



# Scotland Act 2016

## 2016 CHAPTER 11

### PART 1

#### CONSTITUTIONAL ARRANGEMENTS

##### *Elections etc*

### 3 Elections

(1) Section B3 of Part 2 of Schedule 5 to the Scotland Act 1998 (elections) is amended as follows.

(2) Under the heading “B3 Elections” insert—

“(A) *Elections for membership of the House of Commons and the European Parliament*”.

(3) For “, the European Parliament and the Parliament” substitute “ and the European Parliament ”.

(4) Omit the words from “The franchise at local government elections” to the end of the Exceptions and insert—

“(B) *Elections for membership of the Parliament and local government elections in Scotland*

The subject-matter of sections 2(2A) and 12A of this Act.

The subject-matter of section 43(1AA) of the Representation of the People Act 1983.

The combination of—

- (a) polls at elections or referendums that are outside the legislative competence of the Parliament with polls at—
  - (i) elections for membership of the Parliament, or
  - (ii) local government elections in Scotland, and

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- (b) polls at ordinary general elections for membership of the Parliament with polls at ordinary local government elections in Scotland.

Any digital service provided by a Minister of the Crown for the registration of electors.

The subject matter of—

- (a) Parts 5 and 6 of the Political Parties, Elections and Referendums Act 2000 (expenditure in connection with elections) where a limit applies to expenditure in relation to a period determined by reference both to the date of the poll for an election within the legislative competence of the Parliament and to the date of the poll at an election for membership of the House of Commons or the European Parliament, and
- (b) sections 145 to 148 and 150 to 154 of that Act (enforcement) as they apply for the purposes of Part 5 or 6, so far as the subject-matter of that Part is reserved by paragraph (a).

The subject matter of—

- (a) sections 155 and 156 of the Political Parties, Elections and Referendums Act 2000, except in relation to Parts 5 and 6 of that Act so far as those Parts relate to elections for membership of the Parliament, and
- (b) sections 145 to 148 and 150 to 154 of that Act as they apply for the purposes of section 155 or 156, so far as the subject-matter of that section is reserved by paragraph (a).

The subject-matter of the following sections of the Political Parties, Elections and Referendums Act 2000 in relation to elections for membership of the Parliament—

- (a) section 1, except in relation to—
    - (i) financing the Electoral Commission,
    - (ii) preparation, laying and publication by the Commission of reports about the performance of its functions, and
    - (iii) provision by the Commission of copies of regulations made by it or notice of the alteration or revocation of such regulations,
  - (b) sections 2 to 4, 6(1)(e) and (f) (and (g) to the extent that it relates to the law mentioned in those paragraphs),
  - (c) sections 12, 21 to 33, 35 to 37, 39 to 57, 58 to 67, 69, 71, 71F, 71G, 71H to 71Y and 140A,
  - (d) section 149 (except in relation to the register kept under section 89),
  - (e) sections 157 and 159 to 163, and
  - (f) sections 145 to 148 and 150 to 154 as they apply for the purposes of a provision mentioned in paragraphs (a) to (e), so far as the subject matter of that provision is reserved by those paragraphs.”
- (5) In the Interpretation provision, omit the definitions of “Digital service” and “Ordinary local election” and insert— “ Paragraph 5(1) of Part 3 of this Schedule does not apply to the subject-matter of the Political Parties, Elections and Referendums Act 2000; and references to the subject-matter of that Act are to be read as at the day on which the Scotland Act 2016 received Royal Assent. ”

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#### Commencement Information

II S. 3 in force at 18.5.2017 by S.I. 2017/608, reg. 2(1)(a)

## 4 Power to make provision about elections

- (1) For sections 12 and 12A of the Scotland Act 1998 (power of Scottish Ministers and Secretary of State to make provision about elections) substitute—

