

# LOCAL GOVERNANCE (SCOTLAND) ACT 2004

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## EXPLANATORY NOTES

### INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the [Local Governance \(Scotland\) Act 2004 \(asp 9\)](#). They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

### THE ACT— AN OVERVIEW

3. The Act is set out in three parts as follows—
  - [Part 1](#): Local government elections
  - [Part 2](#): Membership of local authorities etc.
  - [Part 3](#): Miscellaneous and general

### THE ACT — SECTION BY SECTION

#### [Part 1](#) – Local government elections

4. The current electoral system used for local government elections in Scotland is the first past the post system. This part of the Act makes provision for the introduction of a Single Transferable Vote (STV) system of proportional representation.
5. Unlike first past the post which is used to elect one member per ward, STV can be used to elect a number of candidates for each ward in a local government area. The provisions in this Act allow for 3 or 4 members to be elected in each ward. Whether 3 or 4 are to be elected will, in relation to each ward, be determined following a review of electoral arrangements by the Local Government Boundary Commission for Scotland (“the Boundary Commission”).
6. Rather than voting for one candidate only, voters can indicate their order of preference for one, some or all of the candidates shown on the ballot paper by marking, for example “1” against their first preference, “2” against their second and so on.

#### [Section 1](#) – *Electoral wards*

7. Subsection (1) provides that, for the purposes of local government elections, each local government area will be divided into electoral wards and a separate election held for each ward at which a prescribed number of councillors will be returned. Subsections (2) and (3) provide that there shall be 3 or 4 councillors per ward and that number may vary from ward to ward. The number of councillors per ward will be set down in an

order made by the Scottish Ministers following a review of electoral arrangements by the Boundary Commission.

### ***Section 2 – Single transferable vote***

8. This section provides that in each ward where there is a contested election, each voter will have a single transferable vote and, where there are 3 or more candidates, will be able to rank candidates in order of preference, if the voter wishes to do so.

### ***Section 3 – Power to make further provision about local government elections***

9. Subsection (1) requires the Scottish Ministers to make an order about the conduct of local government elections, the questioning of such elections, and the consequences of irregularities at such elections. Subsection (2) describes certain matters, central to establishing an STV system, which must be contained in an order made under subsection (1). For example, an order will contain provision in relation to the calculation of the quota, the return of candidates and the transfer of ballot papers. Subsection (3) describes certain matters which may be contained in such an order. The effect of these provisions is that an order under this section will set out the detail of the STV system of proportional representation. An order under this section will generally be subject to negative resolution procedure. However where that order contains provisions described in subsection (2) or amends primary legislation then it will be subject to affirmative resolution procedure (see section 16(5)).
10. Subsection (4) provides that an order made under subsection (1)(b) must include provision applying Part III of the Representation of the People Act 1983 (“the 1983 Act”) subject to such modifications or exceptions as are contained in the order. That Part makes provision for the method of questioning local government elections including the grounds on which an election can be questioned and the procedure which requires to be followed. Subsection (5) provides that that is to be the only means of questioning the return of a councillor.

### ***Section 4 – Reviews of electoral arrangements***

11. Subsection (1) requires the Boundary Commission to conduct a review of electoral arrangements in the light of the introduction of the STV system and to formulate proposals for future arrangements. This review is to be carried out as soon as it can be done after commencement of this section. The procedure for this review is set out in Part II of the [Local Government \(Scotland\) Act 1973 \(c.65\)](#) (“the 1973 Act”). Subsection (2) modifies that procedure for the purpose of this review to allow the Scottish Ministers to require the Boundary Commission to submit its report by a date specified by them and to remove the Scottish Ministers’ discretion not to make an order following submission of the report. This enables the Scottish Ministers to ensure that the review of electoral arrangements is carried out and an order is made in time for the next local elections.
12. Subsection (3) ensures that for this first review the Boundary Commission will have to give reasons to the council for any differences between the ward boundaries it proposes and the ward boundaries that would have resulted if existing wards were combined. Subsection (4) makes clear that the Boundary Commission shall not take account of its duty to give reasons to the council for any differences in ward boundaries when formulating its proposals for future arrangements. The Boundary Commission will formulate their proposals for revised ward boundaries in accordance with the criteria in Schedule 6 to the 1973 Act, as amended.
13. Subsection (5) makes a number of amendments to provisions about the review of electoral arrangements.
14. Subsection (5)(a) amends section 16(2) of the 1973 Act to alter the timing of subsequent reviews by the Boundary Commission in consequence of the requirement to carry out a review under subsection (1).

