

ELECTORAL ADMINISTRATION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6: Conduct of elections etc.

Election timetables

Section 20 Omission of references to Maundy Thursday

118. This section removes Maundy Thursday from the list of days that are to be disregarded for the purposes of the electoral timetable. The section gives effect to Part 4 of Schedule 1, which specifies the amendments to current enactments necessary to achieve this.

Nomination

Section 21 Use of candidates' common names

119. This section amends Schedule 1 (parliamentary election rules) to the 1983 Act by making a new provision to enable candidates to use the name which they commonly use (their “common name”) on the ballot paper. Examples of such names include
- a single name (for example, “Sting”);
 - a shortened version of a forename (for example, “Bob” instead of Robert);
 - a professional or stage name (for example, “Michael Caine” instead of Maurice Joseph Micklewhite);
 - a name where initials are used (for example, A.A. Milne, John H. Stracey or Malcolm X); or
 - a married woman’s maiden name which she retains in connection with her job or profession.
120. *Subsection (2)* inserts new paragraph (2A) into rule 6 (Nomination of candidates), which provides that if a candidate commonly uses a surname or a forename which is different from any other surname or forename he has, the nomination paper may state the commonly used surname or forename in addition to any other name.
121. *Subsection (3)* inserts new paragraphs (2A) to (2C) into rule 14 (Publication of statement of persons nominated). Paragraph (2A) provides that where a nomination paper bears a commonly used name the statement of persons nominated shall show the person’s commonly used name instead of the other name.
122. Paragraph (2B) provides that paragraph (2A) does not apply if the returning officer thinks that the commonly used name may be likely to mislead or confuse voters or is obscene or offensive. Paragraph (2C) requires the returning officer to give notice in writing of his reasons for refusing the use of a commonly used name.

123. *Subsection (4)* amends the Form of Nomination Paper in the Appendix of Forms in Schedule 1 by adding additional columns in which a candidate can include his commonly used surnames and forenames, if applicable.
124. *Subsection (5)* amends the notes accompanying the Form of Nomination Paper. The candidate is advised that he may include his commonly used name on the nomination paper, but that if he does so it is that name which will appear on the ballot paper. The notes also advise of the circumstances in which a returning officer might refuse the use of a common name.

Section 22 Candidate not to stand in more than one constituency

125. This section introduces a new paragraph (c) into Rule 8(3) of Schedule 1 to the Representation of the People Act 1983 (Candidate's consent to nomination). This provides that a candidate must state on the consent form that he is only standing in one constituency at a UK Parliamentary election.

Section 23 Offences as to false statements in nomination papers

126. This section amends section 65A of the 1983 Act.
127. *Subsection (1)* of section 65A is amended to provide that a person shall be guilty of a corrupt practice if they authorise a candidate to use a description knowing that that person will be standing in more than one constituency where the poll is to be held on the same day.
128. A new subsection (*1A*) is inserted into section 65A which provides that a person is guilty of a corrupt practice where he makes a false statement in any document in which he gives his consent to nomination as to:
- his date of birth;
 - his qualification for being elected;
 - the fact that he is not a candidate at an election for any other constituency where the poll is to be held on the same day as the poll at the election to which the consent relates.
129. A relevant election for the purposes of section 65A is generally any parliamentary election or any local government election in England and Wales. However, since the requirement (introduced by section 22 of this Act) for a candidate to state that he is not a candidate in any other constituency applies only to parliamentary elections, local government elections are not relevant elections for the purposes of the related corrupt practices created by section 23 of this Act.

Death of Candidate

Section 24 Death of candidate

130. This section replaces rule 60 of Schedule 1 to the Representation of the People Act 1983 (Death of candidate at a Parliamentary Election) with new rules 60 to 65. Following the delay caused by the death of a candidate in the constituency of South Staffordshire at the 5 May 2005 General Election, concerns were raised about the efficacy of the procedure for dealing with the death of a candidate in these circumstances. New rules 60 to 65 address this problem by reducing the delay in rescheduling the date of poll as a result of the death of a candidate, by allowing registered political parties to field an alternative candidate if their candidate dies and by allowing the original election timetable to continue uninterrupted should the deceased candidate be an independent.

