



# Scottish Elections (Reform) Act 2020

2020 asp 12

VALID FROM 01/10/2020

## PART 2

### ELECTORAL COMMISSION

#### *Codes of practice*

#### **9 Expenditure of candidates at Scottish parliamentary elections**

In the Political Parties, Elections and Referendums Act 2000, after section 6G insert—

##### **“6H Code of practice on expenditure of candidates at Scottish parliamentary elections**

- (1) The Commission may prepare, and from time to time revise, a code of practice giving guidance as to—
  - (a) the matters which are, or are not, to be regarded as election expenses,
  - (b) the cases or circumstances in which expenses are, or are not, to be regarded as incurred,

for the purposes of any order under section 12(1) of the Scotland Act 1998 in so far as regulating the incurring of expenses for the purposes of a candidate's election at a Scottish Parliamentary general election or an election under section 9 of the Scotland Act 1998 (constituency vacancies).

- (2) Once the Commission have prepared a draft code under this section, the Commission must submit it to the Scottish Ministers for their approval.
- (3) The Scottish Ministers may approve a draft code either without modification or with such modifications as they may determine.
- (4) Once the Scottish Ministers have approved a draft code, they must lay a copy of the draft before the Scottish Parliament, either—

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- (a) in its original form, or
  - (b) in a form which incorporates any modifications determined under subsection (3).
- (5) If the draft incorporates any modifications determined under subsection (3), the Scottish Ministers must at the same time lay before the Scottish Parliament a statement of their reasons for making the modifications.
- (6) If, within the 40-day period, the Scottish Parliament resolves not to approve the draft code, the Scottish Ministers must take no further steps in relation to the draft code.
- (7) If no such resolution is made within the 40-day period—
- (a) the Scottish Ministers must issue the code in the form of the draft laid before the Scottish Parliament, and
  - (b) the Commission must arrange for it to be published in such manner as the Commission think appropriate.
- (8) Subsection (6) does not prevent a new draft code from being laid before the Scottish Parliament.
- (9) In this section, “the 40-day period”, in relation to the draft code, means the period of 40 days beginning with the day on which the draft code is laid before the Scottish Parliament (taking no account of any time during which the Parliament is dissolved or in recess for more than 4 days).
- (10) In this section, references to a draft code include references to a draft revised code.”.

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## **10 Expenditure of candidates at Scottish local government elections**

In schedule 4B of the Representation of the People Act 1983 (Scottish local government elections: election expenses) (as inserted by section 17(4) of the Local Electoral Administration and Registration Services (Scotland) Act 2006), after paragraph 12 insert—

### **“PART 2A**

#### GUIDANCE BY THE ELECTORAL COMMISSION

- 12A (1) The Commission may prepare, and from time to time revise, a code of practice giving—
- (a) guidance as to the matters which do, or do not, fall within Part 1 or Part 2 of this schedule,
  - (b) guidance (supplementing the definition in section 90ZB) as to the cases or circumstances in which expenses are, or are not, to be regarded as incurred for the purposes of a candidate's election.

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- (2) Once the Commission have prepared a draft code under this paragraph, the Commission must submit it to the Scottish Ministers for their approval.
- (3) The Scottish Ministers may approve a draft code either without modification or with such modifications as they may determine.
- (4) Once the Scottish Ministers have approved a draft code, they must lay a copy of the draft before the Scottish Parliament, either—
  - (a) in its original form, or
  - (b) in a form which incorporates any modifications determined under sub-paragraph (3).
- (5) If the draft incorporates any modifications determined under sub-paragraph (3), the Scottish Ministers must at the same time lay before the Scottish Parliament a statement of their reasons for making them.
- (6) If, within the 40-day period, the Scottish Parliament resolves not to approve the draft code, the Scottish Ministers must take no further steps in relation to the draft code.
- (7) If no such resolution is made within the 40-day period—
  - (a) the Scottish Ministers must issue the code in the form of the draft laid before the Scottish Parliament, and
  - (b) the Commission must arrange for it to be published in such manner as the Commission think appropriate.
- (8) Sub-paragraph (6) does not prevent a new draft code from being laid before the Scottish Parliament.
- (9) In this paragraph, “the 40-day period”, in relation to the draft code, means the period of 40 days beginning with the day on which the draft code is laid before the Scottish Parliament (taking no account of any time during which the Parliament is dissolved or in recess for more than 4 days).
- (10) In this Part, references to a draft code include references to a draft revised code.”.

