

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Local Electoral Administration and Registration Services (Scotland) Act 2006. They do not form part of the Act and have not been endorsed by the Parliament.
2. The Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE ACT

3. The Act is in 3 parts. Part 1 makes provision in respect of electoral administration to improve access to and participation at elections, enhance security and improve administrative effectiveness. Part 2 deals with registration services and makes provision to improve the registration service in Scotland, for people registering births, deaths, still-births, marriages and civil partnerships and for other users of registration information. Part 3 deals with general matters including orders and regulations and ancillary provisions.

PART 1: ELECTORAL ADMINISTRATION

Performance of local authorities in relation to elections etc.

Section 1 Setting of performance standards

4. Section 1 enables Scottish Ministers to set and publish performance standards for returning officers relating to the administration of a local government election. After they are published the performance standards must be laid before the Scottish Parliament.

Section 2 Returns and reports on performance standards

5. Section 2 enables Scottish Ministers to direct returning officers to submit reports regarding their level of performance against the standards set under section 1. Ministers are required to specify to whom the direction is issued and may also specify the elections to which the report relates and the form in which the report is to be provided. It further requires Ministers, upon receipt of such reports, to publish assessments of the level of performance of the returning officer (or officers) against the standards set.

Section 3 Provision of information about expenditure on elections

6. This section gives Scottish Ministers powers to direct returning officers to provide information on expenditure at local government elections. The direction can specify which elections the information is to cover and the form in which and the date by which the information is to be provided.

Section 4 Correction of procedural errors

7. This section allows returning officers to correct errors or omissions that arise during the preparation for and conduct of elections. These errors and omissions are those made by those administering the elections and those supplying goods and services to the administrators. The provisions of this section do not allow a returning officer to re-count votes at an election after the result has been declared. Subsection (4) provides that a returning officer will not be guilty of the offence of breach of official duty set out in section 53 of the Representation of the People Act 1983 if the act or omission causing the breach of official duty is remedied in full.

Access to election documents

Section 5 Access to election documents

8. This section provides for access to election documents and gives Scottish Ministers a power to make regulations to impose conditions on that access and to charge for it.

9. Subsection (2) imposes requirements on the proper officer who holds documents for local government elections in Scotland to make them available for public inspection. The meaning of the term “proper officer” is set out in section 7 below. Subsection (3) identifies who can request copies of the register and the list of proxies marked to show who has been issued with a ballot paper in a polling station, and the marked lists of postal and postal proxy voters who returned their ballot papers.

10. Subsections (4) to (8) contain regulation-making powers and define what the regulations may or may not provide. The regulations may impose conditions on the inspection and supply of documents, how they are supplied and whether they are subject to payment of a fee, making copies of the documents, the purposes for which the information in the documents is to be used and the disclosure and supply of the documents to another person or use of the information for a different purpose than the one for which the documents were originally provided.

Section 6 Access to election documents: contravention of regulations

11. This section creates an offence of contravening regulations governing access to post-election documentation. The maximum penalty for those found guilty on summary conviction is a fine of £5,000. Subsection (1) provides that any person who breaches any of the conditions set out in regulations made under section 4 is guilty of an offence. Subsection (2) provides that it is a separate and unconnected offence to be an appropriate supervisor of a person who breaches any of these conditions but subsection (2)(b) provides a statutory defence if the supervisor takes steps to stop the breach of conditions. Subsection (3) provides that a person who would otherwise have committed an offence under subsection (1) is not guilty if he has followed the supervisor’s instructions. Subsection (4) provides that a person who is unsupervised and who breaches conditions is not guilty of an offence if he has taken all reasonable steps to comply with the conditions. Subsection (5) sets out the meaning of the terms “appropriate supervisor” and “appropriate steps” in relation to this section.

Section 7 Access to election documents: supplementary

12. This section defines some of the terms used in section 5. It sets the meaning of the “proper officer” at subsection (2); “registered party” is defined with reference to Part 2 of the Political Parties, Elections and Referendums Act 2000 (c.41) (“the 2000 Act”) and the definition of “local government area” is that detailed in section 204(1) of the 1983 Act. The

intention is to define them in the same way as they are defined in the Scottish Local Government Election Rules 2002 no. 457.

Observers

Section 8 Observers: individuals

13. This section allows for individual observers, over the age of 16, to apply to attend and observe proceedings at a local government election. The proceedings that may be observed are the issue and receipt of postal votes, the poll and the count. Applicants will need to apply to returning officers for permission to attend and returning officers will have the power to refuse or revoke an application and must give the reasons for their decision in writing.

Section 9 Observers: organisations

14. This section allows organisations to apply for nominated members to attend and observe those same proceedings which an individual observer may attend. Applicants will need to apply to returning officers for permission to attend and returning officers will have the power to refuse or revoke an application but they must give the reasons for their decision in writing. Returning officers also have the power in granting an application to limit the number of observers nominated by an organisation who may attend proceedings at any one time.

Section 10 Attendance of observers

15. This section allows relevant officers to limit the number of observers present at any one time at election proceedings. Subsection (2) sets out that the term “observers” covers those who have been given permission to attend under sections 8(2) and 9(3). Subsection (2) defines “relevant officer” as being the returning officer (in relation to proceedings other than those at a polling station), the presiding officer (in relation to proceedings at a polling station) or any other person authorised by a returning officer or presiding officer for the purposes of those proceedings.

Section 11 Code of practice on attendance of observers at elections etc.

16. This section requires Scottish Ministers to prepare and publish a code of practice to regulate the processes involved in applying for access as an observer and determining applications and any subsequent revocations of permissions for access. The code of practice will reflect existing legislation governing the conduct of those attending election proceedings and relevant officers must have regard to the code when carrying out any function connected with sections 8, 9 and 10.

False information

Section 12 False information in applications relating to absent voting

17. This section inserts a new section 13CA of the Representation of the People Act 1983 to provide that it will be an offence to give false information in connection with an application for a postal or proxy vote at a local government election in Scotland. Section 13CA(3) states that in relation to a signature, “false information” means a signature which is not the usual signature of the person, or was written by a person other than the person whose signature it purports to be.

Section 13 False information in nomination papers etc.

18. This section inserts a new section 65B of the 1983 Act. Subsection (2) provides that a person will be guilty of a corrupt practice if he knowingly causes or allows a document to be supplied to a returning officer for use at an election if:

- (a) it contains a false statement of the name or home address of a candidate at the election
- (b) it contains anything which claims to be the signature of an elector who is proposing, seconding or assenting to the nomination of a candidate but which he knows was not written by the elector or which was not written by the elector for any of those purposes.

19. Subsection (3) provides that it shall be a corrupt practice at a local government election in Scotland to make knowingly a false statement in the consent to nomination given by the candidate. The following would constitute a false statement:

- (a) an erroneous date of birth
- (b) an incorrect statement that a candidate is or will be qualified for election or that to the best of their knowledge and belief they are not disqualified.

20. Certain offences under the 1983 Act are designated “corrupt practices” which are offences created by the 1983 Act and which are punishable by the criminal courts. These include bribery, treating, undue influence and personation.

Offences relating to voting

Section 14 Undue influence

21. Section 14 amends section 115 of the 1983 Act (undue influence) and addresses attempts by persons to exert undue influence that do not prove to be successful. The amendment will remedy the fact that intended but unsuccessful attempts at preventing the free exercise of the franchise or prevailing upon an elector to vote or to refrain from voting may not at present amount to the corrupt practice of undue influence.

