

Delegated Powers and Law Reform Committee
Tuesday, 16th September 2025
25th Meeting, 2025 (Session 6)

Instrument Responses

The Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2025 (SSI 2025/Draft) (Withdrawn and re-laid)

NB: the original instrument to which these questions relate was laid on 23 June and was withdrawn by the Scottish Government on 26 August 2025. It was re-laid on 28 August, with further questions further down (sent 4 September) relating to that instrument. Questions 1, 2 and 3 remain pertinent to the re-laid instrument.

On 31 July 2025, the Committee asked the Scottish Government:

1. Rule 38 of Scottish Parliamentary Election Rules in schedule 2 of the Scottish Parliament (Elections etc.) Order 2015 (“the 2015 Order”), as it would be amended by article 14 of the instrument, would require the Constituency Returning Officer to provide:

“such equipment as it is reasonable to provide for the purposes of enabling, or making it easier for, relevant persons to vote independently in the manner directed by rule 46 (including in relation to voting secretly)” (new rule 38(4)(b)).

The rule, as amended, would define “relevant persons” as those “who find it difficult or impossible to vote in the manner directed by rule 46” because of blindness, partial sight or another disability (new rule 38(4A)).

The current provision does not require that the equipment enables persons to vote “in the manner directed by rule 46”. It says only that the device is for enabling voters “to vote without any need for assistance from the presiding officer or any companion”.

- Is there a contradiction in requiring equipment to be provided that enables those who find it impossible to vote in the manner directed by rule 46 to vote in that manner?
- The new provision appears to require that all the elements of rule 46 are met when voting using the equipment, including that the voter shall receive the ballot paper, forthwith proceed into a polling compartment, there secretly mark their paper, show the back of the paper to the presiding officer, and put the paper into the ballot box (rule 46(4)). As above, this isn’t the case under the current rule. Can confirmation be provided that the Scottish Government considers that the reference in new rule 38(4)(b) to “in the manner directed by rule 46” will work in practice, particularly given that part of the policy intention

is to allow for future innovations in relation to the types of device and support that may be provided?

2. New paragraph 7(7C) to (E) of schedule 3 of the 2015 Order (inserted by article 15(1)(a) of the instrument) provide a new specific ground for an application for a proxy vote, that the applicant will be accompanying someone to a medical appointment on the date of the poll. Where the application is made after 5pm on the sixth day before polling day, the reasons why the applicant was unable to apply before then must be stated (paragraph 7(7E)(b)(iv)). However, the person who must state these reasons is not the applicant but rather the person who attests the application. Also, the standard of certification by the attester is unqualified, not just 'to the best of their knowledge or belief'. Can confirmation be provided that this meets the policy intention?

This question is asked in the context that, for the other types of application under paragraph 7, it is generally the applicant rather than the attester who must state the reasons, and the attester is only required to certify 'to the best of their knowledge and belief'. There is only one type of application in paragraph 7 for which the attester is required to provide information or certify it without qualification: applications under paragraph 7(3) (detention in a hospital for mental health care and treatment, certified by a hospital manager), and in that case the hospital manager can be expected to know the information.

3. In new paragraph 7A of schedule 3 of the 2015 Order (emergency change of proxy), is any difference of meaning intended between:

“cannot be reasonably expected” in sub-paragraph (1)(c) and
“cannot reasonably be expected” in sub-paragraph (3),

and would it be clearer if the same term was used in both places?

4. In the Explanatory Note, the paragraph relating to article 10 refers to the “minimum duration” for which the Parliament must be dissolved before an ordinary general election (which the instrument reduces from 28 to 20 days). Given that the period (as determined by the 2015 Order) is not in fact a minimum but rather a fixed period, would it be clearer if this paragraph referred to just “period” rather than “minimum duration”, or used the defined term “minimum period”? The same point arises in the Policy Note, paragraph 25.

On 12 August 2025, the Scottish Government responded as follows:

1. The reference to impossibility is intended to be read as impossibility in the absence of the assistive equipment provided (in the context of “difficult or impossible”). The classic example is a person who does not have enough vision to see the ballot paper. On their own they can neither read the names of the candidates nor identify where the boxes are on which to mark their vote when using just pencil and paper. However, with a tactile aid which makes it possible to find the boxes by touch, and an audio listing of candidate names in the order in which they appear on the ballot paper, the person can listen to the recording,

identify they wish to vote for say candidate 4, then use the tactile aid to find the fourth box from the top and mark it.

