

POLICY NOTE

THE SCOTLAND ACT 1998 (MODIFICATION OF SCHEDULES 4 AND 5 AND TRANSFER OF FUNCTIONS TO THE SCOTTISH MINISTERS ETC.) ORDER 2015

SI 2015/692

1. The above instrument is proposed to be made under sections 30(2), 63(1) and (3), 113(3), (4) and (5) and 124(2) of the Scotland Act 1998 (“the 1998 Act”). Section 30(2) provides a mechanism whereby Schedule 4 or Schedule 5 to the 1998 Act can be modified by an Order in Council. Section 63(1) provides that, by an Order in Council, functions exercisable by a Minister of the Crown in or as regards Scotland may be exercised concurrently by Scottish Ministers. Section 63(3) provides that functions exercisable by the Scottish Ministers by virtue of section 63(1) may be made subject to a requirement to be exercised with the agreement of a Minister of the Crown. Section 113(3) provides that subordinate legislation making powers provided by the 1998 Act may make provision for particular cases or classes of case. Section 113(4) provides that such powers may be used to make such supplementary, incidental or consequential provision and such transitory, transitional or saving provision as the person making it considers necessary or expedient. Section 113(5) provides that such powers may modify any enactment or prerogative instrument or other instrument or document, provided that the instrument is subject to one of the forms of parliamentary procedure provided in Schedule 7. By virtue of section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the 1998 Act, this Order is subject to affirmative resolution procedure in both Houses of the UK Parliament and affirmative procedure in the Scottish Parliament.

Policy objectives

2. The purpose of this Order is two-fold. The first purpose is to amend Schedules 4 and 5 to the 1998 Act to devolve power to the Scottish Parliament to legislate to reduce the minimum voting age to 16 at elections to the Scottish Parliament and Scottish local government elections (or both). The amendments will also allow the Scottish Parliament to legislate in respect of the registration of electors in order to give effect to provision reducing the minimum voting age to 16 at those elections.

3. The second purpose is to enable the Scottish Ministers to exercise certain functions of a Minister of the Crown, which relate to the Individual Electoral Registration Digital Service (IERDS) so far as they are exercisable by a Minister of the Crown in or as regards Scotland. Those functions will be exercisable by the Scottish Ministers concurrently with a Minister of the Crown, and subject to the agreement of a Minister of the Crown. The Order provides for the procedure in the Scottish Parliament which will be applicable to any regulations made by the Scottish Ministers under these functions, and also allows for supplementary provision etc. to be made by the Scottish Ministers under these functions.

4. The Order will also modify section 53 of the Representation of the People Act 1983 (“the 1983 Act”) so that where the functions outlined in paragraph 3 above are exercised by the

Scottish Ministers, the requirements contained in section 53(5) to (7) of the 1983 Act will apply to the Scottish Ministers.

Legislative Context

5. Schedule 5 to the 1998 Act lists the matters that are reserved to the UK Parliament. Amongst other things, Section B3 of Part 2 of Schedule 5 reserves elections for membership of the Scottish Parliament and the franchise at local government elections. This Order will amend Schedule 5 by providing an exception to Section B3 so that (a) the reduction of the minimum voting age to 16 at elections to the Scottish Parliament and Scottish local government elections and (b) the registration of electors in order to give effect to provision reducing the minimum voting age at those elections will no longer be reserved matters. However, the use of the IERDS to make an application for registration, or to verify information contained in an application for registration, is not included in the exception and will continue to be reserved to the UK Parliament.

6. Schedule 4 to the 1998 Act lists enactments which are protected from modification by the Scottish Parliament. Much of the 1998 Act itself is included in this list. Although the amendment to Schedule 5 to the 1998 Act will enable the Scottish Parliament to legislate to reduce the minimum voting age to 16 at elections to the Scottish Parliament or local government elections and make related provision about the registration of electors, any such legislation may need to amend certain sections of the 1998 Act which make provision about the franchise for the Scottish Parliament and the registration of electors. Therefore, this Order will amend Schedule 4 to the 1998 Act to allow an Act of the Scottish Parliament to modify sections 11, 12 and 12A of the 1998 Act (and to make modifications to section 113 and Schedule 7 to the 1998 Act, as these might be needed in consequence) for the purpose of reducing the minimum voting age, for making related provision about the registration of electors to give effect to provision reducing the minimum voting age to 16 or for making provision in consequence of either such provision.

