

# **LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) ACT 2006**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### **Part 1: Electoral Administration**

##### **Miscellaneous**

##### ***Section 27 Tendered votes in certain circumstances***

52. Subsection (1) inserts a new subsection (6B) into section 61 of the 1983 Act, which relates to certain voting offences.
53. The new provision excepts from the scope of voting offences an elector who discovers, upon attending his polling station, that he has without his knowledge been included on the list of postal voters or postal proxy voters who may not vote in person at a polling station. It will be possible for such a voter to be issued with a tendered ballot paper at a polling station before the close of voting where the deadline for requesting a replacement postal ballot paper has expired.
54. The elector will be allowed to mark a tendered ballot paper if their answer satisfies the presiding officer that they have lost or not received their postal ballot paper. A person who votes at a polling station when entitled to vote by post is not guilty of a voting offence if the vote cast is a tendered ballot paper. Similarly, a person who votes in person as a proxy for another elector when entitled to vote as a postal proxy, is not committing an offence when voting by a tendered ballot paper.
55. Subsection (2) makes two amendments to Schedule 4 of the Representation of the People Act 2000. The insertion of paragraph 2(6B) of the Schedule removes the prohibition on absent voters voting at a polling station. The effect is that paragraph 2 does not apply to voters casting a tendered ballot paper in the circumstances referred to above. Similarly, the insertion of paragraph 7(14) means that paragraph 7 of Schedule 4 does not prohibit postal proxies casting a tendered vote at a polling station in the circumstances referred to above.

##### ***Section 28 Election campaign and proceedings: miscellaneous amendments***

56. This section makes a minor amendment to section 81 of the 1983 Act dealing with the return as to election expenses by providing that any reference to the Electoral Commission is to be read as if it were a reference to the Scottish Ministers (subsection (1)). Subsection (1) is consequential on subsection (2) in that it makes a further modification of one of the amendments which is extended to Scottish local government elections by subsection (2).

57. The paragraphs in Schedules 18 and 22 to the Political Parties, Elections and Referendums Act 2000 which are now applied to local government elections in Scotland by virtue of subsections (2) and (3) update provisions in the 1983 Act or omit those that are out of date and no longer serve a useful purpose. The Schedule 18 and 22 provisions principally amend sections in Part V of the 2000 Act, dealing with control of campaign expenditure. Amendments are made to sections, 73 (payment of expenses through election agent), 74 (candidate's personal expenses), a new section 74A (expenses incurred otherwise than for election purposes) is inserted, 78 (time for sending in and paying claims), 81 (return as to election expenses), 82 (declarations as to election expenses), 89(1) (inspection of returns and declarations for purposes of section 88), and 90 (election expenses where agent not required). Sections 72 (campaign expenditure), parts of 79(3) (limits on campaign expenditure), parts of 81 (return as to election expenses), 82(4) (person before whom declaration as to election expenses may be made), 101 – 105 (dealing with referendums) and 108 (Designation of organisations to whom assistance is available) are deleted.

### ***Section 29 Details to appear on election publications***

57. This section repeals section 110 of the 1983 Act, so far as it applies to Scottish local government elections, covering the details to appear on election material and replaces it with a new section 110A. The new section 110A has the effect of introducing for local government elections in Scotland the amendment made by paragraph 14 of Schedule 18 to the 2000 Act. It widens the scope of the original section 110 by extending whose details are to be provided on the election publication and does this by replacing the term "publisher" with "promoter" and by providing that the name and address of any person on behalf of whom the material is being published (and who is not the promoter) are to be provided on the election publication.

### ***Section 30 Repeal of reference to Maundy Thursday***

58. This section removes Maundy Thursday from the list of days that are to be disregarded for the purposes of calculating the timetable for local government elections.

### ***Section 31 Translations etc. of certain documents***

59. This section inserts a new section 199C of the 1983 Act which requires returning officers at Scottish local government elections and their staff, if they consider it appropriate, to make election documents (other than a nomination paper or ballot paper), which are displayed or given to voters, available in graphical format, Braille, languages other than English or other means. If appropriate, the information contained in those documents must also be made available in an audio format.

### ***Section 32 Certain voters entitled to vote in person***

60. This section amends Schedule 4 to the Representation of the People Act 2000 which deals with absent voting. The change extends the right to vote in person at local government elections in Scotland, rather than by post or proxy, to people detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.

### ***Section 33 Power to make regulations as to preparation of special lists and records etc.***

61. This section gives Scottish Ministers a power to make regulations on the procedures for drawing up special lists and records in connection with the conduct of a local government election. This is to put beyond doubt that Ministers have a power to make provisions regarding the procedure to be followed in the preparation of any special lists relating to absent voting. Regulations made under this power will attract negative resolution procedure.

**Section 34 Miscellaneous amendments**

62. This section makes a number of minor amendments to the 1983 Act. Subsection (1)(a) amends the offence provision in section 65 (tampering with nomination papers, ballot papers etc.), insofar as it applies in relation to a local government election in Scotland, to add a reference to the new form of postal voting statement which will be used in place of the current declaration of identity. Subsection (1)(b) amends section 66 (requirement of secrecy of those persons attending the poll and counting of votes) and adds a reference to a unique identifying mark used on the back of any ballot paper to those items about which information is not to be communicated. Subsection (1A) removes the restriction in sections 160(5A) and (5B) to ensure that the disqualification provisions in section 160 are triggered for the office of councillor in Scotland by a conviction of corrupt or illegal practice at a reserved election.
63. Subsection (2) amends section 173A (incapacity to hold public or judicial office in Scotland) and removes the restriction imposed by paragraph 104 of Schedule 1 to the UK Electoral Administration Act. This has the effect of extending to the office of councillor for a local government area in Scotland the provisions of section 173A which set out that a person convicted of a corrupt practice is prevented from holding public or judicial office in Scotland for a period of five years starting from the date of his conviction or, if holding such office, shall vacate it from that date. Subsection (3) amends Schedule 2 of the 1983 Act (provisions which may be contained in regulations as to registration etc.) and inserts a new paragraph 12A which provides that regulations made in relation to local government elections in Scotland may also make provision authorising the cancellation or removal of ballot papers at such an election in any prescribed circumstances.
64. The UK Electoral Administration Act amends paragraph 3(3)(b) of Schedule 4 to the Representation of the People Act 2000 which deals with absent voting. The change replaces the words “physical incapacity” with “disability” to ensure that the link between mental incapacity and legal capacity is removed in relation to a person who applies to vote by proxy. Subsection (4) removes the restriction of the extent of the change so that it now extends to local government elections in Scotland.
65. Ministers have a power in section 3(1) of the 2004 Act to make an order which, in addition to updating the local government election rules, will also make provision about the detail of the STV system to be used in the 2007 local government elections. That order will be subject to affirmative procedure, as provided for in section 16(5) of the 2004 Act. Subsection 25(5) makes clear that not every order made under section 3(1) of the Local Governance (Scotland) Act 2004 need include provisions set out in section 3(2) (which deals with the counting of votes.) Where the order does not include such provision, it will be subject to negative procedure. Where the order does include provisions in section 3(2), it will continue to be subject to affirmative procedure.