15. Subsection (5)(b) provides that the Boundary Commission must consult individual councils on their initial proposals for revised ward boundaries in the council area 2 months before issuing those proposals for wider consultation under section 18(2)(b) of the 1973 Act. It also gives the Scottish Ministers a power to give directions to the Boundary Commission and councils in relation to the consultation with councils at the beginning of any review process under section 18(2)(a) of the 1973 Act.
16. Section 20 of the 1973 Act deals with the first review of electoral arrangements after 1<sup>st</sup> April 1996. This provision is now spent and is accordingly repealed by subsection (5) (c).
17. Subsection (5)(d) amends the 1973 Act definition of “electoral arrangements” to allow the Boundary Commission to review the number of councillors to be returned for each ward. It is not necessary to carry out such a review under the first past the post system but, because section 1(2) and (3) allows there to be either 3 or 4 councillors per ward under the STV system, the effect of the amendment is to require the Boundary Commission to consider whether there should be 3 or 4 councillors for each ward as part of its review.
18. Subsection (5)(e) and (f) contain amendments which are consequential on the provision made elsewhere in section 4. In particular subsection (5)(f) repeals Schedule 5 to the 1973 Act. That Schedule made provision for the first review of electoral arrangements by the Local Government Boundary Commission after 1<sup>st</sup> April 1996.
19. Subsection (5)(g) and (h) amend Schedule 6 to the 1973 Act which contains the rules that the Boundary Commission and the Scottish Ministers must comply with, so far as reasonably practicable, when considering the electoral arrangements for local government areas. The rule contained in paragraph 1(2) of Schedule 6 was designed to ensure that within each local government area the number of electors represented by each member is more or less the same. The formulation for the first past the post system was that the number of local government electors shall be as nearly as may be the same in every electoral ward of a local government area. With the introduction of 3 and 4 member wards this formulation would not deliver such parity. Paragraph 1(2) of Schedule 6 is amended to ensure that in a local government area every councillor is returned in relation to the same or nearly the same number of electors. Schedule 6 has also been amended to provide that if there is any conflict between the duties of the Boundary Commission to have regard to identifiable boundaries and local ties, greater weight should be given to local ties.

### ***Section 5 – Consequential amendments and repeals***

20. This section makes a number of consequential amendments and repeals to the 1983 Act and the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#). In particular it repeals subsections (1) to (4) and (7) of section 42 (local elections in Scotland) of the 1983 Act as these provisions are superseded by the new power to make rules contained in section 3 of the Act. It also repeals section 5(1), (5) and (6) (elections and terms of office of councillors) of the 1994 Act. These provisions are superseded by section 1 of the Act.

## **Part 2 – Membership of local authorities**

### ***Section 7 – Disqualification***

21. This section repeals section 31(1)(a) of the 1973 Act and replaces it with a new section 31A. The effect of so doing is to lift the requirement for a person who is a paid employee or office-holder of a local authority to resign when he or she is nominated as a candidate to be a councillor and to replace it with a requirement to resign only where the person is elected. Resignation is to take effect on the first working day following the declaration of election. Disqualification on the grounds that a person has a business partner who is a paid employee or office-holder of a local authority is lifted entirely.

***Section 8 – Reduction of age qualification***

22. This section amends section 29 of the 1973 Act to reduce the age at which a person may be nominated as a candidate for, be elected as or hold office as a councillor from 21 to 18 years.