New rule 60: Independent candidate

131. Rule 60(1) applies if at a contested UK Parliamentary election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named in the ballot papers as an independent candidate has died.
132. Rule 60(2) provides that where an independent candidate dies, the election will continue as if that candidate has not died, subject to this rule and rules 61 and 62.
133. Rule 60(3) states the exceptions where the rules of Schedule 1 to the Representation of the People Act 1983 do not apply to a deceased independent candidate. These are:
 - (a) rule 32(1)(c) and (d) (admission to polling station) – the polling agents of a deceased candidate are not permitted to enter a polling station;
 - (b) rule 44(2)(b) to (d) (attendance at count) – the election agent, counting agents or spouse of a deceased candidate are not automatically entitled to be present at the count; and
 - (c) rule 53(4) (forfeiture of deposit) – the deposit of a deceased independent candidate will not be forfeit under any circumstances.
134. Rule 60(4) provides that where there are only two candidates shown in the statement of persons nominated, and one of those candidates dies, the election will be treated as an uncontested election. Either the notice of poll will be countermanded, or if polling as begun, the returning officer will direct that the poll is abandoned, and any prescribed election documents disposed of in the manner set out in Rule 65 of schedule 1 to the Representation of the People Act 1983.
135. Rule 60(5) For the purposes of this rule a person is named or to be named on the ballot papers as an independent candidate if the description (if any) on his nomination paper is not authorised as mentioned in rule 6A(1) or (1B).

New rule 61: Deceased independent candidate wins

136. Rule 61(1) applies where a deceased independent candidate, named on the statement of persons nominated, receives the majority of votes at the election.
137. Rule 61(2) provides that where the deceased candidate receives the majority of votes, Rule 50(1) (declaration of result) does not apply and that the returning officer shall declare that no member is returned and announce the number of votes given to each candidates together with the number of rejected ballot papers.
138. Rule 61(3) disapplies Rule 53, with the result that the remaining candidates' deposits will not be forfeited.
139. Rule 61(4) specifies that where the deceased candidate receives the majority of votes, the returning officer must retain the writ, and proceed with a fresh election, subject to the following provisions of this rule.
140. Rule 61(5) specifies that the writ for the election must be taken to have been received on the first working day after the end of the period of seven days starting on the day of the declaration of result of the election.
141. Rule 61(6) provides that in the case of a person shown in the statement of persons nominated as standing nominated, no fresh nomination is necessary. Additionally, no new nominations may be made by any person.
142. Rule 61(7) provides that if a candidate wishes to withdraw from the rescheduled contest, the last day on which he can give notice of withdrawal of candidature is the seventh working day after the day on which the writ is taken to be received.

143. Rule 61(8) provides that no new deposit is necessary in the case of a rescheduled election caused by the a deceased independent candidate receiving the majority of votes at the original poll.
144. Rule 61(9) specifies that the rescheduled poll must be held on a day in the period which starts 15 working days after the day on which the writ is taken to have been received and ends 19 working days after that day.
145. Rule 61(10) provides that for the purposes of this rule a working day is a day which is not a day specified in rule 2(1)(a) to (c) of Schedule 1 to the Representation of the People Act 1983. The specified days are a Saturday or Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday, or a day appointed for public thanksgiving or mourning.

New rule 62: Deceased independent candidate with equality of votes

146. Rule 62 provides that where a deceased candidate polls the same number of votes as another candidate, the deceased candidate will be ignored, and the remaining candidate will be returned.

New rule 63: Party candidate

147. Rule 63(1) applies where proof is given to the officer that the candidate of a registered political party, who is named or to be named on the ballot paper, has died before the declaration of result.
148. Rule 63(2) provides that the returning officer must either countermand notice of the poll, or if polling has begun, direct that the poll be abandoned.
149. Rule 63(3) provides that the proceedings with reference to the election must be commenced afresh, subject to paragraphs (4) to (9) of this rule:
- the writ will be taken to have arrived on the first working day after the end of a period of seven days following the day that a returning officer receives proof of a party candidate's death;
 - a candidate already shown on the statement of persons nominated does not need to submit a fresh nomination;
 - only a new candidate for the registered political party in whose name the deceased candidate was standing will be permitted to submit a new nomination. No other nominations may be made;
 - the last day for a nomination by a new candidate for the registered political party to be made, is the seventh working day after the writ is taken to be received;
 - a candidate already shown as nominated may withdraw from the rescheduled poll. The notice of withdrawal must be made by the seventh working day after the day on which the writ is taken to be received; and
 - the minimum number of days that may pass between the day on which the writ is taken to have been received and the poll is 15 working days. The maximum number of days is 19 working days.
150. For the purposes of rule 63:
- (a) a person stands in the name of a registered political party if his nomination paper contains a description which is authorised as mentioned in rule 6A(1) or (1B);
 - (b) a registered political party is a party which is registered under Part 2 of the Political Parties, Elections and Referendums Act 2000; and;
 - (c) a working day excludes days specified in rule 2 of Schedule 1 to the Representation of the People Act 1983. The specified days are a Saturday or

Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday, or a day appointed for public thanksgiving or mourning.

