



# Local Governance (Scotland) Act 2004

## 2004 asp 9

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 23rd June 2004 and received Royal Assent on 29th July 2004**

An Act of the Scottish Parliament to make provision for the election of councillors by single transferable vote and in relation to candidates to be councillor; to make provision in relation to certain restrictions upon being a councillor and upon former councillors; to make new provision about remuneration for and other payments to councillors; and for connected purposes.

### PART 1

#### LOCAL GOVERNMENT ELECTIONS

#### **1 Electoral wards**

- (1) Each local government area shall be divided into electoral wards; and there shall be a separate election for each electoral ward.
- (2) The number of councillors to be returned in an electoral ward shall be either three or four, as determined by order made under section 17 (order giving effect to proposals made by Boundary Commission) of the Local Government (Scotland) Act 1973 (c. 65) (“the 1973 Act”).
- (3) Different numbers may be determined in relation to different electoral wards.

#### **2 Single transferable vote**

In each electoral ward in which there is a contested election, a poll shall be held at which each person entitled to vote as an elector may vote by marking on the ballot paper—

- (a) the voter’s first preference from among the candidates to be councillor, and
- (b) if there are three or more candidates and the voter wishes to express a further preference for one or more of those candidates, the voter’s second and, if the voter wishes, subsequent preferences from among those candidates.

### **3 Power to make further provision about local government elections**

- (1) The Scottish Ministers must by order make provision as to—
  - (a) the conduct of elections of councillors,
  - (b) the questioning of such an election and the consequences of irregularities.
- (2) Such an order must, in particular—
  - (a) specify the manner in which the number of votes which will secure the return of a candidate as a councillor is to be calculated,
  - (b) provide for any candidate with a number of votes which equals or exceeds the number so calculated to be deemed to be elected as a councillor,
  - (c) make provision as to circumstances in which one or more of the candidates is to be excluded from the election on the basis of the number of votes then credited to those candidates,
  - (d) make provision as to the transfer of ballot papers from candidates deemed to be elected as councillors or excluded from the election,
  - (e) specify the value, or the method for calculating the value, to be given to a vote on a transferred ballot paper.
- (3) Such an order may, in particular—
  - (a) make provision about the limitation of the election expenses of candidates,
  - (b) apply, with or without modifications or exceptions, any provision made by or under any enactment.
- (4) Provision made by such an order by virtue of subsection (1)(b) must include provision applying Part III of the Representation of the People Act 1983 (c. 2) (“the 1983 Act”) (with such modifications or exceptions as the order may specify).
- (5) The return of a councillor may be questioned only under Part III of the 1983 Act as applied by an order under subsection (1).

### **4 Reviews of electoral arrangements**

- (1) As soon as practicable after the commencement of this section the Boundary Commission shall—
  - (a) review the electoral arrangements for all local government areas for the purpose of considering future electoral arrangements for those areas, and
  - (b) formulate proposals for those arrangements.
- (2) Part II of the 1973 Act applies to a review under subsection (1) as it applies to a review under section 16 of that Act except that section 17 of that Act has effect as if it required—
  - (a) the Boundary Commission to submit a report on any review before such date as the Scottish Ministers may direct, and
  - (b) the Scottish Ministers to make an order under section 17 giving effect to the proposals of the Commission under subsection (1) (whether as submitted to them or with modifications).
- (3) The Boundary Commission shall, when complying with section 18(2)(aa) of the 1973 Act on a review under subsection (1), also inform the council of the reasons for any differences between—
  - (a) their draft proposals, and