## **11 Attendance of observers at Scottish parliamentary elections**

- (1) The Political Parties, Elections and Referendums Act 2000 is amended in accordance with subsections (2) to (5).
- (2) In section 6G (code of practice on attendance of observers at local government elections in Scotland)—
  - (a) in subsection (1), after “at” insert “ Scottish Parliamentary general elections, elections under section 9 of the Scotland Act 1998 (constituency vacancies) and ”,
  - (b) the title of the section becomes “ Code of practice on attendance of observers at Scottish Parliamentary elections and local government elections in Scotland ”.

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- (3) In section 6C(3) (accredited observers: individuals), after “to” insert “ a Scottish Parliamentary general election, an election under section 9 of the Scotland Act 1998 (constituency vacancies) or ”.
- (4) In section 6D(4) (accredited observers: organisations), after “to” insert “ a Scottish Parliamentary general election, an election under section 9 of the Scotland Act 1998 (constituency vacancies) or ”.
- (5) In section 6F(1) (code of practice on attendance of observers at elections etc.), after “than” insert “ a Scottish Parliamentary general election, an election under section 9 of the Scotland Act 1998 (constituency vacancies) and ”.
- (6) In section 24 of the Referendums (Scotland) Act 2020 (code of practice on attendance of observers)—
  - (a) after “at”, in the first place where it occurs, insert “ Scottish parliamentary elections and ”,
  - (b) after “to”, in the second place where it occurs, insert “ Scottish Parliamentary general elections, elections under section 9 of the Scotland Act 1998 (constituency vacancies) and ”.

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## **12      Controlled expenditure of third parties at Scottish local government elections**

In section 85A(1) of the Political Parties, Elections and Referendums Act 2000 (controlled expenditure of third parties: power of Scottish Ministers), after “Parliament” insert “ and local government elections in Scotland ”.

### *Reporting and standards*

## **13      Reviews of electoral and political matters**

- (1) The Political Parties, Elections and Referendums Act 2000 is amended as follows.
- (2) In section 6 (reviews of electoral and political matters)—
  - (a) subsection (1)(d) is repealed,
  - (b) in subsection (6)(a)—
    - (i) the word “and” following sub-paragraph (ii) is repealed,
    - (ii) in sub-paragraph (iii), after “and” following that sub-paragraph insert—
 

“(iv) local government elections in Scotland;  
and”,
  - (c) after subsection (6) insert—
 

“(6A) This section is subject to section 6ZA.”.
- (3) After section 6 insert—

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### **“6ZA Reviews of electoral and political matters: devolved Scottish elections**

- (1) Where a report under subsection (1) of section 6 relates to Scottish Parliamentary general elections or local government elections in Scotland, the Commission must submit the report to—
  - (a) the Scottish Ministers in so far as the report relates to—
    - (i) a matter mentioned in paragraph (a) of that subsection, or
    - (ii) the law relating to such a matter,
  - (b) the Secretary of State in so far as the report relates to—
    - (i) a matter mentioned in paragraph (b), (c), (e) or (f) of that subsection, or
    - (ii) the law relating to such a matter.
- (2) At the request of the Scottish Ministers, and within such time as the Scottish Ministers may specify, the Commission must—
  - (a) review, and
  - (b) submit a report to the Scottish Ministers on, such matter as the Scottish Ministers may specify in so far as it relates to any elections mentioned in subsection (3) and does not relate to a reserved matter (within the meaning of the Scotland Act 1998).
- (3) The elections are—
  - (a) Scottish Parliamentary general elections,
  - (b) elections held under section 9 of the Scotland Act 1998 (constituency vacancies),
  - (c) local government elections in Scotland.”.