Section 15 Offences relating to applications for postal and proxy votes

22. Section 15 inserts a new section 62B of the 1983 Act which provides that it will be both a corrupt practice and a criminal offence to do certain acts in connection with applications for a postal or proxy vote with the intention of gaining certain specified advantages. Where by virtue of the new offences provisions in the Act, a person is guilty of either a corrupt practice or an illegal practice, the consequences of committing such a practice are set out in sections 158 to 160 of the Representation of the People Act 1983. Section 160(4) of that Act, however, provides that a candidate or other person reported by an election court as personally guilty of a corrupt or illegal practice shall, for the relevant periods that are set out in section 160(5), be incapable of being registered as an elector or voting at UK Parliamentary elections or any local government election in Great Britain, of being elected to the House of Commons, or of holding other elective office. As elections to the UK Parliament and the franchise at local government elections are matters reserved to the UK Parliament, and as the Act itself does not specify that these penalties in such reserved areas will apply where a person is guilty of a corrupt or illegal practice, these penalties stated in section 160(4) will not apply as a consequence of the Act.

23. Section 160(4A) of the 1983 Act provides that the bar on being registered as an elector or voting, contained in section 160(4)(a)(i) as above, only applies to those found

guilty of a corrupt practice under section 60 or of an illegal practice under section 61 (personation/other voting offences.) It will be a matter for consequential modification, by order, so that it would be proposed that section 160(4A) of the 1983 Act would insert a reference to the new section 62B for Scottish local government elections. This would have the effect that the bar contained in section 160(4A) would also be a consequence of where an offence is committed under the new section 62B.

24. Sections 168 to 173 of the 1983 Act deal with prosecutions for corrupt or illegal practices. Matters challenging the outcome or conduct of an election on petition would go before an election court. Matters dealing with criminal matters such as fraud would go before the appropriate criminal court in Scotland. If found guilty on a criminal prosecution, a person may be imprisoned for up to two years and fined.

25. Sections 62B(2) and (3) outline the intentions and the acts that must be proved in order to establish that the offence has been committed. Section 62B(2)(b) specifies that the intention that must be proved is that the person intended to deprive another of the opportunity to vote, or intended to gain a vote to which the person was not entitled, or intended to make some other financial gain.

26. Section 62B(3) gives details of the acts that underpin the offence. These include the applicant pretending to be another elector, or making any other false statement in an application for a postal or proxy vote. It also covers the applicant causing the diversion of communications from the entitled elector or preventing their delivery.

Election expenses

Section 16 Prohibition of expenses not authorised by election agent

27. Section 16 inserts a new section 75A of the 1983 Act which deals with the prohibition of election expenses incurred by a third party and re-enacts section 75 of that Act (so far as it applies to Scottish local government elections) with certain amendments to clarify the effect of an earlier amendment to section 75(1) of the 1983 Act by section 131 of the 2000 Act. The intention of the earlier amendment was to allow a third party to incur expenses up to the permitted sum (see paragraph 33 below) but the drafting gave rise to concerns about the circumstances to which this applied, in particular there was some doubt as to whom section 75 applied.

28. The amendments made by section 75A are to be taken as having effect from 16 February 2001 (section 14(3)). The date of 16 February 2001 is the date when previous amendments made to section 75 of the 1983 Act by the 2000 Act came into effect. Section 131 of the 2000 Act increased the amount of expenditure that may be incurred by a third party who is campaigning for or against a candidate at an election. This was as a result of a ruling by the European Court of Human Rights in *Bowman v UK* which found the previous limit of £5 to be in violation of an individual's right to freedom of expression. A new limit of £500 was set for parliamentary elections and a formula for local government elections was also inserted. Section 131 gave effect to these changes and allowed a third party to incur expenses up to the permitted sum on promoting or procuring the election of a candidate through any of the means listed in section 75(1)(a) to (d). However, there was scope for confusion in that it was possible to interpret section 75(1) to apply only to the circumstances detailed in section 75(1)(c) and (d). Section 16 seeks to remove the possibility for confusion and to clarify the provision.

29. As this section is designed to address a mismatch between the way in which section 75 has, to date, been interpreted and the intended effect of section 75, it is applied

retrospectively to the date when the original limits were increased. The effect is that, while retrospective, the amendment will not place in jeopardy of prosecution anyone who was not already in such jeopardy and, because of the increased limit of permitted expenditure, could potentially remove individuals from such jeopardy. Also, as it will narrow the class of conduct which will constitute a breach of section 75, less people will be capable of being prosecuted under it

30. Subsection (2) of section 75A provides that no expenses, with a view to promoting or procuring the election of a candidate at an election, shall be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account of:

- (a) holding public meetings or organising any public display;
- (b) issuing advertisements, circulars or publications;
- (c) otherwise presenting to the electors the candidate or his views, or the extent or nature of his backing, or disparaging another candidate.

31. A breach of subsection (2) will amount to a corrupt practice in terms of subsection (7).

32. Subsection (3) provides that subsection (2)(c) will not restrict the publication of any matter relating to the election in a newspaper, a broadcast made by the BBC or a programme made under the appropriate Broadcasting Acts.

33. While subsection (2) specifies who can incur expenditure, by way of exception, subsection (4) provides that a third party campaigning for or against a candidate at a local government election in Scotland may incur expenditure up to a maximum of £50 together with an additional 0.05p per elector ("the permitted sum" – as defined in subsection (5)).

34. Subsection (6) makes provision requiring returns of expenses, a declaration verifying the return and details of authority received from the election agent to be delivered to the appropriate officer within 21 days after the result of the election is declared. Failure to do so will constitute an illegal practice in terms of subsection (8).

35. Where a person is convicted of a corrupt practice (under subsection (7)) or an illegal practice (under subsection (8)), the court may, if it considers it just to do so, mitigate or entirely remit any incapacity incurred. Further, where the corrupt or illegal practice is the result of an agent acting without the candidate's consent or connivance, the candidate is not liable for the actions of the agent, nor is his election void by reason of the agent's corrupt or illegal practice (subsection (10)). Subsection (11) makes provision for corrupt or illegal practices committed by an association or body of persons, whether corporate or unincorporated.

Section 17 Meaning of election expenses for purposes of the 1983 Act

36. Section 17 repeals sections 90A (meaning of election expenses) of the 1983 Act and 90B (incurring of election expenses) and inserts a new section 90ZB which provides that "election expenses" in relation to a candidate at a local government election in Scotland means any expenses incurred at any time in respect of any matter specified in Part 1 of Schedule 4B (inserted by schedule 1 to this Act – see below), which is used for the purposes of the candidate's election. The modification in subsection (2) is consequential to the insertion of the new section 90ZB.

37. Parts 1 and 2 of the new Schedule 4B list those items qualifying as election expenses and those that are excluded. Part 3 of the Schedule also empowers Scottish Ministers to

amend Parts 1 and 2 of the Schedule by order. An order made under this provision must be laid before the Scottish Parliament and is subject to the affirmative resolution procedure.

Section 18 Financial limits applying to candidates' election expenses

38. This section amends provisions in the Political Parties, Elections and Referendums Act 2000 dealing with financial limits applying to candidates' election expenses.

39. The section removes subsection (6) of section 132 of the 2000 Act and extends, in relation to local government elections in Scotland, some of the changes made by that section to section 76 of the 1983 Act. Section 132(2) inserts a new section 76(1) and the effect is to align this provision with the new definition of election expenses inserted in section 90A by section 134 of the 2000 Act. Section 132(4) inserts new subsection (1B) into section 76 which re-casts the criminal offence of exceeding the election expenses limit so that it is in similar terms to parallel offences created by this Act in respect of, for example, campaign expenditure by political parties.