***Section 9 – Eligibility for membership: politically restricted posts***

23. This section amends section 2 of the [Local Government and Housing Act 1989 \(c.42\)](#) which sets out categories of local authority employees who are to be regarded as holding politically restricted posts and who are therefore prevented, by section 1 of that Act, from standing for election as, or holding office as, councillor and engaging in a range of political activities. This amendment removes two of those categories, which are determined by a salary threshold.

***Section 10 – Prohibitions on appointment of councillors and ex-councillors to local authority posts***

24. This section substitutes a new section for section 67 of the 1973 Act (which prevents a former member of a local authority from being employed by that authority for a period of twelve months after ceasing to be a member). The new section retains the twelve month restriction for employment in posts designated as politically-restricted, and for retiring councillors who have been directly involved in the appointments process for council officers holding politically-restricted posts; but reduces the restriction to three months for all other posts.

***Section 11 – Pay, pensions etc. of councillors***

25. This section enables the Scottish Ministers to make regulations to provide for the payment by local authorities of remuneration, allowances and expenses to councillors. These regulations may cover payments made in respect of activities carried out in connection with any of the duties of a councillor and make different provisions for different circumstances and purposes.
26. The power to make regulations also enables provision for an element of remuneration to be payable by way of a pension and for a pension scheme to be set up or adapted for this purpose.
27. Subsection (4) requires the Scottish Ministers, where they have required the Scottish Local Authorities Remuneration Committee (established under section 13) to provide them with information, advice or recommendations in relation to remuneration etc., to consider what the Committee gives them before making regulations under subsection (1).

***Section 12 – Severance payments for councillors***

28. Subsection (1) confers power on the Scottish Ministers to make regulations providing for the making of severance payments to councillors who do not stand at a local government election and who meet such other criteria as the Scottish Ministers may specify.
29. Subsection (3) requires the Scottish Ministers, where they have required the Scottish Local Authorities Remuneration Committee (established under section 13) to provide them with information, advice or recommendations in relation to severance payments, to consider what the Committee gives them before making regulations under subsection (1).
30. Subsection (4) amends section 29 of the 1973 Act to provide that an ex-councillor to whom a severance payment is made is not entitled to stand as a candidate for councillor at a future local government election.

### ***Section 13 – The Scottish Local Authorities Remuneration Committee***

31. Subsection (1) establishes a Scottish Local Authorities Remuneration Committee.
32. The Scottish Ministers may, under subsection (2), require the Committee to provide them with information, or to review and prepare advice or recommendations, in relation to the remuneration etc. of councillors or the payment of severance payments. Subsection (5) requires the Committee to comply with any directions made by the Scottish Ministers in relation to the discharge of its functions.

### ***Schedule – Constitution etc. of the Scottish Local Authorities Remuneration Committee***

33. The schedule contains further provision in relation to the Committee established by section 13. The Committee is to be made up of 7 members appointed by the Scottish Ministers. The activities of the Committee will be funded from grants provided by the Scottish Ministers and the Commission may, with the consent of the Scottish Ministers, appoint staff to help it in carrying out its functions. Its procedures will be a matter for the Committee itself to determine.

## **Part 3 – Miscellaneous and general**

### ***Section 14 – Election expenses etc.***

34. Section 14 amends certain sections of the [Political Parties, Elections and Referendums Act 2000 \(c.41\)](#) to extend to local government elections sections 90A to 90D of the 1983 Act (meaning of “election expenses”) and section 118A of that Act (meaning of “candidate”). The new meanings already apply, by virtue of the 2000 Act, for Parliamentary elections.
35. Subsections (3) and (4) also repeal section 82(4) of the 1983 Act and, in so doing, remove the requirement for a declaration of election expenses to be made before a justice of the peace or the proper officer of a local authority.

### ***Section 15 – Ancillary provision***

36. This section gives Scottish Ministers a power to make orders containing such ancillary provision as they consider necessary or expedient for the purposes or in consequence of the Act.