New rule 64: Speaker of the House of Commons seeking re-election

151. Rule 64 applies where proof is given to the returning officer that the Speaker of the House of Commons has died while seeking re-election as a candidate, shown on the statement of nominated persons for a UK Parliamentary election.
152. Rule 64 (2) provides that where the circumstances in subsection (1) occur, the returning officer must, either countermand notice of the poll, or if polling has begun, direct that the poll be abandoned.
153. Rule 64 (3) provides that the proceedings with reference to the election must be commenced afresh, subject to paragraphs (4) to (6) of this rule, which provide that:
 - the writ will be taken to have arrived on the first working day after the end of a period of seven days following the day that a returning officer receives proof of a party candidate's death;
 - the last date for new nominations to be delivered, or for a candidate already shown on the statement of persons nominated to withdraw his candidature, is the seventh working day after the day on which the writ is taken to be received; and
 - the minimum number of days that may pass between the day on which the writ is taken to have been received and the poll is 15 working days. The maximum number of days is 19 working days.
154. Paragraph (7) states that for the purposes of this rule a working day is a day which is not a day specified in rule 2(1)(a) to (c) of Schedule 1 to the Representation of the People Act 1983. The specified days are a Saturday or Sunday, Christmas Eve, Christmas Day, Good Friday, a bank holiday, or a day appointed for public thanksgiving or mourning.

New rule 65: Abandoned poll

155. Rule 65 applies to an election where the death of either an independent candidate, a candidate from a registered political party, or the Speaker of the House of Commons occurs, as set out in Rules 60, 63 and 64 of Schedule 1 to the Representation of the People Act 1983 respectively.
156. Rule 65(2) provides that, where the death of a candidate occurs as described in paragraph (1), the presiding officer at a polling station must forward to the returning officer, the ballot boxes, ballot papers and other documents as he would be required to do on the close of the poll.
157. Rule 65(3) requires the returning officer to dispose of election documents, as he is required to do on the completion of the counting of the votes.
158. Rule 65(4) to (8) provide that:
 - the returning officer does not need to prepare or verify a ballot paper account;
 - no count should take place where proof is given of a candidate's death, or the count should cease should proof of death be made to the returning officer during the count; and
 - the returning officer must seal up all the ballot papers (whether the votes on them have been counted or not) and it is not necessary to seal up counted and rejected ballot papers in separate packets.
159. Rule 65(7) provides that ballot papers and other election documents relating to the poll should be retained and open to inspection in the same manner as if the election had not been postponed due to a candidate's death, subject to paragraphs (8) and (9).

160. Rule 65(8) states that ballot papers on which the votes were neither counted nor rejected must be treated as counted ballot papers.
161. Rule 65(9) states that no order is to be made for the inspection or production of either ballot papers, corresponding number lists, or certificates of employment on the day of poll. An exception is made where the order is made by a court in relation to a prosecution.

Election expenses

Section 25 Amount of expenses which may be incurred by third party

162. This section amends section 75 of the 1983 Act (Prohibition of expenses not authorised by election agent), as previously amended by section 131 of the 2000 Act.
163. *Subsections (2) and (3)* amend section 75(1) of the 1983 Act. Section 75(1) provides that no expenses, with a view to promoting or procuring the election of a candidate at an election (or, in the case of an election of the London Members of the London Assembly at an ordinary election, a registered political party or candidates of that party), 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 the matters set out in paragraphs (a) to (d) of subsection (1):
- (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; or
 - (d) in the case of an election of the London Members of the London Assembly at an ordinary election, otherwise presenting to the electors the candidate's registered political party (if any) or the views of that party, or the extent or nature of that party's backing, or disparaging any other registered political party.
164. By way of exception, section 75(1), as amended, also provides that a third party campaigning for or against a candidate at a Parliamentary election may incur expenditure up to a maximum of £500 ("the permitted sum"). A formula is provided for calculating the permitted sum in local government elections.
165. The intention of the earlier amendment to section 75(1) was to allow 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 under section 75(1)(a) to (d) above, and the Electoral Commission had interpreted it this way. However, as drafted, the amendment gave rise to ambiguity, raising concerns that the exception only applied to those matters set out in subsection (1)(c) and (d).
166. *Subsection (2)* amends section 75(1) of the 1983 Act to remove any ambiguity. The result is that the exception allowing a third party to incur expenditure up to the permitted sum applies to all those matters set out in subsection (1)(a) to (d) above and ensures that other exceptions to subsection (1)(c) and (d) continue to apply.
167. *Subsection (5)* inserts a new subsection (8) in section 75 of the 1983 Act. The effect of new subsection (8) is to provide that expenditure incurred by a third party will count for the purposes of section 75 if it is incurred in connection with any thing which is used or takes place after the candidate becomes a candidate, even if the expenditure is incurred before that date.

Section 26 Return as to election expenses

168. This section amends section 81 (return as to election expenses) of the 1983 Act, by inserting a new subsection (3A) and omitting subsection (3).

169. **Section 81(3)**, as amended by the 2000 Act, prescribes the information to be included in a candidate's election expenses return to the appropriate officer and the form in which the information should be presented. The Electoral Commission expressed concern that the information as required to be presented by section 81(1) to (3) is too prescriptive and complex. Consequently the election expenses return that the Electoral Commission must produce is difficult to understand.
170. New subsection (3A) allows the Electoral Commission greater flexibility in prescribing the form in which the information required should be presented, without reducing the amount of information that must be included in the return.

