a) of the Scotland Act 1998, by section 3(2)(a) of the Scottish Elections (Reform) Act 2020 which sets out that the Presiding Officer’s power to postpone a Scottish Parliament election applies even where the Parliament had already been dissolved in advance of an ordinary general election.

### **Procedures to be followed if an election is postponed** (*Article 17(1)*)

Sections 2(5) and 3(2B) of the Scotland Act 1998 (as amended by section 3 of the Scottish Elections (Reform) Act 2020) allow for the Presiding Officer to change the date of a Scottish Parliament poll if the Parliament has already been dissolved in the run up to an election (either ordinary or extraordinary). This differs from the pre-Reform Act position where the Presiding Officer could only

propose a date before Parliament had dissolved. *[Please note that this change predated the emergence of Covid-19 and it should not be viewed as part of the Government's response to the pandemic.]*

However this change, which is intended to take account of unexpected events which might prevent a poll being run, means that a poll may be postponed whilst it is actually in progress. Previously this would have been very unlikely, but not impossible.

The date of the poll can only be delayed by up to one calendar month (about 23 counting days), which does not allow sufficient time to re-run a full poll. The full poll process takes a minimum of 28 counting days from the last possible day for the publication of the notice of election, which starts the nomination process, to the date of poll.

As the Act is silent on what happens around the administration of the poll in such circumstances, we are proposing to include provisions which will allow for materials produced or used in connection with the original poll date to be used for the revised poll date. For example, we see no reason why (assuming they have already been printed) ballot papers should have to be reprinted (even assuming there was enough time to do so) as the only change would be to the date on the back of the ballot paper. Our view is that it would be appropriate to allow ballot papers, and other materials, to be re-used where practicable. This will help to reduce the cost of any postponed election and will remove the need for returning officers to have to reprint ballot papers etc.

Since the point at which a postponement is announced, or the length of any postponement, is not fixed it is not possible to set out in legislation exactly what procedure should be followed in all circumstances. Therefore the policy intention is to set out a number of principles which must be followed and to make provision for some documentation to be used at the new poll. The policy intention is to reduce the disruption and expense of any postponement of the poll whilst still allowing it to be run as closely to the normal procedure as possible.

With this overall aim in mind, we are making the following provisions:

- If the poll is postponed before the notice of election is published then:
  - the poll should run to the normal timetable based on the new poll date.
- If the poll is postponed after notice of election has been published but before publication of statement of persons nominate then:
  - If the postponement is for less than 5 counting days (i.e. there is insufficient time to re-run the nomination process), then a new notice of poll should be issued. The nomination period should be extended, based on the new date of poll, and the rest of the poll run to the normal timetable based on the new date of poll.
  - If the postponement is for more than 5 counting days, a new notice of poll should be published. The full poll will then run to normal timetable based on the new poll date. The nomination period will be extended to allow candidates to withdraw their nominations and for new nominations to be made. Candidates who were nominated for the original poll can remain as candidates for the postponed poll, unless they withdraw, i.e. candidates who wish to continue to stand do not have to be re-nominated.
- If the poll is postponed after publication of the statement of persons nominate then:

- A revised timetable should be calculated based on the new date of poll and the poll continues based on the revised timetable.
- Revised notices should be issued to replace any notices that have already been published.
- The nomination process would not be re-run.
- A notification should be issued to voters with an explanation of what has happened and the changes involved.
- Any functions or processes which had been completed, or started under the original timetable but would still have to be complied under the new timetable, will go by the new timetable, e.g. registration would re-open/continue until the revised close of registration; absent voting deadlines would be based on new date of poll etc.
- If postal ballot packs have already been issued then voters should be informed that they can still be used for voting at the poll. If any postal ballot packs have been returned, then they will continue to count for the postponed poll.
- Any materials which have been printed etc. can continue to be used for the new poll date even though they may not show the new date of poll.

These changes include the following:

- Ballot papers
- Corresponding number list
- Postal ballot packs (whether still to be issued, have been issued or have been returned)
- Any completed returned postal ballots should be allowed to count
- Any deposits paid are retained until after revised poll and forfeited if appropriate.

Documents which will require to be re-issued:

- Notice of election and other notices which had already been issued.

We are not proposing to introduce a procedure which would allow postal voters who have already returned their postal votes to cancel those returned votes and for replacement ballot papers to be issued.

### **Issue of official poll cards to prisoners (*Article 19(2)*)**

Paragraph 37(2) of schedule 2 to the 2015 conduct order provides for the constituency returning officer to send or deliver an elector's official poll card to the "elector's qualifying address". Article 8(11) sets out a definition of "qualifying address", as the address at which the person is entitled to be registered. However, this definition only applies for the purposes of article 11.

