

These notes relate to the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14) which received Royal Assent on 1 August 2006

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Part 1: Electoral Administration

Performance of local authorities in relation to elections etc.

Section 1 Setting of performance standards

4. **Section 1** enables Scottish Ministers to set and publish performance standards for returning officers relating to the administration of a local government election. After they are published the performance standards must be laid before the Scottish Parliament.

Section 2 Returns and reports on performance standards

5. **Section 2** enables Scottish Ministers to direct returning officers to submit reports regarding their level of performance against the standards set under section 1. Ministers are required to specify to whom the direction is issued and may also specify the elections to which the report relates and the form in which the report is to be provided. It further requires Ministers, upon receipt of such reports, to publish assessments of the level of performance of the returning officer (or officers) against the standards set.

Section 3 Provision of information about expenditure on elections

6. This section gives Scottish Ministers powers to direct returning officers to provide information on expenditure at local government elections. The direction can specify which elections the information is to cover and the form in which and the date by which the information is to be provided.

Section 4 Correction of procedural errors

7. This section allows returning officers to correct errors or omissions that arise during the preparation for and conduct of elections. These errors and omissions are those made by those administering the elections and those supplying goods and services to the administrators. The provisions of this section do not allow a returning officer to recount votes at an election after the result has been declared. Subsection (4) provides that a returning officer will not be guilty of the offence of breach of official duty set out in section 53 of the Representation of the People Act 1983 if the act or omission causing the breach of official duty is remedied in full.

Access to election documents

Section 5 Access to election documents

8. This section provides for access to election documents and gives Scottish Ministers a power to make regulations to impose conditions on that access and to charge for it.
9. Subsection (2) imposes requirements on the proper officer who holds documents for local government elections in Scotland to make them available for public inspection. The meaning of the term “proper officer” is set out in section 7 below. Subsection (3) identifies who can request copies of the register and the list of proxies marked to show who has been issued with a ballot paper in a polling station, and the marked lists of postal and postal proxy voters who returned their ballot papers.
10. Subsections (4) to (8) contain regulation-making powers and define what the regulations may or may not provide. The regulations may impose conditions on the inspection and supply of documents, how they are supplied and whether they are subject to payment of a fee, making copies of the documents, the purposes for which the information in the documents is to be used and the disclosure and supply of the documents to another person or use of the information for a different purpose than the one for which the documents were originally provided.

Section 6 Access to election documents: contravention of regulations

11. This section creates an offence of contravening regulations governing access to post-election documentation. The maximum penalty for those found guilty on summary conviction is a fine of £5,000. Subsection (1) provides that any person who breaches any of the conditions set out in regulations made under section 4 is guilty of an offence. Subsection (2) provides that it is a separate and unconnected offence to be an appropriate supervisor of a person who breaches any of these conditions but subsection (2)(b) provides a statutory defence if the supervisor takes steps to stop the breach of conditions. Subsection (3) provides that a person who would otherwise have committed an offence under subsection (1) is not guilty if he has followed the supervisor’s instructions. Subsection (4) provides that a person who is unsupervised and who breaches conditions is not guilty of an offence if he has taken all reasonable steps to comply with the conditions. Subsection (5) sets out the meaning of the terms “appropriate supervisor” and “appropriate steps” in relation to this section.

Section 7 Access to election documents: supplementary

12. This section defines some of the terms used in section 5. It sets the meaning of the “proper officer” at subsection (2); “registered party” is defined with reference to Part 2 of the [Political Parties, Elections and Referendums Act 2000 \(c.41\)](#) (“the 2000 Act”) and the definition of “local government area” is that detailed in section 204(1) of the 1983 Act. The intention is to define them in the same way as they are defined in the [Scottish Local Government Election Rules 2002 no. 457](#).

Observers

Section 8 Observers: individuals

13. This section allows for individual observers, over the age of 16, to apply to attend and observe proceedings at a local government election. The proceedings that may be observed are the issue and receipt of postal votes, the poll and the count. Applicants will need to apply to returning officers for permission to attend and returning officers will have the power to refuse or revoke an application and must give the reasons for their decision in writing.