## **14 Setting of performance standards**

- (1) The Political Parties, Elections and Referendums Act 2000 is amended as follows.
- (2) In section 9A (setting of performance standards), after subsection (5) insert—

“(5A) But subsections (3) and (5) do not apply in relation to standards relating to—

  - (a) Scottish Parliamentary general elections,
  - (b) elections held under section 9 of the Scotland Act 1998 (constituency vacancies), or
  - (c) local government elections in Scotland.”.
- (3) After section 9A insert—

### **“9AA Setting performance standards: devolved Scottish elections**

- (1) Before determining standards under subsection (1) of section 9A relating to any elections mentioned in subsection (5A)(a) to (c) of that section, the Commission must consult—
  - (a) the Scottish Ministers, and
  - (b) any other person they think appropriate.

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- (2) When the Commission publish standards under subsection (1) of section 9A relating to any elections mentioned in subsection (5A)(a) to (c) of that section—
  - (a) the Commission must send a copy of the published standards to the Scottish Ministers, and
  - (b) the Scottish Ministers must lay a copy of the published standards before the Scottish Parliament.”.

### *Funding*

## **15 Financing of Electoral Commission**

- (1) Schedule 1 of the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) is amended as follows.
- (2) In paragraph 14(1)—
  - (a) in sub-sub-paragraph (a), the words “13A, 19(11) or” are repealed,
  - (b) after sub-sub-paragraph (a) insert—
    - “(aa) met by the Scottish Parliamentary Corporate Body under paragraph 14A,”.
- (3) After paragraph 14 insert—

### **14A “Financing of Commission: devolved Scottish elections**

- (1) The Scottish Parliamentary Corporate Body (in this paragraph, the “SPCB”) must reimburse the Commission for any expenditure properly incurred by the Commission (in so far as it cannot be met out of income received by the Commission) which is attributable to the exercise of the Commission's devolved Scottish functions.
- (2) Sub-paragraph (1) does not require the SPCB to reimburse any expenditure which exceeds or is otherwise not covered by an estimate or, as the case may be, a revised estimate approved under this paragraph.
- (3) However, the SPCB may reimburse that expenditure.
- (4) Before the start of each financial year, the Commission must prepare an estimate of the Commission's income and expenditure for the year in relation to the Commission's devolved Scottish functions and, by such date as the SPCB determines, send the estimate to the SPCB for approval.
- (5) The Commission may, in the course of a financial year, prepare a revised estimate for the remainder of the year and send it to the SPCB for approval.
- (6) In preparing an estimate or a revised estimate, the Commission must ensure that the estimated level of income and expenditure is consistent with the economical, efficient and effective exercise by the Commission of their devolved Scottish functions.
- (7) An estimate or a revised estimate must contain a statement that the Commission have complied with the duty under sub-paragraph (6).

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(8) In this paragraph, “devolved Scottish functions”, in relation to the Commission, means the functions of the Commission under Part 1 in relation to—

- (a) Scottish Parliamentary general elections,
- (b) elections held under section 9 of the Scotland Act 1998 (constituency vacancies), and
- (c) local government elections in Scotland,

in so far as those functions do not relate to reserved matters (within the meaning of the Scotland Act 1998).”.

(4) In paragraph 25—

- (a) the existing text becomes sub-paragraph (1),
- (b) after that sub-paragraph insert—

“(2) In this schedule, “devolved Scottish functions”, in relation to the Commission, has the meaning given in paragraph 14A(8).”.

## **16 Reimbursement of costs by Scottish Ministers etc.**

Section 13A of the Political Parties, Elections and Referendums Act 2000 (reimbursement of costs by Scottish Ministers etc.) is repealed.

