

LOCAL GOVERNANCE (SCOTLAND) ACT 2004

EXPLANATORY NOTES

THE ACT — SECTION BY SECTION

Part 2 – Membership of local authorities

Section 7 – Disqualification

21. This section repeals section 31(1)(a) of the 1973 Act and replaces it with a new section 31A. The effect of so doing is to lift the requirement for a person who is a paid employee or office-holder of a local authority to resign when he or she is nominated as a candidate to be a councillor and to replace it with a requirement to resign only where the person is elected. Resignation is to take effect on the first working day following the declaration of election. Disqualification on the grounds that a person has a business partner who is a paid employee or office-holder of a local authority is lifted entirely.

Section 8 – Reduction of age qualification

22. This section amends section 29 of the 1973 Act to reduce the age at which a person may be nominated as a candidate for, be elected as or hold office as a councillor from 21 to 18 years.

Section 9 – Eligibility for membership: politically restricted posts

23. This section amends section 2 of the [Local Government and Housing Act 1989 \(c.42\)](#) which sets out categories of local authority employees who are to be regarded as holding politically restricted posts and who are therefore prevented, by section 1 of that Act, from standing for election as, or holding office as, councillor and engaging in a range of political activities. This amendment removes two of those categories, which are determined by a salary threshold.

Section 10 – Prohibitions on appointment of councillors and ex-councillors to local authority posts

24. This section substitutes a new section for section 67 of the 1973 Act (which prevents a former member of a local authority from being employed by that authority for a period of twelve months after ceasing to be a member). The new section retains the twelve month restriction for employment in posts designated as politically-restricted, and for retiring councillors who have been directly involved in the appointments process for council officers holding politically-restricted posts; but reduces the restriction to three months for all other posts.

Section 11 – Pay, pensions etc. of councillors

25. This section enables the Scottish Ministers to make regulations to provide for the payment by local authorities of remuneration, allowances and expenses to councillors. These regulations may cover payments made in respect of activities carried out in connection with any of the duties of a councillor and make different provisions for different circumstances and purposes.

26. The power to make regulations also enables provision for an element of remuneration to be payable by way of a pension and for a pension scheme to be set up or adapted for this purpose.
27. Subsection (4) requires the Scottish Ministers, where they have required the Scottish Local Authorities Remuneration Committee (established under section 13) to provide them with information, advice or recommendations in relation to remuneration etc., to consider what the Committee gives them before making regulations under subsection (1).

Section 12 – Severance payments for councillors

28. Subsection (1) confers power on the Scottish Ministers to make regulations providing for the making of severance payments to councillors who do not stand at a local government election and who meet such other criteria as the Scottish Ministers may specify.
29. Subsection (3) requires the Scottish Ministers, where they have required the Scottish Local Authorities Remuneration Committee (established under section 13) to provide them with information, advice or recommendations in relation to severance payments, to consider what the Committee gives them before making regulations under subsection (1).
30. Subsection (4) amends section 29 of the 1973 Act to provide that an ex-councillor to whom a severance payment is made is not entitled to stand as a candidate for councillor at a future local government election.

Section 13 – The Scottish Local Authorities Remuneration Committee

31. Subsection (1) establishes a Scottish Local Authorities Remuneration Committee.
32. The Scottish Ministers may, under subsection (2), require the Committee to provide them with information, or to review and prepare advice or recommendations, in relation to the remuneration etc. of councillors or the payment of severance payments. Subsection (5) requires the Committee to comply with any directions made by the Scottish Ministers in relation to the discharge of its functions.

Schedule – Constitution etc. of the Scottish Local Authorities Remuneration Committee

33. The schedule contains further provision in relation to the Committee established by section 13. The Committee is to be made up of 7 members appointed by the Scottish Ministers. The activities of the Committee will be funded from grants provided by the Scottish Ministers and the Commission may, with the consent of the Scottish Ministers, appoint staff to help it in carrying out its functions. Its procedures will be a matter for the Committee itself to determine.