### ***Section 16 – Orders and regulations***

37. Subsection (1) provides that powers to make orders or regulations under this Act shall be exercisable by statutory instrument. Subsection (4) provides that any statutory instrument containing an order or regulations made under the Act will be subject to negative resolution procedure with the exception of instruments containing an order made under section 17(2) (commencement) and those specified in subsection (5). Subsection (5) provides that statutory instruments containing the orders and regulations specified in that subsection will be subject to affirmative resolution procedure.

## **PARLIAMENTARY HISTORY**

38. The following table sets out, for each Stage of the proceedings in the Scottish Parliament on the Bill for this Act, the dates on which the proceedings at that Stage took place, the references to the Official Report of those proceedings and the dates on which Committee Reports and other papers relating to the Bill were published, and references to those Reports and other papers.

*These notes relate to the Local Governance (Scotland) Act 2004 (asp 9)  
which received Royal Assent on 29 July 2004*

<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
<b>Introduction</b>	
21 November 2003	SP Bill 14 (Session 2)
<b>Stage 1</b>	
<b><i>(a) Local Government and Transport Committee</i></b>	
10th meeting 2003 (Session 2)	2 December 2003, col 273-378 & Minutes
11th meeting 2003 (Session 2)	9 December 2003, col 379-428 & Minutes
12th meeting 2003 (Session 2)	16 December 2003, col 431-484 & Minutes
1st meeting 2004 (Session 2)	6 January 2004, col 486-556 & Minutes
2nd meeting 2004 (Session 2)	13 January 2004, col 558-584 & Minutes
4 <sup>th</sup> meeting 2004 (Session 2)	3 February 2004, col 624-662 & Minutes
19 March 2nd Report 2004 (Session 2): Stage 1 Report on Local Governance (Scotland) Bill	SP Paper 110 Session 2 (2004)
<b><i>(b) Subordinate Legislation Committee</i></b>	
2nd meeting 2004 (Session 2)	13 January 2004, col 271-273 & Minutes
3 <sup>rd</sup> meeting 2004 (Session 2)	20 January 2004, col 275-276 & Minutes
4 <sup>th</sup> meeting 2004 (Session 2)	27 January 2004, col 283 & Minutes
<b><i>(c) Finance Committee</i></b>	
18th meeting 2003 (Session 2)	16 December 2003, col 733-758 & Minutes
2nd meeting 2004 (Session 2)	20 January 2004, col 849-866 & Minutes
<b><i>(d) Equal Opportunities Committee</i></b>	
3 <sup>rd</sup> meeting 2004 (Session 2)	10 February 2004, col 273-315 & Minutes
<b><i>(e) Consideration by Parliament</i></b>	
24 March 2004	Col 6939-6993, col 6997, col 6999-7005 & Minutes
<b>Stage 2</b>	
<b><i>(a) Local Government and Transport Committee</i></b>	
12th meeting 2004 (Session 2)	4 May 2004, col 834-878 & Minutes
13th meeting 2004 (Session 2)	11 May 2004, col 880-904 & Minutes
Bill (as amended at Stage 2)	SP Bill 14A Session 2
<b><i>(b) Subordinate Legislation Committee</i></b>	
21st meeting 2004 (Session 2)	15 June 2004, col 509-519 & Minutes
18 June 28th Report 2004 (Session 2): Report on the Local Governance (Scotland) Bill as amended at Stage 2	SP Paper 186 Session 2 (2004)

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<b><i>Proceedings and Reports</i></b>	<b><i>Reference</i></b>
<b><i>(c) Equal Opportunities Committee</i></b>	
9th meeting 2004 (Session 2)	4 May 2004, col 443-458 & Minutes
<b>Stage 3</b>	
<b><i>Consideration by Parliament</i></b>	
23 June 2004	Col 9392-9463, col 9467-9471 & Minutes
<b>Royal Assent – 29 July 2004</b>	