Section 27 Meaning of election expenses for purposes of the 1983 Act

171. This section inserts new section 90ZA (meaning of election expenses) after section 90 of the 1983 Act.
172. New section 90ZA(1) provides that "election expenses" in relation to a candidate at an election means any expenses incurred at any time in respect of any matter specified in Part 1 of Schedule 4A, which is used for the purposes of the candidate's election after the date when he becomes a candidate at the election. Because of section 118A of the 1983 Act, a person cannot become a candidate at the election before#in the case of a parliamentary general election#the dissolution of Parliament.
173. New subsection (3) provides that the phrase "for the purposes of a candidate's election" means with a view to, or otherwise in connection with, promoting or procuring the candidate's election at the election.
174. New subsection (4) confirms that election expenditure is such expenditure as is incurred by the candidate or his agent or by any person authorised by the candidate or his election agent to incur election expenses.
175. Part 1 of new Schedule 4A lists those matters qualifying as election expenses. Part 2 of the Schedule, together with subsection (2), lists general exclusions to the definition of election expenses. These lists are based on those for political parties' campaign expenditure contained in Schedule 8 to the 2000 Act, and will provide simpler and clearer reporting requirements.
176. Part 3 of new Schedule 4A makes provision for the Electoral Commission to provide guidance on the subject of election expenses and to prepare a draft code for observance by candidates and their agents. The code must be approved by the Secretary of State and thereafter be laid, either with or without modifications, before each House of Parliament, subject to the negative resolution procedure, before coming into force on such date as the Secretary of State may by order appoint. If the Secretary of State should make any modifications to the code he must, at the same time as laying the code, lay a statement of his reasons for making them.
177. Part 3 of the new Schedule also empowers the Secretary of State to amend Parts 1 and 2 of the Schedule by order. An order made under this provision must either give effect to a recommendation of the Electoral Commission or be made after consultation with the Electoral Commission. The order must be laid before each House of Parliament and is subject to the affirmative resolution procedure.

Observation of elections etc.

Section 28 Discretion to report on parliamentary by-elections

178. This section amends section 5 of the 2000 Act by inserting new subsection (2A), which gives the Electoral Commission discretion to prepare a report on parliamentary by-elections and elections to the Scottish Parliament and National Assembly for Wales. The discretion is in addition to the Electoral Commission's duty to report on parliamentary general and certain other elections under sections 5 and 6 of the 2000 Act.

Section 29 Observation of proceedings at elections and referendums

179. This section amends the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”):
- to confer on representatives of the Electoral Commission the right to attend electoral or referendum proceedings so that they can observe and subsequently report on them;
 - to confer on representatives of the Electoral Commission the right to observe the working practices of electoral registration officers, returning officers and counting officers;
 - to provide for other observers, whether individuals or organisations, to be accredited by the Electoral Commission so that they or their members can attend and observe certain proceedings at an election or a referendum; and
 - to provide for the Electoral Commission to produce a code of practice to regulate the attendance of all observers at such proceedings.
180. This section inserts six new sections into the 2000 Act after section 6.
181. New section 6A (Attendance of representatives of Commission at elections etc.) provides for representatives of the Electoral Commission to attend any proceedings which fall within the responsibilities of a returning officer at an election or a counting officer at a referendum. The right to attend is subject to any enactment that already exists under electoral law, which regulates attendance at proceedings. It also specifies who can be regarded as a representative of the Electoral Commission for these purposes as well as defining the term “counting officer” and identifying the elections and referendums to which this section applies.
182. New section 6B (Observation of working practices by representatives of Commission) provides for representatives of the Electoral Commission to observe the working practices of an electoral registration officer, a returning officer, a counting officer or of any person acting under the direction of such persons.
183. New section 6C (Accredited observers: individuals) provides for anyone over the age of 16 to apply to the Electoral Commission to be accredited as an observer at elections or referendums. It further specifies the proceedings to which such accredited persons can have access. These are:
- the issue and receipt of postal votes;
 - the poll; and
 - the count.
184. It also provides for the Electoral Commission to refuse or revoke accreditation and requires them to give reasons in writing for doing so. It specifies that all applications must be made in accordance with a code of practice (considered in the discussion of section 6F below).
185. New section 6D (Accredited observers: organisations) provides for organisations to apply to the Electoral Commission to be accredited for the purpose of nominating members of that organisation to attend those same proceedings which an individual accredited observer may attend. The Electoral Commission can put a limit on the number of observers who apply to attend a specific proceeding at an election, as listed under 6D(1). It again provides that the Electoral Commission may refuse or revoke accreditation and must give written reasons for doing so. Again it specifies that all applications must be made in accordance with the code of practice.
186. New section 6E (Attendance and conduct of observers) enables relevant electoral officers to regulate the number of accredited observers who can attend an election

proceeding at any one time. If an accredited observer misconducts himself while in attendance at an election proceeding, the relevant officer has the power cancel that observer's entitlement to be present at that proceeding. This section states that a relevant officer still retains any existing powers he has to remove a person from election proceedings. For the purposes of this section, relevant officer means a returning officer, presiding officer, relevant counting officer or any person authorised by them for the purposes of election proceedings.

