

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

SECTION 12: Power to make provision about elections

Purpose and Effect

This section enables the Secretary of State by order to make provisions for the holding of elections. That includes provisions about the general conduct of elections, return of members, registration of electors, levels of election expenses and combination of Scottish Parliament elections with other elections.

General

This election related section is related to section 11.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	28-Jan-98	413
CR	12-May-98	229
LC	14-Jul-98	220

Details of Provisions

Subsection (1) provides for the Secretary of State by order to make provision:

- for the conduct of elections to the Parliament;
- for questioning such an election and the consequences of election irregularities; and
- for the return of members otherwise than at an election i.e. regional members.

The Scottish Parliament (Elections etc.) Order 1999 ([S.I. 1999/787](#)), made in exercise of this power, covers the detailed arrangements for the conduct of elections and the process for dealing with election irregularities.

Further provision about the making of this order is to be found in sections 112 to 115 and Schedule 7. Paragraph 1 of Schedule 7 provides that the order is subject to Type C procedure which means that the Secretary of State cannot make the order unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament. Elections to the Scottish Parliament are a reserved matter. Section B3 of Schedule 5 makes further provision in this regard.

Subsection (2) expands further upon the scope of the order-making power provided by subsection (1). It makes it clear that it enables provision to be made:

- for the registration of electors;

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for disregarding alterations to the register of electors;

about limits on the election expenses of individual candidates. As originally enacted, this also referred to the expenses of registered political parties, but these words were repealed, as from 16 February 2001, by section 158 and paragraph 13(3) of Schedule 21 of the [Political Parties, Elections and Referendums Act 2000 \(c.41\)](#). See also Article 1 of The Political Parties, Elections and Referendums Act 2000 (Commencement No. 1 and Transitional Provisions) Order 2001 ([S.I. 2000/222](#));

for elections to the Parliament to be held on the same day as other elections (e.g. for local government and the European Parliament);

to modify the operation of section 7(1), which provides for the return of constituency members to be determined before the process of allocating regional members can proceed, where a poll at a constituency election is abandoned (or notice of it is countermanded) so that special provision can be made enabling the regional members to be returned even though not all of the constituency members have been returned; and

to modify the effect of section 8(7) to ensure that the correct number of seats are allocated. The note on section 8 gives details of the order made.

Subsection (3) makes it clear that subsection (1)(c) will enable section 10(4) and (5), which deal with the filling of regional vacancies from a party's list, to be modified. The note on section 10 gives details of the exercise of this power).

Subsection (4) supplements and elaborates on the scope of subsections (1) and (2).

Paragraph (a) enables the established statutory procedures for elections to be applied, subject to any necessary alterations.

Paragraph (b) provides that an order may amend forms contained in, or in regulations or rules made under, the Representation of the People Acts to enable such forms to be used for elections to the Parliament as well as for their original purpose.

Paragraph (c) enables consequential modification of any legislative provision relating to the registration of Parliamentary or local government electors (e.g. the Town & Country Planning (Control of Advertisements) Regulations 1992).

Subsection (5) provides that the return of a member at an election to the Parliament may be questioned only under Part III (legal proceedings) of the Representation of the People Act 1983, as applied and modified by an order under subsection (1). However, section 18 permits an action to be raised in the Court of Session seeking a declarator that the person who was returned as a member of the Parliament is disqualified.

Subsection (6) defines, for the purposes of the Act (e.g. section 10), the "regional returning officer" as the person designated as such in an order made by the Secretary of State. This order is not subject to any Parliamentary procedure.

The Regional Returning Officer is, the person who, under section 41 of the Representation of the People Act 1983, is the returning officer at elections of councillors for the local authority for the local government area corresponding to that particular region (see The Scottish Parliament (Regional Returning Officers)(Scotland)(No.2) Order 1999 ([S.I. 1999/829](#)), revoking ([S.I. 1999/270](#))).