

Policy Note
The Scotland Act 1998 (Modification of Schedule 5) Order 2013

The above instrument is proposed to be made under sections 30(2) and (4) and 113(4)(a) of the Scotland Act 1998. Section 30(2) orders provide a mechanism whereby Schedule 4 or Schedule 5 to that Act can be modified by Order in Council. By virtue of section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the Scotland Act 1998, this Order is subject to affirmative resolution procedures in both Houses of the United Kingdom Parliament and the Scottish Parliament.

Policy objectives

The purpose of this Order is to amend Schedule 5 to the Scotland Act 1998 to enable the Scottish Parliament to legislate for an independence referendum that takes place at any point before the end of 2014. The Order requires the poll for this referendum to be held on a day with no other referendum poll provided for by legislation of the Scottish Parliament. It requires that the referendum will ask one question on independence.

The Order also applies existing provision set out in Part 7 of the Political Parties, Elections and Referendums Act 2000 (PPERA), relating to referendum campaign broadcasts and referendum mailshots, to an independence referendum.

The United Kingdom and Scottish Governments are agreed that the referendum should meet the highest standards of fairness, transparency and propriety, informed by consultation and independent expert advice. A memorandum published alongside the Order sets out the agreement reached between the two Governments on the wider referendum rules and regulation that will be set out in the legislation to be introduced in the Scottish Parliament by the Scottish Government.¹

Effect of Instrument

Article 3 of the Order amends Part 1 of Schedule 5 to make an exception to the reservation of aspects of the constitution of the United Kingdom to enable an independence referendum that meets certain requirements.

These requirements are that:

- The date of the poll at the referendum may not be the date of the poll at any other referendum held under provision made by the Parliament;
- The date of the poll at the referendum must be no later than 31 December 2014;
- There must be only one ballot paper at the referendum, and the ballot paper must give the voter a choice between only two responses.

Section 127 of PERA provides a definition of “referendum campaign broadcast” and also provides that only referendum broadcasts made by or on behalf of designated campaign organisations can be broadcast. Article 4 of the Order makes provision applying the provisions in PERA to an independence referendum, meaning that Ofcom, the BBC and the Electoral Commission will have the same role in relation to referendum campaign broadcasts at an independence referendum as they would in relation to a PERA referendum.

¹ <http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence>

Adapting the definition in section 127 of PPERA brings in other relevant broadcasting controls including the Communications Act 2003 and the agreement between the Secretary of State for Culture, Media and Sport and the BBC (July 2006). Article 4(3)(a) and (b) accordingly removes the application of PPERA rules on campaign spending on broadcasts so that the Scottish Parliament can make its own provision in the legislation for the referendum. Article 4(3)(c) removes the requirement in the Communications Act 2003 for the Welsh broadcasting Authority's services, including the Welsh language public broadcaster, S4C, to screen Scottish referendum campaign broadcasts.

Paragraph 1 of Schedule 12 to PPERA entitles the designated campaign organisations to send a referendum mailshot to every elector or household free of charge. Article 4 of the Order applies these provisions to an independence referendum. Provision is made for the Royal Mail to recover the cost of postage from the Scottish Ministers.

Article 2 provides that the Order will come into force the day after it is made.

The United Kingdom Government has agreed to this proposed course of action, and to the laying the draft instrument before both Houses of Parliament at Westminster for approval, as required by section 115 of, and paragraphs 1 and 2 of Schedule 7 to, the Scotland Act 1998.

Consultation

On 25 January 2012 the Scottish Government launched a consultation setting out its proposals for the running of an independence referendum, including a draft Referendum Bill.² The consultation document stated that the Scottish Government would be willing to work with the United Kingdom Government to agree a clarification of the Scotland Act 1998 that would remove their doubts about the competence of the Scottish Parliament to legislate for an independence referendum. The closing date for responses was 11 May 2012.

Over 26,000 responses were received. The independent analysis of these responses will be published in October 2012 and will inform the development of specific proposals about the running of the referendum, which will be set out in the legislation to be introduced in the Scottish Parliament by the Scottish Government.

The United Kingdom Government launched a consultation on 10 January 2012 which sought views on how to facilitate a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom. The consultation document set out a draft section 30 Order. The closing date for responses was 9 March 2012 and the United Kingdom Government published its response to this consultation on 4 April 2012.

Financial Effects

The instrument has no financial effect.

Scottish Government
October 2012

² <http://www.scotland.gov.uk/Resource/0038/00386122.pdf>