

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) ACT 2006

EXPLANATORY NOTES

THE ACT

Part 1: Electoral Administration

Offences relating to voting

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.

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

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.