Section 19 Return as to election expenses

40. This section amends section 81(3) of the 1983 Act which provides that a return giving details of all the election expenses incurred by or on behalf of the candidate and payments made by the elections agent has to be submitted within 35 days of the declaration of the result of the election. Subsection (3) is only repealed insofar as it relates to Scottish local government elections and is replaced with a new sub-section (4A) which allows greater flexibility in prescribing the form in which information on election expenses should be presented without reducing the amount of information that has to be provided.

41. New subsection (4B) allows Scottish Ministers greater flexibility in prescribing the information required and the form in which it is presented. An order made under this provision must be laid before the Scottish Parliament and is subject to the affirmative resolution procedure.

Anonymous entries

Section 20 Anonymous registration: miscellaneous amendments

42. This section provides for a number of miscellaneous amendments to the 1983 Act and the Representation of the People 2000 Act linked to the procedure at elections involving voters who are registered anonymously. These include procedures for the sending of electoral registration material by post to voters registered anonymously, the exclusion of any person who is registered anonymously from presenting a petition questioning a local government election in Scotland and procedures involving absent voting. The provisions referred to are inserted into the 1983 and 2000 Acts by the UK Electoral Administration Act. This section will extend those UK Act provisions so that they apply also to Scottish local government elections.

Personal identifiers

Section 21 Absent vote applications : provision of personal identifiers

43. Section 21 introduces new provisions for the collection of personal identifiers (signature and date of birth) at the point of application for absent voting (both postal voting and voting by proxy) at local government elections in Scotland. Subsection (3) provides that an application for an absent vote must include these details and subsection (4) requires registration officers not to grant an application if they are not supplied.

44. Subsection (5) allows registration officers discretion to dispense with the need for a signature if they are satisfied that the applicant cannot provide a signature or sign in a consistent and distinctive way because of illiteracy or disability. Subsection (6) requires a record to be kept of those persons granted an application for an absent vote and that this record should show their dates of birth and signatures unless the registration officer has dispensed with the need for a signature under subsection (5). Subsection (7) gives Scottish Ministers powers to make regulations setting out the period of time for which this record must be kept.

Section 22 Provision of fresh signatures

45. This section deals with the provision of new signatures by absent voters who have already provided a signature. Subsection (2) allows the voter to provide a new signature and subsection (3) provides that regulations may be made to enable registration officers to require electors who vote by post or proxy to provide a fresh signature in certain circumstances. The regulations can also specify the consequences for voters who refuse or fail to comply with such a requirement. Subsection (4) requires returning officers to amend the record of personal identifiers kept under section 21(6) where a fresh signature has been provided.

Section 23 Disclosure of personal identifiers

46. This section deals with the disclosure of personal identifiers and, in subsection (1), requires registration officers to supply or give access to information contained in the record kept of personal identifier information to returning officers for use at local government elections.

47. Subsection (2) provides that this information can also be given to other registration officers, people involved in preparing or conducting legal proceedings on the conduct of election and to other people as set out in regulations to be made by Scottish Ministers.

Section 24 Power to require existing absent voters to provide personal identifiers

48. This section sets out provisions for collecting personal identifier information from existing absent voters and, in subsection (1), gives Scottish Ministers powers to make regulations to enable registration officers to require existing absent voters to provide a signature and date of birth. The regulations will set out the circumstances in which this information will be required and the consequences for voters who refuse or fail to comply with such a requirement.

49. Subsection (2) makes it clear that an existing absent voter is a person who was granted an absent vote prior to the date the provisions in section 21 come into effect. Subsection (3) provides that the details of the personal identifiers of such persons must be included in the record kept under section 21.

Photographs on ballot papers: piloting

Section 25 Photographs on ballot papers: piloting

50. This section amends section 5 of the Scottish Local Government (Elections) Act 2002 so that the use of photographs of candidates on ballot papers can be piloted at local government elections. Orders made under section 5 of the 2002 Act must make provision for and in connection with the implementation of the proposed scheme as is considered appropriate. They may include provisions which modify or disapply any enactment. Such orders are not subject to Parliamentary procedure.

Encouraging electoral participation

Section 26 Encouraging electoral participation

51. Section 26(1) gives returning officers powers to encourage participation at local government elections. Subsection (2) provides that returning officers must have regard to any guidance issued by Scottish Ministers for this purpose. Subsection (3) allows Ministers to reimburse expenditure incurred by returning officers but subsection (4) requires that the total amount must not exceed a fixed sum which will be set out in regulations.

Miscellaneous

Section 27 Tendered votes in certain circumstances

52. Subsection (1) inserts a new subsection (6B) into section 61 of the 1983 Act, which relates to certain voting offences.

53. The new provision excepts from the scope of voting offences an elector who discovers, upon attending his polling station, that he has without his knowledge been included on the list of postal voters or postal proxy voters who may not vote in person at a polling station. It will be possible for such a voter to be issued with a tendered ballot paper at a polling station before the close of voting where the deadline for requesting a replacement postal ballot paper has expired.

54. The elector will be allowed to mark a tendered ballot paper if their answer satisfies the presiding officer that they have lost or not received their postal ballot paper. A person who votes at a polling station when entitled to vote by post is not guilty of a voting offence if the vote cast is a tendered ballot paper. Similarly, a person who votes in person as a proxy for another elector when entitled to vote as a postal proxy, is not committing an offence when voting by a tendered ballot paper.

55. Subsection (2) makes two amendments to Schedule 4 of the Representation of the People Act 2000. The insertion of paragraph 2(6B) of the Schedule removes the prohibition on absent voters voting at a polling station. The effect is that paragraph 2 does not apply to voters casting a tendered ballot paper in the circumstances referred to above. Similarly, the insertion of paragraph 7(14) means that paragraph 7 of Schedule 4 does not prohibit postal proxies casting a tendered vote at a polling station in the circumstances referred to above.

Section 28 Election campaign and proceedings: miscellaneous amendments

56. This section makes a minor amendment to section 81 of the 1983 Act dealing with the return as to election expenses by providing that any reference to the Electoral Commission is to be read as if it were a reference to the Scottish Ministers (subsection (1)). Subsection (1) is consequential on subsection (2) in that it makes a further modification of one of the amendments which is extended to Scottish local government elections by subsection (2).

57. The paragraphs in Schedules 18 and 22 to the Political Parties, Elections and Referendums Act 2000 which are now applied to local government elections in Scotland by virtue of subsections (2) and (3) update provisions in the 1983 Act or omit those that are out of date and no longer serve a useful purpose. The Schedule 18 and 22 provisions principally amend sections in Part V of the 2000 Act, dealing with control of campaign expenditure. Amendments are made to sections, 73 (payment of expenses through election agent), 74 (candidate's personal expenses), a new section 74A (expenses incurred otherwise than for election purposes) is inserted, 78 (time for sending in and paying claims), 81 (return as to election expenses), 82 (declarations as to election expenses), 89(1) (inspection of returns and declarations for purposes of section 88), and 90 (election expenses where agent not required). Sections 72 (campaign expenditure), parts of 79(3) (limits on campaign expenditure), parts of 81 (return as to election expenses), 82(4) (person before whom declaration as to election expenses may be made), 101 – 105 (dealing with referendums) and 108 (Designation of organisations to whom assistance is available) are deleted.

Section 29 Details to appear on election publications

57. This section repeals section 110 of the 1983 Act, so far as it applies to Scottish local government elections, covering the details to appear on election material and replaces it with a new section 110A. The new section 110A has the effect of introducing for local government elections in Scotland the amendment made by paragraph 14 of Schedule 18 to the 2000 Act. It widens the scope of the original section 110 by extending whose details are to be provided on the election publication and does this by replacing the term “publisher” with “promoter” and by providing that the name and address of any person on behalf of whom the material is being published (and who is not the promoter) are to be provided on the election publication.