*Examination and audit: devolved Scottish elections*

## **17 Electoral Commission: five-year plan**

(1) Schedule 1 of the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) is amended as follows.

(2) After paragraph 15 insert—

### **15A “Five-year plan: devolved Scottish elections**

(1) At the same time as the Commission submit to the Speaker's Committee a plan under paragraph 15(1), the Commission must also submit the plan to the Scottish Parliamentary Corporate Body (in this paragraph, the “SPCB”).

(2) The SPCB—

- (a) must examine each plan submitted to it in so far as the plan relates to the Commission's devolved Scottish functions,
- (b) must decide whether it is satisfied that the plan is consistent with the economical, efficient and effective discharge by the Commission of their devolved Scottish functions, and
- (c) if it is not so satisfied, may recommend such modifications to the plan as it considers appropriate for the purpose of achieving such consistency.

(3) The SPCB must, after concluding its examination and making its recommendations (if any) under sub-paragraph (2) in relation to a plan—

- (a) report to the Speaker's Committee on its findings and its recommendations (if any), and

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- (b) as soon as reasonably practicable after the plan is laid by the Speaker's Committee under paragraph 15(4)—
  - (i) lay the plan before the Scottish Parliament, and
  - (ii) if the SPCB made any recommendations for modifications to the plan under sub-paragraph (2), lay before the Scottish Parliament a document describing its reasons for making the recommendations.”.

## **18 Accounts and accounting officer**

- (1) Schedule 1 of the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) is amended as follows.
- (2) After paragraph 18(2) insert—
  - “(3) As soon as is reasonably practicable after the Comptroller and Auditor General has certified the Commission's accounts and laid a copy of the accounts as so certified before each House of Parliament under sub-paragraph (2), the Commission must—
    - (a) submit a copy of the accounts as so certified to the Scottish Parliamentary Corporate Body, and
    - (b) lay a copy of the accounts as so certified before the Scottish Parliament.”.
- (3) In paragraph 19(4), after “Speaker's Committee” insert “, the Scottish Parliament, the Scottish Parliamentary Corporate Body”.

### *Reporting*

## **19 Reports by Electoral Commission: devolved Scottish elections**

- (1) Schedule 1 of the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) is amended as follows.
- (2) In paragraph 20(3), for the words “functions under Part 1 in relation to local Government elections in Scotland” substitute “devolved Scottish functions”.
- (3) In paragraph 20A—
  - (a) in sub-paragraph (1), for the words “functions mentioned in sub-paragraph (3)” substitute “Commission's devolved Scottish functions”,
  - (b) sub-paragraph (3) is repealed.



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*Expenses and donations for local government elections*

**20 Electoral Commission: election expenses at Scottish local government elections**

- (1) In section 26 of the Electoral Administration Act 2006 (return as to election expenses), subsection (2) is repealed and accordingly the amendments made by that section apply to local government elections in Scotland.
- (2) Section 19 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (return as to election expenses) is repealed.
- (3) In section 81 of the Representation of the People Act 1983 (return as to election expenses)—
  - (a) after subsection (3A) insert—

“(3B) In the application of paragraph (c) of subsection (3A) in relation to a local government election in Scotland, any regulations under that paragraph are to be made by the Scottish Ministers and such regulations are subject to the affirmative procedure.”,
  - (b) subsection (10B) is repealed.
- (4) In section 7(2) of the Political Parties, Elections and Referendums Act 2000 (Electoral Commission to be consulted on changes to electoral law), after paragraph (e) insert—

“(eza) regulations to be made by the Scottish Ministers under section 81(3A)(c) of the Representation of the People Act 1983 (other matters to be included in election expenses return in relation to local government elections in Scotland);”.