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- (b) the draft proposals which would have been made had they been formulated on the basis that each electoral ward of a local government area is to consist of a combination of existing electoral wards (the rules set out in Schedule 6 to that Act having been disregarded in so far as those rules conflicted with that basis).
- (4) The Boundary Commission shall disregard subsection (3) when formulating proposals for future electoral arrangements under subsection (1).
- (5) The 1973 Act is amended as follows—
- (a) in section 16(2) (duty of Boundary Commission to carry out periodic reviews of electoral arrangements), for “Schedule 5 to this Act” substitute “section 4(1) of the Local Governance (Scotland) Act 2004 (asp 9)”,
  - (b) in section 18 (procedure for reviews)—
    - (i) in subsection (2), after paragraph (a) insert—
      - “(aa) at least two months before taking any steps under paragraph (b) below to inform other persons of any draft proposals or any interim decision not to make proposals, inform the council of any local government area affected by the review of those proposals or that decision;
      - (ab) before taking any such steps, take into consideration any representation made to them by such a council during the period of two months beginning on the day on which the council is informed under paragraph (aa);”
    - (ii) after subsection (2) insert—
      - “(2A) The Scottish Ministers may give directions to—
        - (a) the Boundary Commission,
        - (b) the council of any local government area affected by a review,in relation to consultation under subsection (2)(a) above.
      - (2B) Such directions may be given generally or in relation to particular reviews or particular aspects of reviews.”
  - (c) section 20 is repealed,
  - (d) in subsection (1) (interpretation) of section 28, in the definition of “electoral arrangements”, after “councillors”, where second occurring, insert “, the number of councillors for each electoral ward”,
  - (e) in subsection (2) (review of electoral arrangements to be carried out in compliance with certain enactments) of that section—
    - (i) after “Act”, where first occurring, insert “or section 4(1) of the Local Governance (Scotland) Act 2004 (asp 9)”, and
    - (ii) for “section 5 of the Local Government etc. (Scotland) Act 1994” substitute “section 1 of the Local Governance (Scotland) Act 2004 (asp 9)”,
  - (f) Schedule 5 is repealed,
  - (g) in sub-paragraph (2) of paragraph 1 of Schedule 6, for the words from “of”, where fourth occurring, to the end of that sub-paragraph substitute “calculated by dividing the number of local government electors in each electoral ward

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of that local government area by the number of councillors to be returned in that ward shall be, as nearly as may be, the same.”, and

- (h) at the end of sub-paragraph (3) of that paragraph insert—  
“but if, in any case, there is a conflict between those criteria, greater weight shall be given to the latter.”

## **5 Consequential amendments and repeals**

- (1) The 1983 Act is amended as follows—
- (a) in section 42 (conduct of local elections), subsections (1) to (4) and (7) are repealed,
  - (b) in section 166(3) (vote to be void if voter is subject to incapacity to vote by reason of corrupt or illegal practices), for “or an election to any elective office or” substitute “, local government election or an election under the Local Government (Scotland) etc. Act 1994 (c. 39)”,
  - (c) in section 187(2) (application of certain provisions to elections other than elections of councillors)—
    - (i) the word “other” is repealed, and
    - (ii) for “local government Act” substitute “Local Government etc. (Scotland) Act 1994 (c. 39)”,
  - (d) section 188 is repealed, and
  - (e) in section 204 (general application to Scotland), in the definition of “local government Act”, for “Local Government etc. (Scotland) Act 1994” substitute “Local Governance (Scotland) Act 2004 (asp 9)”.
- (2) In section 5 (elections and term of office of councillors) of the Local Government etc. (Scotland) Act 1994 (c. 39), subsections (1), (5) and (6) are repealed.

## **6 Interpretation of Part 1**

In this Part—

“Boundary Commission” means the Local Government Boundary Commission for Scotland,

“electoral arrangements” has the same meaning as in Part II of the 1973 Act,

“local government area” is to be construed in accordance with section 1 (local government areas) of the Local Government etc. (Scotland) Act 1994 (c. 39).

## **PART 2**

### **MEMBERSHIP OF LOCAL AUTHORITIES ETC.**

## **7 Disqualification**

- (1) In section 31 of the 1973 Act, subsection (1)(a) (disqualification of officers, employees etc. and their partners from nomination, election and holding office as members of local authorities) is repealed.
- (2) After that section insert—

### **“31A Disqualification of officers, employees etc. from remaining members of local authority**

- (1) A person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority is disqualified from remaining a member of the authority after the relevant day unless the person complies with subsection (2) below.
- (2) A person complies with this subsection by resigning, not later than the relevant day, from that office, employment or, as the case may be, other place of profit.
- (3) A resignation effected in pursuance of subsection (2) above terminates the holding of the office, employment or other place of profit with immediate effect notwithstanding any contrary provision in the terms and conditions under which the office, employment or place of profit is held.
- (4) In this section the “relevant day” is the day first occurring after that on which the person elected a member of the local authority was, under the local elections rules, declared to be so elected (no account being taken of a day which is a Saturday or Sunday or Christmas Eve, Easter Monday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80) or a day appointed for public thanksgiving or mourning in Scotland).
- (5) In subsection (4) above, the “local elections rules” means an order made under section 3(1) of the Local Governance (Scotland) Act 2004 (asp 9).
- (6) This section does not affect section 1 (disqualification and political restriction of certain local government officers and staff) of the Local Government and Housing Act 1989 (c. 42).”