Section 9 Observers: organisations

14. This section allows organisations to apply for nominated members to attend and observe those same proceedings which an individual observer may attend. Applicants will need to apply to returning officers for permission to attend and returning officers will have the power to refuse or revoke an application but they must give the reasons for their decision in writing. Returning officers also have the power in granting an application to limit the number of observers nominated by an organisation who may attend proceedings at any one time.

Section 10 Attendance of observers

15. This section allows relevant officers to limit the number of observers present at any one time at election proceedings. Subsection (2) sets out that the term “observers” covers those who have been given permission to attend under sections 8(2) and 9(3). Subsection (2) defines “relevant officer” as being the returning officer (in relation to proceedings other than those at a polling station), the presiding officer (in relation to proceedings at a polling station) or any other person authorised by a returning officer or presiding officer for the purposes of those proceedings.

Section 11 Code of practice on attendance of observers at elections etc.

16. This section requires Scottish Ministers to prepare and publish a code of practice to regulate the processes involved in applying for access as an observer and determining applications and any subsequent revocations of permissions for access. The code of practice will reflect existing legislation governing the conduct of those attending election proceedings and relevant officers must have regard to the code when carrying out any function connected with sections 8, 9 and 10.

False information

Section 12 False information in applications relating to absent voting

17. This section inserts a new section 13CA of the Representation of the People Act 1983 to provide that it will be an offence to give false information in connection with an application for a postal or proxy vote at a local government election in Scotland. Section 13CA(3) states that in relation to a signature, “false information” means a signature which is not the usual signature of the person, or was written by a person other than the person whose signature it purports to be.

Section 13 False information in nomination papers etc.

18. This section inserts a new section 65B of the 1983 Act. Subsection (2) provides that a person will be guilty of a corrupt practice if he knowingly causes or allows a document to be supplied to a returning officer for use at an election if:
- (a) it contains a false statement of the name or home address of a candidate at the election
 - (b) it contains anything which claims to be the signature of an elector who is proposing, seconding or assenting to the nomination of a candidate but which he knows was not written by the elector or which was not written by the elector for any of those purposes.
19. Subsection (3) provides that it shall be a corrupt practice at a local government election in Scotland to make knowingly a false statement in the consent to nomination given by the candidate. The following would constitute a false statement:
- (a) an erroneous date of birth

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- (b) an incorrect statement that a candidate is or will be qualified for election or that to the best of their knowledge and belief they are not disqualified.

20. Certain offences under the 1983 Act are designated “corrupt practices” which are offences created by the 1983 Act and which are punishable by the criminal courts. These include bribery, treating, undue influence and personation.

Offences relating to voting

Section 14 Undue influence

21. **Section 14** amends section 115 of the 1983 Act (undue influence) and addresses attempts by persons to exert undue influence that do not prove to be successful. The amendment will remedy the fact that intended but unsuccessful attempts at preventing the free exercise of the franchise or prevailing upon an elector to vote or to refrain from voting may not at present amount to the corrupt practice of undue influence.

Section 15 Offences relating to applications for postal and proxy votes

22. **Section 15** inserts a new section 62B of the 1983 Act which provides that it will be both a corrupt practice and a criminal offence to do certain acts in connection with applications for a postal or proxy vote with the intention of gaining certain specified advantages. Where by virtue of the new offences provisions in the Act, a person is guilty of either a corrupt practice or an illegal practice, the consequences of committing such a practice are set out in sections 158 to 160 of the Representation of the People Act 1983. Section 160(4) of that Act, however, provides that a candidate or other person reported by an election court as personally guilty of a corrupt or illegal practice shall, for the relevant periods that are set out in section 160(5), be incapable of being registered as an elector or voting at UK Parliamentary elections or any local government election in Great Britain, of being elected to the House of Commons, or of holding other elective office. As elections to the UK Parliament and the franchise at local government elections are matters reserved to the UK Parliament, and as the Act itself does not specify that these penalties in such reserved areas will apply where a person is guilty of a corrupt or illegal practice, these penalties stated in section 160(4) will not apply as a consequence of the Act.
23. Section 160(4A) of the 1983 Act provides that the bar on being registered as an elector or voting, contained in section 160(4)(a)(i) as above, only applies to those found guilty of a corrupt practice under section 60 or of an illegal practice under section 61 (personation/other voting offences.) It will be a matter for consequential modification, by order, so that it would be proposed that section 160(4A) of the 1983 Act would insert a reference to the new section 62B for Scottish local government elections. This would have the effect that the bar contained in section 160(4A) would also be a consequence of where an offence is committed under the new section 62B.
24. Sections 168 to 173 of the 1983 Act deal with prosecutions for corrupt or illegal practices. Matters challenging the outcome or conduct of an election on petition would go before an election court. Matters dealing with criminal matters such as fraud would go before the appropriate criminal court in Scotland. If found guilty on a criminal prosecution, a person may be imprisoned for up to two years and fined.
25. Sections 62B(2) and (3) outline the intentions and the acts that must be proved in order to establish that the offence has been committed. Section 62B(2)(b) specifies that the intention that must be proved is that the person intended to deprive another of the opportunity to vote, or intended to gain a vote to which the person was not entitled, or intended to make some other financial gain.
26. Section 62B(3) gives details of the acts that underpin the offence. These include the applicant pretending to be another elector, or making any other false statement in an

