

# **ELECTORAL ADMINISTRATION ACT 2006**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 8: Miscellaneous**

#### **Funding for election services**

##### ***Section 67 Performance of local authorities in relation to elections etc***

393. This section inserts three new sections into the 2000 Act concerning the Electoral Commission's general functions: 9A (Setting of performance standards), 9B (Returns and reports on performance standards) and 9C (Provision of information about expenditure on elections etc.).
394. New section 9A enables the Electoral Commission to set and publish performance standards for EROs, returning officers and counting officers relating to maintaining the electoral registers and the delivery of electoral and referendum services. The relevant elections and referendums are specified in subsections (6) and (7). It requires the Electoral Commission to consult the Secretary of State and anyone else the Electoral Commission thinks appropriate before determining the standards. After they are published the performance standards must be laid before Parliament.
395. New section 9B enables the Electoral Commission to direct relevant officers to submit reports regarding their level of performance against the standards set by the Electoral Commission. The Electoral Commission is required to specify to whom the direction is issued and may also specify the elections or referendums to which the report relates and the form in which the report is to be provided. It further enables the Electoral Commission, upon receipt of such reports, to publish assessments of the level of performance of the relevant officer (or officers) against the standards set.
396. New section 9C enables the Electoral Commission to direct EROs, returning officers and counting officers to submit information on expenditure incurred in the performance of their functions (in the case of EROs) or, as regards returning officers and counting officers, in connection with the elections or referendums for which they are responsible. It further enables the Electoral Commission to specify the relevant election or referendum, the form in which the information must be provided and the time within which the information must be supplied.

##### ***Section 68 Funding of services and expense of returning officers***

397. This section amends section 29 of the 1983 Act (payments by and to returning officer) by substituting existing subsections (3) to (4B) with new subsections (3), (3A), (3B), and (3C).
398. New subsection (3) allows the Secretary of State to specify in an order a total overall amount a returning officer may recover for expenses incurred in connection with the services he renders. The order may specify a figure or specify a formula by which the figure may be calculated. New subsection (3A) also enables him to specify maximum

recoverable amounts for particular services or expenses. New subsection (3B) enables the Secretary of State to agree to pay more than those amounts if certain conditions are met, and new subsection (3C) specifies those conditions, namely that it was reasonable for the returning officer to incur the expenses, and that the charges themselves are reasonable.

### ***Section 69 Encouraging electoral participation***

399. This section requires EROs and returning officers to take such steps as they think appropriate to encourage the participation of electors in the electoral process. It also provides for the Secretary of State to reimburse the electoral officials for expenditure incurred in this respect, subject to a maximum limit to be provided for in regulations.

## **Criminal proceedings**

### ***Section 70 Time limit for prosecutions***

400. This section inserts new subsections (2A) to (2G) into section 176 of the 1983 Act.
401. New subsections (2A) and (2B) enable magistrates' courts (in England and Wales) to extend the time for commencing proceedings from 12 months to no more than 24 months. The court can only grant the extension of time if satisfied that there are exceptional circumstances and that there has been no undue delay in the investigation of the said offence.
402. The new subsections (2C) and (2D) enable a magistrates' court, if it grants an extension of the time, to direct the relevant registration officer who is keeping the election documentation not to destroy that documentation (which rule 57 would otherwise require), and to extend the period of retention of that documentation for up to a further 12 months.
403. The new subsection (2G) provides for a right of appeal to the Crown Court against a refusal of the magistrates' court to act under subsection (2B) or to make an order under subsection (2D).

### ***Section 71 Restrictions on powers of arrest by persons other than constables***

404. This section maintains the current position that the power of arrest inside a polling station without warrant of a person suspected of committing personation rests with a police constable only. Without this provision, the amendments made by the Serious Organised Crime and Police Act 2005 to sections 24 and 24A of the Police and Criminal Evidence Act 1984 would allow any person who has reasonable grounds for suspecting another person of being guilty of the offence inside a polling station to make an arrest. For personation outside a polling station or fraudulent applications for absent votes, the provisions of section 24 and 24A of the 1984 Act will, however, automatically apply because of the seriousness of the offence and level of the penalty.

## **Pre-consolidation**

### ***Section 72 Pre-consolidation amendments***

405. This section supports any future consolidation of the main legislation from 1983 onwards relating to UK parliamentary elections and local government elections in England and Wales.
406. *Subsection (1)* confers power on the Secretary of State to make an order amending, for the purposes of and just prior to substantive consolidation, any of the electoral law enactments listed in subsection (2). The coming into force of provisions in the amending order and the substantive Consolidation Act would be co-ordinated (*subsections (3) to (6)*).

407. *Subsection (7)* imposes a requirement of consulting the Electoral Commission before making a pre-consolidation order. *Subsection (8)* provides for affirmative resolution procedure. *Subsection (9)* states that the Secretary of State must not amend provisions falling within competence of the Scottish Parliament.

### **Legal incapacity to vote**

#### ***Section 73 Abolition of common law incapacity: mental state***

408. This section abolishes any common law rule which renders persons unable to vote on the basis of mental incapacity. There is case law dating back to at least the 18<sup>th</sup> Century which suggests that persons might be regarded as legally incapable of voting solely by reason of their mental state. The case law referred to such persons as ‘idiots’ and ‘lunatics’.
409. *Subsection (2)* makes a consequential change to the definition of ‘legal incapacity’ contained in the 1983 Act.
410. *Subsection (3)* makes a consequential change to the definition of ‘legal incapacity’ for Northern Ireland contained in the Elected Authorities (Northern Ireland) Act 1989.