

POLICY NOTE

THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT ORDER 2022

SSI 2022/38

1. The above instrument was made in exercise of the powers conferred by sections 3 and 16 of the Local Governance (Scotland) Act 2004 and all other powers enabling the Scottish Ministers to do so. This instrument is subject to affirmative procedure.

Summary Box

This Order makes three main changes to the rules which set out how Scottish Local Government elections should be run.

- It requires returning officers to send copies of candidates' expenses returns and declarations to the Electoral Commission, if requested;
- It places the Electoral Commission's monitoring and securing compliance role on candidates' spending on a statutory basis; and
- It allows for poll cards to be issued to electors at an earlier date.

Policy Objectives

2. The purpose of this instrument is to amend the Scottish Local Government Elections Order 2011 (the "2011 Order"); the Representation of the People Act 1983 (the "1983 Act"); and the Political Parties, Elections and Referendums Act 2000 (the "2000 Act") to reflect changes to the rules and procedures for the running of Local Government elections in Scotland. The changes are set out in more detail below.
3. In terms of section 5 of the Local Government etc. (Scotland) Act 1994 (as amended by the Scottish Elections (Dates) Act 2016), the next ordinary Local Government election is scheduled to take place on 5 May 2022.
4. If approved, this Order will apply to any election for which the date of the poll is on or after 5 May 2022.

Amendments

5. The Electoral Commission has a statutory role in producing and ensuring compliance with guidance on candidates' election expenses for most elections across the UK, including Scottish Parliament elections. However, they do not have the same statutory role in relation to Scottish Local Government elections.
6. In the past, at the request of the Scottish Government, the Electoral Commission has produced spending information to assist candidates and agents by explaining the rules on spending at local government elections. However, that information was provided on an informal basis and had no statutory authority. Whilst this informal role has worked well,

the Electoral Commission has requested that their existing informal role should be placed on a statutory footing.

7. The Scottish Government agrees that, in line with other recent changes to candidates' expenses at Local Government elections, it would be appropriate to give the Electoral Commission a statutory role in monitoring, and taking steps to secure, compliance the rules on expenses at Local Government elections. This role will include the production of guidance on those rules. This will bring the Commission's role at Local Government elections into line with its existing role at Scottish Parliament elections. These changes do not alter the rules for candidates' expenses - they provide a statutory monitoring role for the Commission in relation to those rules.
8. In order to put the Electoral Commission's previous informal role on to a statutory basis, the following amendments are being made:-

Duty of appropriate officer to forward returns and declarations to Electoral Commission
(*article 2*)

9. In order to allow the Electoral Commission to monitor candidates' compliance with the rules on candidates' expenses, a new section (87B) is being inserted into the Representation of the People Act 1983. This new provision allows for the Electoral Commission to request that a returning officer send them a copy of any return of expenses incurred by a third party on behalf of a candidate (section 75A); any return of the amount of expenses incurred by, or on behalf of the candidate (section 81); and any declaration from the candidate or their agent that the expenses return is complete and correct (section 82) and any accompanying documents. These returns are already available for public inspection for two years following their receipt by the returning officer and copies can be requested on payment of a fee. This amendment however allows for the Electoral Commission to request copies of these public documents be sent to them without payment of the fee.

Duties of the Commission with respect to compliance (*article 3*)

10. Section 145 of the Political Parties, Elections and Referendums Act 2000 sets out the role of the Electoral Commission in monitoring and securing compliance with the restrictions and other requirements imposed by various sections of the Act. This includes the ability to produce and publish guidance on expenses rules. However, the monitoring of candidates' election expenses and donations to candidates at Scottish Local Government elections was specifically excluded from the Commission's monitoring and compliance role.
11. This amendment removes that exclusion so that the Electoral Commission will now have a statutory role in monitoring donations to and expenditure by candidates or their election agents. The Scottish Government's view was that rather than using the order making power in section 145(2), which would have required additional subordinate legislation to apply these duties to the Commission, it was more efficient to simply remove the subsection which disapplied section 145 to Scottish Local Government elections.
12. Following specific discussions with the Electoral Commission, the SSI will also remove the duty on the Scottish Government to reimburse the Commission for specific guidance

and monitoring action assigned to them (section 145(6)). This change recognises the shift from Commission monitoring of Local Government elections by specific order of the Government, into such monitoring being part of the Electoral Commission's general duties. It also reflects the transfer of responsibility for funding the Electoral Commission's Scottish devolved activities from the Speaker's Committee of the UK Parliament to the Scottish Parliamentary Corporate Body.

