



# Scottish Local Government (Elections) Act 2002

2002 asp 1

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 20th December 2001 and received Royal Assent on 22 January 2002**

An Act of the Scottish Parliament to make provision as respects the synchronisation of the polls at local government elections with the polls at elections to the Scottish Parliament; to make some minor rectifications in enactments relating to the timing of elections; and to make provision in relation to the casting and counting of votes at, and the sending of election communications in connection with, local government elections.

## *Local government elections*

### **1 Synchronisation of polling at local government and Scottish Parliamentary elections** **S**

In section 5(3) of the Local Government etc. (Scotland) Act 1994 (c.39) (“the 1994 Act”) (ordinary elections of councillors to take place every third year after 1999), for “every third year thereafter” there is substituted “ thereafter in the years in which, under section 2(2) of the Scotland Act 1998 (c.46), polls at ordinary general elections for membership of the Scottish Parliament fall to be held ”.

### **2 Power to synchronise polling at local government and Scottish Parliamentary elections** **S**

(1) In the Representation of the People Act 1983 (c.2) (“the 1983 Act”), after section 43(1A) there is inserted—

“(1B) Despite subsection (1) above—

- (a) if the poll at an ordinary general election is, under section 2(5) of the Scotland Act 1998 (c.46) (“the 1998 Act”) (which enables the advancement or postponement, for up to a month, of the date of the poll at such an election), to be held on the day proposed by the Presiding Officer for the purposes of that provision; or

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- (b) if an extraordinary general election is, under section 3(2) of that Act (which enables the holding of such an election), to be held on a day occurring within the relevant period,

the Scottish Ministers may, by order, provide that the poll at the ordinary local election to be held that year shall be held on that day;

(1C) In subsection (1B) above—

“extraordinary general election” means a general election for membership of the Scottish Parliament held under section 3 of the 1998 Act;

“ordinary general election” means a general election for membership of the Scottish Parliament held under section 2 of the 1998 Act;

“ordinary local election” means an ordinary election of councillors for local government areas in Scotland held in accordance with section 5 of the 1994 Act and this Act;

“relevant period” means the period beginning with 11th March in a year in which an ordinary local election falls to be held and ending with the day which immediately precedes the first Thursday in May in that year, and references to the time when a local election falls or does not fall to be held are to be construed in accordance with section 5(3) of the 1994 Act.

(1D) An order under subsection (1B) above shall be made by statutory instrument.”.

- (2) In section 43(2)(b) of the 1983 Act (which, amongst other things, postpones the poll for a local government election which would otherwise take place on a public holiday), after “subsection (1)” there is inserted “ or (1B) ”.

### 3 Provisions consequential upon synchronisation of polling **S**

- (1) Where a casual vacancy in the office of councillor has occurred during the period beginning on 2 November 2001 and ending on the date on which this Act comes into force—

- (a) an election to fill the vacancy shall, notwithstanding section 37(2) of the Local Government (Scotland) Act 1973 (c.65) (“the 1973 Act”) (which provides that a casual vacancy occurring within six months of the next ordinary local government election is not to be filled until that election), be held within three months of the date on which this Act comes into force, and the day on which the poll is to be held at the election shall be fixed by the returning officer; and
- (b) section 37(1) of the 1973 Act (filling of vacancies occurring in the office of councillor) shall not apply in relation to that vacancy.

- (2) In section 37(2) of the 1973 Act—

- (a) after “the”, where first occurring, there is inserted “ relevant ”; and
- (b) the words “of the next ordinary election” are repealed.

- (3) After section 37(2) of the 1973 Act there is inserted—

“(2A) For the purposes of subsection (2) above, the “relevant date” is—

- (a) the first Thursday in May in the year in which the next ordinary election is to be held; or

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- (b) where, by virtue of subsection (1)(b) of section 43 of the Representation of the People Act 1983 (c.2), the poll at that election is to be held on another day, that other day.”.

