

LOCAL ELECTORAL ADMINISTRATION (SCOTLAND) ACT 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act and to help inform debate on it. 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. 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

3. Following the 2007 joint Scottish Parliament and local government elections, Ron Gould, former Assistant Chief Electoral Officer of Canada and an electoral administration expert, was appointed by the Electoral Commission to carry out an independent review of the problems which had arisen during the elections. Gould made a number of recommendations to improve electoral administration and this Act continues the process of implementing these.¹

4. The Act establishes the Electoral Management Board for Scotland on a statutory basis for its work in relation to local government elections in Scotland and extends the statutory remit of the Electoral Commission to cover local government elections in Scotland.

COMMENTARY ON SECTIONS

Part 1 – Electoral Management Board for Scotland

5. Part 1 of the Act contains provisions relating to the Electoral Management Board for Scotland. Section 1 establishes the Board and defines its general function which is to provide a forum for co-ordinating the administration of local government elections in Scotland. Section 2 defines the membership of the Board and provides for the convener of the Board to be appointed by Scottish Ministers. Members of the Board will be returning officers, depute returning officers and electoral registration officers and will be appointed by the convener.

¹ <http://www.electoralcommission.org.uk/document-summary?assetid=13223>

6. Section 3 sets out the duration of the convener's and other members' appointments. Appointments will be for a period of four years and the Act also allows for the possibility of reappointment. It is anticipated that appointments will be made in 2011, 2015, 2019 and so on with local government elections taking place in 2012, 2017, 2021 and subsequently every four years.

7. Section 4 enables the Board to determine its own operating procedures. Subsection (2) enables the convener, with the Board's agreement, to invite advisers to its meetings.

8. Sections 5 and 6 provide for the convener to have the power of direction over local government returning officers and electoral registration officers. The power of direction over returning officers in section 5 is similar to that given to the Regional Returning Officer for European Parliamentary elections. Such directions must relate to the exercise of the returning officers' functions in connection with local government elections generally or a particular local government election. Previous directions for European elections have included, for example, requirements in relation to the opening of postal votes and the timing of the count.

9. Section 6 contains a more limited power of direction over electoral registration officers in relation to local government elections in Scotland. This power of direction would be limited to functions relating directly to the preparation for a particular local government election. Possible uses of this power of direction could include the supply of data to returning officers by electoral registration officers at a particular time, the requirement to use an agreed style of form or to confirm specific dates for making available updated electoral registers.

10. Section 7 provides that the convener must consult the Electoral Commission and the Board before giving a direction.

11. Section 8 sets out the reporting requirements of the Board. The Board will provide an annual report on the performance of its functions in relation to local government elections to the Scottish Parliament as soon as practicable after the end of the financial year.

Part 2 – Electoral Commission: local government elections etc.

12. Local government elections in Scotland are the only statutory governmental elections in the UK which currently fall outwith the remit of the Electoral Commission. Part 2 of the Act extends some of the statutory powers and responsibilities of the Electoral Commission so that these can be exercised in relation to elections to Scottish local authorities.

13. Sections 10 to 15 contain provisions to enable the Electoral Commission to:

- report on administration of ordinary local government elections (section 10);
- include local government elections in Scotland within the Commission's Observers Scheme (section 11);
- be consulted on changes to electoral law in relation to local government elections (section 12);
- apply performance standards to returning officers for local government elections (section 13);

- provide guidance and advice to electoral administrators, candidates and political parties (section 14); and
- run public awareness and information campaigns in relation to the local government electoral system (section 15).

14. Section 16 sets out the mechanisms for financing the Commission. It requires the Commission to be reimbursed by the Scottish Government for expenditure incurred by the Commission on carrying out their functions in relation to local government elections in Scotland, subject to a maximum specified by the Scottish Ministers by order.

15. Section 17 sets out the reporting requirements of the Commission. Subsection (3) requires the Commission to prepare and lay before the Scottish Parliament a report on the performance of their functions in relation to local government elections in Scotland as soon as practicable after the end of each financial year. The report should also be published.

16. Section 18 enables the Scottish Public Services Ombudsman to consider any complaint or request to investigate a matter arising as a result of the Electoral Commission's work in relation to local government elections in Scotland.

Part 3 – General

17. This Part sets out powers for the Scottish Ministers to make ancillary provision and provides for the commencement of the Act. It also gives the short title of the Act.

18. Section 20 confers on Ministers a power to make by order further provisions to support the implementation of the Act or to ensure a smooth transition from the current law to that in the Act.

19. Section 21 of the Act provides for Ministers to make an order specifying that the Act will come into force on a day or days determined by them.

PARLIAMENTARY HISTORY

Introduction

Bill as introduced – 8 October 2010 SP Bill 57

Stage 1

Local Government and Communities Committee

27th meeting 2010, 17 November 2010 Official Report of 27th LGC Committee Meeting

30th meeting 2010, 8 December 2010 Official Report of 30th LGC Committee Meeting

Stage 1 Report to Parliament LGC Committee Stage 1 Report

Subordinate Legislation

31st meeting 2010, 16 November 2010 Official Report of 31st Subordinate Legislation Committee

64th Report 2010 (Session 3) Subordinate Legislation Committee Report

Consideration by the Parliament

Stage 1 Debate – 2 February 2011 Official Report of Stage 1 Debate

Stage 2

Local Government and Communities Committee

7th meeting 2011, 2 March 2011 Official report of 7th LGC Committee meeting Stage 2 consideration

Stage 3

Consideration by the Parliament

Stage 3 Debate – 16 March 2011 Official Report of Stage 3 Debate

Bill as Passed SP Bill 57

Royal Assent

20 April 2011 Local Electoral Administration (Scotland) Act 2011