There is no other definition of qualifying address in the conduct order, which would tend to imply that in the absence of a definition, the use of qualifying address in paragraph 37(2) is open to interpretation. We understand that in the absence of a specific definition, administrators have tended to use the definition set out in article 8(11), even though it does not apply to paragraph 37(2).



Article 90, of the conduct order, allows for a returning officer to take such steps as they think appropriate to remedy any act or omission which is not in accordance with the rules or any other requirements applicable to the election. This has always been taken as allowing returning officers the discretion to depart from the strict interpretation of the rules where it is obvious that the set down procedure would not be in the best interest of the voter, or others.

Whilst the lack of a specific definition for the use of “qualifying address” in paragraph 37(2) does not seem to have caused any significant difficulties in the past, concerns have been expressed that sending the official poll card for a prisoner, who is confined in a prison, to their registered address may not always be a sensible option. In particular, it would be undesirable for a Returning Officer to consider themselves to be obliged to issue a polling card to a ‘notional’ qualifying address, where a prisoner has registered by declaration of local connection to a relevant previous address or an address they normally frequented under new section 7B(4) of RoPA (as amended by section 8 of the Scottish Elections (Franchise and Representation) Act 2020).

More generally, if a returning officer is aware that an elector is a prisoner, it would seem to be more sensible to send the poll card to the prison rather than their registered address. This would avoid the risk that those resident at the registered address will simply destroy, or ignore, the poll card, on the assumption that it is an error, and, consequently, the prisoner would not receive their poll card. Failure to receive a poll card would mean that the prisoner would not be made aware of how to change their voting method or other assistance which might be available.

The policy proposal is that the official poll card should be sent directly to the elector, where possible, and therefore paragraph 37(2) has been amended to make it clear that in the case of a confined prisoner, the official poll card should be sent to their prison address as opposed to their registered address.

#### **Number of counting agents** (*Article 17(3) and (4)*)

Sub-paragraphs 39(2) and (3) of schedule 2 to the 2015 conduct order currently set out that the returning officer may limit the number of counting agents as long as each candidate and party have the same limit. However there is no de minimis level set for the number of counting agents which have to be appointed.

Concerns have been expressed that rule 39 could be used by a returning officer in such a way as to unreasonably limit scrutiny by reducing the number of counting agents so that there are insufficient to carry out effective observation of the count. It should be noted that, as far as we are aware, there have not been any instances of this happening in practice.

The intention is to modify rule 39(2) to reflect the position at other elections.

The equivalent provision at UK Parliament elections is set out in rule 30(2) of schedule 1 to the Representation of the People Act 1983.

Articles 17(3) and 17(4) modify rules 39(2) and (3) to allow returning officers to limit the number of counting agents but the number of counting agents per individual candidate and party must be:

- the same in the case of each candidate and party; and
- the number allowed to a candidate or party shall not (except in special circumstances) be less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.

The numbers allowed are to be calculated separately for the constituency and regional counts and are not cumulative, i.e. only counting agents appointed for the constituency count can attend that count and only counting agents appointed for the regional count can attend the regional count. The same individual can be appointed as a counting agent for both counts but their appointment should count against both limits.

The proposed limit reflects that for referendum counting agents set out in the Referendums (Scotland) Act 2020, apart from the “(except in special circumstances)” provision which takes account of the fact that many election counts take place in premises that are smaller than are likely to be used at a referendum.

### **Registered address for detained prisoners who are applying for an absent vote (*Article 18(1)*)**

Paragraph 1(4) of schedule 3 to the 2015 conduct order sets out, in relation to specific categories of elector, what address the applicant can be registered at, or be treated as having applied to be registered at, when applying for an absent vote.

Concerns have been raised that, whilst Paragraph 1(4)(c) sets out the position in respect of remand prisoners, there is nothing which sets out the position for detained prisoners. They have asked that we clarify in the legislation at what address a detained prisoners can apply for an absent vote.

Our view is that a detained prisoner should be treated in a similar way to a person remanded in custody and that they should be able to apply for an absent vote at either the place at which they are detained or the address shown on their declaration of local connection.

### **Emergency proxies for medical reasons (*Article 18(2) and (3)*)**

Article 9(2) of the conduct order sets out the conditions that must be satisfied to grant an application to vote by proxy at a particular Scottish Parliament election.

Paragraph 9(3) of schedule 3 to the conduct order sets out the deadline for applying for a “normal” proxy vote is 5pm on the sixth day before the date of poll.

Paragraph 7(2) of schedule 3 sets out that an application made on the grounds of the applicant’s disability after 5pm on the sixth day before the date of poll must be attested in line with the requirements of paragraph 5 and include the date upon which the applicant became disabled (subparagraph 7(2)(b)).

Sub-paragraph 9(4) of schedule 3 sets out that the deadline for an application for an “emergency” proxy under sub-paragraph 7(2) is 5pm on the day of poll.

