

# **LOCAL GOVERNANCE (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **THE ACT — SECTION BY SECTION**

#### **Part 1 – Local government elections**

4. The current electoral system used for local government elections in Scotland is the first past the post system. This part of the Act makes provision for the introduction of a Single Transferable Vote (STV) system of proportional representation.
5. Unlike first past the post which is used to elect one member per ward, STV can be used to elect a number of candidates for each ward in a local government area. The provisions in this Act allow for 3 or 4 members to be elected in each ward. Whether 3 or 4 are to be elected will, in relation to each ward, be determined following a review of electoral arrangements by the Local Government Boundary Commission for Scotland (“the Boundary Commission”).
6. Rather than voting for one candidate only, voters can indicate their order of preference for one, some or all of the candidates shown on the ballot paper by marking, for example “1” against their first preference, “2” against their second and so on.

#### ***Section 1 – Electoral wards***

7. Subsection (1) provides that, for the purposes of local government elections, each local government area will be divided into electoral wards and a separate election held for each ward at which a prescribed number of councillors will be returned. Subsections (2) and (3) provide that there shall be 3 or 4 councillors per ward and that number may vary from ward to ward. The number of councillors per ward will be set down in an order made by the Scottish Ministers following a review of electoral arrangements by the Boundary Commission.

#### ***Section 2 – Single transferable vote***

8. This section provides that in each ward where there is a contested election, each voter will have a single transferable vote and, where there are 3 or more candidates, will be able to rank candidates in order of preference, if the voter wishes to do so.

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

9. Subsection (1) requires the Scottish Ministers to make an order about the conduct of local government elections, the questioning of such elections, and the consequences of irregularities at such elections. Subsection (2) describes certain matters, central to establishing an STV system, which must be contained in an order made under subsection (1). For example, an order will contain provision in relation to the calculation of the quota, the return of candidates and the transfer of ballot papers. Subsection (3) describes certain matters which may be contained in such an order. The effect of these provisions is that an order under this section will set out the detail of the STV system of proportional representation. An order under this section will generally be subject to negative resolution procedure. However where that order contains provisions described

in subsection (2) or amends primary legislation then it will be subject to affirmative resolution procedure (see section 16(5)).

10. Subsection (4) provides that an order made under subsection (1)(b) must include provision applying Part III of the Representation of the People Act 1983 (“the 1983 Act”) subject to such modifications or exceptions as are contained in the order. That Part makes provision for the method of questioning local government elections including the grounds on which an election can be questioned and the procedure which requires to be followed. Subsection (5) provides that that is to be the only means of questioning the return of a councillor.

#### ***Section 4 – Reviews of electoral arrangements***

11. Subsection (1) requires the Boundary Commission to conduct a review of electoral arrangements in the light of the introduction of the STV system and to formulate proposals for future arrangements. This review is to be carried out as soon as it can be done after commencement of this section. The procedure for this review is set out in Part II of the [Local Government \(Scotland\) Act 1973 \(c.65\)](#) (“the 1973 Act”). Subsection (2) modifies that procedure for the purpose of this review to allow the Scottish Ministers to require the Boundary Commission to submit its report by a date specified by them and to remove the Scottish Ministers’ discretion not to make an order following submission of the report. This enables the Scottish Ministers to ensure that the review of electoral arrangements is carried out and an order is made in time for the next local elections.
12. Subsection (3) ensures that for this first review the Boundary Commission will have to give reasons to the council for any differences between the ward boundaries it proposes and the ward boundaries that would have resulted if existing wards were combined. Subsection (4) makes clear that the Boundary Commission shall not take account of its duty to give reasons to the council for any differences in ward boundaries when formulating its proposals for future arrangements. The Boundary Commission will formulate their proposals for revised ward boundaries in accordance with the criteria in Schedule 6 to the 1973 Act, as amended.
13. Subsection (5) makes a number of amendments to provisions about the review of electoral arrangements.
14. Subsection (5)(a) amends section 16(2) of the 1973 Act to alter the timing of subsequent reviews by the Boundary Commission in consequence of the requirement to carry out a review under subsection (1).
15. Subsection (5)(b) provides that the Boundary Commission must consult individual councils on their initial proposals for revised ward boundaries in the council area 2 months before issuing those proposals for wider consultation under section 18(2)(b) of the 1973 Act. It also gives the Scottish Ministers a power to give directions to the Boundary Commission and councils in relation to the consultation with councils at the beginning of any review process under section 18(2)(a) of the 1973 Act.
16. Section 20 of the 1973 Act deals with the first review of electoral arrangements after 1<sup>st</sup> April 1996. This provision is now spent and is accordingly repealed by subsection (5) (c).
17. Subsection (5)(d) amends the 1973 Act definition of “electoral arrangements” to allow the Boundary Commission to review the number of councillors to be returned for each ward. It is not necessary to carry out such a review under the first past the post system but, because section 1(2) and (3) allows there to be either 3 or 4 councillors per ward under the STV system, the effect of the amendment is to require the Boundary Commission to consider whether there should be 3 or 4 councillors for each ward as part of its review.
18. Subsection (5)(e) and (f) contain amendments which are consequential on the provision made elsewhere in section 4. In particular subsection (5)(f) repeals Schedule 5 to the

1973 Act. That Schedule made provision for the first review of electoral arrangements by the Local Government Boundary Commission after 1<sup>st</sup> April 1996.

19. Subsection (5)(g) and (h) amend Schedule 6 to the 1973 Act which contains the rules that the Boundary Commission and the Scottish Ministers must comply with, so far as reasonably practicable, when considering the electoral arrangements for local government areas. The rule contained in paragraph 1(2) of Schedule 6 was designed to ensure that within each local government area the number of electors represented by each member is more or less the same. The formulation for the first past the post system was that the number of local government electors shall be as nearly as may be the same in every electoral ward of a local government area. With the introduction of 3 and 4 member wards this formulation would not deliver such parity. Paragraph 1(2) of Schedule 6 is amended to ensure that in a local government area every councillor is returned in relation to the same or nearly the same number of electors. Schedule 6 has also been amended to provide that if there is any conflict between the duties of the Boundary Commission to have regard to identifiable boundaries and local ties, greater weight should be given to local ties.

### ***Section 5 – Consequential amendments and repeals***

20. This section makes a number of consequential amendments and repeals to the 1983 Act and the [Local Government etc. \(Scotland\) Act 1994 \(c.39\)](#). In particular it repeals subsections (1) to (4) and (7) of section 42 (local elections in Scotland) of the 1983 Act as these provisions are superseded by the new power to make rules contained in section 3 of the Act. It also repeals section 5(1), (5) and (6) (elections and terms of office of councillors) of the 1994 Act. These provisions are superseded by section 1 of the Act.