Devolution (Further Powers) Committee

Report on the draft Scottish Parliament (Elections etc.) Order 2015
Contents

Report 1
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.
## Committee Membership

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Introduction

1. The draft Scottish Parliament (Elections etc.) Order 2015 was laid in the Scottish Parliament on 4 November 2015 and was referred to the Devolution (Further Powers) Committee for consideration. It was subject to the affirmative procedure.

2. The draft Order was withdrawn and re-laid on 16 November 2015. The Scottish Government wrote to the Presiding Officer to state that the draft Order had been withdrawn and re-laid due to a typographical error.

3. The Devolution (Further Powers) Committee considered the draft Order at its meetings on 12 and 26 November 2015. It was also considered by the Delegated Powers and Law Reform Committee.

Background

4. The framework and rules governing the conduct of Scottish Parliament elections, including the voting system and date of the poll, are set out in the Scotland Act 1998. Sections 1 and 3 of the Scotland Act 2012, which came into force on 1 July 2015, transferred responsibility from the Secretary of State to the Scottish Ministers for making provisions about the conduct of elections for, and the return of members to, the Scottish Parliament.

5. The purpose of the draft Scottish Parliament (Elections etc.) Order 2015 is to replace most of the Scottish Parliament (Elections etc.) Order 2010, which provides the rules governing the conduct of elections of Members of the Scottish Parliament. The draft 2015 Order, if passed, will provide the rules governing the next ordinary general election to the Scottish Parliament, which is scheduled to take place on 5 May 2016.

6. As the transfer of responsibility for making provisions about the conduct of Scottish Parliament elections came into force in July of this year, this is the first such order to be made by the Scottish Government.

7. The provisions contained in the Order are mostly the same as those in place from the previous Scottish Parliament election held on 5 May 2011. However, the Order includes a number of changes that reflect developments in the wider elections field, the transfer of responsibility to the Scottish Ministers, and the lowering of the voting age from 18 to 16 years old.

8. The material differences from the provisions contained in the 2010 Order or other electoral legislation are summarised in the policy note that accompanies the draft Order. These changes were considered by the Devolution (Further Powers) Committee during its consideration of the draft Order.
Consideration by the Delegated Powers and Law Reform Committee

9. The Delegated Powers and Law Reform Committee considered the draft Order at its meeting on 24 November 2015.

10. The Committee determined that it did not need to draw the attention of the Parliament to the Order on any grounds within its remit.

Consideration by the Devolution (Further Powers) Committee

11. At its meeting on 12 November 2015, the Committee took evidence on the draft Order from—

- Gordon Blair, Chief Legal Officer, West Lothian Council, Depute Returning Officer, West Lothian, Chair of the SOLAR Elections Working Group, Adviser to the Electoral Management Board for Scotland;
- Ian Milton, Grampian Assessor & Electoral Registration Officer, Chair of the Scottish Assessors Association (SAA) Electoral Registration Committee, Member of the Electoral Management Board for Scotland;
- Andy O'Neill, Head of Office Scotland, The Electoral Commission; and
- Mary Pitcaithly, Chief Counting Officer at the Scottish Independence Referendum, Convener of the Electoral Management Board for Scotland.

12. In advance of the meeting, the Committee received written evidence from witnesses and subsequently received supplementary written evidence on a number of points raised during the meeting.

13. The Committee took evidence from the Minister for Parliamentary Business, Joe FitzPatrick, on 26 November 2015. At this meeting, the Minister also moved the motion recommending approval of the draft Order.

14. In his evidence, the Minister highlighted a number of changes to the equivalent order that governed the 2011 election, including the introduction of the requirement for proxy voters to be registered to vote themselves, allowing postal ballot packs to be issued earlier, and allowing the use of commonly used names on ballot papers.
15. In their evidence to the Committee, the witnesses welcomed the consultative approach taken by the Scottish Government in the drafting of the Order. They were also broadly supportive of the provisions contained within it.