### “12 Power of the Scottish Ministers to make provision about elections

- (1) The Scottish Ministers may by order make any provision that would be within the legislative competence of the Parliament, if included in an Act of the Scottish Parliament, as to—
- (a) the conduct of elections for membership of the Parliament,
  - (b) the questioning of such an election and the consequences of irregularities, and
  - (c) the return of members of the Parliament otherwise than at an election.
- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision—
- (a) about the registration of electors,
  - (b) for disregarding alterations in a register of electors,
  - (c) about the limitation of the election expenses of candidates,
  - (d) for the combination of polls,
  - (e) for modifying the application of section 7(1) where the poll at an election for the return of a constituency member is abandoned (or notice of it is countermanded), and
  - (f) for modifying section 8(7) to ensure the allocation of the correct number of seats for the region.
- (3) The provision that may be made under subsection (1)(c) includes, in particular, provision modifying section 10(4) to (5A).
- (4) An order under subsection (1) may—
- (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and
  - (b) so far as may be necessary in consequence of any provision made by an order under subsection (1), modify any provision made by any enactment relating to the registration of parliamentary electors or local government electors.
- (5) The return of a member of the Parliament at an election may be questioned only under Part 3 of the Representation of the People Act 1983 as applied by an order under subsection (1).

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- (6) For the purposes of this Act, the regional returning officer for any region is the person designated as such in accordance with an order made by the Scottish Ministers under this subsection.

### **12A Power of the Secretary of State to make provision about the combination of polls**

- (1) The Secretary of State may by regulations make provision for—
- (a) the combination of polls at ordinary general elections for membership of the Parliament with polls at the elections listed in subsection (2), and
  - (b) the combination of polls at extraordinary general elections for membership of the Parliament, and by-elections for membership of the Parliament, with polls at the elections listed in subsections (2) and (3).
- (2) The elections are—
- (a) early parliamentary general elections,
  - (b) parliamentary by-elections, and
  - (c) European parliamentary by-elections.
- (3) The elections are—
- (a) parliamentary general elections, and
  - (b) European parliamentary general elections.
- (4) The Secretary of State may not make regulations under this section without the agreement of the Scottish Ministers.
- (5) Regulations under subsection (1) may—
- (a) apply, with or without modifications or exceptions, any provision made by or under the Representation of the People Acts or the European Parliamentary Elections Act 2002 or by any other enactment relating to parliamentary elections, European Parliamentary elections or local government elections, and
  - (b) modify any form contained in, or in regulations or rules made under, the Representation of the People Acts so far as may be necessary to enable it to be used both for the original purpose and in relation to elections for membership of the Parliament.”
- (2) In section 15 of the Representation of the People Act 1985 (combination of polls) after subsection (5B) insert—
- “(5C) Before making provision under subsection (5) in connection with the combination of polls where one of the elections is a local government election in Scotland, the Secretary of State must consult the Scottish Ministers.”

#### **Commencement Information**

**I2** S. 4 in force at 18.5.2017 by S.I. 2017/608, reg. 2(1)(b)

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## 5 Timing of elections

(1) Section 2 of the Scotland Act 1998 (ordinary general elections) is amended as follows.

(2) In subsection (2) for the words from “the day” to the end substitute—

- “(a) subsection (2A) prevents the poll being held on that day, or
- (b) the day of the poll is determined by a proclamation under subsection (5).”

(3) After subsection (2) insert—

- “(2A) The poll shall not be held on the same date as the date of the poll at—
  - (a) a parliamentary general election (other than an early parliamentary general election), or
  - (b) a European parliamentary general election.

(2B) Where subsection (2A) prevents the poll being held on the day specified in subsection (2), the poll shall be held on such day, subject to subsection (2A), as the Scottish Ministers may by order specify, unless the day of the poll is determined by a proclamation under subsection (5) as modified by subsection (5ZA).”

(4) In subsection (3) after “May” insert “, or on the day specified by an order under subsection (2B) ”.

(5) In subsection (5) at the beginning insert “ Subject to subsection (2A), ”.

(6) After subsection (5) insert—

“(5ZA) Where a day is specified by order under subsection (2B), subsection (5) applies as if the reference to the first Thursday in May were a reference to that day.”

(7) Omit subsections (5A) to (5C).

(8) In paragraph 1(2) of Schedule 7 (procedure for subordinate legislation) in the appropriate place insert—

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“Section 2(2B)

Type L”

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(9) Section 43 of the Representation of the People Act 1983 (day of ordinary local elections in Scotland, and other timing provisions) is amended as follows.

(10) In subsection (1) at the beginning insert “ Subject to subsection (1AA), ”.