187. New section 6F (Code of practice on attendance of observers at elections etc.) requires the Electoral Commission to prepare and publish a code of practice to regulate the processes involved in applying for accreditation and to give guidance on the powers and behaviour of relevant electoral officers and observers while attending election proceedings. It specifies what particulars must be included in the code, and requires that the Electoral Commission should consult the Secretary of State before preparing it. It also requires the Electoral Commission to lay the code before each House of Parliament and specifies that the Electoral Commission and its representatives, as well as returning officers and counting officers, must have regard to the code. It allows the Electoral Commission to revise the code at any time, following the same procedure for preparing the code.
188. Contained in Part 5 of Schedule 1 to the Act are the necessary consequential amendments to the 1983 Act to allow the Electoral Commission and other observers access to various electoral proceedings. Paragraph 84 amends rule 32 of Schedule 1 to the 1983 Act (the Parliamentary Elections Rules), which specifies who may attend at a polling station. This will now include observers, but will also include those under voting age who may accompany voters to the polling station and observe the democratic process at first hand. The presiding officer's power to regulate the total number of voters to be admitted to the polling station at the same time is extended to include those persons under the age of 18 who accompany them.

Ballot papers

Section 30 Ballot paper design

189. This section amends the rules in Schedule 1 to the 1983 Act and the Appendix of Forms included in that Schedule. The Secretary of State is given a power to prescribe a different form of ballot paper from that which is currently depicted in the Appendix of Forms, and to amend the directions to printers of ballot papers and those for the guidance of voters in voting. The current directions have been clarified to provide that the front of the ballot paper may contain two columns of named candidates.

Section 31 Replacement of counterfoils

190. This section amends the parliamentary elections rules. Ballot papers will no longer be attached by a perforation to counterfoils. Instead, electoral officials will be provided with a corresponding number list (new rule 19A) of all the numbered ballot papers. The official must insert the electoral register number of the voter to whom a ballot paper is issued (amended rule 37(1)(b) and (d) to which paragraph 71 of Schedule 1 refers). On being given a ballot paper, voters will be required to sign on the corresponding number list beside their electoral register number and ballot paper number. At the close of the poll, the corresponding number list is added to the other lists that must be forwarded to the count (amendments to rule 43). After the announcement of the result, the corresponding number list is forwarded for safe keeping in case it needs to be produced in legal proceedings (amendments to rules 55 to 57).

Section 32 Photographs on ballot papers: piloting

191. This section provides the Secretary of State with the power to make an order applying to specified local elections in England and Wales to enable the inclusion of photographs

of candidates on ballot papers to be piloted at those elections. The Secretary of State will only be able to exercise this power following an application from a local authority to run a pilot scheme and having consulted with the Electoral Commission.

- 192. *Subsection (1)* provides that a pilot order can only be made where a local authority makes a piloting proposal to the Secretary of State.
- 193. *Subsection (2)* provides that the Secretary of State may make a pilot order to enable photographs of candidates to be included on ballot papers at specified local elections.
- 194. *Subsection (3)* provides that if he considers it necessary for the purposes of setting up a pilot scheme, the Secretary of State may include provision in a pilot order amending legislation applying to those elections.
- 195. *Subsection (4)* provides that a pilot order must not be made without the Secretary of State first consulting the Electoral Commission.
- 196. *Subsection (5)* provides that a pilot order may only differ from the original pilot proposal if the relevant local authority and the Secretary of State agree to the modifications.
- 197. *Subsection (6)* provides that if the Secretary of State makes a pilot order, then he must send a copy to the relevant local authority and the Electoral Commission, and that the local authority must publish the order.
- 198. *Subsection (7)* provides a specific power for the Secretary of State to amend or cancel a pilot order.
- 199. *Subsection (8)* provides discretion for the Secretary of State to reimburse a returning officer for expenditure incurred as a result of the pilot.
- 200. *Subsections (9) and (10)* provide the definitions of “local authority”, “local government election” and “local government area” for the purposes of the this section.