16. However, a number of issues were raised by witnesses and with the Minister during their evidence to the Committee, which primarily focussed on changes made to the draft 2015 Order in comparison to the Order that governed the conduct of the 2011 Scottish Parliament elections. The main issues that were considered at these meetings are outlined below.

**Donations to candidates**

17. Based on provisions that governed the UK general election in 2010, legislation for the 2011 Scottish Parliament election set out the regulated period for which candidate expenditure rules would apply.

18. The regulated period was divided into two parts: the ‘long campaign’ covering the pre-election period up to dissolution, and the ‘short campaign’ covering the election period between dissolution and polling day.

19. In its evidence to the Committee, the Electoral Commission referred to its report on the 2011 Scottish Parliament election. The report highlighted that the candidate rules for the long campaign did not cover donations, meaning that donations to constituency and independent list candidates during this period would not be recorded.

20. Donations to party list candidates are classed as donations to the relevant political party and are reportable under provisions in the Political Parties, Elections and Referendums Act 2000. Political party funding is a reserved matter.

21. The Electoral Commission told the Committee that its recommendation in 2011 was to move to a single regulated period for candidate donations. This recommendation was also made to the Scottish Government during the consultation on this draft Order.

22. During his evidence, the Minister highlighted the division of reserved and devolved powers which applied to either party list candidates, or constituency and independent list candidates. He stated the difficulty in making changes to the rules governing some candidates given the Scottish Government didn’t have the power to change the rules for other candidates.

23. The Minister told the Committee that the issue in 2011 had involved only a small number of candidates and he hoped that the improved guidance would resolve the matter.

24. He went on to state that the powers to address this issue were not transferred to the Scottish Parliament until July of this year and that any changes to the regulated period would require further consultation. He said that this may be
something the Scottish Government could explore in parallel with the UK Government.

**Employment of staff by the Returning Officer**

25. Several witnesses, in their written evidence to the Committee, highlighted the provision in the draft Order that requires that constituency returning officers, when making arrangements for the counting of votes, shall not knowingly employ someone who has been employed by, or on behalf of, a candidate or a registered party in connection with the election.

26. This provision was welcomed by those witnesses that gave evidence to the Committee as they were of the view that it strengthened the integrity of the election and ensured greater trust in the process for voters.

27. In their evidence to the Committee, the Minister and Scottish Government officials stated that the request for the inclusion of this provision initially came from returning officers and has subsequently been welcomed by them. Furthermore, that the provision formalises policy that returning officers already have in place.

**Secrecy**

28. Article 31 of the draft Order replicates provisions contained in the 2010 Order to protect the secrecy of a poll but, in addition, mirrors provisions in other electoral legislation that prohibits the publication of exit polls before the close of poll.

29. The Minister told the Committee that although this is a new provision for Scottish Parliament elections, it is already in place for UK Parliament elections. He stated that the monitoring of breaches of this law would primarily be a matter for the police.

**Candidates with long-term impairments**

30. In its written evidence to the Committee, the Electoral Commission highlighted its recommendation in its report on the 2015 UK Parliament election that costs associated with a candidate’s disability should be exempt from rules governing candidate and party spending.

31. The Electoral Commission welcomed the provision in the draft Order that would change the definition of “personal expenses” in this regard, and committed to ensuring, through its guidance, that candidates are made aware of the change.

32. The Minister highlighted this provision in his evidence to the Committee and acknowledged the ‘one in five’ cross-party group for its role in the development of this change to the rules.
Consideration of motion to approve

33. At the meeting on 26 November 2015, the Minister for Parliamentary Business moved motion S4M-14803—That the Devolution (Further Powers) Committee recommends that the Scottish Parliament (Elections etc.) Order 2015 [draft] be approved.

34. The motion was agreed to.

Recommendation

35. The Devolution (Further Powers) Committee recommends to the Parliament that it approves the draft Scottish Parliament (Elections etc.) Order 2015.