

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Part 1: Electoral Administration

Election expenses

Section 16 Prohibition of expenses not authorised by election agent

27. **Section 16** inserts a new section 75A of the 1983 Act which deals with the prohibition of election expenses incurred by a third party and re-enacts section 75 of that Act (so far as it applies to Scottish local government elections) with certain amendments to clarify the effect of an earlier amendment to section 75(1) of the 1983 Act by section 131 of the 2000 Act. The intention of the earlier amendment was to allow a third party to incur expenses up to the permitted sum (see paragraph 33 below) but the drafting gave rise to concerns about the circumstances to which this applied, in particular there was some doubt as to whom section 75 applied.
28. The amendments made by section 75A are to be taken as having effect from 16 February 2001 (section 14(3)). The date of 16 February 2001 is the date when previous amendments made to section 75 of the 1983 Act by the 2000 Act came into effect. Section 131 of the 2000 Act increased the amount of expenditure that may be incurred by a third party who is campaigning for or against a candidate at an election. This was as a result of a ruling by the European Court of Human Rights in *Bowman v UK* which found the previous limit of £5 to be in violation of an individual's right to freedom of expression. A new limit of £500 was set for parliamentary elections and a formula for local government elections was also inserted. Section 131 gave effect to these changes and allowed a third party to incur expenses up to the permitted sum on promoting or procuring the election of a candidate through any of the means listed in section 75(1) (a) to (d). However, there was scope for confusion in that it was possible to interpret section 75(1) to apply only to the circumstances detailed in section 75(1)(c) and (d). Section 16 seeks to remove the possibility for confusion and to clarify the provision.
29. As this section is designed to address a mismatch between the way in which section 75 has, to date, been interpreted and the intended effect of section 75, it is applied retrospectively to the date when the original limits were increased. The effect is that, while retrospective, the amendment will not place in jeopardy of prosecution anyone who was not already in such jeopardy and, because of the increased limit of permitted expenditure, could potentially remove individuals from such jeopardy. Also, as it will narrow the class of conduct which will constitute a breach of section 75, less people will be capable of being prosecuted under it

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30. Subsection (2) of section 75A provides that no expenses, with a view to promoting or procuring the election of a candidate at an election, shall be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account of:
 - (a) holding public meetings or organising any public display;
 - (b) issuing advertisements, circulars or publications;
 - ((c) otherwise presenting to the electors the candidate or his views, or the extent or nature of his backing, or disparaging another candidate.
31. A breach of subsection (2) will amount to a corrupt practice in terms of subsection (7).
32. Subsection (3) provides that subsection (2)(c) will not restrict the publication of any matter relating to the election in a newspaper, a broadcast made by the BBC or a programme made under the appropriate Broadcasting Acts.
33. While subsection (2) specifies who can incur expenditure, by way of exception, subsection (4) provides that a third party campaigning for or against a candidate at a local government election in Scotland may incur expenditure up to a maximum of £50 together with an additional 0.05p per elector ("the permitted sum" – as defined in subsection (5)).
34. Subsection (6) makes provision requiring returns of expenses, a declaration verifying the return and details of authority received from the election agent to be delivered to the appropriate officer within 21 days after the result of the election is declared. Failure to do so will constitute an illegal practice in terms of subsection (8).
35. Where a person is convicted of a corrupt practice (under subsection (7)) or an illegal practice (under subsection (8)), the court may, if it considers it just to do so, mitigate or entirely remit any incapacity incurred. Further, where the corrupt or illegal practice is the result of an agent acting without the candidate's consent or connivance, the candidate is not liable for the actions of the agent, nor is his election void by reason of the agent's corrupt or illegal practice (subsection (10)). Subsection (11) makes provision for corrupt or illegal practices committed by an association or body of persons, whether corporate or unincorporated.

Section 17 Meaning of election expenses for purposes of the 1983 Act

36. **Section 17** repeals sections 90A (meaning of election expenses) of the 1983 Act and 90B (incurring of election expenses) and inserts a new section 90ZB which provides that "election expenses" in relation to a candidate at a local government election in Scotland means any expenses incurred at any time in respect of any matter specified in Part 1 of Schedule 4B (inserted by schedule 1 to this Act – see below), which is used for the purposes of the candidate's election. The modification in subsection (2) is consequential to the insertion of the new section 90ZB.
37. Parts 1 and 2 of the new Schedule 4B list those items qualifying as election expenses and those that are excluded. Part 3 of the Schedule also empowers Scottish Ministers to amend Parts 1 and 2 of the Schedule by order. An order made under this provision must be laid before the Scottish Parliament and is subject to the affirmative resolution procedure.

Section 18 Financial limits applying to candidates' election expenses

38. This section amends provisions in the Political Parties, Elections and Referendums Act 2000 dealing with financial limits applying to candidates' election expenses.
39. The section removes subsection (6) of section 132 of the 2000 Act and extends, in relation to local government elections in Scotland, some of the changes made by that section to section 76 of the 1983 Act. Section 132(2) inserts a new section 76(1) and the

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effect is to align this provision with the new definition of election expenses inserted in section 90A by section 134 of the 2000 Act. Section 132(4) inserts new subsection (1B) into section 76 which re-casts the criminal offence of exceeding the election expenses limit so that it is in similar terms to parallel offences created by this Act in respect of, for example, campaign expenditure by political parties.

Section 19 Return as to election expenses

40. This section amends section 81(3) of the 1983 Act which provides that a return giving details of all the election expenses incurred by or on behalf of the candidate and payments made by the elections agent has to be submitted within 35 days of the declaration of the result of the election. Subsection (3) is only repealed insofar as it relates to Scottish local government elections and is replaced with a new sub-section (4A) which allows greater flexibility in prescribing the form in which information on election expenses should be presented without reducing the amount of information that has to be provided.
41. New subsection (4B) allows Scottish Ministers greater flexibility in prescribing the information required and the form in which it is presented. An order made under this provision must be laid before the Scottish Parliament and is subject to the affirmative resolution procedure.