application for a postal or proxy vote. It also covers the applicant causing the diversion of communications from the entitled elector or preventing their delivery.

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
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

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£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 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

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provision must be laid before the Scottish Parliament and is subject to the affirmative resolution procedure.

Anonymous entries

Section 20 Anonymous registration: miscellaneous amendments

42. This section provides for a number of miscellaneous amendments to the 1983 Act and the Representation of the People 2000 Act linked to the procedure at elections involving voters who are registered anonymously. These include procedures for the sending of electoral registration material by post to voters registered anonymously, the exclusion of any person who is registered anonymously from presenting a petition questioning a local government election in Scotland and procedures involving absent voting. The provisions referred to are inserted into the 1983 and 2000 Acts by the UK Electoral Administration Act. This section will extend those UK Act provisions so that they apply also to Scottish local government elections.

Personal identifiers

Section 21 Absent vote applications : provision of personal identifiers

43. **Section 21** introduces new provisions for the collection of personal identifiers (signature and date of birth) at the point of application for absent voting (both postal voting and voting by proxy) at local government elections in Scotland. Subsection (3) provides that an application for an absent vote must include these details and subsection (4) requires registration officers not to grant an application if they are not supplied.
44. Subsection (5) allows registration officers discretion to dispense with the need for a signature if they are satisfied that the applicant cannot provide a signature or sign in a consistent and distinctive way because of illiteracy or disability. Subsection (6) requires a record to be kept of those persons granted an application for an absent vote and that this record should show their dates of birth and signatures unless the registration officer has dispensed with the need for a signature under subsection (5). Subsection (7) gives Scottish Ministers powers to make regulations setting out the period of time for which this record must be kept.

Section 22 Provision of fresh signatures

45. This section deals with the provision of new signatures by absent voters who have already provided a signature. Subsection (2) allows the voter to provide a new signature and subsection (3) provides that regulations may be made to enable registration officers to require electors who vote by post or proxy to provide a fresh signature in certain circumstances. The regulations can also specify the consequences for voters who refuse or fail to comply with such a requirement. Subsection (4) requires returning officers to amend the record of personal identifiers kept under section 21(6) where a fresh signature has been provided.

Section 23 Disclosure of personal identifiers

46. This section deals with the disclosure of personal identifiers and, in subsection (1), requires registration officers to supply or give access to information contained in the record kept of personal identifier information to returning officers for use at local government elections.
47. Subsection (2) provides that this information can also be given to other registration officers, people involved in preparing or conducting legal proceedings on the conduct of election and to other people as set out in regulations to be made by Scottish Ministers.

Section 24 Power to require existing absent voters to provide personal identifiers

48. This section sets out provisions for collecting personal identifier information from existing absent voters and, in subsection (1), gives Scottish Ministers powers to make regulations to enable registration officers to require existing absent voters to provide a signature and date of birth. The regulations will set out the circumstances in which this information will be required and the consequences for voters who refuse or fail to comply with such a requirement.
49. Subsection (2) makes it clear that an existing absent voter is a person who was granted an absent vote prior to the date the provisions in section 21 come into effect. Subsection (3) provides that the details of the personal identifiers of such persons must be included in the record kept under section 21.