(11) After subsection (1A) insert—

“(1AA) The poll shall not be held on the day specified in or fixed under subsection (1) where that day is the day of the poll at an ordinary general election for membership of the Scottish Parliament.

(1AB) Where subsection (1AA) prevents the poll being held on the day specified in or fixed under subsection (1), the poll is to be held on such other day as the Scottish Ministers may by order specify.

(1AC) An order under subsection (1AB) is subject to the affirmative procedure.”

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### Commencement Information

**I3** S. 5 in force at 18.5.2017 by S.I. 2017/608, reg. 2(1)(c)

## 6 Electoral registration: the digital service

- (1) The Representation of the People Act 1983 is amended as follows.
- (2) In section 10ZC (registration of electors in Great Britain) at the end insert—
  - “(4) The power to make regulations under this section, so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Scotland, is exercisable by the Scottish Ministers concurrently with that Minister.
  - (5) The power of the Scottish Ministers to make regulations by virtue of subsection (4) is exercisable in the same ways and subject to the same provisions as their power to make other regulations under this section, except that—
    - (a) the power is not exercisable without the agreement of a Minister of the Crown, and
    - (b) regulations made in exercise of the power are subject to the negative procedure.
  - (6) In this section—
    - “election in Scotland” means—
      - (a) an election for membership of the Scottish Parliament, or
      - (b) a local government election in Scotland;
    - “UK digital service” means a digital service provided by a Minister of the Crown for the registration of electors.”
- (3) In section 10ZD (registration of electors in Great Britain: alterations) at the end insert—
  - “(4) The power to make regulations under this section, so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Scotland, is exercisable by the Scottish Ministers concurrently with that Minister.
  - (5) The power of the Scottish Ministers to make regulations by virtue of subsection (4) is exercisable in the same ways and subject to the same provisions as their power to make other regulations under this section, except that—
    - (a) the power is not exercisable without the agreement of a Minister of the Crown, and
    - (b) regulations made in exercise of the power are subject to the negative procedure.
  - (6) In this section “election in Scotland” and “UK digital service” have the same meaning as in section 10ZC.”
- (4) In section 53 (power to make regulations about registration etc) at the end insert—

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- “(9) The power to make regulations under this section, so far as it is exercisable by a Minister of the Crown to make provision about a UK digital service in relation to elections in Scotland, is exercisable by the Scottish Ministers concurrently with that Minister.
- (10) The power of the Scottish Ministers to make regulations by virtue of subsection (9) is exercisable in the same ways and subject to the same provisions as their power to make other regulations under this section, except that—
- (a) the power is not exercisable without the agreement of a Minister of the Crown, and
  - (b) regulations made in exercise of the power are subject to the negative procedure.
- (11) In subsection (9)—
- “election in Scotland” means—
- (a) an election for membership of the Scottish Parliament, or
  - (b) a local government election in Scotland;
- “UK digital service” means a digital service provided by a Minister of the Crown for the registration of electors.”

#### Commencement Information

**14** S. 6 in force at 18.5.2017 by S.I. 2017/608, reg. 2(1)(d)

## 7 Expenditure in connection with elections

- (1) The Political Parties, Elections and Referendums Act 2000 is amended as follows.
- (2) After section 72 (campaign expenditure) insert—

### “72A Campaign expenditure: power of Scottish Ministers

- (1) The powers under the following provisions of Schedule 8 are exercisable by the Scottish Ministers instead of the Secretary of State, so far as they relate to polls at elections for membership of the Scottish Parliament—
- (a) paragraph 3(3) (power to approve a draft code of practice prepared by the Electoral Commission),
  - (b) paragraph 3(7) (power to appoint day when code comes into force), and
  - (c) paragraph 4(1) (power to amend Part 1 of Schedule 8).
- (2) For the purposes of the exercise by the Scottish Ministers of the powers mentioned in subsection (1), paragraphs 3 and 4 of Schedule 8 apply—
- (a) as if any reference to the Secretary of State were a reference to the Scottish Ministers,
  - (b) as if any reference to “each House of Parliament”, “each House”, “either House”, “both Houses” or “Parliament” were a reference to the Scottish Parliament,