## **8 Reduction of age qualification**

In section 29(1) (qualifications for nomination, election and holding office as member of local authority) of the 1973 Act, for “21” substitute “18”.

## **9 Eligibility for membership: politically restricted posts**

In section 2 (politically restricted posts the holders of which are disqualified from membership of the local authority) of the Local Government and Housing Act 1989 (c. 42), in subsection (2)—

- (a) paragraphs (a) and (b) and the word “and” immediately following the latter are repealed, and
- (b) in paragraph (c), the words “not falling within paragraph (a) or (b) above the” are repealed.

## **10 Prohibitions on appointment of councillors and ex-councillors to local authority posts**

For section 67 (members of local authorities not to be appointed as officers) of the 1973 Act substitute—

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**“67 Members of local authorities not to be appointed as officers etc.**

- (1) A person who is a member of a local authority is disqualified from being appointed by the authority to any paid office or employment (other than the office of convener or depute convener) or other place of profit in the gift or disposal of the authority.
- (2) A person who has ceased to be a member of a local authority is disqualified—
  - (a) for a period of 3 months beginning with the day on which the person ceased to be a member of a local authority from being appointed by the authority to any such office, employment or place of profit which is not a politically restricted post;
  - (b) for a period of 12 months beginning with that day from being appointed by the authority to any such office, employment or place of profit which is a politically restricted post.
- (3) A person who—
  - (a) has ceased to be a member of a local authority; and
  - (b) at any time during the period of 12 months ending with the day on which the person so ceased, participated directly in the appointing of any person to a politically restricted post,
 is, for the period of 12 months beginning on that day, disqualified from being appointed by the authority to any paid office or employment or other place of profit in the gift or disposal of the authority.
- (4) A reference to a politically restricted post is—
  - (a) in subsection (2) above, a reference to a post held by a person who is within any of paragraphs (a) to (g) of subsection (1) of section 2 (politically restricted posts the holders of which are disqualified from membership of the local authority) of the Local Government and Housing Act 1989 (c. 42);
  - (b) in subsection (3) above, a reference to a post held by a person who is within any of paragraphs (a) to (e) of that subsection.”

**11 Pay, pensions etc. of councillors**

- (1) The Scottish Ministers may, by regulations, provide for the payment by local authorities of remuneration and allowances to and reimbursement of expenses incurred by members of those authorities.
- (2) Those regulations may include provision by or under which—
  - (a) an element of the remuneration, allowance or reimbursement payable to a member of a local authority is calculated by reference to activities carried out by the member in the discharge of the member’s functions as such,
  - (b) other such elements are calculated by reference to other factors,
  - (c) an element of the remuneration is payable by way of pension.
- (3) Those regulations may also include provision for—
  - (a) local authorities to make contributions or other payments towards provision for such pensions,

- (b) the establishment and administration, by local authorities or otherwise, of one or more pension schemes, or the adaptation of any pension scheme, for the purpose of making provision for such pensions,
  - (c) members of local authorities to be enabled to contribute to pension schemes so established or adapted and, otherwise than under subsection (2)(c), to benefit from them.
- (4) Where the Scottish Ministers have made a requirement under subsection (2) of section 13 in relation to a matter specified in subsection (3)(a) of that section they shall, before making regulations under subsection (1) of this section, consider any information, advice or recommendations given to them by the Scottish Local Authorities Remuneration Committee in response to the requirement.

## **12 Severance payments for councillors**

- (1) The Scottish Ministers may, by regulations, provide for the making by local authorities of payments (“severance payments”) to persons who—
- (a) were, immediately prior to the date of an ordinary election, members of local authorities,
  - (b) were not candidates to be councillor at that election, and
  - (c) meet such other criteria as may be specified in the regulations.
- (2) Those regulations may include provision as to—
- (a) the amounts of severance payments and the methods of calculating those amounts,
  - (b) the procedure for applying for severance payments and for dealing with such applications.
- (3) Where the Scottish Ministers have made a requirement under subsection (2) of section 13 in relation to a matter specified in subsection (3)(b) of that section they shall, before making regulations under subsection (1) of this section, consider any information, advice or recommendations given to them by the Scottish Local Authorities Remuneration Committee in response to the requirement.
- (4) In section 29 (qualifications for nomination, election and holding office as member of local authority) of the 1973 Act, after subsection (1) insert—
- “(1A) A person who has received a severance payment (within the meaning of section 12 of the Local Governance (Scotland) Act 2004 (asp 9)) shall not be so qualified.”
- (5) In this section, “ordinary election” means an ordinary election of councillors for local government areas (within the meaning of section 6) in Scotland.

