



# Electoral Administration Act 2006

## 2006 CHAPTER 22

### PART 8

#### MISCELLANEOUS

##### *Election services*

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

After section 9 of the 2000 Act insert—

##### **“9A Setting of performance standards**

- (1) The Commission may from time to time—
  - (a) determine standards of performance for relevant officers, and
  - (b) publish, in such form and in such manner as they consider appropriate, the standards so determined.
- (2) The standards of performance are such standards as the Commission think ought to be achieved by—
  - (a) electoral registration officers in the performance of their functions;
  - (b) returning officers in the administration of the elections specified in subsection (6);
  - (c) counting officers in the administration of the referendums specified in subsection (7).
- (3) Before determining standards under subsection (1), the Commission must consult—
  - (a) the Secretary of State, and
  - (b) any other person they think appropriate.
- (4) The Commission may determine different standards for different descriptions of relevant officers.

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- (5) When the Commission publish standards under subsection (1) they must send a copy of the published standards to the Secretary of State who must lay a copy of the published standards before each House of Parliament.
- (6) The elections specified in this subsection are—
- (a) an election mentioned in section 5(2);
  - (b) a parliamentary by-election;
  - (c) an election under section 9 of the Scotland Act 1998 (constituency vacancies);
  - (d) an election under section 8 of the Government of Wales Act 1998 (vacancies in constituency seats);
  - (e) a local government election in England or Wales.
- (7) The referendums specified in this subsection are—
- (a) a referendum to which Part 7 applies;
  - (b) a referendum under Part 2 of the Local Government Act 2000.
- (8) For the purposes of this section and sections 9B and 9C, the relevant officers are—
- (a) electoral registration officers;
  - (b) in relation to elections within subsection (6), returning officers;
  - (c) in relation to referendums within subsection (7), counting officers.

### **9B Returns and reports on performance standards**

- (1) The Commission may from time to time issue directions to relevant officers to provide the Commission with such reports regarding their level of performance against the standards determined under section 9A(1) as may be specified in the direction.
- (2) A direction under subsection (1)—
- (a) must specify the relevant officer or officers to whom it is issued (and may specify a description or descriptions of relevant officers),
  - (b) may require the report or reports to relate to such elections or referendums (or both) as may be specified in the direction, and
  - (c) may require the report or reports to be provided in a form specified in the direction.
- (3) A report provided to the Commission in pursuance of subsection (1) may be published by the relevant officer to whom it relates.
- (4) The Commission shall from time to time prepare and publish (in such manner as the Commission may determine) assessments of the level of performance by relevant officers against the standards determined under section 9A(1).
- (5) An assessment under subsection (4)—
- (a) must specify the relevant officer or officers to whom it relates;
  - (b) must specify the period to which it relates;
  - (c) may specify the elections or referendums (or both) to which it relates.

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- (6) The Commission must not prepare an assessment under subsection (4) unless they have received reports in pursuance of subsection (1) from the relevant officer or officers for the matters to which the assessment relates.
- (7) Before publishing an assessment under subsection (4), the Commission shall—
  - (a) provide to each relevant officer a copy of those parts of the assessment which relate to him;
  - (b) have regard to any comments made by him regarding the factual accuracy of the assessment.

### **9C Provision of information about expenditure on elections etc.**

- (1) The Commission may by notice in writing direct a relevant officer to provide the Commission with such expenditure information as may be specified in the direction.
- (2) Expenditure information is information relating to—
  - (a) in the case of an electoral registration officer, expenditure in connection with the performance of his functions;
  - (b) in the case of a returning officer, expenditure in connection with the election or elections specified in section 9A(6) for which he is appointed or otherwise holds office;
  - (c) in the case of a counting officer, expenditure in connection with the referendum or referendums specified in section 9A(7) for which he is appointed.
- (3) A direction under subsection (1)—
  - (a) may require the information to relate to such elections or (as the case may be) referendums as may be specified in the direction;
  - (b) may require the information to be provided in a form specified in the direction;
  - (c) may specify the time within which the information must be provided.
- (4) This section does not affect any other power of the Commission to request information.”