Section 30 Repeal of reference to Maundy Thursday

58. This section removes Maundy Thursday from the list of days that are to be disregarded for the purposes of calculating the timetable for local government elections.

Section 31 Translations etc. of certain documents

59. This section inserts a new section 199C of the 1983 Act which requires returning officers at Scottish local government elections and their staff, if they consider it appropriate, to make election documents (other than a nomination paper or ballot paper), which are displayed or given to voters, available in graphical format, Braille, languages other than English or other means. If appropriate, the information contained in those documents must also be made available in an audio format.

Section 32 Certain voters entitled to vote in person

60. This section amends Schedule 4 to the Representation of the People Act 2000 which deals with absent voting. The change extends the right to vote in person at local government elections in Scotland, rather than by post or proxy, to people detained under the Mental Health (Care and Treatment) (Scotland) Act 2003.

Section 33 Power to make regulations as to preparation of special lists and records etc.

61. This section gives Scottish Ministers a power to make regulations on the procedures for drawing up special lists and records in connection with the conduct of a local government election. This is to put beyond doubt that Ministers have a power to make provisions regarding the procedure to be followed in the preparation of any special lists relating to absent voting. Regulations made under this power will attract negative resolution procedure.

Section 34 Miscellaneous amendments

62. This section makes a number of minor amendments to the 1983 Act. Subsection (1)(a) amends the offence provision in section 65 (tampering with nomination papers, ballot papers etc.), insofar as it applies in relation to a local government election in Scotland, to add a reference to the new form of postal voting statement which will be used in place of the current declaration of identity. Subsection (1)(b) amends section 66 (requirement of secrecy of those persons attending the poll and counting of votes) and adds a reference to a unique identifying mark used on the back of any ballot paper to those items about which information is not to be communicated. Subsection (1A) removes the restriction in sections 160(5A) and (5B) to ensure that the disqualification provisions in section 160 are triggered for the office of councillor in Scotland by a conviction of corrupt or illegal practice at a reserved election.

63. Subsection (2) amends section 173A (incapacity to hold public or judicial office in Scotland) and removes the restriction imposed by paragraph 104 of Schedule 1 to the UK Electoral Administration Act. This has the effect of extending to the office of councillor for a local government area in Scotland the provisions of section 173A which set out that a person convicted of a corrupt practice is prevented from holding public or judicial office in Scotland for a period of five years starting from the date of his conviction or, if holding such office, shall vacate it from that date. Subsection (3) amends Schedule 2 of the 1983 Act (provisions which may be contained in regulations as to registration etc.) and inserts a new paragraph 12A which provides that regulations made in relation to local government elections in Scotland may also make provision authorising the cancellation or removal of ballot papers at such an election in any prescribed circumstances.

64. The UK Electoral Administration Act amends paragraph 3(3)(b) of Schedule 4 to the Representation of the People Act 2000 which deals with absent voting. The change replaces the words “physical incapacity” with “disability” to ensure that the link between mental incapacity and legal capacity is removed in relation to a person who applies to vote by proxy. Subsection (4) removes the restriction of the extent of the change so that it now extends to local government elections in Scotland.

65. Ministers have a power in section 3(1) of the 2004 Act to make an order which, in addition to updating the local government election rules, will also make provision about the detail of the STV system to be used in the 2007 local government elections. That order will be subject to affirmative procedure, as provided for in section 16(5) of the 2004 Act. Subsection 25(5) makes clear that not every order made under section 3(1) of the Local Governance (Scotland) Act 2004 need include provisions set out in section 3(2) (which deals with the counting of votes.) Where the order does not include such provision, it will be subject to negative procedure. Where the order does include provisions in section 3(2), it will continue to be subject to affirmative procedure.

General

Section 35 Part 1: minor and consequential modifications

66. This section inserts schedule 2 which makes minor and consequential amendments to existing legislation as a result of changes made by the Act.

Section 36 Interpretation of Part 1

67. The section deals with the interpretation of terms used in Part 1.

68. Subsection (3)(a) ensures that the term “enactment” carries the same meaning as it would normally have in an Act of the Scottish Parliament. Subsection (3)(b) ensures that the

meaning of “prescribed” in section 7 is as given in section 7(9) of this Act. These provisions are inserted as the more general interpretation provisions set out in section 36(2) would otherwise give these terms the same meaning as in the Representation of the People Act 1983.

PART 2: REGISTRATION SERVICES

Introduction

69. Part 2 of the Act makes provision about the registration of births, death, marriages and civil partnerships etc. in Scotland.

70. Registration services in Scotland are provided by a partnership of the Registrar General for Scotland’s department – the General Register Office for Scotland (GROS), which is part of the devolved Scottish Administration – and the 32 local councils. Local registrars are employees of the local authorities, which are responsible for pay and conditions and for accommodation, but their registration work is governed by instructions and guidelines set by the Registrar General within the existing legislative framework.

71. The registration of births, deaths and marriages in Scotland operates under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 – “the 1965 Act”. Arrangements for marriage preliminaries and the solemnisation of civil marriages are governed by the Marriage (Scotland) Act 1977. Arrangements for civil partnership preliminaries and the registration of civil partnerships are governed by the Civil Partnership Act 2004. The Act does not change that basic framework.

72. Provisions of Part 2 of the Act were brought into force on 1st October 2006 and 1st January 2007 by the Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 1 and Transitional Provision) Order 2006 ([S.S.I. 2006/469](#)), with transitional provision for marriage notices, as described below. The commencement of the provisions of Part 2 of the Act and its implementation is described below as it stood at the date of publication of these Notes. The fees set by the Registrar General for registration services generally were amended and consolidated, using various powers amended and created by the Act, in the Registration Services (Fees) (Scotland) Regulations 2006 ([S.S.I. 2006/575](#)).

Reorganisation of local registration services

Section 37 Registration districts and authorities

73. Prior to the Act there were 230 Registration Districts (RDs) in Scotland. The RDs sometimes matched the area covered by one of the 32 local councils (a large example was the City of Glasgow; a smaller one Clackmannanshire). More often, the local council was responsible for more than one RD. In some cases, for historical reasons, a single RD overlapped a council boundary and included the territory of 2 or more councils. It was not always obvious to the citizen where the birth of a baby should be registered or in which RD the death of a relative had occurred. Subsection (2) therefore amends the 1965 Act by providing that each local authority area is a registration district and that the relevant local authority is the local registration authority. Subsection (3) repeals the current provision for a local authority or local authorities to alter the boundaries of their registration districts – these will simply be the local authority area. Subsections (4) to (6) make changes to the administrative provisions on senior and district registrars and other staff, registration offices and area repositories in the 1965 Act which are consequential on the changes in subsections (2) and (3). Section 37 came into force on 1st January 2007.

Section 38 Registration offices: opening times

74. Under section 8(3) of the 1965 Act, all the registration offices in an RD had to have the same hours of business. This made it more difficult for councils to run local offices, because they had to be open throughout normal working hours even if there was little demand. The problem was more acute when the entire council area was a single RD. Section 38 therefore amends the 1965 Act to allow the local registration authority to set different opening hours for different registration offices, subject to the approval of the Registrar General. Section 38 came into force on 1st January 2007.

