Contents

Introduction 1
  The draft Order 1

Scrutiny by parliamentary committees 3
  Scrutiny by the Delegated Powers and Law Reform Committee 3
  Scrutiny by the Devolution (Further Powers) Committee 3

Conclusion and recommendation 4

Annexe 5
  Extract from the minutes of the meetings of the Committee and links to the Official Reports 5
Devolution (Further Powers) Committee

To consider matters relating to The Scotland Act 1998 (Modification of Schedule 5) Order 2013, the Scottish Independence Referendum Act 2013, its implementation and any associated legislation. Furthermore, (i) until the end of November 2014 or when the final report of the Scotland Devolution Commission has been published, to facilitate engagement of stakeholders with the Scotland Devolution Commission and to engage in an agreed programme of work with the commission as it develops its proposals; and (ii) thereafter, to consider the work of the Scotland Devolution Commission, the proposals it makes for further devolution to the Scottish Parliament, other such proposals for further devolution and any legislation to implement such proposals that may be introduced in the UK Parliament or Scottish Parliament after the commission has published its final report.

scottish.parliament.uk/devolution-of-further-powers
devolutioncommittee@scottish.parliament.uk
0131 348 5206

Follow the Devolution (Further Powers) Committee @SP_DevoCttee
Committee Membership

Convener
Bruce Crawford
Scottish National Party

Deputy Convener
Duncan McNeil
Scottish Labour

Malcolm Chisholm
Scottish Labour

Linda Fabiani
Scottish National Party

Rob Gibson
Scottish National Party

Alex Johnstone
Scottish Conservative and Unionist Party

Alison Johnstone
Scottish Green Party

Stewart Maxwell
Scottish National Party

Mark McDonald
Scottish National Party

Stuart McMillan
Scottish National Party

Tavish Scott
Scottish Liberal Democrats

Note: The membership of the Committee changed during the period covered by this report, as follows:
Malcolm Chisholm replaced Lewis Macdonald on 2 September 2015.
Introduction

The draft Order

1. The draft Order was laid before the Scottish Parliament on 29 June 2015 and was referred to the Devolution (Further Powers) Committee for consideration as lead committee.

2. The purpose of this Order is to amend Schedules 4 and 5 to the Scotland Act 1998 to devolve power to the Scottish Parliament to legislate to determine a date for the poll of the first ordinary general election for membership of the Scottish Parliament after that scheduled to be held on 5 May 2016.

3. According to the Policy Note accompanying the draft Order—

- Section 1(2) of the Fixed-term Parliaments Act 2011 determines that the next UK Parliamentary general election is due to be held on 7 May 2020, while section 4(2) of that same Act determines that the next Scottish Parliamentary ordinary general election is due to be held on 5 May 2016. Section 2(2) of the 1998 Act provides for the poll at Scottish Parliament ordinary general elections to be held on the first Thursday in May every fourth year and, accordingly, the following Scottish Parliamentary ordinary general election would occur on 7 May 2020, the same date that the UK Parliamentary general election is due to be held. The Scottish Government and the UK Government are committed to take action to avoid this clash in 2020.

- 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. Therefore, this Order will amend Schedule 4 to the 1998 Act to allow an Act of the Scottish Parliament to modify section 2(2) in relation to the first Scottish Parliamentary ordinary general election after 2016.

- 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. This Order will amend Schedule 5 by providing a further exception to section B3 so that the day of the poll at the first Scottish Parliamentary ordinary general election after 2016, will not be a reserved matter.

- The Order also provides for certain limitations on this exception to the reservation. The day of the poll, as determined by the Scottish Parliament, must not be the same as the day of the poll at a UK Parliamentary general election (other than an early parliamentary general election), European Parliamentary general election or ordinary local government election in
Scotland. Section 3(3) of the 1998 Act provides that where the poll at an extraordinary general election for membership of the Scottish Parliament is held within the 6 months before the poll at the next Scottish Parliamentary ordinary general election is due to be held, that ordinary general election will not be held. If these circumstances arise in relation to the ordinary general election for which the Scottish Parliament determines the date using the competence given in the Order, that competence cannot be used in relation to that ordinary general election following the extraordinary general election (which would then be the first ordinary general election after 2016).

Section 2(5) of the 1998 Act provides for a limited alteration in the date to be set for a Scottish Parliamentary ordinary general election. If the first Thursday in May is deemed inappropriate for the holding of a poll, the Presiding Officer may propose an alternative day for the election to Her Majesty. However, the proposed date may not be more than one month earlier or one month later than the first Thursday in May. This Order provides that the Presiding Officer will retain the ability to propose this limited alteration in the date of the poll, in relation to the first Scottish Parliament ordinary general election after 2016. However, any date so proposed must not be the same as the day of the poll at a UK Parliamentary general election (other than an early parliamentary general election), European Parliamentary general election or ordinary local government election in Scotland.
Scrutiny by parliamentary committees

Scrutiny by the Delegated Powers and Law Reform Committee

4. Subordinate legislation, such as a draft Order, is scrutinised initially in the Scottish Parliament by the Delegated Powers and Law Reform Committee. This Committee considered the draft Order at its meeting on 1 September 2015.

5. In its report to the Scottish Parliament, the Delegated Powers and Law Reform Committee raised no issues with the draft Order.²

Scrutiny by the Devolution (Further Powers) Committee

6. As lead Committee, the Devolution (Further Powers) Committee considered the draft Order at its meeting on 24 September 2015. The Committee took evidence from the Minister for Parliamentary Business and relevant officials in the Scottish Government.

7. Members raised the following issues:
   - confirmation that the subsequent Bill would be limited to proposals to alter the date of the next parliamentary term only; and
   - whether thought had been given by the Scottish Government to potential clashes for future elections beyond the next parliamentary term.

8. The Official Report of this meeting is available at:

http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83010.aspx
Conclusion and recommendation

9. After consideration of the evidence received and motion S4M-14274, the Committee recommends that the Scottish Parliament gives its approval to the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 [draft].
Annexe

Extract from the minutes of the meetings of the Committee and links to the Official Reports

23rd Meeting 2015 (Session 5), Thursday 24 September 2015

Present:

Malcolm Chisholm
Bruce Crawford (Convener)
Linda Fabiani
Rob Gibson
Alex Johnstone
Alison Johnstone
Stewart Maxwell
Mark McDonald
Stuart McMillan
Duncan McNeil (Deputy Convener)
Tavish Scott

The meeting opened at 9.31 am.

1. **Subordinate legislation**: The Committee took evidence on the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 [draft] from—

Joe FitzPatrick, Minister for Parliamentary Business, and Roddy Angus, Policy Officer, Elections and Constitution Division, Scottish Government.

2. **Subordinate legislation**: Joe FitzPatrick (Minister for Parliamentary Business) moved—

S4M-14274—That the Devolution (Further Powers) Committee recommends that the Scotland Act 1998 (Modification of Schedules 4 and 5) Order 2015 [draft] be approved.

The motion was agreed to.

---