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- (c) as if in paragraph 3(9) for the words from “means—” to the end there were substituted “ means the period of 40 days beginning with the day on which the draft is laid before the Scottish Parliament. ”
- (3) Subsection (1) does not apply to a power so far as it relates to circumstances where a limit applies to expenditure in relation to a period determined by reference both to the date of the poll for an election for membership of the Scottish Parliament and to the date of any other election.”
- (3) After section 85 (controlled expenditure of third parties) insert—

**“85A Controlled expenditure of third parties: power of Scottish Ministers**

- (1) The powers under the following provisions of Schedule 8A are exercisable by the Scottish Ministers instead of the Secretary of State, so far as they relate to polls at elections for membership of the Scottish Parliament—
  - (a) paragraph 3(3) (power to approve a draft code of practice prepared by the Electoral Commission),
  - (b) paragraph 3(7) (power to appoint day when code comes into force), and
  - (c) paragraph 4(1) (power to amend Part 1 of Schedule 8A).
- (2) For the purposes of the exercise by the Scottish Ministers of the powers mentioned in subsection (1), paragraphs 3 and 4 of Schedule 8A apply—
  - (a) as if any reference to the Secretary of State were a reference to the Scottish Ministers,
  - (b) as if any reference to “each House of Parliament”, “each House”, “either House”, “both Houses” or “Parliament” were a reference to the Scottish Parliament,
  - (c) as if in paragraph 3(9) for the words from “means—” to the end there were substituted “ means the period of 40 days beginning with the day on which the draft is laid before the Scottish Parliament. ”
- (3) Subsection (1) does not apply to a power so far as it relates to circumstances where a limit applies to expenditure in relation to a period determined by reference both to the date of the poll for an election for membership of the Scottish Parliament and to the date of any other election.”
- (4) After section 95 (control of donations to recognised third parties) insert—

**“95ZA Control of donation to recognised third parties: power of Scottish Ministers**

- (1) The powers under the following provisions of Schedule 11 are exercisable by the Scottish Ministers instead of the Secretary of State, so far as they relate to polls at elections for membership of the Scottish Parliament—
  - (a) paragraph 3(4) (power to change meaning of defined expenses and sponsorship),
  - (b) paragraph 6A(6) (power to make regulations about how the value of a benefit is calculated), and



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- (c) paragraph 6B(4) (power to make regulations about the retention of declarations).
- (2) For the purposes of the exercise by the Scottish Ministers of the powers mentioned in subsection (1), paragraphs 3, 6A and 6B of Schedule 11 apply as if any reference to the Secretary of State was a reference to the Scottish Ministers.
- (3) Subsection (1) does not apply to a power so far as it relates to circumstances where a limit applies to expenditure in relation to a period determined by reference both to the date of the poll for an election for membership of the Scottish Parliament and to the date of any other election.”
- (5) Section 95ZA inserted by subsection (4) has effect—
  - (a) until the coming into force of paragraph 1(2) of Schedule 3 to the Political Parties and Elections Act 2009, with the omission of subsection (1)(b) and “6A” in subsection (2);
  - (b) until the coming into force of paragraph 4(2) of Schedule 4 to that Act, with the omission of subsection (1)(c) and “and 6B” in subsection (2).
- (6) Section 155 (power to vary specified sums or percentages) is amended as follows.
- (7) In subsection (1) at the beginning insert “ Except where subsection (1A) applies, ”.
- (8) After subsection (1) insert—
  - “(1A) The Scottish Ministers may by order vary any sum for the time being specified in Part 5 or 6 so far as that sum applies in relation to an election the conduct of which is within the legislative competence of the Scottish Parliament.”
- (9) In subsection (2)—
  - (a) for the words before paragraph (a) substitute “ An order under subsection (1) or (1A) may be made either— ”, and
  - (b) in paragraph (a) for “he” substitute “ the person making the order ”.
- (10) After subsection (4) insert—
  - “(4A) Subsection (4B) applies in relation to the sums specified in Schedule 11.
  - (4B) In each session of the Scottish Parliament, other than a session that is dissolved less than two years after the date of its first sitting, the Scottish Ministers must either—
    - (a) make an order in pursuance of subsection (2)(a), or
    - (b) lay before the Scottish Parliament a statement setting out the Scottish Ministers' reasons for not doing so.”
- (11) Section 156 (orders and regulations) is amended as follows.
- (12) After subsection (4A) insert—
  - “(4B) Subject to subsections (4C) and (4D), any order or regulations made under this Act by the Scottish Ministers shall be subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).
  - (4C) Subsection (4B) does not apply to an order falling within subsection (3).