It is considered necessary for the duty to provide assistive equipment to apply to the whole process, not only the marking of the paper, to afford the greatest autonomy for the voter throughout the process. Insofar as there are technologies which it would be reasonable to provide to assist a person other parts of the process, those tasks ought to be covered by the duty. We can confirm the Scottish Government considers this will work in practice. The current Electoral Commission guidance applicable to UK Parliament elections (and various regional elections in England) already includes equipment like chairs, ramps and temporary doorbells which are not directly connected to marking the ballot paper but are included because they may help disabled voters access and move around the polling station more easily, or help communication with polling station staff.

The standard is a qualified one, in that equipment is only required to be provided if it is reasonable and in some cases it will not enable fully independent voting, only “make it easier”. This is not a guarantee that a person definitely will be able “to vote without any need for assistance” as is the current law. This is a more flexible standard which is not breached if cases remain where a voter requires the assistance of another person. The new duty is wider in scope, to offer assistance with more of the process, recognising it is not just marking the paper with which voters may need support, but which also reflects the fact that not all equipment which could be provided is reasonable to provide in the circumstances.

2. We can confirm that the provision meets the policy intention and was discussed with the Electoral Commission during the statutory consultation. The attester is required to certify that the information that the applicant has provided in making the application on the grounds set out in paragraph 7(7C) is true to the best of the attester’s knowledge and belief – that the applicant cannot reasonably be expected to vote in person because they are acting as a companion to another person, whilst that person is receiving medical care or treatment which is likely to take place on the date of the poll for the election. The attester is further required to state their name, that they are aged 16 years or over, that they are not related to the applicant, and the reasons why the applicant was unable to make the application before 5 pm on the sixth day before the date of the poll at the election for which it is made. The intention is that those reasons will form part of the discussion around attesting the application, but that they must be capable of being stated by the attester themselves--and will be capable of being so stated by the attester in appropriate circumstances.
3. There is no difference in meaning intended between the phrases “cannot be reasonably expected” in sub-paragraph (1)(c) of paragraph 7A and “cannot reasonably be expected” in sub-paragraph (3). We consider that they have the same meaning in this context and that the minor difference in the phrasing of these terms does not result in any lack of clarity in the provision.
4. We do not consider this will be confusing, given the provision in article 10 referring to “minimum period” in the title to that article and in the parentheses, by reference to that concept in section 2(3) of the Scotland Act. We think the use of

the synonym in the Explanatory note and Policy note can be useful to make the explanation accessible to confirm the reader has the right idea. Where a poll is postponed, dissolution will extend beyond the “minimum period” until the new polling day. We think “minimum period” or “minimum duration” is helpful in that respect because a poll does not necessarily occur at the end of it

Withdrawal letter – received 26 August 2025

Draft SI: The Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2025

The above instrument was laid in draft before the Scottish Parliament on 23 June 2025 under section 115 and schedule 7 of the Scotland Act 1998. The Order is subject to the affirmative procedure.

In terms of Rule 10.8 of the Standing Orders of the Parliament, the Scottish Government wishes to withdraw the above named instrument in recognition of the fact that it contains inaccuracies drawn to the attention of the Scottish Government by the Delegated Powers and Law Reform Committee by email dated 13 August 2025.

The Scottish Government intends to correct these inaccuracies and re-lay the draft Order in early course. We are happy to keep the Parliament informed on timescales for this.

I would be grateful if you would make any necessary changes to the Business Bulletin and notify the relevant Committee as appropriate.

The Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2025 (SSI 2025/Draft) (Re-laid)

On 4 September 2025, the Committee asked the Scottish Government:

1. The amendments made by article 16(2)(a)(d) and (e) of the instrument are to Forms K, T and U respectively in the Appendix of the Scottish Parliament (Elections etc.) Order 2015 (these forms were relevantly amended by SSI 2020/426). In each case, the amendment is intended to change one reference to “10pm” to “5pm”. Article 16(2)(a)(d) and (e) refer to 10pm “where it first appears”. However, in each case “10pm” appears only once in the part of the Form that is specified (that is, in the “Getting Help” box). “10pm” does appear in other parts of each of these Forms. Are the amendments to be made by article 16(2)(a)(d) and (e) sufficiently clear?
2. Please advise whether any corrective action is proposed, and if so, what action and when.

On 9 September 2025, the Scottish Government responded as follows:

1. The Scottish Government considers that the amendments are sufficiently clear. The Government acknowledges the additional words “where it first appears” may be superfluous, but as the amendments guide the reader to the “Getting Help” box, where the term “10 pm” appears once in each case, the amendment remains sufficiently clear.
2. The Scottish Government is grateful for the opportunity to place this on record and does not propose to take corrective action.

Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 (“HoC Regulations”) (SSI 2025/Draft); and

Scottish Parliament (Disqualification of Members of the House of Lords) Regulations 2025 (“HoL Regulations”) (SSI 2025/Draft); and

Scottish Parliament (Disqualification of Councillors) Regulations 2025 (“Councillors Regulations”) (SSI 2025/Draft)

On 5 September 2025, the Committee asked the Scottish Government:

Councillors Regulations

1. All of the draft instruments make provision modifying section 82 of the Scotland Act 1998 (limits on salaries of MSPs). The power to do so by regulations made under section 3(1) (in relation to members of the House of Commons) and section 4(1) (in relation to members of the House of Lords) of the parent Act is expressly provided for in sections 3(2)(d) and 4(2)(d). However, there is no equivalent of subsection (2)(d) for regulations made under section 5(1) (in relation to councillors). We note that the powers relied upon for the Councillors Regulations are sections 5(1) and (2) and the ancillary power in section 72(1).

Given that the power to make provision modifying section 82 is express in sections 3 and 4 and absent from section 5, could further explanation please be provided of the legal basis relied upon for making such provision in the Councillors Regulations?

HoL Regulations

2. Regulation 4 amends section 16 of the Scotland Act 1998. It provides a grace period from disqualification for all members of the House of Lords who become MSPs (new subsection (1ZC)), and for all MSPs who become members of the House of Lords (new subsection (1ZD)).

There is express power for (1ZC) in section 4(2)(b)(iii) of the parent Act, which provides that regulations may, in particular, modify section 16 so as to provide for an exception period for:

“any person recently returned at an election”.

However, this formulation does not apply to MSPs who become House of Lords members (1ZD), as there is no election.

The express power in relation to such MSPs is in section 4(2)(b)(iv) but is limited to those who are/were on leave, or have applied for leave, from the House of Lords:

“[Regulations may, in particular, modify section 16 so as to] provide for periods of exception from the disqualification for any person who would otherwise be disqualified, **provided** that person—

- (A) has a leave of absence from the House of Lords,
- (B) has made an application for such leave and the application has not been withdrawn or refused, or
- (C) was on leave of absence immediately before the UK Parliament was dissolved” (emphasis added).

Could further explanation please be provided of the legal basis relied upon for new subsection (1ZD))?

3. New subsection (1ZD) provides that an MSP who becomes a member of the House of Lords is not disqualified at any time “before the end of the period...”. This contrasts with the equivalent provision in new (1ZB) (House of Commons members) and (1ZH) (Councillors), which is “in the period...”. Could an explanation please be provided for the difference in this wording?

HoC Regulations

4. Regulation 5(c) amends section 82 of the Scotland Act 1998 by inserting new subsection (2A):

“(2A) The Parliament is to make no payment of salary to a member of the Parliament in accordance with section 81(1) in respect of any period in which the member is or was also a member of the House of Commons.” (emphasis added)

This wording contrasts with section 81(1), under which the Parliament does not itself make the payment of salaries but rather “make[s] provision for the payment” (for example by making provision for this to be done by the Scottish Parliamentary Corporate Body under section 81(5)). This wording also contrasts with the equivalent provision in the Councillors Regulations: “the Parliament must ensure that the amount of salary payable...”, which is more consistent with the wording of section 81(1). Is the wording of new subsection (2A) sufficiently accurate in this regard?

5. Please advise whether any corrective action is proposed, and if so, what action and when.

On 9 September 2025, the Scottish Government responded as follows:

Councillors Regulations

1. For each of the three instruments the Scottish Government considers that the power under sections 3(1), 4(1) or 5(1) confers sufficient power to limit the salary of an MSP during the applicable period of exception.

The lists in sections 3(2), 4(2) and 5(2) each indicate provision which the subsection (1) power “may in particular” be used to make. The Scottish Government considers that these lists illustrate for readers and the Parliament the type of provision for which the power might be used, but are not exhaustive or restrictive. The provision made does not need to match the illustrations given exactly.

Sections 3(2)(d) and 4(2)(d) give the illustrative example of modifying section 82 of the Scotland Act 1998 because section 82 contains provision for existing salary limitations which apply to MSPs who are also MPs and MSPs who are also members of the House of Lords. Any additional provision which the Scottish Ministers made by regulations under sections 3 or 4 about salaries for MSPs in those situations would need to interact with or modify that existing provision in section 82 to achieve a coherent effect. As it was very likely to be necessary to modify as part of any proposal to make provision about salary limitations for MSPs in these situations, modifying section 82 of the Scotland Act 1998 is included for these cases.