#### **Commencement Information**

- II** S. 67 wholly in force at 11.9.2006, see s. 77(2)-(4) and S.I. 2006/1972, art. 3, Sch. 1 para. 23 (subject to transitional provisions in Sch. 2)

### **68 Funding of services and expenses of returning officers**

- (1) Section 29 of the 1983 Act (payments by and to returning officer) is amended as follows.
- (2) For subsections (3) to (4B) substitute—
  - “(3) A returning officer shall be entitled to recover his charges in respect of services rendered, or expenses incurred, for or in connection with a parliamentary election if—

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- (a) the services were necessarily rendered, or the expenses were necessarily incurred, for the efficient and effective conduct of the election; and
  - (b) the total of his charges does not exceed the amount (“the overall maximum recoverable amount”) specified in, or determined in accordance with, an order made by the Secretary of State for the purposes of this subsection.
- (3A) An order under subsection (3) may specify, or make provision for determining in accordance with the order, a maximum recoverable amount for services or expenses of any specified description and, subject to subsection (3B) below, the returning officer may not recover more than that amount in respect of any such services or expenses.
- (3B) The Secretary of State may, in a particular case, authorise the payment of—
- (a) more than the overall maximum recoverable amount, or
  - (b) more than the specified maximum recoverable amount for any specified services or expenses,
- if he is satisfied that the conditions in subsection (3C) are met.
- (3C) The conditions referred to in subsection (3B) are—
- (a) that it was reasonable for the returning officer concerned to render the services or incur the expenses, and
  - (b) that the charges in question are reasonable.”
- (3) In subsection (9), for “subsections (3) and (4)” substitute “ subsection (3) ”.
- (4) This section ceases to have effect if, before it is brought into force, paragraph 6(3) of Schedule 21 to the 2000 Act is brought into force.

#### **Commencement Information**

- I2** S. 68 wholly in force at 10.2.2010; s. 68 not in force at Royal Assent see s. 77; s. 68 in force for E.W. at 1.1.2007 by [S.I. 2006/3412](#), [art. 3](#), [Sch. 1 para. 15\(b\)](#) (with [Sch. 2](#)); s. 68 in force for N.I. at 1.7.2008 by [S.I. 2008/1316](#), [arts. 2\(2\)](#), 4(w)

### *Encouraging electoral participation*

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

- (1) A local electoral officer must take such steps as he thinks appropriate to encourage the participation by electors in the electoral process in the area for which he acts.
- (2) A local electoral officer must have regard to any guidance issued by the Electoral Commission for the purposes of this section.
- (3) This section does not permit an electoral registration officer to undertake any activity in relation to a local government election in Scotland unless the activity relates to a matter falling within Section B3 (elections) of Schedule 5 to the Scotland Act 1998 (c. 46) (reserved matters).
- (4) The Secretary of State may reimburse a local electoral officer in respect of any expenditure incurred by the officer for the purposes of this section.

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- (5) The amount paid under subsection (4) must not in any year exceed such amount as is determined in accordance with regulations made by the Secretary of State.
- (6) The power to make regulations under subsection (5) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The regulations may make different provision for different purposes.
- (8) A local electoral officer is—
  - (a) an electoral registration officer;
  - (b) a returning officer for an election mentioned in subsection (9).
- (9) These are the elections—
  - (a) parliamentary elections;
  - (b) local government elections in England and Wales and Northern Ireland;
  - (c) European Parliamentary elections;
  - (d) elections to the Scottish Parliament;
  - (e) elections to the Northern Ireland Assembly;
  - (f) elections to the National Assembly for Wales.
- (10) References to a local government election must be construed in accordance with the 1983 Act.

**Modifications etc. (not altering text)**

- C1** S. 69 applied (with modifications) (E.) (28.7.2007) by [The Local Authorities \(Conduct of Referendums\) \(England\) Regulations 2007 \(S.I. 2007/2089\)](#), **regs. 8, 11, 13**, {Sch. 4 Table 5}
- C2** S. 69 applied (with modifications) (24.7.2008) by [The Local Authorities \(Conduct of Referendums\) \(Wales\) Regulations 2008 \(S.I. 2008/1848\)](#), **regs. 1(2)(3), 8**, {Sch. 4 para. 1 Table 4}

**Commencement Information**

- I3** S. 69 partly in force; s. 69 not in force at Royal Assent see s. 77; s. 69 in force for E.W.S. at 1.1.2007 by S.I. 2006/3412, **art. 3, Sch. 1 para. 14** (y) (subject to transitional provisions in Sch. 2)

*Criminal proceedings*

**70 Time limit for prosecutions**

- (1) In section 176 of the 1983 Act (time limit for prosecution of offences) after subsection (2) insert—
  - “(2A) A magistrates' court in England and Wales may act under subsection (2B) if it is satisfied on an application by a constable or Crown Prosecutor—
    - (a) that there are exceptional circumstances which justify the granting of the application, and
    - (b) that there has been no undue delay in the investigation of the offence to which the application relates.