Although it does not seem to be specifically stated as such, this combination of conditions is generally taken to mean that if the disability to the individual applying for an “emergency” proxy happened before the deadline for a “normal” proxy application, then the individual is not eligible for an “emergency” proxy.

This has led to concerns that if a potential voter were to suffer a disability before the deadline for a normal proxy but, for good reasons, was not able to apply for a proxy until after the proxy deadline, then they would not qualify for an emergency proxy. Such a situation might occur where an individual is involved in an incident, is hospitalised and is physically unable, perhaps due to being unconscious, to apply for a proxy vote before the deadline for a normal proxy.

These concerns were addressed in the Referendums (Scotland) Act 2020 by the inclusion, in sub-paragraph 7(9)(a)(i) of schedule 1, of specific provision for a disability suffered in circumstances where the disability means that the application could not reasonably have been made before that deadline for a “normal” proxy.

The proposal is that the change made in the Referendums (Scotland) Act 2020, which allows for an “emergency” proxy to be granted in a situation where even though the disability happened before the deadline for a “normal” proxy the applicant was unable to apply before that deadline, should be replicated for Scottish Parliament elections.

The policy intention is that in such a situation the individual can apply for an emergency proxy but they must provide an explanation of why they were unable to apply before the normal deadline. As currently, the final decision on whether to grant an emergency proxy would lie with the ERO.

Any application under the amended provision will be subject to the matters to be specified and the requirement for attestation of the application as set out in paragraph 5 of schedule 3, as per the requirement of sub-paragraph 7(2) for existing “emergency” proxy applications.

### **Standardising the deadline for replacement of spoilt or lost ballot papers** (Articles 19 and 21 (b) to (f))

Paragraph 13(3) of schedule 4 to the 2015 conduct order sets out that the deadline for replacing spoilt postal ballot papers is “5pm on the day of poll”. Paragraph 14 of the same schedule sets out the procedure for replacing lost postal ballot papers but does not specify a deadline on the day of poll for applications. It has therefore been accepted that, in the absence of anything to the contrary, the deadline is the close of poll at 10pm.

This difference in deadlines means that a replacement for a lost ballot paper, which does not require any tangible proof, can be provided after 5pm but a spoilt ballot paper, for which proof exists in the form of the spoilt ballot paper, can’t be replaced. This situation could result in an individual claiming that a postal ballot paper which has been spoilt has not been received, in order to get a later replacement. This is an understandable but legally questionable course of action.

It has been suggested that the deadline should be standardised at 5pm, due to the logistical problems with setting up a place where ballot papers can be replaced/exchanged until 10pm on the date of poll. However, changing both deadlines to 10pm will not add significantly to returning officers’ existing duties, since they already have to make similar arrangements for replacement of lost/not received ballot papers. Extending the deadline for replacement of spoilt ballot papers would also be in the best interest of the voters.

The proposal is therefore that the deadline for the replacement of spoilt ballot papers, currently 5pm, set out in paragraph 13(3) of schedule 4 to the 2015 conduct order should be changed to 10pm on the day of poll.

In order to clarify the position around replacement of lost/not received ballot papers, we are also adding a specific 10pm deadline for replacement to paragraph 14 (6) of schedule 4. Whilst we appreciate that this is not strictly necessary, as the issuing of a replacement ballot paper is not practicable after the close of poll at 10pm, our view is that a specifically stated deadline for both would provide clarity and certainty to voters and administrators.

Changes have also been made to the guidance provided on the postal voter’s poll cards and postal voting statements (forms K, L2, M2, T and U) as set out in article 21 (b) to (f).

## **Printing of party name on regional ballot paper** (*Article 21(a)*)

The instruction for printing constituency ballot papers set out in form J of the appendix of forms to the 2015 conduct order, specify that certain types of type should be used for different entries, for example political parties' and individuals candidates' names must be in bold print. However whilst the printing instructions for form J indicate that individual candidates' surnames must be in capitals (paragraph 12), they are silent on whether capital or lower case should be used for political parties' names. The example of the ballot paper set out in form J shows the political parties' names as being in capitals.

As far as we are aware, electoral administrators have always complied with the printed format of the example ballot paper and have included party names in capitals. However, at the last election in 2016, it was queried whether or not the party name should be all in capitals or if they could be in lower case with only initial capitals.

The Scottish Government does not support the interpretation that the party name could be printed in lower case with initial capitals and we are therefore amending the printing instructions to make it clear that party names must be printed in capitals and bold type.

With this in mind we are amending the directions as to the printing of the regional ballot paper so that it is clear that the names of the political parties must appear in capitals. This would ensure that they match the surnames of individual candidates which must also appear in capitals, as set out in paragraph 12.