Section 32 Evaluation of pilots under section 31

- 201. This section provides that the Electoral Commission must prepare a report containing an assessment of the operation of every pilot order after the elections specified in that order have taken place.
- 202. *Subsection (1)* provides that the Electoral Commission must provide a report on the operation of every pilot order made under section 31.
- 203. *Subsection (2)* specifies various items that must as a minimum be included in the report.
- 204. *Subsection (3)* specifies criteria that must be assessed by the Electoral Commission when determining whether the order assisted voters in making informed decisions at the elections.
- 205. *Subsection (4)* provides that the report must contain an assessment of whether in the Commission’s opinion the order had any effect on turnout.
- 206. *Subsection (5)* provides that the report must include an assessment of the procedures provided in the pilot order from the perspective of candidates, returning officers and the agents of both. The report must also include a statement on the incidence of malpractice and resources impact for the authority of the relevant pilot order.
- 207. *Subsection (6)* provides that the Electoral Commission must also apply such other criteria to the evaluation of the pilot schemes as are specified in the pilot order.
- 208. *Subsection (7)* places a duty on the local authority to provide any assistance reasonably required by the Commission for the preparation of the report.

- 209. *Subsection (8)* specifies that reasonable assistance may include making arrangements to obtain the views of electors on the effect of the pilot and reporting allegations of fraud to the Commission.
- 210. *Subsection (9)* provides that the Commission must report to the Secretary of State and the local authority within three months of the declaration of the election result.
- 211. *Subsection (10)* provides that the local authority must publish the report in their area.
- 212. *Subsection (11)* provides that the terms “pilot order” and “local authority” must be construed in accordance with section 31.

Section 33 Revision of electoral provisions in light of pilot schemes

- 213. This section provides the Secretary of State with the power to make an order applying similar provision to that found in a pilot order made under section 31 on a general and permanent basis. Such an order can amend the enactments applying to local government and UK parliamentary elections and by-elections.
- 214. *Subsections (1) and (2)* provide that if the Secretary of State thinks it would be desirable to make permanent provision similar to that made in a pilot order under section 31 and evaluated by the Electoral Commission under section 32, he may do so by an order under section 33.
- 215. *Subsection (3)* provides that an order may not be made without prior consultation with the Electoral Commission.

Subsection (4) provides that the Secretary of State may make provision in the order modifying or disapplying any enactment that he considers necessary or expedient to achieve the purposes in *subsection (2)*. He may also create an offence.
- 216. *Subsection (5)* restricts the maximum penalty with which an offence created by an order under *subsection (2)* is punishable. The limit is set at the same level as the maximum penalty on conviction for most corrupt practices.
- 217. *Subsection (6)* provides that the order making power under *subsection (2)* is exercisable by statutory instrument and must be approved by a resolution passed by both houses of Parliament before it is made.
- 218. *Subsection (7)* defines local government elections by reference to section 31.
- 219. *Subsection (8)* provides that if an offence created in a *subsection (2)* order is committed before the commencement of section 281(5) of the Criminal Justice Act 2003, then the maximum sentence of imprisonment in relation to that offence shall be interpreted as six months rather than 51 weeks.
- 220. *Subsection (9)* specifies that the reference in subsection (5)(b) to 51 weeks be taken as a reference to six months for Scotland and Northern Ireland.

Voting in person

Section 35 Certain voters entitled to vote in person

- 224. This section removes the provision in electoral law that stipulates that mental health patients detained under civil powers must vote at elections by either post or proxy. In future, such persons will not be prevented by electoral law from voting in person in polling stations.
- 225. *Subsection (1)* provides that Schedule 4 of the Representation of the People Act 2000 (absent voting in Great Britain) is amended in accordance with the section.
- 226. *Subsection (2)* inserts a new paragraph 2(5A) into Schedule 4 which provides that a mental health patient who is detained under civil powers (and so is not a detained

offender) may vote in person where he is granted permission to be absent from the hospital and voting in person does not breach any condition attached to that permission, or by post or proxy (where he is entitled as an elector to vote by post or proxy at the election).

- 227. *Subsection (3)* removes paragraph 2(6)(a) of Schedule 4 to the Representation of the People Act 2000 and the “or” following it. This paragraph currently provides that patients detained at mental hospitals under civil powers may exercise their right to vote by post or proxy only.
- 228. *Subsection (4)* provides that the section does not apply to local government elections in Scotland.

Assistance for voters etc.

Section 36 Translations etc. of certain documents

- 229. This section inserts section 199B (translations etc. of certain documents) into the 1983 Act.
- 230. *Subsection (1)* of section 199B provides that subsections (2) and (3) apply to any document required or authorised to be given to voters or to be displayed in any place for the purposes of a parliamentary or local government election.
- 231. *Subsection (2)* provides that the person who is required or authorised to give or display the documents mentioned in subsection (1) must, as he thinks appropriate, make those documents available in Braille and translate them into languages other than English. In addition he must, as he thinks appropriate, make graphical representations of the information contained in the documents and provide information in an accessible, appropriate form to persons who might not otherwise be able to access that information.
- 232. *Subsection (3)* enables the person who is required or authorised to display specified documents to provide the information contained in those documents in an audible form.
- 233. *Subsection (4)* provides that the power in subsection (2) does not apply to the nomination paper or the ballot paper.
- 234. *Subsections (5) and (6)* permit the returning officer to exhibit an enlarged sample copy of the ballot paper during the poll. The words ‘VOTE FOR ONE CANDIDATE ONLY’ (or, alternatively and where necessary for local government elections “VOTE FOR NO MORE THAN [here insert the maximum number of candidates to be elected] CANDIDATES”) must appear both at the top and immediately below the list of candidates on the enlarged sample copy as well as such translations of those words printed below the list of candidates as considered appropriate by the returning officer. *Subsections (7) and (8)* provide that the returning officer must have a large, hand-held sample ballot paper available at the polling station for partially sighted voters – this is not intended for the purpose of voting on and as such should be clearly marked as a specimen.
- 235. *Subsection (9)* provides that in Northern Ireland, the question as to whether a person should provide documents in a language other than English, as set out under subsection (2)(b), is to be decided by the returning officer.