**21 Electoral Commission: donations to candidates at local government elections**

- (1) In section 130 of the Political Parties, Elections and Referendums Act 2000 (control of donations to candidates), subsection (4) is repealed and accordingly the amendments made by that section have effect in relation to local government elections in Scotland.
- (2) In schedule 2A of the Representation of the People Act 1983 (“the 1983 Act”) (control of donations to candidates)—
  - (a) in paragraph 3 (sponsorship), after sub-paragraph (4) insert—

“(4A) But any modification of sub-paragraph (2) or (3) by order under sub-paragraph (4) has no effect in relation to local government elections in Scotland.”,
  - (b) in paragraph 10 (statement of relevant donations)—
    - (i) after sub-paragraph (2) insert—

“(2A) In the application of sub-paragraph (2) in relation to a local government election in Scotland, the reference to the

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Secretary of State is to be read as if it were a reference to the Scottish Ministers, and regulations made by the Scottish Ministers under that sub-paragraph are subject to the affirmative procedure.”,

(ii) sub-paragraph (3) is repealed.

- (3) As a consequence of subsection (2)(b)(ii), paragraph 10(2) of schedule 2A of the 1983 Act and any regulations made under that paragraph apply to local government elections in Scotland.
- (4) The references in subsection (3) are to that paragraph and to those regulations as they had effect on the date that the Bill for this Act was introduced to the Scottish Parliament.
- (5) Regulations made by the Scottish Ministers under paragraph 10(2) of schedule 2A of the 1983 Act may amend or revoke the regulations described under subsection (3) in so far as they apply to local government elections in Scotland.
- (6) In section 7(2) of the Political Parties, Elections and Referendums Act 2000 (Electoral Commission to be consulted on changes to electoral law), after paragraph (eza) (as inserted by section 20(4) of this Act) insert—
- “(ezb) regulations to be made by the Scottish Ministers under paragraph 10(2) of schedule 2A of the Representation of the People Act 1983 (evidence of donor's anonymous registration to accompany statement of relevant donations in relation to local government elections in Scotland);”.

*Voting by disabled persons: devolved Scottish elections*

**22 Reports on elections: voting by disabled persons at devolved Scottish elections**

In section 5 of the Political Parties, Elections and Referendums Act 2000 (reports on elections and referendums), after subsection (2B) insert—

“(2C) Subsection (2D) applies where a report under this section relates to one of the following elections—

- (a) a Scottish Parliamentary general election,
- (b) an election held under section 9 of the Scotland Act 1998 (constituency vacancies), or
- (c) an ordinary election of councillors for local government areas in Scotland.

(2D) The report must include a description of the steps taken by returning officers to assist disabled persons (within the meaning of section 6(2) of the Equality Act 2010) to vote at the election.

(2E) In subsection (2D), “returning officer”—

- (a) in the case of a Scottish Parliamentary general election, means an officer who is—
  - (i) appointed by order in accordance with section 12(1) of the Scotland Act 1998, or
  - (ii) appointed by order under section 12(6) of that Act,

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- (b) in the case of an election held under section 9 of that Act, means an officer who is appointed by order in accordance with section 12(1) of that Act,
- (c) in the case of an ordinary election of councillors for local government areas in Scotland, means an officer who is appointed under section 41(1) of the Representation of the People Act 1983.”. Miscellaneous”.

*Miscellaneous*

**23 Notification of Commission regulations: devolved Scottish elections**

In schedule 1 of the Political Parties, Elections and Referendums Act 2000 (the Electoral Commission) after paragraph 21 insert—

- “21A (1) If the Commission make any regulations which relate to any elections mentioned in sub-paragraph (4), they must give a copy to the Scottish Ministers without delay.
- (2) If the Commission alter or revoke any regulations mentioned in sub-paragraph (1), they must give notice to the Scottish Ministers without delay.
- (3) Notice of an alteration must include details of the alteration.
- (4) The elections are—
- (a) Scottish Parliamentary general elections,
  - (b) elections held under section 9 of the Scotland Act 1998 (constituency vacancies),
  - (c) local government elections in Scotland.”.

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