Registration of births and deaths

Section 39 Registration of births

75. Prior to the Act, a family had the option of registering a birth in the RD where the birth occurred or – if this was different - in the RD where the mother was usually resident. This option was important where a mother was well enough to take her new baby back to her home in another area after only a day or so in hospital, perhaps before the baby's name was decided on. The 2 district registrars made appropriate cross-indexing arrangements, so that the birth-entry could readily be found. Computer links now allow this option to be extended to allow the birth to be registered in any Scottish RD, which is more convenient in today's highly mobile society. Subsection (2) therefore amends the 1965 Act to specify that every child born in Scotland must be registered in the birth or still-birth registers to be kept by district registrars and dispenses with the restrictions on the choice of RD in which the birth must be registered.

76. Subsection (3) amends section 14 of the 1965 Act, by removing the requirement that a person registering the birth must attend personally at the registration office and sign the register in the presence of the registrar. This paves the way for registration of births to be initiated electronically. Birth or death registration by internet could be more convenient to the family than the present face-to-face interview with the registrar. Births are not required to be registered electronically, because many people value the help of the registrar. But personal attendance will no longer be obligatory - for electronic registration which is not face to face the opportunity for fraud will be reduced by taking advantage of advances in NHS information services, which would allow details of births and deaths to be independently corroborated before the registration of the event was finalised.

77. Subsection (4) amends section 15 of the 1965 Act, which concerns abandoned infant children, to reflect the changes described in paragraphs 76 and 77. Subsection (5) amends the registrar's power under section 16 of the 1965 Act to obtain information concerning a birth, to reflect the same changes.

78. Subsection (6) adds 2 new sections to the 1965 Act. Both are designed to pave the way for electronic registration of birth. The first obliges NHS Health Boards to provide to the Registrar General information about every birth in their area – and for the Registrar General to make these details available to the district registrars. The second requires the district registrar, once corroborative information has been received from the health service, to complete the registration of a birth which has been initiated electronically as described in paragraph 77 above.

79. Section 17 of the 1965 Act prohibits registration more than 3 months after the birth without the written authority of the Registrar General. Subsection (7) amends that section to enable the Registrar General to authorise electronically the late registration of a birth. Subsection (8) amends section 18 of the 1965 Act, which provides for the registration of

children born to unmarried parents, in order to reflect the changes described in paragraphs 76 and 77.

80. Section 39 came into operation on 1st January 2007 aside from its provisions enabling the completion of an electronic birth registration as described in paragraph 77 above. [S.S.I. 2006/597](#) preserved the existing law pending the implementation of those provisions.

Section 40 Registration of still-births

81. Section 21 of the 1965 Act makes provision for where a still-birth may be registered (applying, unless otherwise provided for, the same rules as for a birth - as described in paragraph 76 above). It also provides for the certification of a still-birth and for the certification of registration of a still-birth. Section 40 makes minor amendments to section 21 including for documents to be attested, rather than signed, to pave the way for electronic registration of still-births. It came into force on 1st January 2007, except in relation to electronic registration as described in paragraph 81 above.

Section 41 Re-registration of births

82. Section 41 amends sections 20 and 54 of the 1965 Act. Section 20 allows the Registrar General to authorise the re-registration of a birth of any person, if:

- (a) the entry relating to him or her in the register of births is affected by any matter contained in the Register of Corrections Etc. respecting his or her status or parentage or non-parentage, or
- (b) the entry relating to him or her in the register of births has been so made as to imply that he or she was found exposed, or
- (c) the entry relating to him or her in the register of births has been so made as to imply that his or her parents were not then married to one another and the parents have subsequently married one another.

83. Section 41 allows registrars, in certain circumstances, to handle applications for the re-registration of births themselves, in addition to the Registrar General. It does so by empowering the Registrar General to prescribe cases or classes of case where a birth may be re-registered (in regulations made under section 54 of the 1965 Act, which are subject to negative resolution procedure in the Scottish Parliament).

84. The Registrar General has used this power to make the Registration of Births, Deaths and Marriages (Re-registration) (Scotland) Regulations 2007 ([S.S.I. 2007/54](#)). Those Regulations should be looked at for their full details (along with the consequential amendments made by [S.S.I. 2007/52](#)), but from 1st March 2007 local registrars can re-register a birth where:

- paternity has been shown in the Register of Corrections Etc., the applicant is the child's mother who has parental responsibilities and is also the qualified informant;
- the parents have subsequently married, paternity has previously been acknowledged by statutory declaration or a court decree and the child's father's details are already recorded;
- the child has died, details are missing from the child's birth entry and the responsible parent wants to include either the father's details or the parents' marriage; or

- the child is still-born and the parents apply to re-register the child's still-birth to include either the father's details or the parents' subsequent marriage.

Section 42 Registration of deaths

85. Subsections (2) to (3) and (5) to (7) amend the 1965 Act provisions about the registration of deaths, in the same way that section 39(2) to (7) amends the provisions on the registration of births – see paragraphs 76, 77, 79 and 80 above.

86. Subsection (4) reflects the creation of a single registration district for each local authority area and paves the way for electronic registration by making minor amendments to section 24 of the 1965 Act, which provides for a medical certificate of cause of death.

87. Section 27 of the 1965 Act provides for a free certificate of registration of death for use by the person having charge of the place of interment or cremation. It also makes provision for the person having charge of the place of interment to notify the registrar where a burial has taken place without a certificate of registration of death. Subsection (8) makes minor consequential amendments to existing provisions as a result of the provisions in section 42 that enable a death to be registered anywhere in Scotland.

88. Section 42 came into operation on 1st January 2007, except in relation to electronic registration as described for birth registration at paragraph 80 above.

Registration information

Section 43 Registers kept by district registrars

89. Since 1855, identical “master copies” of every register of births, deaths and marriages have been held locally and in Edinburgh. GROS, having in the 1990s completed the electronic indexing of all the registers, has recently completed a project to provide a digital image of every register page, linked to the searchable electronic indexes. This gives registrars throughout Scotland access through a secure computer network to the indexes and to the digital image of any register page. The paper register, however, remains the authoritative source. Subsection (2) enables the Registrar General to determine that the registers are to be kept in electronic rather than in paper form. All of section 43 came into force on 1st October 2006.

90. To ensure the accuracy of register entries, the registers are inspected by “District Examiners” nominated by the Registrar General under section 34 of the 1965 Act. The District Examiner visits each registration district once per year, and checks the previous year's register entries. Subsection (3) substitutes a new section 34 which allows the District Examiner to examine the electronic version of the register continuously throughout the year instead of by an annual visit – in order to identify and correct any errors more swiftly. The Examiner continues to check entries in the Register of Corrections Etc., but there is no need for those entries to be sent back to the Registrar General. Instead a report is sent of any circumstances arising from the examination to which the Registrar General's attention should be drawn.

91. Subsection (4) repeals section 35 of the 1965 Act, which allows the Registrar General to copy the paper registers once submitted to him. This is unnecessary when the electronic register comes into force. Subsection (5) is consequential.

92. Subsection (6) adjusts the District Examiner's power to correct errors in the registers, to reflect the introduction of electronic registers.

Section 44 Indexing of registers and provision of registration information

93. This section takes advantage of the flexibility of electronically-available registration information to provide for new registration services.

94. Subsection (2) repeals section 19 of the 1965 Act, which is superseded by new section 39E of the 1965 Act (added by section 44(5) of the Act - see paragraph 102 below). Subsection (3) substitutes a new section 37 of the 1965 Act. This section restates the powers for a district registrar to issue, on payment of a fee prescribed by regulations, an extract of an entry in the registers currently operated by the registrar. The new section is similar to the existing section 37 of the 1965 Act, except that the requirement on district registrars to keep and search indexes of the current registers is no longer required because district registrars can also use section 39D of the 1965 Act (added by section 44(5) of the Act - see paragraph 101 below). Subsection (2) also ensures that the current statutory restrictions on access to the register of still-births are retained.

