

# **SCOTTISH LOCAL GOVERNMENT (ELECTIONS) ACT 2002**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes have been prepared by the Scottish Administration in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section, or a part of a section, does not seem to require any explanation or comment, none is given.

### **THE ACT**

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

3. Section 5(3) of the Local Government etc. (Scotland) Act 1994 provides for local government elections to be held on a three-year cycle. Section 1 deletes the reference to the three-year cycle and inserts a new provision for local government elections to be moved to a four-year cycle by being linked to the years in which ordinary elections to the Scottish Parliament occur.

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

4. **Section 2** makes amendments to sections 43(1) and (2) of the Representation of the People Act 1983 which deal with the date and timing of local government elections in Scotland. These amendments are consequential upon the principle of section 1 and provide powers to synchronise local government elections with an advanced or postponed ordinary general election and an extraordinary general election of the Scottish Parliament.

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

5. Section 37(2) of the Local Government (Scotland) Act 1973 Act provides that where a vacancy in the office of councillor occurs within 6 months before the date of the next ordinary local government elections, a by-election should not be held but rather the vacancy filled at the next ordinary local government elections. Section 3 of this Act makes provision in respect of vacancies occurring in the period from 2 November 2001 to the date on which this Act received Royal Assent. Section 37(2) will, prior to this Act coming into force, have operated to provide that, where a vacancy has occurred during that period, it should be filled at the next ordinary local government elections. As explained above, section 1 operates so as to change the date of those next elections. Subsection (1) of section 3 therefore provides that a by-election to fill such a vacancy is required to be held within 3 months of the date on which this Act received Royal

Assent. Subsections (2) and (3) of section 3 amend section 37 of the 1973 Act to reflect the fact that the date on which the poll is to be held at the next local government election may be varied by virtue of the power conferred by section 43(1)(b) of the 1983 Act.

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

6. **Section 4** amends sections 4(3) and 5(4) of the Local Government etc. (Scotland) Act 1994, sections 43(1), (2) and (3) of the Representation of the People Act 1983 and sections 36 and 37(1) of the Local Government (Scotland) Act 1973. These amendments correct minor inaccuracies of language and statutory references. Subsection (6) gives certain of the amendments retrospective effect. The amended provisions will therefore be interpreted as if they had always included the amendments.

#### ***Section 5 New electoral procedures***

7. This section allows the Scottish Ministers to make orders enabling local authorities in Scotland to run pilot schemes of innovative electoral procedures at particular local government elections.
8. Under *subsection (1)* a local authority must submit their proposals to the Scottish Ministers who must, if they approve them (with or without such modifications as they consider appropriate), make the necessary order to allow the pilot to take place.
9. *Subsection (2)* provides that pilot schemes may make provision which differs from the normal provision made by or under the Representation of the People Acts in relation to when and where voting takes place, the method used to cast votes, how votes are to be counted, the sending of elections addresses by candidates free of postal charges or for any other matter which relates to action to be taken, or procedure to be carried out, before or during the poll at an election.
10. *Subsection (3)* provides further in relation to pilot schemes which make provision regarding the matters mentioned in section 5(2)(b) of the Act ( i.e. matters other than those in section 5(2)(a) relating to action to be taken, or procedure to be carried out, before or during the poll). Such provisions can be made in a scheme only if, in the opinion of the local authority proposing the scheme, they are likely to facilitate voting by any persons or any class of persons or encourage more persons, or more persons of a particular class, to vote at the election.
11. *Subsection (4)* provides that pilot schemes may in particular make provision for voting to take place over more than one day and at places other than polling stations. Pilot schemes may also allow for the local authority concerned to meet the postage costs of the distribution of candidates' election addresses, in which case the order providing for the pilot scheme may disapply the provisions of section 75(1) of the Representation of the People Act 1983 (which restrict third party expenditure).
12. *Subsection (5)* enables a pilot scheme to be run across the whole of a local authority's area or only in some parts of it.
13. *Subsection (6)* allows the Scottish Ministers to consult appropriate bodies on any pilot scheme proposal and requires them to consult the appropriate local authority of any modifications proposed to that scheme.
14. *Subsection (7)* provides that where the Scottish Ministers make an order for implementing a pilot scheme they must send a copy of the order to the local authority concerned, which must publish it in their area.
15. *Subsections (8)-(12)* deal with evaluation of pilot schemes. A local authority running a pilot is required to produce a report on the scheme. 16. The report must include details of the scheme together with a copy of the order authorising it made by the Scottish Ministers.

*These notes relate to the Scottish Local Government (Elections)  
Act 2002 (asp 1) which received Royal Assent on 24 January 2002*

17. The report must also include an assessment of the scheme in facilitating voting or in encouraging voting or enabling voters to make informed decisions. The report about must include a statement as to whether in the local authority's opinion:
  - turnout was higher than it would otherwise have been,
  - voters found the new arrangements easy to use,
  - the new procedures led to any increase in personation or other electoral fraud.
18. The report must also include an assessment of any other matters that the Scottish Ministers have requested should be included in the report.
19. The report must be completed and sent to the Scottish Ministers within three months of the day on which the election results are declared, and the local authority must also within that time limit publish the report in their area.
20. *Subsection (13)* provides that an application to run a pilot scheme submitted to the Scottish Ministers before the Act receives Royal Assent is to be treated in the same fashion as those submitted after that time.

***Section 6 Revision of procedures in the light of pilot schemes***

21. This section is concerned with the implementation of innovations that have been successfully piloted.
22. *Subsection (1)* enables the Scottish Ministers to make an order providing for an innovation which has been piloted to apply generally and permanently to local government elections in Scotland. Such an order can modify or disapply any legislative provision in relation to the elections to which it will apply.
23. *Subsection (2)* provides that an order may exempt particular local government areas from its provisions but, otherwise, must make the same provision throughout Scotland for all the elections that it relates to.
24. *Subsections (3) and (4)* provide that an order must be made by statutory instrument which needs to be approved by the Scottish Parliament, and that when laying such an order the Scottish Ministers must also lay copies of the evaluation report of the relevant pilot scheme(s).
25. *Subsection (5)* provides that rules made under section 42 of the Representation of the People Act 1983 may make such provision as the Scottish Ministers consider appropriate in connection with any order rolling out a pilot scheme.
26. *Subsection (6)* provides that nothing in section 5 prejudices the powers contained in other Acts to make secondary legislation relating to elections.