#### 4 **Revision of provisions relating to timing of elections** **S**

- (1) In subsection (3) of section 4 of the 1994 Act (which provides as to the duration of the terms of office of conveners and deputy conveners of councils), after “beyond” there is inserted “ the day on which the poll is held at ”.
- (2) In subsection (4) of section 5 of the 1994 Act (which provides for the retiral of councillors on the day of ordinary elections), for “of” there is substituted “ on which the poll is held at ”.
- (3) In section 43 of the 1983 Act—
  - (a) in subsection (1), for “day of” there is substituted “ day on which the poll is held at an ”;
  - (b) in subsection (2), for “(Scotland) Act 1973” there is substituted “ etc. (Scotland) Act 1994 ”;
  - (c) in subsection (3)—
    - (i) after “Where” there is inserted “ the day on which the poll is held at ”;
    - (ii) for “election” where secondly occurring, there is substituted “ poll ”;
    - and
    - (iii) for “1973” there is substituted “ 1994 ”.
- (4) In paragraph (d) of section 36 of the 1973 Act, for “date of” there is substituted “ day on which the poll was held at ”.
- (5) In subsection (1) of section 37 of the 1973 Act, for “day of” there is substituted “ day on which the poll is to be held at the ”.
- (6) The amendments made—
  - (a) by paragraphs (a) and (c)(i) and (ii) of subsection (3), and subsections (4) and (5), above are to be treated as always having had effect;
  - (b) by paragraphs (b) and (c)(iii) of subsection (3) above are to be treated as having had effect since the coming into force of section 5 (elections and terms of office of councillors) of the 1994 Act.

#### *New electoral procedures*

#### 5 **Pilot schemes for local elections** **S**

- (1) Where—
  - (a) a local authority submit to the Scottish Ministers a proposal that a scheme under this section should apply to particular local government elections held in the authority’s area; and
  - (b) that proposal, and that proposed scheme, are approved by the Scottish Ministers, either—
    - (i) without modification; or
    - (ii) with such modifications as the Scottish Ministers consider appropriate,

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the Scottish Ministers shall by order make such provision for and in connection with the implementation of the proposed scheme in relation to those elections as they consider appropriate (which may include provision modifying or disapplying any enactment).

- (2) A scheme under this section is a scheme which makes, in relation to local government elections in the area of a local authority, provision differing in any respect from that made by virtue of the Representation of the People Acts—
- (a) as regards one or more of the following—
    - (i) when and where voting at the elections is to take place;
    - (ii) the method used to cast votes;
    - (iii) how the votes cast are to be counted;
    - (iv) the sending by candidates of election communications free of charge for postage; or
  - (b) for any other matter which relates to action to be taken, or procedure to be carried out, before or during the poll which is to be held at the election.
- (3) A scheme may make provision such as is mentioned in paragraph (b) of subsection (2) above only where, in the opinion of the local authority which proposed the scheme, that provision is likely to—
- (a) facilitate voting by any persons or any class of persons; or
  - (b) encourage more persons, or more persons of a particular class, to vote at the election.
- (4) Without prejudice to the generality of subsections (1) and (2) above, a scheme under this section may make provision—
- (a) for voting to take place—
    - (i) on more than one day (whether each of those days is designated as a day of the poll or otherwise);
    - (ii) at places other than polling stations;
  - [<sup>F1</sup>(aa) for ballot papers issued at the elections to contain photographs of the candidates;]
  - (b) for postal charges incurred in respect of the sending of candidates' election communications as mentioned in subsection (2)(a)(iv) above to be paid by the local authority,
- and where a scheme makes such provision as is mentioned in paragraph (b) above, the Scottish Ministers' order under subsection (1) above may make provision for disapplying section 75(1) of the 1983 Act (restriction on third party election expenditure) in relation to the payment of such charges by the local authority.
- (5) In subsection (2) above the reference to local government elections in the area of a local authority is a reference to such elections—
- (a) throughout that area; or
  - (b) in any particular part or parts of it,
- as the scheme may provide.
- (6) The Scottish Ministers—
- (a) may, in order to inform their consideration of a proposal and proposed scheme submitted to them under subsection (1) above and how they might deal with it, consult such persons as they think appropriate;