95. Subsection (4) amends section 38 of the 1965 Act, to delete a requirement on the Registrar General to keep alphabetical indexes in the General Register Office – which is redundant with the introduction of electronic indexes.

96. Subsection (5) replaces sections 39 and 40 of the 1965 Act with 5 new sections. Section 39 is concerned with the process of producing paper extracts from the register, which is redundant now that extracts are produced electronically, and section 40 with the issuing of abbreviated birth certificates (which is superseded by new section 39E).

97. New section 39A allows the Registrar General, for a fee to be prescribed by regulations, to give official notification of a birth, death, marriage or change of name to nominated private-sector bodies (insurance firms, banks, solicitors, utility firms etc). This is a new service. It will require to be triggered by a qualified informant (in the case of a birth or death), a party to a marriage or, in the case of a change of name, the person concerned or (for a child) a person who has parental responsibilities. The request for this service will most likely be made to the district registrar when registering a birth or death or when submitting notice of intention to marry.

98. New section 39B allows third parties to ask the Registrar General to notify them of the death of a person if and when it occurs in Scotland, in return for a fee to be prescribed by regulations. Such requests might be made individually or relate to batches of names. This will enable for instance pensions or insurance firms to check whether pensioners or annuitants had died. The provision makes the existing “particular search” process, which is open to any member of the public on payment of a prescribed fee, more automatic.

99. New section 39C authorises the operation of electronic arrangements to provide information to district registrars. It requires the Registrar General to provide to district registrars throughout Scotland the images of the main Scottish register entries (including divorce records, pre-1855 parish registers not currently available to them and pre-1965 register entries), together with an alphabetical index. It gives the Registrar General flexibility to provide copies in the way which best suits the needs of the area concerned – on paper or in digitised form.

100. New section 39D similarly updates the powers under which district registrars search the indexes and issue extracts of events in return for payment of a fee. Any correction must also be taken into account in issuing such a copy extract. It also paves the way for local authorities to provide family history research centres.

101. New section 39E makes provision for issuing abbreviated extracts, replacing section 40 of the 1965 Act. In addition, it introduces an abbreviated extract from the death register. The 1965 Act did not allow the issue of an abbreviated extract from the death register, as can be issued for births under section 19 of that Act. A paper extract from the register of deaths shows the full entry on the page of the public register, omitting nothing. In some circumstances, the deceased's executors may wish to have an official document attesting to the fact and date of the death, but leaving out (possibly embarrassing) details of the cause of death. The new abbreviated extract from the death register could be used for purposes such as closing a bank account where the bank manager has no need to know the cause of death of the account-holder. The new section 39E was implemented by regulations 3 to 5 of [S.S.I. 2006/598](#) with effect from 1st January 2007 and by [S.S.I. 2007/52](#).

102. Subsection (6) replaces section 41 of the 1965 Act (which deals with the authentication of extracts and their admissibility as evidence) with 2 new sections 41 and 41A. The changes are consequential on the repeal of section 39 and on the new sections 39A and 39B. [S.S.I. 2006/597](#) re-prescribed under these powers the existing law for the form and authentication requirements for extracts of register entries. Subsection (7) makes a similar consequential change to section 44 of the 1965 Act, removing wording superseded by new section 39E. Subsection (8) similarly amends section 53 of the 1965 Act, removing words superseded by the replacement of section 41.

103. Section 44 was brought into force on 1st October 2006 and 1st January 2007 by [S.S.I. 2006/469](#) except for subsection (5) for the purpose of adding the new section 39A to the 1965 Act (although its regulation-making powers were commenced).

Section 45 Correction of errors in registers

104. Under section 42(2) of the 1965 Act a registrar was able to correct any **clerical** errors in entries in the birth and death registers, from the faulty transcription of particulars provided by an informant. The registrar was also able to correct other errors that are prescribed by the Registrar General. If the error was discovered after the entry in the registers has been signed, then the error could still be corrected – but only within 7 days and in the presence of the informant. A similar provision in section 42(3) related to the correction of errors in the marriage register due to faulty transcription of particulars from a Marriage Schedule. The correction could be made within one month of the date of registration, provided that no extract containing the information has been issued.

105. These rules placed unrealistic prohibitions on the registrars and made it inconvenient for the informant who had to go to the registration office simply to witness the correction of what could be a trivial error (e.g. “McKenzie” entered as “MacKenzie”). Subsection (2) allows registrars to correct errors of transcription or other prescribed errors without the informant being present or without the restriction, in relation to marriages, for there to have been no extract issued. In cases where a more significant error is discovered, the other provisions in section 42 of the 1965 Act continue to apply.

106. Subsection (3) provides for the correction of an error in the pre-1855 registers kept by individual parishes. It allows the Registrar General to take into account suitable electronic evidence that an error has been made, as well as written evidence.

107. Section 45 came into force and was implemented by regulations 7 and 8 of [S.S.I. 2006/598](#) with effect from 1st January 2007.

Section 46 Recording change of name or surname

108. Section 43(3)(a) of the 1965 Act previously allowed the registration of a new baptismal name if, within 12 months of the birth, the child's name were changed, or given, in baptism. That had the unintended side effect of allowing a mother or father to change a child's name through baptism without the knowledge or agreement of the other parent. This had the effect of allowing the ceremony of baptism to take precedence over parental responsibilities in a way which is incompatible with the Children (Scotland) Act 1995. Section 46(a) makes amendments to section 43(3) which mean that only persons who have parental responsibilities for a child may apply to the Registrar General to change the name of the child.

109. Section 46(b) amends section 43 of the 1965 Act to remove the 2 year time limit which applied to an official change of name (forenames and/or surname). Previously, during that 2 year period the new name had to be in use. This means that it is now possible for anyone whose birth has been registered in Scotland to apply immediately to the Registrar General to record a change of forename or surname. Any new birth certificate, issued after the change will show the new name, together with the former name, for purposes of continuity.

110. Section 46 came into force and was implemented by regulation 6 of [S.S.I. 2006/598](#) with effect from 1st January 2007.

Other amendments of the 1965 Act

Section 47 Other amendments of the 1965 Act

111. Section 47, subsection (2) extends the offence of giving false information to a district registrar, to cover any information given to the Registrar General. This is necessary because of the increasing volume of information provided directly to GROS, examples of which have later been discovered to be false. Subsection (2) was brought into force on 1st January 2007. Subsection (3) adds a new section 54A to the 1965 Act which enables documents to be prescribed in electronic form and for the manner of attestation of documents to be prescribed. Subsection (3) came into force on 1st October 2006 – see regulation 2(a) of [S.S.I. 2006/597](#) for its initial use in relation to the 1965 Act, temporarily preserving the existing position.

Marriages and civil partnerships: procedure

Section 48 Marriage procedure: marriages at sea

112. Subsection (1) refers to the Marriage (Scotland) Act 1977 (“the 1977 Act”), which is the principal Scottish marriage legislation.

113. Subsection (2) defines the “district registrar” in line with the changes made by section 37 of the Act. It also makes special provision for the definition of the “district registrar”, where the marriage is to be solemnised in Scottish waters. The Marriage (Scotland) Act 2002 allowed civil marriages to be solemnised by registrars in a wide range of approved places, including on vessels. Marriage on board a vessel at sea between 2 places led to difficulty in determining the registration district in which the marriage was solemnised. Subsection (2) provides that any district registrar can accept notification of intention to marry, in the case of a religious marriage. In the case of a civil marriage, notification has to be given to the district registrar for the registration district which is to provide the registrar who will solemnise the marriage. Transitional provision was also made for marriage notices generally by article 4 of [S.S.I. 2006/469](#).

