

Standards, Procedures and Public Appointments Committee

5th Meeting 2021 (Session 6), Thursday 28 October 2021

Subordinate legislation

Affirmative instruments:

[The Representation of the People \(Postal Voting for Local Government Elections\) \(Scotland\) Amendment Regulations 2021](#)

Type of Instrument:	Draft Affirmative
Laid Date:	14 September 2021
Meeting Date:	28 October 2021
Minister to attend meeting:	Yes
Motion to approve:	S6M-01320 - That the Standards, Procedures and Public Appointments Committee recommends that the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2021 [draft] be approved.
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?:	No
Reporting deadline:	8 November 2021

Committee consideration

1. The Committee will take evidence from George Adam MSP, Minister for Parliamentary Business, and then formally consider this instrument today.

Purpose

2. These regulations amend the deadline for an elector to seek a replacement for a spoilt or lost postal ballot paper from 5pm to 10pm on the day of poll.
3. The instrument amends the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 (“the 2007 Regulations”, SSI 2007/263). The 2007 Regulations have previously been amended by the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 and the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2016. The 2007 Order sets out the procedures for the issue and receipt of postal ballot papers at Local Government elections.
4. The proposed changes would bring the practice for Local Government into line with that of the Scottish Parliament election and therefore standardise the 10pm deadline for replacement of spoilt or lost postal ballot papers. The Scottish Government considers that the additional time will assist in maximising turnout.
5. In terms of section 5 of the Local Government etc. (Scotland) Act 1994 (as amended by the Scottish Elections (Dates) Act 2016), the next ordinary Local Government election is scheduled to take place on 5 May 2022.
6. If approved, these Regulations will apply to any election for which the date of the poll is on or after 5 May 2022.

Delegated Powers and Law Reform Committee (DPLRC)

7. The DPLRC considered the instrument at its meeting on 21 September 2021 and [reported](#) that it had no points to raise.

Procedure for affirmative instruments

8. The Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2021 were laid on 14 September 2021 and referred to the Standards, Procedures and Public Appointments Committee. The procedure for affirmative instruments is set out in Rule 10.6 of Standing Orders. It is for the Standards, Procedures and Public Appointments Committee to recommend to the Parliament whether the Order should be approved. The Minister has, by motion [S6M-01320](#) (set out in the agenda), proposed that the Committee recommends the approval of the instrument.

The Scottish Local Government Elections Amendment Order 2021

Type of Instrument:	Draft Affirmative
Laid Date:	14 September 2021
Meeting Date:	28 October 2021
Minister to attend meeting:	Yes
Motion to approve:	S6M-01321 - That the Standards, Procedures and Public Appointments Committee recommends that the Scottish Local Government Elections Amendment Order 2021 [draft] be approved.
Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?:	No
Reporting deadline:	8 November 2021

Committee consideration

9. The Committee will take evidence from George Adam MSP, Minister for Parliamentary Business, and then formally consider this instrument today.

Purpose

10. The purpose of this instrument is to make a number of changes to the rules which set out how Scottish Local Government elections should be run.

11. Changes are made in the following areas:

- Decisions as to the validity of nomination papers;
- Issue of official poll cards and notifications;
- Filling of last vacancies;
- Limitation of election expenses;
- Publication of time and place for inspection of returns and declarations;
- Meaning of election expenses;
- Power to amend Parts 1 and 2 of schedule 4B to the Representation of the People Act 1983; and
- Proxies at elections

12. The instrument amends the Scottish Local Government Elections Order 2011 (the "2011 Order"), the Representation of the People Act 1983 (the "1983 Act") and

the Representation of the People Act 2000 (the “2000 Act”) to reflect changes to the rules and procedures for the running of Local Government elections in Scotland.

13. In terms of section 5 of the Local Government etc. (Scotland) Act 1994 (as amended by the Scottish Elections (Dates) Act 2016), the next ordinary Local Government election is scheduled to take place on 5 May 2022.

14. If approved, this Order will apply to any election for which the date of the poll is on or after 5 May 2022.

Delegated Powers and Law Reform Committee (DPLRC)

15. The DPLRC considered the instrument at its meeting on 21 September 2021 and [reported](#) that it had no points to raise.

Procedure for affirmative instruments

16. The Scottish Local Government Elections Amendment Order 2021 was laid on 14 September 2021 and referred to the Standards, Procedures and Public Appointments Committee. The procedure for affirmative instruments is set out in Rule 10.6 of Standing Orders. It is for the Standards, Procedures and Public Appointments Committee to recommend to the Parliament whether the Order should be approved. The Minister has, by motion [S6M-01321](#) (set out in the agenda), proposed that the Committee recommends the approval of the revised Code.

Negative instruments

17. The Committee is also invited to consider the following negative instruments:

[The Representation of the People \(Variation of Limits of Candidates' Local Government Election Expenses\) \(Scotland\) Order 2021 \(SSI 2021/310\)](#)

18. This Order proposes to increase the maximum amount of candidates' elections expenses at local government elections in Scotland. The maximum amount of a candidate's election expenses is made up of a fixed amount together with an additional sum for each entry in the register of electors. This Order proposes to increase the fixed amount so that it will now be £806, and the sum for each entry in the register of electors so that it will be 7p.

19. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 1 November 2021.

[The Representation of the People \(Absent Voting at Local Government Elections\) \(Scotland\) Amendment Regulations 2021 SSI 2021/317](#)

20. These regulations propose to extend the availability of emergency proxies to those who suffer a disability before the application period for emergency proxies begins but who are unable to apply until during the application period. They allow for the replacement of an elector's proxy where, for whatever reason, the original proxy is unable to vote on polling day; provide that applications to vote by proxy at a particular election made on grounds of the applicant's detention must include details of the place of detention; and that those applications must be received by 5pm on the day of the election.

21. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 8 November 2021.

Procedure for negative instruments

22. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

23. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

24. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

25. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

Guidance on subordinate legislation

26. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<https://www.parliament.scot/bills-and-laws/bills/secondary-legislation>

Decision

Affirmative instruments

27. The Committee must decide whether or not to agree to the motions on the affirmative instruments, and then report to Parliament accordingly, by 2 November 2021.

28. Should the Committee agree to the motions, it is invited to delegate the final approval of a short, factual report on the instruments to the Convener.

Negative instruments

29. The Committee is invited to consider the instruments.

Joanna Hardy
Senior Assistant Clerk
Standards Procedures and Public Appointments Committee
October 2021