

SCOTTISH LOCAL GOVERNMENT (ELECTIONS) ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Year of local government elections

5. Under the Act the next two ordinary local government elections will be held in 2012 and 2017. After 2017, ordinary local government elections will revert to taking place every fourth year. The effect of this will be that the local government elections will take place halfway through the term of the Scottish Parliament. Section 1 of the Act does this by amending section 5 of the Local Government etc. (Scotland) Act 1994 which contains provision about the timing of local government elections. The Act inserts two new subsections into section 5 of the 1994 Act and repeals subsections (2) and (3) of that section (subsection (2) contains a historical date for local government elections and subsection (3) is the provision that links the date of local government elections to that of the Scottish Parliament elections).
6. Subsection (2) introduces the schedule which contains consequential modifications and repeals.

Section 2 – Voting information from local government elections

7. This section inserts a new section 3A (Voting information from local government elections) into the Local Governance (Scotland) Act 2004. Subsection (1) of the new section confers power on the Scottish Ministers to make orders about the publication of information about votes cast at elections of councillors. Any order under new section 3A would attract the affirmative procedure in terms of Parliamentary scrutiny.
8. An order under new section 3A may specify the information to which the order is to apply, the limits to be placed on the publication of the information and the parts of an electoral ward which may be identified in the order. The order may also make provision about granting access to the information for the purposes of publication (see subsection (2) of the new section 3A).
9. This order making power could be used to authorise the publication of voting information at polling station level (subject to certain limitations). The Scottish Local Government Elections Order 2007, made under section 3(1) of the Local Governance (Scotland) Act 2004, sets out the rules governing the conduct of Scottish local government elections. Rule 55 requires the returning officer to publish at ward level the following information upon declaration of the result:
 - the name(s) of the candidate(s) elected;
 - the number of first and subsequent preference votes for each candidate;
 - the number of ballot papers transferred and transfer values (under the STV process) at each stage of the count;

*These notes relate to the Scottish Local Government (Elections)
Act 2009 (asp 10) which received Royal Assent on 21 July 2009*

- the number of votes credited to each candidate at each stage of the count; and
 - the number of non-transferable ballot papers at each stage of the count.
10. An order under new section 3A could be used to authorise the publication at polling station level of information similar to that detailed in paragraph 10 above. In circumstances where the number of voters using a particular polling station was small enough to run the risk of an individual elector's vote being identified, or at least assumed with some degree of accuracy, the order could specify that the data from a number of polling stations could be amalgamated until the combined number of voters reached a minimum threshold. Such an amalgamation might be required, for example, in remote rural locations.
 11. Nothing may be done under an order made under new section 3A which would identify whether a particular person has voted. Given that nothing may be done to identify if a person has voted it follows that an order under new section 3A cannot authorise anything which would disclose how a particular person voted (see subsection (3) of the new section 3A). This prohibition on disclosure of whether a person has voted does not prejudice other enactments where certain specific and confidential information can be accessed in certain circumstances and subject to certain safeguards. Sections 5, 6 and 7 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 provide that registered political parties and candidates in an election may have access to a marked copy of the electoral register, the postal voters list, the list of proxies and the proxy postal voters list. Access is given under specified restrictions. The information released in this way does not allow parties or candidates to identify how individuals voted.
 12. An order under new section 3A may specify that the terms of the order may apply to information relating to the local government elections of 2007 (see subsection (4) of the new section 3A).

Schedule

13. The schedule contains a number of consequential modifications and repeals.