



# Local Governance (Scotland) Act 2004

## 2004 asp 9

### PART 2

#### MEMBERSHIP OF LOCAL AUTHORITIES ETC.

#### 7 Disqualification

- (1) In section 31 of the 1973 Act, subsection (1)(a) (disqualification of officers, employees etc. and their partners from nomination, election and holding office as members of local authorities) is repealed.
- (2) After that section insert—

**“31A Disqualification of officers, employees etc. from remaining members of local authority**

- (1) A person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority is disqualified from remaining a member of the authority after the relevant day unless the person complies with subsection (2) below.
- (2) A person complies with this subsection by resigning, not later than the relevant day, from that office, employment or, as the case may be, other place of profit.
- (3) A resignation effected in pursuance of subsection (2) above terminates the holding of the office, employment or other place of profit with immediate effect notwithstanding any contrary provision in the terms and conditions under which the office, employment or place of profit is held.
- (4) In this section the “relevant day” is the day first occurring after that on which the person elected a member of the local authority was, under the local elections rules, declared to be so elected (no account being taken of a day which is a Saturday or Sunday or Christmas Eve, Easter Monday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80) or a day appointed for public thanksgiving or mourning in Scotland).
- (5) In subsection (4) above, the “local elections rules” means an order made under section 3(1) of the Local Governance (Scotland) Act 2004 (asp 9).

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*Status: This is the original version (as it was originally enacted).*

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- (6) This section does not affect section 1 (disqualification and political restriction of certain local government officers and staff) of the Local Government and Housing Act 1989 (c. 42).”

## 8 Reduction of age qualification

In section 29(1) (qualifications for nomination, election and holding office as member of local authority) of the 1973 Act, for “21” substitute “18”.

## 9 Eligibility for membership: politically restricted posts

In section 2 (politically restricted posts the holders of which are disqualified from membership of the local authority) of the Local Government and Housing Act 1989 (c. 42), in subsection (2)—

- (a) paragraphs (a) and (b) and the word “and” immediately following the latter are repealed, and
- (b) in paragraph (c), the words “not falling within paragraph (a) or (b) above the” are repealed.

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

For section 67 (members of local authorities not to be appointed as officers) of the 1973 Act substitute—

### “67 Members of local authorities not to be appointed as officers etc.

- (1) A person who is a member of a local authority is disqualified from being appointed by the authority to any paid office or employment (other than the office of convener or depute convener) or other place of profit in the gift or disposal of the authority.
- (2) A person who has ceased to be a member of a local authority is disqualified—
  - (a) for a period of 3 months beginning with the day on which the person ceased to be a member of a local authority from being appointed by the authority to any such office, employment or place of profit which is not a politically restricted post;
  - (b) for a period of 12 months beginning with that day from being appointed by the authority to any such office, employment or place of profit which is a politically restricted post.
- (3) A person who—
  - (a) has ceased to be a member of a local authority; and
  - (b) at any time during the period of 12 months ending with the day on which the person so ceased, participated directly in the appointing of any person to a politically restricted post,
 is, for the period of 12 months beginning on that day, disqualified from being appointed by the authority to any paid office or employment or other place of profit in the gift or disposal of the authority.
- (4) A reference to a politically restricted post is—

- (a) in subsection (2) above, a reference to a post held by a person who is within any of paragraphs (a) to (g) of subsection (1) of section 2 (politically restricted posts the holders of which are disqualified from membership of the local authority) of the Local Government and Housing Act 1989 (c. 42);
- (b) in subsection (3) above, a reference to a post held by a person who is within any of paragraphs (a) to (e) of that subsection.”

## **11 Pay, pensions etc. of councillors**

- (1) The Scottish Ministers may, by regulations, provide for the payment by local authorities of remuneration and allowances to and reimbursement of expenses incurred by members of those authorities.
- (2) Those regulations may include provision by or under which—
  - (a) an element of the remuneration, allowance or reimbursement payable to a member of a local authority is calculated by reference to activities carried out by the member in the discharge of the member’s functions as such,
  - (b) other such elements are calculated by reference to other factors,
  - (c) an element of the remuneration is payable by way of pension.
- (3) Those regulations may also include provision for—
  - (a) local authorities to make contributions or other payments towards provision for such pensions,
  - (b) the establishment and administration, by local authorities or otherwise, of one or more pension schemes, or the adaptation of any pension scheme, for the purpose of making provision for such pensions,
  - (c) members of local authorities to be enabled to contribute to pension schemes so established or adapted and, otherwise than under subsection (2)(c), to benefit from them.
- (4) Where the Scottish Ministers have made a requirement under subsection (2) of section 13 in relation to a matter specified in subsection (3)(a) of that section they shall, before making regulations under subsection (1) of this section, consider any information, advice or recommendations given to them by the Scottish Local Authorities Remuneration Committee in response to the requirement.

## **12 Severance payments for councillors**

- (1) The Scottish Ministers may, by regulations, provide for the making by local authorities of payments (“severance payments”) to persons who—
  - (a) were, immediately prior to the date of an ordinary election, members of local authorities,
  - (b) were not candidates to be councillor at that election, and
  - (c) meet such other criteria as may be specified in the regulations.
- (2) Those regulations may include provision as to—
  - (a) the amounts of severance payments and the methods of calculating those amounts,
  - (b) the procedure for applying for severance payments and for dealing with such applications.

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- (3) Where the Scottish Ministers have made a requirement under subsection (2) of section 13 in relation to a matter specified in subsection (3)(b) of that section they shall, before making regulations under subsection (1) of this section, consider any information, advice or recommendations given to them by the Scottish Local Authorities Remuneration Committee in response to the requirement.
- (4) In section 29 (qualifications for nomination, election and holding office as member of local authority) of the 1973 Act, after subsection (1) insert—
  - “(1A) A person who has received a severance payment (within the meaning of section 12 of the Local Governance (Scotland) Act 2004 (asp 9)) shall not be so qualified.”
- (5) In this section, “ordinary election” means an ordinary election of councillors for local government areas (within the meaning of section 6) in Scotland.

### **13 The Scottish Local Authorities Remuneration Committee**

- (1) There shall be a body, to be known as the “Scottish Local Authorities Remuneration Committee”.
- (2) The Scottish Ministers may require the Committee to—
  - (a) provide them with information in relation to, or
  - (b) review, and prepare and submit to the Scottish Ministers advice or recommendations in relation to,such of the matters mentioned in subsection (3) as the requirement may specify.
- (3) Those matters are—
  - (a) the payment by local authorities of remuneration (including pensions) and allowances to and reimbursement of expenses incurred by members of local authorities,
  - (b) the payment of severance payments (within the meaning of section 12) in relation to members of local authorities.
- (4) A requirement under subsection (2)(b) may specify criteria by reference to which the Committee is to prepare advice or recommendations.
- (5) The Committee shall comply with any directions given to it by the Scottish Ministers as to the discharge of its functions.
- (6) The schedule makes further provision about the constitution etc. of the Committee.