7. Section 63(1)(b) of the 1998 Act enables an Order to provide for any functions, so far as they are exercisable by a Minister of the Crown in or as regards Scotland, to be exercisable by the Scottish Ministers concurrently with the Minister of the Crown. This Order will enable the Scottish Ministers to exercise regulation-making powers under section 53(1) and (3) of the 1983 Act and certain paragraphs in Schedule 2 to that Act to enable them to make provision for use of the IERDS when giving effect to provision reducing the minimum voting age. The Scottish Ministers will only be able to exercise these functions with the agreement of a Minister of the Crown. The Scottish Ministers will be able to exercise these functions concurrently with a Minister of the Crown (insofar as these are exercisable in or as regards Scotland).

8. Section 53(1) and (3) of the 1983 Act provides for power to make regulations as to registration. Subsection (5) provides that the Secretary of State must consult the Electoral Commission, the Information Commissioner, and any other person the Secretary of State thinks appropriate before making regulations containing provision under paragraph 1A of Schedule 2 to that Act, or paragraph 13(1ZB) of that Schedule so far as relating to that paragraph. Section 53(6) of the 1983 Act provides that the Secretary of State may require the Electoral Commission to (a) prepare a report on specified matters relating to the operation of any provision made under

paragraph 1A of Schedule 2 to the 1983 Act, and (b) give the Secretary of State a copy of the report by no later than a specified date. Section 53(7) of the 1983 Act then provides that the Secretary of State must publish a copy of the report. This Order modifies sections 53(5) to (7) of the 1983 Act so that these references to the Secretary of State will be read as references to the Scottish Ministers in relation to the functions that will be exercised by the Scottish Ministers under article 5.

9. This instrument extends throughout the United Kingdom.

10. No Human Rights issues arise.

Policy background and Consultation

11. Following the Independence Referendum a Commission was set up under Lord Smith of Kelvin, working with the five parties represented in the Scottish Parliament, to agree what new powers should be devolved to the Scottish Parliament. On 27th November 2014, the Smith Commission published its report detailing Heads of Agreement on further devolution of powers to the Scottish Parliament. The report records that the parties specifically called on the UK Parliament: *“to devolve the relevant powers in sufficient time to allow the Scottish Parliament to extend the franchise to 16 and 17 year old for the 2016 Scottish Parliamentary elections, should the Scottish Parliament wish to do so”*. In practical terms, this is a call for legislation devolving these powers before the end of the current UK Parliament in March 2015. The UK and Scottish governments agreed that this Order would also devolve the power to reduce the minimum voting age to 16 for local government elections in Scotland at the same time (so that the Scottish Parliament, if it wishes to do so, can make this change too).

12. This Order is being brought forward as a consequence of agreement reached by the five parties represented in the Scottish Parliament. As mentioned in paragraph 11 above, the Smith Commission was convened to take forward further devolution. The Commission invited submissions from political parties, a wide range of business and civic organisations and the wider public to help guide its consideration of what further powers should be devolved to the Scottish Parliament. On 27th November 2014 the Commission published its report detailing Heads of Agreement on further devolution of powers to the Scottish Parliament. The Smith Commission Report can be viewed here: http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

13. The Order has been agreed by the Scottish Government and all the relevant departments within the UK government.

Financial Effects

14. This instrument will have no direct financial effect on the Scottish Government or the public sector.

15. The instrument has no financial effect on business, charities or voluntary bodies.

16. An Impact Assessment has not been prepared for this instrument.

Elections and Constitution Division
Scottish Government
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