114. Subsection (3) makes similar provision for the definition of the district registrar who will record the intended marriage in the marriage notice book and the list of intended marriages.

115. Subsection (4) deals with what happens when arrangements for a marriage change and the marriage is taking place at sea rather than in a registration district or vice-versa. It allows the Registrar General to decide whether a new marriage schedule needs to be issued, or whether the new location can be substituted in the marriage schedule, or whether the couple have to submit a new marriage notice.

116. Subsection (5) provides that, where a marriage has been solemnised in Scottish waters, it should be registered in the district of the registrar who issued the initial marriage schedule.

117. Subsection (6) adds to the choice of places at which civil marriage may be solemnised, an approved vessel, while in Scottish waters. It defines “approved vessel” as a vessel approved by the local registration authority whose registrar will solemnise the marriage. This parallels the arrangements for approving other places outwith registration offices at which marriages can be solemnised.

118. Subsection (7) widens Scottish Ministers’ regulation-making powers concerning the approval by local authorities of places in their areas where civil marriages may be solemnized. The amendments ensure that regulations can cover vessels operating in Scottish waters, as well as places on dry land.

119. Subsection (8) ensures that a marriage taking place on an approved vessel in Scottish waters is properly registered by the authorised registrar.

120. Subsection (9) makes various provisions for interpretation, deleting the definition of “district registrar” which is no longer required, defining “Scottish waters” in line with the Scotland Act 1998, defining the meaning of “vessel” as a vehicle or other structure and defining exactly when a vessel is part of a registration district (e.g. when it is berthed) and when it is in Scottish waters.

121. Section 48 was brought fully into force on 1st January 2007. The Marriage (Approval of Places) (Scotland) Amendment Regulations 2006 ([S.S.I. 2006/573](#)) implemented this section with effect from that date to provide for new arrangements for the approval of vessels on board which civil marriages may be solemnised, in particular in Scottish waters.

Section 49 Marriage procedure: miscellaneous amendments

122. This section changes the arrangements for the display of a list of people who have submitted notice of their intention to marry. Until now, the list had to be displayed conspicuously at the registration office where the parties had submitted notice to marry. This was burdensome for a local registration authority with many registration offices, each of which had to display the forthcoming marriages for the entire registration district. Instead, it is now sufficient to display the list conspicuously at the main registration office in the local registration authority area. In addition, however, the district registrar is obliged to notify the intended marriage to the Registrar General, who will maintain a list of all proposed marriages in Scotland and make it available for public inspection, including on the GROS website. This will enable anyone with internet access, potentially anywhere in the world, to learn of a proposed marriage in Scotland and to offer a legal objection if they have good reason. Section 49 was brought into force on 1st January 2007.

Section 50 Marriage procedure: electronic communications

123. This section paves the way for completion of certain parts of marriage arrangements by electronic means.

124. Subsection (2) allows the marriage notice to be submitted electronically, and the prescribed fee and birth certificate to be submitted separately. Subsection (3) allows for an objection to marriage to be submitted separately from a medical certificate showing that a party to the marriage is incapable of understanding or consenting to marriage, which certificate can be submitted electronically. Subsection (4) allows electronic submission of a request by a marriage party for the marriage to take place within the normal 14 day notification period. Subsection (5) makes similar provision for electronic submission of objections, where a Scottish resident is getting married outwith Scotland. Subsection (6) allows the Registrar General to give notice by electronic means instead of in writing, where he rejects a nomination as authorised celebrant for a religious marriage, subsection (7) where the Registrar General removes a person from the register of celebrants, subsection (8) where the Registrar General issues a temporary authorisation of a marriage celebrant and subsection (9) where a party wishes a civil marriage to take place within the normal 14 days period of notice. Subsection (10) adds a new section 24A of the 1977 Act which enables documents to be prescribed in electronic form and for the manner of attestation of documents to be prescribed.

125. Section 50 came into force on 1st January 2007 – but see regulation 2(b) of [S.S.I. 2006/597](#) for its initial use, temporarily preserving the existing position on attestation.

Section 51 Civil partnership procedure: registrations at sea

126. Section 51 amends section 93 of the Civil Partnership Act 2004, which specifies where a civil partnership may be registered, to provide for which registrar is to register a civil partnership registered in Scottish waters, and in which register that registration is to be recorded, paralleling the provision made for marriage by Section 48 of the Act. Section 51 came into force on 1st January 2007 - but see [S.S.I. 2006/574](#) for its initial use, temporarily preserving the existing position on attestation.

Section 52 Civil partnership procedure: miscellaneous amendments

127. Section 52 amends the Civil Partnership Act 2004 (“the 2004 Act”). Subsection (2) paves the way for electronic submission of the notice of a proposed civil partnership, by allowing regulations to provide for this, for the fee and the prescribed documents (including the partners’ birth certificates) to be sent separately, and by allowing the notice to be attested rather than signed. Subsection (3) brings the period of notice which must be given to the registrar of a civil partnership in Scotland into line with the period of notice for a marriage, correcting an error in the 2004 Act. Subsection (4) paves the way for electronic submission of an objection to a civil partnership registration by regulations and by allowing any supporting certificate to be sent separately and to be attested rather than signed. Subsection (5) mirrors, for a civil partnership which has been validly registered, existing provisions preventing challenge to the validity of a marriage on a minor technical flaw. Subsection (6) brings section 98 of the 2004 Act, which applies to civil partnerships certain sections of the 1965 Act, into line with the 1965 Act as amended by the Act. Subsection (7) amends section 122 of the 2004 Act to apply the provisions of section 39C of the 1965 Act (see section 44(5) of the Act) to the Register of Dissolutions of Civil Partnership.

128. Section 52 was brought into force on 1st October 2006 and 1st January 2007, except for subsection (6) insofar as it relates to the new section 39A of the 1965 Act (to be inserted by section 44(5) of the Act).

Section 53 Provision of information about civil partnerships for certain purposes: fees

129. This section provides for fees for the issue of certificates or certified copies from the civil partnership register for certain specified purposes, and for those fees to be varied by order, in the same way as for the other statutory registers. It was brought into force on 1st October 2006.

Recording of events relating to persons outwith Scotland

Section 54 Recording of certain events in Book of Scottish connections

130. Subsection (1) obliges the Registrar General to keep a new register to be known as the “Book of Scottish Connections” (BSC). In some circumstance and in certain countries, people with a Scots connection can arrange for a birth, death or marriage abroad to be recorded in the register held by the Registrar General in Edinburgh, who is thereafter able to issue an official copy, in English, of the entry in the foreign register. The event has first to be registered with the civil registration authorities of the country in question. The BSC will offer, for an appropriate fee, the facility for Scots abroad to apply directly to the Registrar General to add to the records held in Edinburgh a copy of any suitably-authenticated entry in a statutory register of births, deaths, marriages or divorces outwith Scotland, where the subject of the entry has or had a connection with Scotland to be preserved a part of the family history record. Section 55 came into force on 1st October 2006 for the limited purpose of making regulations.

131. Subsection (2) defines the events which can be recorded on the BSC – a birth, death, marriage or divorce, formation or dissolution of a civil partnership and entering into or dissolution of an overseas relationship (as defined by the Civil Partnership Act 2004) – so long as the person involved qualifies under later subsections.