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- (b) shall, before making any modification under that subsection, consult the local authority which submitted the proposal and proposed scheme.
- (7) The Scottish Ministers shall send a copy of any order under subsection (1) above to the local authority to which it relates and the authority shall publish the order in their area in such manner as they think fit.
- (8) After the elections in relation to which a scheme under this section applied have taken place, the local authority shall prepare a report on the scheme.
- (9) The report shall contain—
- (a) a description of the scheme and of the respects in which the provision made by it differed from that made by virtue of the Representation of the People Acts;
  - (b) a copy of the order of the Scottish Ministers under subsection (1) above; and
  - (c) an assessment of the extent to which the scheme—
    - (i) encouraged voting at the elections;
    - (ii) enabled voters to make informed decisions at the elections;
    - (iii) facilitated voting at the elections.
- (10) An assessment under subsection (9)(c)(iii) shall include a statement by the local authority as to whether, in their opinion—
- (a) the turnout of voters was higher than it would have been if the scheme had not applied;
  - (b) voters found the procedures provided under the scheme easy to use;
  - (c) the procedures provided under the scheme led to any incidence of, or increase in, personation or other electoral offences or in any other malpractice in connection with elections.
- (11) If the Scottish Ministers so request in writing, the report shall contain also an assessment of such other matters relating to the scheme as are specified in the request.
- (12) The local authority shall—
- (a) send a copy of the report to the Scottish Ministers; and
  - (b) publish the report in their area in such manner as they think fit,
- by the end of the period of three months beginning with the date of the declaration of the result of the elections to which the report relates.
- (13) For the purposes of this section a proposal falling within subsection (1) above and submitted to the Scottish Ministers before the date on which this Act comes into force shall be as effective as one so submitted on or after that date.
- (14) In this section and in section 6 below—
- “local authority” means a council constituted under section 2 of the 1994 Act;
  - “local government election” has the meaning given by section 204(1) of the 1983 Act; and
  - “modifications” includes additions, omissions and amendments (and “modify” has a corresponding meaning).

#### Textual Amendments

- F1** S. 5(4)(aa) inserted (29.1.2007) by [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#), ss. 25, 63(2); S.S.I. 2007/26, art. 2(1)(h)

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## 6 **Revision of procedures in the light of pilot schemes** **S**

- (1) If it appears to the Scottish Ministers, in the light of any report made under section 5 above on a scheme under that section, that it would be desirable for provision similar to that made by the scheme to apply generally and on a permanent basis in relation to—
  - (a) local government elections in Scotland; or
  - (b) any particular description of such elections,they may by order make such provision for and in connection with that purpose as they consider appropriate (which may include provision modifying or disapplying any enactment).
- (2) An order under subsection (1) above—
  - (a) may, however, except from the operation of any of its provisions any local authority's area specified in the order; but
  - (b) subject to that, shall make the same provision—
    - (i) in relation to local government elections; or
    - (ii) if it applies only to a particular description of such elections, in relation to elections of that description, throughout Scotland.
- (3) An order under subsection (1) above shall be made by statutory instrument; and no such order shall be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the Scottish Parliament.
- (4) When laying such a draft before the Parliament the Scottish Ministers shall also lay before the Parliament a copy of the report under section 5 above of each relevant local authority (within the meaning of that section) in whose area a scheme making provision similar to that made by the order has been implemented.
- (5) Rules made under section 42 of the 1983 Act (local elections in Scotland) may make such provision as the Scottish Ministers consider appropriate in connection with any provision made by an order under subsection (1) above.
- (6) Nothing in this section shall be taken as prejudicing the generality of any power contained in any other Act to make subordinate legislation with respect to elections of any description.

## 7 **Short title** **S**

This Act may be cited as the Scottish Local Government (Elections) Act 2002.

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