There is no reference in section 5(2) to modifying section 82 because that section does not currently contain any provision about the salaries of MSPs who are also councillors. Provisions introducing salary limitation for MSPs who are also councillors would not necessarily need to interact with or modify section 82. Salary limitation for MSPs who are also councillors could be achieved by standalone provision in the Regulations or elsewhere without modifying section 82.

Although standalone provision in the Councillors Regulations would be within the powers conferred on the Scottish Ministers by section 5(1), the Scottish Government considers that it is expedient to have all of the limitations applicable to the salaries of MSPs contained in the Scotland Act 1998. The Scottish Government therefore considers it appropriate in this case to use the ancillary power in section 72(1) of the 2025 Act as incidental or supplementary for the purposes of, in connection with or for giving full effect to Part 2 of the Act to place the salary limitation provision in section 82 of the Scotland Act 1998 where the provision will be most easily accessible to readers and most likely to achieve its full effect.

House of Lords Regulations

2. The power in section 4(1) of the Scottish Elections (Representation and Reform) Act 2025 extends to creating exceptions to disqualification for an MSP who is a member of the House of Lords in general, including situations not given as examples by section 4(2). The Scottish Government considers this extends to the

case described by new subsection (1ZD) where a person is an MSP first and subsequently becomes a member of the House of Lords.

Section 4(2) provides that “regulations under subsection (1) may, in particular...” make the kind of provision described. The lists of possible provision are not exhaustive, but are illustrative and permissive and give a sense of the provision which may be made using the power. The Scottish Government considers the conditions in the proviso to section 4(2)(b)(iv) do not rule out making provision other than that envisaged by section 4(2)(b)(iv). This can be seen from section 4(2)(b)(v) which sits separately and otherwise falls within the description of matters covered by section 4(2)(b)(iv) before application of the proviso. The Scottish Government considers the 14-day latitude on timing provided for in subsection (1ZD) is nonetheless within the scope of the power in section 4(1). The power also includes the power to make transitional provision (section 4(1)(b)) and different provision for different purposes (section 4(2)(e)).

3. The Scottish Government considers that the disqualifying effect of section 17(2) of the Scotland Act 1998 is immediate if no exception applies. Where an MSP becomes disqualified their seat is immediately vacant. It follows that in order for the periods of exception created by the draft Regulations to be effective, they must apply immediately to an MSP from the point at which they gain a second role which would otherwise be disqualifying.

The Scottish Government understands that a person becomes a member of the House of Lords in law when the letters patent appointing them are finalised by having the seal applied to them. The practical assumption of that new role will occur some time after the legal appointment, when the person presents themselves to the House of Lords to be introduced and to swear the oath required of them by the Parliamentary Oaths Act 1866.

The Scottish Government considers that in order for the period of exception applicable to an MSP who becomes a member of the House of Lords to be effective, it must also cover this “pre-oath” period where the MSP is a member of the House of Lords but has not yet been introduced, sworn the oath or taken their place in the House. The framing “at any time before the end of the period of 14 days beginning with [the day the person takes the House of Lords oath]” was chosen because this captures this pre-oath period. The person is not disqualified “at any time before the end of the period” described, so that the person is also not disqualified at any time before that period has begun.

The Scottish Government considers that the swearing of the oath required of a member of the House of Lords is a reasonable point at which to begin the time limit of the period of exception applicable to MSPs who are appointed to the House of Lords because it is only after they have sworn the oath that the MSP and member of the House of Lords can begin to practically exercise two public roles at once.

House of Commons Regulations

4. The Scottish Government considers it to be sufficiently accurate. The Scottish Government considers that the reference to section 81(1) in new section 82(2A) is sufficient to indicate that the authority conferred by section 81(1), to provide for payments to be made, is not to be used to make payment of a salary to a person to whom section 82(2A) applies. Section 82 is currently framed as a duty on the Parliament, albeit only to “ensure” the reduction in salary. The Scottish Government considers it is clear that new section 82(2A) fits into the scheme whereby payments are at present made under provision referred to in section 81 and that the Scottish Parliament Corporate Body would make payment in line with this requirement.
5. The Scottish Government is grateful for the opportunity to put these points on the record and does not propose to take corrective action.