Photographs on ballot papers: piloting

Section 25 Photographs on ballot papers: piloting

50. This section amends section 5 of the Scottish Local Government (Elections) Act 2002 so that the use of photographs of candidates on ballot papers can be piloted at local government elections. Orders made under section 5 of the 2002 Act must make provision for and in connection with the implementation of the proposed scheme as is considered appropriate. They may include provisions which modify or disapply any enactment. Such orders are not subject to Parliamentary procedure.

Encouraging electoral participation

Section 26 Encouraging electoral participation

51. **Section 26(1)** gives returning officers powers to encourage participation at local government elections. Subsection (2) provides that returning officers must have regard to any guidance issued by Scottish Ministers for this purpose. Subsection (3) allows Ministers to reimburse expenditure incurred by returning officers but subsection (4) requires that the total amount must not exceed a fixed sum which will be set out in regulations.

Miscellaneous

Section 27 Tendered votes in certain circumstances

52. Subsection (1) inserts a new subsection (6B) into section 61 of the 1983 Act, which relates to certain voting offences.
53. The new provision excepts from the scope of voting offences an elector who discovers, upon attending his polling station, that he has without his knowledge been included on the list of postal voters or postal proxy voters who may not vote in person at a polling station. It will be possible for such a voter to be issued with a tendered ballot paper at a polling station before the close of voting where the deadline for requesting a replacement postal ballot paper has expired.
54. The elector will be allowed to mark a tendered ballot paper if their answer satisfies the presiding officer that they have lost or not received their postal ballot paper. A person who votes at a polling station when entitled to vote by post is not guilty of a voting offence if the vote cast is a tendered ballot paper. Similarly, a person who votes in person as a proxy for another elector when entitled to vote as a postal proxy, is not committing an offence when voting by a tendered ballot paper.
55. Subsection (2) makes two amendments to Schedule 4 of the Representation of the People Act 2000. The insertion of paragraph 2(6B) of the Schedule removes the prohibition on absent voters voting at a polling station. The effect is that paragraph 2

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does not apply to voters casting a fendered ballot paper in the circumstances referred to above. Similarly, the insertion of paragraph 7(14) means that paragraph 7 of Schedule 4 does not prohibit postal proxies casting a tendered vote at a polling station in the circumstances referred to above.

Section 28 Election campaign and proceedings: miscellaneous amendments

56. This section makes a minor amendment to section 81 of the 1983 Act dealing with the return as to election expenses by providing that any reference to the Electoral Commission is to be read as if it were a reference to the Scottish Ministers (subsection (1)). Subsection (1) is consequential on subsection (2) in that it makes a further modification of one of the amendments which is extended to Scottish local government elections by subsection (2).
57. The paragraphs in Schedules 18 and 22 to the Political Parties, Elections and Referendums Act 2000 which are now applied to local government elections in Scotland by virtue of subsections (2) and (3) update provisions in the 1983 Act or omit those that are out of date and no longer serve a useful purpose. The Schedule 18 and 22 provisions principally amend sections in Part V of the 2000 Act, dealing with control of campaign expenditure. Amendments are made to sections, 73 (payment of expenses through election agent), 74 (candidate's personal expenses), a new section 74A (expenses incurred otherwise than for election purposes) is inserted, 78 (time for sending in and paying claims), 81 (return as to election expenses), 82 (declarations as to election expenses), 89(1) (inspection of returns and declarations for purposes of section 88), and 90 (election expenses where agent not required). Sections 72 (campaign expenditure), parts of 79(3) (limits on campaign expenditure), parts of 81 (return as to election expenses), 82(4) (person before whom declaration as to election expenses may be made), 101 – 105 (dealing with referendums) and 108 (Designation of organisations to whom assistance is available) are deleted.

Section 29 Details to appear on election publications

57. This section repeals section 110 of the 1983 Act, so far as it applies to Scottish local government elections, covering the details to appear on election material and replaces it with a new section 110A. The new section 110A has the effect of introducing for local government elections in Scotland the amendment made by paragraph 14 of Schedule 18 to the 2000 Act. It widens the scope of the original section 110 by extending whose details are to be provided on the election publication and does this by replacing the term "publisher" with "promoter" and by providing that the name and address of any person on behalf of whom the material is being published (and who is not the promoter) are to be provided on the election publication.

Section 30 Repeal of reference to Maundy Thursday

58. This section removes Maundy Thursday from the list of days that are to be disregarded for the purposes of calculating the timetable for local government elections.