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(4D) Subsection (4B) does not apply to an order falling within subsection (4), and any such order made by the Scottish Ministers shall be subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010).”

(13) In subsection (5) after each “Secretary of State” insert “ or the Scottish Ministers ”.

(14) In the Interpretation and Legislative Reform (Scotland) Act 2010, in section 30(4) (other instruments laid before the Parliament: exceptions) after paragraph (f) insert—  
“(fa) section 155(2)(a) of the Political Parties, Elections and Referendums Act 2000 (c.41),”.

#### Commencement Information

**I5** S. 7 in force at 18.5.2017 by S.I. 2017/608, reg. 2(1)(e)

## 8 Review of electoral boundaries by the Local Government Boundary Commission for Scotland

- (1) Schedule 1 to the Scotland Act 1998 is amended as follows.
- (2) For “the Boundary Commission for Scotland” in each place substitute “ the Local Government Boundary Commission for Scotland ”.
- (3) In paragraphs 3 to 7 for “the Secretary of State” in each place, and for “he” in paragraphs 3(9) and 6(1), substitute “ the Scottish Ministers ”.
- (4) In paragraphs 3 to 7 for—
  - (a) “each House of Parliament”, “either House of Parliament” or “the House” in each place, and
  - (b) “Parliament” in all other places, except in paragraph 6(7), substitute “the Parliament”.
- (5) In paragraph 3(4)—
  - (a) before “under this paragraph” insert “ to the Scottish Ministers ”;
  - (b) for “not later than 30 June 2010” substitute “ no earlier than 1 May 2018 and no later than 1 May 2022 ”.
- (6) In paragraph 3(6) omit “(but not before the submission of their first report)”.
- (7) Omit paragraph 3(11).
- (8) In paragraph 6(1) for “thinks” substitute “ think ”.

#### Commencement Information

**I6** S. 8 in force at 18.5.2017 by S.I. 2017/608, reg. 2(1)(f)

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## 9 Functions exercisable within devolved competence: elections

- (1) The Scotland Act 1998 (“the 1998 Act”) has effect, in relation to any function so far as exercisable within devolved competence by virtue of a provision of section 3, as if references to a “pre-commencement enactment” were to—
  - (a) an Act passed before or in the same session as the relevant date,
  - (b) any other enactment made before the relevant date,
  - (c) subordinate legislation under section 106 of the 1998 Act, to the extent that the legislation states that it is to be treated as a pre-commencement enactment, but did not include the 1998 Act or this Act (or any amendment made by either of those Acts) or (subject to paragraph (c)) an enactment comprised in subordinate legislation under either of those Acts.
- (2) In this section—
  - (a) expressions used in the 1998 Act have the same meaning as in that Act;
  - (b) the relevant date is the date on which section 3 comes into force.

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### Commencement Information

- 17** S. 9 in force at 18.5.2017 immediately after ss. 3-8, 10-12 come into force by [S.I. 2017/608](#), [reg. 2\(1\)](#) (g)(2)

## 10 Minor and consequential amendments: elections etc

- (1) This section makes minor and consequential amendments in relation to elections and related matters.
- (2) The Scotland Act 1998 is amended as follows.
- (3) Omit sections 92(4A), 104(3) and 112(6) and paragraph 11(4) of Schedule 4 (functions under section 15 to be regarded as exercisable within devolved competence).
- (4) In Schedule 4, omit paragraph 4(2A) and (2B) (voting age), and (2C) (date of elections to the Parliament).
- (5) In Part 1 of Schedule 5, omit paragraph 5A (referendums).
- (6) In the Scotland Act 2012, omit sections 1, 2 and 13.
- (7) The Scotland Act 1998 (Modification of Schedules 4 and 5 and Transfer of Functions to the Scottish Ministers) Order 2015 (S.I. 2015/692) and the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 (S.I. 2015/1764) are revoked.

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### Commencement Information

- 18** S. 10 in force at 18.5.2017 by [S.I. 2017/608](#), [reg. 2\(1\)\(h\)](#)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/455, reg. 3 by [S.I. 2019/1438 reg. 2](#)