Section 37 Assistance for certain postal voters

- 236. This section amends the Parliamentary Elections Rules (contained in Schedule 1 to the 1983 Act), by substituting a new rule 24 (postal ballot papers). This rule specifies the materials that should be issued by the returning officer to those entitled to vote by post. It clarifies that he can include information about how to access translations and graphical representations of the guidance.

237. The new rule 24(1) provides, in Great Britain, for a “postal voting statement”, replacing the current declaration of identity, to be issued with the postal ballot paper. The form of the postal voting statement may be prescribed in secondary legislation. In Northern Ireland the current position is retained.
238. Rule 24(2) makes provision for returning officers to provide information which alerts voters to the availability the directions and guidance on how to vote by post that have been translated, converted into Braille format, include graphical representations or have been provided in any other appropriate form (including an audible form). This might take the form of an internet address to a web page containing foreign language or audio versions of the instructions, or a phone number for contacting the local electoral services department.
239. Rule 24(3) provides that the prescribed form (i.e. the new postal voting statement and, in Northern Ireland, the declaration of identity) accompanying the postal ballot paper shall include provision for it to be signed by the elector. Other requirements may be prescribed.
240. Rule 24(4) provides that in the case of a ballot paper issued to a person resident in the United Kingdom the returning officer must ensure that the return of the ballot paper and postal voting statement or declaration of identity is free of charge to the voter.
241. Rule 24(5) provides that in any other case - i.e. postal voters resident outside the UK - regulations may provide that the returning officer must ensure the return of the items listed in rule 24(4) is free of charge to the voter. As such, it will still be open for the Secretary of State to prescribe that the cost of postage from overseas should either be free.

Circumstances in which votes may be tendered

Section 38 Tendered votes in certain circumstances

242. This section amends rule 40, the Representation of the People Acts 1983 and 1985, and Schedule 4 to the Representation of the People Act 2000 (Absent voting in Great Britain). The section outlines two new circumstances where a tendered ballot can be issued to a voter.
243. *Subsection (1)* relates to 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. The new rule 40(1ZA) to (1ZC) provides that such a person is to be permitted to mark a tendered ballot paper. The person can be asked questions to determine whether they come within the scope of the provision. The questions – inserted by the new rule 35 substituted by paragraph 74 of Schedule 1 – concern whether they applied to vote by post and why they have not voted by post.
244. *Subsection (2)* also amends rule 40, in this case adding rule 40(1ZD) and (1ZE). It will become possible for a postal voter or postal proxy voter to be issued with a tendered ballot paper at a polling station if the deadline for requesting a replacement postal ballot paper has expired, and before the close of voting. 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.
245. **Paragraph 74** of Schedule 1 inserts the new questions that may be put to the voters into rule 35. This rule outlines the questions a Presiding Officer may ask a person who has requested a ballot paper at the polling station.
246. *Subsection (3)* inserts section 61(6A) of the 1983 Act, which relates to certain voting offences. The new provision excepts from the scope of voting offences the circumstances covered in subsections (1) and (2) of this section. 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.

247. *Subsection (6)* makes two amendments to Schedule 4 of the Representation of the People Act 2000, in relation to Great Britain. The insertion of paragraph 2(6A) of the Schedule removes the prohibition on absent voters voting at a polling station. The effect is that paragraph 2 does not apply to voters casting a tendered ballot paper in the circumstances referred to above. Similarly, the insertion of paragraph 7(10) 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. *Subsections (4)* and *(5)* similarly amend the equivalent legislation in relation to Northern Ireland, namely sections 5 and 9 of the Representation of the People Act 1985 respectively (which have been repealed as regards Great Britain).

Offences related to absent voting

Section 39 Undue influence

248. This section 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 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. The lacuna was identified in the 1992 case of *R v. Rowe ex parte Mainwaring*. The case related to the circulation of a fraudulent pamphlet that was designed to mislead electors into voting against, or withdrawing their support from, the opposing party's candidates. The persons responsible could not be penalised because it could not be proved that the pamphlet had had this result.