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- (2B) The magistrates' court may extend the time within which proceedings must be commenced in pursuance of subsection (1) above to not more than 24 months after the offence was committed.
- (2C) If the magistrates' court acts under subsection (2B), it may also make an order under subsection (2D) if it is satisfied, on an application by a constable or Crown Prosecutor, that documents retained by the relevant registration officer in pursuance of rule 57 of the parliamentary elections rules may provide evidence relating to the offence.
- (2D) An order under this subsection is an order—
- (a) directing the relevant registration officer not to cause the documents to be destroyed at the expiry of the period of one year mentioned in rule 57, and
  - (b) extending the period for which he is required to retain them under that rule by such further period not exceeding 12 months as is specified in the order.
- (2E) The making of an order under subsection (2D) does not affect any other power to require the retention of the documents.
- (2F) An application under this section must be made not more than one year after the offence was committed.
- (2G) Any party to—
- (a) an application under subsection (2A), or
  - (b) an application under subsection (2C),
- who is aggrieved by the refusal of the magistrates' court to act under subsection (2B) or to make an order under subsection (2D) (as the case may be) may appeal to the Crown Court.”
- (2) In Schedule 1 to that Act, in rule 57(1) (retention and public inspection of documents) for “or the High Court” substitute “, the High Court, the Crown Court or a magistrates' court ”.

#### Commencement Information

- I4** S. 70 wholly in force at 1.1.2007; s. 70 not in force at Royal Assent see s. 77; s. 70 in force at 1.1.2007 by S.I. 2006/3412, art. 3, Sch. 1, (subject to transitional provisions in Schedule 2)

## 71 Restriction on powers of arrest by persons other than constables

Section 24A of the Police and Criminal Evidence Act 1984 (c. 60) (arrest without warrant: other persons) does not permit a person other than a constable to arrest inside a polling station a person who commits or is suspected of committing an offence under section 60 of the 1983 Act (personation).

#### Commencement Information

- I5** S. 71 wholly in force at 1.1.2007; s. 71 not in force at Royal Assent see s. 77; s. 71 in force at 1.1.2007 by S.I. 2006/3412, art. 3, Sch. 1, (subject to transitional provisions in Schedule 2)

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### *Pre-consolidation amendments*

## **72 Pre-consolidation amendments**

- (1) The Secretary of State may by order make such amendments of the enactments relating to the representation of the people as in his opinion facilitate or are otherwise desirable in connection with the consolidation of some or all of those enactments.
- (2) The enactments relating to the representation of the people are—
  - (a) the Representation of the People Act 1983 (c. 2);
  - (b) the Representation of the People Act 1985 (c. 50);
  - (c) the Representation of the People Act 1989 (c. 28);
  - (d) the Representation of the People Act 1993 (c. 29);
  - (e) the Representation of the People Act 2000 (c. 2);
  - (f) the Electoral Administration Act 2006;
  - (g) the Elections (Northern Ireland) Act 1985 (c. 2);
  - (h) the Electoral Fraud (Northern Ireland) Act 2002 (c. 13);
  - (i) the Northern Ireland (Miscellaneous Provisions) Act 2006;
  - (j) an enactment referring to any enactment falling within paragraphs (a) to (i).
- (3) An order under this section must not come into force unless an Act consolidating the enactments amended by the order (with or without other enactments relating to the representation of the people) has been passed.
- (4) An order under this section must not come into force until immediately before that Act comes into force.
- (5) Subsection (6) applies if the provisions of that Act come into force at different times.
- (6) So much of an order under this section as amends an enactment repealed and re-enacted by a provision of that Act comes into force immediately before that provision.
- (7) An order under this section must not be made unless the Secretary of State first consults the Electoral Commission.
- (8) An order under this section must be made by statutory instrument, but no such order may be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (9) An order under this section must not make any provision which would, if it were included in an Act of the Scottish Parliament, be within the legislative competence of that Parliament.

#### **Commencement Information**

**I6** S. 72 wholly in force at 1.1.2007; s. 72 not in force at Royal Assent see s. 77; s. 72 in force at 1.1.2007 by S.I. 2006/3412, art. 3, Sch. 1, (subject to transitional provisions in Schedule 2)

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### *Legal incapacity to vote*

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

- (1) Any rule of the common law which provides that a person is subject to a legal incapacity to vote by reason of his mental state is abolished.
- (2) Accordingly, in section 202(1) of the 1983 Act (general provisions as to interpretation), in the definition of “legal incapacity” after “addition” insert “, where applicable, ”.
- (3) And in section 10(1) of the Elected Authorities (Northern Ireland) Act 1989 (c. 3) (interpretation), in the definition of “legal incapacity” omit the words “or of any subsisting provision of the common law”.

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#### **Commencement Information**

- I7** S. 73 wholly in force at 1.7.2008; s. 73 not in force at Royal Assent see s. 77; s. 73(1)(2) in force for E.W.S. at 1.1.2007 by S.I. 2006/3412, art. 3, Sch. 1 para. 14(z) (subject to Sch. 2); s. 73(1)(2) in force for N.I. and s. 73(3) in force at 1.7.2008 by S.I. 2008/1316, arts. 2(2){3}, 4(x), 5(d)



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