## **13 The Scottish Local Authorities Remuneration Committee**

- (1) There shall be a body, to be known as the “Scottish Local Authorities Remuneration Committee”.
- (2) The Scottish Ministers may require the Committee to—
- (a) provide them with information in relation to, or
  - (b) review, and prepare and submit to the Scottish Ministers advice or recommendations in relation to,

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such of the matters mentioned in subsection (3) as the requirement may specify.

- (3) Those matters are—
  - (a) the payment by local authorities of remuneration (including pensions) and allowances to and reimbursement of expenses incurred by members of local authorities,
  - (b) the payment of severance payments (within the meaning of section 12) in relation to members of local authorities.
- (4) A requirement under subsection (2)(b) may specify criteria by reference to which the Committee is to prepare advice or recommendations.
- (5) The Committee shall comply with any directions given to it by the Scottish Ministers as to the discharge of its functions.
- (6) The schedule makes further provision about the constitution etc. of the Committee.

### PART 3

#### MISCELLANEOUS AND GENERAL

#### 14 Election expenses etc.

- (1) The Political Parties, Elections and Referendums Act 2000 (c. 41) is amended as follows.
- (2) Sections 134(2) and 135(3) (which restrict, in relation to local government elections in Scotland, the effect of amendments to the meanings of “election expenses” and “candidate” in Part II of the 1983 Act) are repealed.
- (3) In section 138(2) (which restricts, in relation to local government elections in Scotland, the effect of other amendments to the 1983 Act), after “18” insert “(other than paragraphs 8 and 15(a))”.
- (4) In section 158(3) (which restricts, in relation to local government elections in Scotland, the effect of repeals relating to the 1983 Act), after “II” insert “(other than section 82(4))”.

#### 15 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

#### 16 Orders and regulations

- (1) Any power of the Scottish Ministers under this Act to make an order or regulations is exercisable by statutory instrument.
- (2) Any such power includes power to make—
  - (a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,
  - (b) different provision for different purposes.

- (3) Orders under sections 3(1) and 15 and regulations under section 11(1) may modify any enactment.
- (4) A statutory instrument containing an order (other than an order made under section 17(2)) or regulations made under this Act is, unless subsection (5) otherwise provides, subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No—
  - (a) order under section 3(1) containing provisions of the type mentioned in section 3(2), or
  - (b) order under section 3(1) or 15, or regulations under section 11(1), containing provisions which add to, replace or omit any part of the text of an Act,may be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Parliament.

## **17 Short title and commencement**

- (1) This Act may be cited as the Local Governance (Scotland) Act 2004.
- (2) This Act (except this section and sections 15 and 16) comes into force on such day as the Scottish Ministers may by order appoint.

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## SCHEDULE

*(introduced by section 13)*

### CONSTITUTION ETC. OF SCOTTISH LOCAL AUTHORITIES REMUNERATION COMMITTEE

- 1           The Scottish Local Authorities Remuneration Committee is to be a body corporate.
- 2           The Committee is to have 7 members to be appointed by the Scottish Ministers.
- 3           The Scottish Ministers shall appoint one of those members to be the convener of the Committee.
- 4           The members of the Committee are entitled to payment from the funds of the Committee of such allowances as are determined by the Scottish Ministers.
- 5           The Committee may, with the prior consent (given either generally or in relation to particular cases) of the Scottish Ministers, appoint staff on such terms (including terms as to remuneration) as it thinks appropriate to assist it in the discharge of its functions.
- 6           The Scottish Ministers may make grants to the Committee.
- 7           The procedure of the Committee is for it to determine.
- 8           The Committee—
  - (a) is not to be regarded as a servant or agent of the Crown,
  - (b) does not have any status, immunity or privilege of the Crown,and its property is not to be regarded as property of, or held on behalf of, the Crown.
- 9           The validity of the proceedings or actings of the Committee is not affected by any vacancy among its members or defect in the appointment of those members.