Section 31 Translations etc. of certain documents

59. This section inserts a new section 199C of the 1983 Act which requires returning officers at Scottish local government elections and their staff, if they consider it appropriate, to make election documents (other than a nomination paper or ballot paper), which are displayed or given to voters, available in graphical format, Braille, languages other than English or other means. If appropriate, the information contained in those documents must also be made available in an audio format.

Section 32 Certain voters entitled to vote in person

60. This section amends Schedule 4 to the Representation of the People Act 2000 which deals with absent voting. The change extends the right to vote in person at local

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government elections in Scotland, rather than by post or proxy, to people detained under
the Mental Health (Care and Treatment) (Scotland) Act 2003.

***Section 33 Power to make regulations as to preparation of special lists and records
etc.***

61. This section gives Scottish Ministers a power to make regulations on the procedures for drawing up special lists and records in connection with the conduct of a local government election. This is to put beyond doubt that Ministers have a power to make provisions regarding the procedure to be followed in the preparation of any special lists relating to absent voting. Regulations made under this power will attract negative resolution procedure.

Section 34 Miscellaneous amendments

62. This section makes a number of minor amendments to the 1983 Act. Subsection (1)(a) amends the offence provision in section 65 (tampering with nomination papers, ballot papers etc.), insofar as it applies in relation to a local government election in Scotland, to add a reference to the new form of postal voting statement which will be used in place of the current declaration of identity. Subsection (1)(b) amends section 66 (requirement of secrecy of those persons attending the poll and counting of votes) and adds a reference to a unique identifying mark used on the back of any ballot paper to those items about which information is not to be communicated. Subsection (1A) removes the restriction in sections 160(5A) and (5B) to ensure that the disqualification provisions in section 160 are triggered for the office of councillor in Scotland by a conviction of corrupt or illegal practice at a reserved election.
63. Subsection (2) amends section 173A (incapacity to hold public or judicial office in Scotland) and removes the restriction imposed by paragraph 104 of Schedule 1 to the UK Electoral Administration Act. This has the effect of extending to the office of councillor for a local government area in Scotland the provisions of section 173A which set out that a person convicted of a corrupt practice is prevented from holding public or judicial office in Scotland for a period of five years starting from the date of his conviction or, if holding such office, shall vacate it from that date. Subsection (3) amends Schedule 2 of the 1983 Act (provisions which may be contained in regulations as to registration etc.) and inserts a new paragraph 12A which provides that regulations made in relation to local government elections in Scotland may also make provision authorising the cancellation or removal of ballot papers at such an election in any prescribed circumstances.
64. The UK Electoral Administration Act amends paragraph 3(3)(b) of Schedule 4 to the Representation of the People Act 2000 which deals with absent voting. The change replaces the words “physical incapacity” with “disability” to ensure that the link between mental incapacity and legal capacity is removed in relation to a person who applies to vote by proxy. Subsection (4) removes the restriction of the extent of the change so that it now extends to local government elections in Scotland.
65. Ministers have a power in section 3(1) of the 2004 Act to make an order which, in addition to updating the local government election rules, will also make provision about the detail of the STV system to be used in the 2007 local government elections. That order will be subject to affirmative procedure, as provided for in section 16(5) of the 2004 Act. Subsection 25(5) makes clear that not every order made under section 3(1) of the Local Governance (Scotland) Act 2004 need include provisions set out in section 3(2) (which deals with the counting of votes.) Where the order does not include such provision, it will be subject to negative procedure. Where the order does include provisions in section 3(2), it will continue to be subject to affirmative procedure.

General

Section 35 Part 1: minor and consequential modifications

66. This section inserts schedule 2 which makes minor and consequential amendments to existing legislation as a result of changes made by the Act.

Section 36 Interpretation of Part 1

67. The section deals with the interpretation of terms used in Part 1.
68. Subsection (3)(a) ensures that the term “enactment” carries the same meaning as it would normally have in an Act of the Scottish Parliament. Subsection (3)(b) ensures that the meaning of “prescribed” in section 7 is as given in section 7(9) of this Act. These provisions are inserted as the more general interpretation provisions set out in section 36(2) would otherwise give these terms the same meaning as in the Representation of the People Act 1983.