Issue of official poll cards and notifications (article 4)

13. Rule 24 of schedule 1 of the Scottish Local Government Elections Order 2011 (the 2011 Order) sets out that as soon as practical after the issue of the notice of poll, the Returning Officer should send to electors and their proxies an official poll card. The Convener of the Electoral Management Board for Scotland ("the Convener") has written to the Scottish Government to request that this provision be amended so that returning officers can send official poll cards after the issue of the notice of election rather than the issue of the notice of poll. This would bring practice at Scottish Local Government elections into line with other elections in Scotland, where poll cards are already sent after the issue of the notice of election.
14. The practical effect of the Convener's request is that official poll cards would be issued to electors at an earlier date. The timetable for Scottish Local government elections, which is set out in rule 1 of the 2011 Order, sets out that the notice of poll must be issued as soon as practicable after the deadline for withdrawal of nominations (not later than 4pm on the twenty-third day before the date of poll). Similarly, under this timetable, the notice of election must be published no earlier than thirty-five days or later than twenty-eight days before the date of poll.
15. For the Scottish Local Government elections which are due to be held on 5 May 2022, the Convener has already directed that Returning Officers should publish the notice of election on 14 March 2022, in order to maximise the period during which nominations can be delivered to Returning Officers¹. This is the earliest date allowed for publication under the timetable. The earliest that the notice of poll can be issued for these elections will be the 30 March 2022. Moving issue of official poll cards from after the notice of poll to after the publication of the notice of election will mean that electors will receive their poll cards about 16 calendar days earlier than currently allowed for under the timetable.
16. Earlier issue of poll cards will be to the benefit of electors as this will give them official notification of the election at an earlier date and will allow them more time to apply for an absent vote, should they require it.
17. The Electoral Management Board for Scotland have indicated that the earlier issue of poll cards will not cause any problem or additional costs for Returning Officers. The Convener has already directed Returning Officers to plan on the basis that poll cards will be dispatched from printers between 15-16 March 2022, should this Order be approved by the Parliament.

¹ See <https://www.emb.scot/downloads/download/160/scottish-local-government-elections-2022>

Consultation

18. Due to the limited effect of the proposed changes on most stakeholders, and the need to make this Order in sufficient time to apply it to the May 2022 Local Government elections, consultation on the proposals was, by necessity, restricted. However, the proposed changes were shared with the following stakeholders:

- Electoral Commission
- Electoral Management Board for Scotland
- Association of Electoral Administrators
- Electoral Registration Committee of the Scottish Assessors Association
- Society of Local Authority Lawyers & Administrators in Scotland
- Society of Local Authority Chief Executives and Senior Managers
- COSLA
- Political Parties represented in the Scottish Parliament
- Community groups representing protected characteristics

19. Two responses to the consultation was received, from the Electoral Commission (in its statutory consultation role) and the Scottish Assessors Association as of 14 December 2021. Both welcomed and supported the proposed changes.

Impact Assessments

20. An equality impact assessment (EQIA) has been produced and published for this Order.

21. The Scottish Government view is that this order will have no significant impact on child rights and wellbeing, the environment or island communities and therefore no impact assessments are required for those areas. No significant additional processing of personal data is considered to be involved in the provision around Electoral Commission access to spending returns as these are already publically available.

22. The Scottish Government does not consider that a Business and Regulatory Impact Assessment (BRIA) is necessary, as the policy changes will not lead to any significant new costs or savings for business, third or public sector organisations, regulators or consumers and there is no transfer of costs or benefits from one group to another.

Financial Implications

23. Local authorities are responsible for meeting the cost of Local Government elections from within their overall budget. This order is not expected to result in any significant increased costs.

24. Section 14A of the Political Parties, Elections and Referendums Act 2000 requires that the Scottish Parliament Corporate Body must reimburse the Commission which is attributable to the exercise of the Commission's devolved Scottish functions. The Scottish Government has discussed, with the Electoral Commission, the cost of putting their role in producing and ensuring compliance with guidance on candidates' election expenses on a statutory basis. The Electoral Commission have indicated that since they already carried out this role on an informal basis, they do not anticipate that any

additional expenditure will be incurred, though requests for any future projects beyond this business as usual work would require further discussions.

Scottish Government
Directorate for Constitution and Cabinet
14 December 2021