Section 40 Offences relating to applications for postal and proxy votes

249. This section inserts a new section 62A of the 1983 Act. It will be both a corrupt practice and criminal offence to apply for a postal or proxy vote with the intention of stealing another person's vote or gaining a vote to which the applicant is not entitled.
250. Section 62A(1) outlines the acts and the intentions that must be proved in order to establish that the offence has been committed. Section 62A(1)(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.
251. Section 62A(2) details 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.
252. *Paragraphs 120 to 126* of Schedule 1 to the Act make consequential amendments to the 1983 Act. If found guilty by an election court, a person may be disqualified from standing for election or from being registered as a voter, for a period of five years. If found guilty on a criminal prosecution, a person may be imprisoned for up to two years and fined.

Access to election documents

Section 41 Control of documents after parliamentary election

253. This section amends Schedule 1 to the 1983 Act. It transfers the responsibility for storing electoral documents after an election from the Clerk of the Crown to local EROs. *Subsection (5)* inserts new paragraphs (3) to (9) of rule 57 detailing the extent of the

right of access to documents. Parties and candidates may be supplied with marked copies of the register, the postal voters list, the list of proxies and the postal proxy voters list (rule 57(4)). Conditions may be imposed by regulations limiting the purposes for which the documents may be used and limiting onward supply to others (rule 57(7) and (8)). *Subsection (6)* makes provision for the handling of such documents in Scotland. *Subsection (7)* makes provision for the handling of such documents in Northern Ireland.

254. *Subsection (9)* creates a new offence of failure to comply with conditions relating to the supply of election documents. This is inserted as section 66B of the 1983 Act. It enforces compliance with the provisions of rule 57 as amended by subsection (5). The maximum penalty for those found guilty on summary conviction is a fine of £5,000.

Section 42 Access to other election documents

255. This section provides for access to election documents for elections other than parliamentary elections in a similar way to that provided for parliamentary elections. It also gives the Secretary of State a power to make regulations to impose conditions on that access and to charge for it. It also makes it a criminal offence not to comply with the regulations and prescribes the maximum penalty for conviction.
256. *Subsection (1)* imposes requirements on EROs who hold documents for elections other than parliamentary elections and local government elections in Scotland and Northern Ireland to make them available for public inspection. The conditional duty to supply copies or extracts on request is cast in similar terms to those for parliamentary elections. *Subsection (2)* 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.
257. *Subsections (3) to (10)* contain regulation-making powers and define what regulations may or may not provide.
258. The Secretary of State can impose conditions restricting the inspection or supply of the documents (*subsection (3)*) and the purposes for which such documents may be used (*subsection (5)*).
259. *Subsection (4)* provides for the form in which the documents supplied are to be specified and for fees to be charged.
260. *Subsection (5)* allows regulations to be made to permit or prohibit copies of the documents to be taken and to specify the manner in which they may be taken.
261. *Subsection (6)* allows regulations to impose conditions on the further supply, disclosure, or use of the information contained in the documents.
262. *Subsection (7)* allows regulations to apply those conditions to people who have not been directly supplied with the documents.
263. *Subsection (9)* requires the Secretary of State to consult the Electoral Commission when making regulations under this section.
264. *Subsection (10)* specifies that such regulations must be laid before, and are subject to the approval by resolution of, each House of Parliament.

Section 43 Access to other election documents: contravention of regulations

266. This section creates an offence of contravening regulations governing access to post-election documentation. This offence will apply as regards documentation relating to elections other than parliamentary elections. The maximum penalty for those found guilty on summary conviction is a fine of £5,000. For parliamentary elections, a similarly worded offence is created by section 41 as a new section 66B of the 1983 Act.

Section 44 Access to election documents: supplementary

267. This section defines some of the terms used in section 42. It provides the meaning of “electoral area” which is relevant for the purposes of elections other than parliamentary elections. The remaining terms are to be interpreted in a manner consistent with the interpretation they bear in the parliamentary elections rules: relevant ERO, relevant election documents, registered party, marked copy of the register, the list of proxies, the postal voters list, and the postal proxy voters list.

Section 45 Marked postal voters list

268. This section inserts new rule 31A. When a postal voter has returned a postal vote or a postal proxy vote, the returning officer must mark the relevant list. It also enables regulations to be made prescribing the circumstances in which that mark should be made. It also makes consequential amendments to rule 55.

Correction of procedural errors

Section 46 Returning Officers: correction of procedural errors

269. This section allows returning officers to correct errors or omissions that arise during the preparation for and conduct of elections. This will apply to acts and omissions that are made by those administering elections (returning officers, EROs and their staff) and those supplying goods and services to the administrators. By way of example, electoral documents printed with incorrect details would be capable of correction under this provision.

Miscellaneous amendments

Section 47 Miscellaneous amendments of the 1983 Act

270. This section makes provision for the application of Part 5 of Schedule 1, which makes amendments relevant to the conduct of elections. Similar amendments are made to the 1983 Act and the Electoral Law Act (Northern Ireland) 1962.