132. Subsection (3) defines an event occurring outside Scotland, as an event that occurs in the rest of the UK or elsewhere in the world, and an overseas relationship (defined by reference to section 212 of the Civil Partnership Act 2004).

133. Subsection (4) states that a person qualifies if a parent or grandparent was born in Scotland or if the BSC already records an event relating to a parent or grandparent.

134. Subsection (5) states that a person qualifies if born in Scotland or was normally resident in Scotland at the time of the event.

135. Subsection (6) requires the Registrar General to make an entry in the BSC on receipt of an application in the form containing the necessary information, together with a fee and any necessary supporting documents, all of which the Registrar General has the power to prescribe by regulations. The Registrar General is given discretion not to make an entry if he does not consider it appropriate to do so.

Section 55 Keeping of, and access to, the Book of Scottish Connections

136. This section gives details of the way in which the BSC and its index is to be kept, and the arrangements for access to the index and the BSC entries. The Registrar General is obliged to give district registrars access to all prescribed parts of the BSC and its index, in the same way as to the other registers in his care. The Registrar General and district registrars

must make arrangements for the public to research the index and purchase an extract. Section 55 came into force on 1st October 2006 for the limited purpose of making regulations.

Other provisions about information held by Registrar General

Section 56 Provision of registration information to public bodies and office-holders

137. The 1965 Act already allows the Registrar General to exchange data concerning all births or deaths in Scotland with the National Health Service and to notify deaths to the Department for Work and Pensions as well as to local council tax departments. Otherwise, the basic personal details involved in birth, death or marriage registration, though publicly available, are not automatically passed on to other parts of government, even at the citizen's request. In the interests of convenience for the citizen and of efficiency of public administration, section 56 allows for birth, death and marriage details already visible publicly on the registers to be supplied to any relevant government body. Examples are the departments interested in family tax credit, driving licence and passport records, benefits, income tax and student loans. This service will be provided in reaction to specific requests from the public bodies concerned and may be on payment by them of a fee. The consent of the individual citizen would not be required for the provision of this information which is already available on a public register.

138. Subsection (1) allows the Registrar General to provide any registration information to any public body or office holder in Scotland, the rest of the UK or outside the UK. Subsection (2) specifies the registers concerned – births, still births, deaths, marriages, civil partnerships, divorces, civil partnership dissolutions and corrections. Subsection (3) allows the Registrar General to make charges for the provision of the information. Section 56 came into force on 1st October 2006.

Section 57 Keeping of central register for health and local authority purposes

139. Section 57 empowers the Registrar General to keep a central register of information about people, to help the efficient running of the NHS and local authorities in Scotland.

140. The Registrar General already runs the National Health Service Central Register (NHSCR) on behalf of the NHS in Scotland. The NHSCR, which dates from the early 1950s, contains basic details of everyone born in Scotland, plus anyone else who is (or has been) on the list of a GP in Scotland. The details are name, sex, date of birth, Health Board of current and past residence, and NHS number. The Register exists mainly to allow the smooth transfer of patients who move between Health Board areas (or across borders within the UK). The Act puts the Register on a clear statutory footing (prior to this Act it had operated partly under sections 1(3) and 51 of the 1965 Act as far as the Registrar General is concerned, but is not explicitly mentioned there) and allows its information to be used to assist in the operation of local authority schemes, i.e. the Citizen's Account.

141. The Citizen's Account is a voluntary scheme, under which each citizen will be able to apply to have an account recording all entitlements and transactions with local authorities. A national infrastructure for the Citizen's Account, holding basic details of every account holder (name, sex, date of birth, address and unique identifier) is accessible to all authorities where a particular citizen has opted to allow that by giving their informed consent. The database does not contain information about the transactions relating to account holders which is kept only by the individual authority. So the national infrastructure is in effect an index.

142. The Registrar General's powers did not allow the NHSCR data to be used for that purpose. Section 57 extends his powers in the necessary way, as well as giving a clearer statutory basis for the NHSCR itself. The Registrar General may need to agree certain aspects of the information sharing with the recipient to ensure he is satisfied that it is appropriate to share the information.

143. Subsection (1) empowers the Registrar General to create and maintain a register of people to which Health Boards, the Common Services Agency and local authorities have provided or are providing statutory services. The subsection makes clear that the register is kept to help Health Boards and local authorities perform their functions.

144. Subsection (2) sets out the sources of the information on the register which can include other persons described in regulations (covering for instance medical researchers – see paragraph 147 below). It includes:

- information about births and deaths in Scotland;
- information about children who have been adopted;
- information provided by a Health Board or local authority;
- equivalent information from the rest of the UK – which is necessary when someone moves across the border to Scotland.

145. Subsection (3) specifies the information which may be held on the register. This is restricted to basic personal data and details of which health authority the patient has been registered with, but may be extended to include other information prescribed by the Registrar General, by subordinate legislation requiring negative resolution procedure.

146. Subsection (4) gives access to the register for Health Boards, the Common Services Agency and local authorities – and other persons, or persons of a certain description, prescribed by the Registrar General (which would cover cases such as medical researchers).

147. Subsection (5) makes clear that the purposes for which information may be provided are not limited to those referred to in subsection (1).

148. Subsection (6) requires that the information which may be, or must not be, provided to those given access under subsection (4) must be prescribed in regulations.

149. Subsection (7) is consequential to subsection (6).

150. Subsection (8) makes clear that this section does not reduce the Registrar General's other powers to provide information.

151. Section 57 came into force on 1st October 2006. The National Health Service Central Register (Scotland) Regulations 2006 ([S.S.I. 2006/484](#)) prescribed the information contained in a register entry, and with whom it may be shared, with effect from 11th November 2006.

Section 58 Issuing of other material kept or held by Registrar General

152. Section 58 codifies the arrangements for issuing to the public and to the district registrar other information held by the Registrar General. These include the register of neglected entries (events recorded between 1801 and 1854 not recorded in the old parish records, where not covered by section 39C of the 1965 Act as inserted by section 44(5) of the Act); other registers of births, deaths and marriages in foreign countries; foreign marriages and already publicly available census records. The section specifies arrangements which parallel those for the main statutory registers. The section also lists registers and documents

excluded from the power to share residual documents, to ensure that different regimes for sharing different registers are set out separately and clearly, so registrars and those accessing the registers know under which powers they are acting. Section 58 came into force on 1st October 2006.

Section 59 Part 2: minor and consequential modifications

153. Subsection (1) repeals a requirement in the 1965 Act for the local registration authority to consult the Registrar General before removing registrars they have appointed from office. It also extends a provision in that Act which requires district registrars to account to their local registration authority for fees charged to the fees provided for in the Act. Section 59 was brought into force on 1st October 2006 and 1st January 2007.

154. Subsections (2) and (3) repeal certain provisions of the statutes that provide for the structure of local authorities in Scotland, as a consequence of the reorganisation of local registration districts in the Act.

155. Subsections (4) and (5) make consequential amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the Civil Partnership Act 2004 to reflect the changes made by sections 50(2) and 52(2) of the Act which provide that a marriage or civil partnership notice no longer requires to be “accompanied by” a fee and certain documents. Those Acts currently refer to that procedure to identify and prevent sham marriages and civil partnerships for immigration purposes.

Section 60 Interpretation of Part 2

156. This section interprets 4 terms used in the registration services Part of the Act, and also imports the interpretation provisions in the 1965 Act. It was brought into force on 1st October 2006.

THE ACT – PART 3: GENERAL

Section 61 Orders and regulations

157. This section sets out the arrangements for Scottish Ministers to make orders or regulations by statutory instrument under the powers set out in the Act. It provides that orders and regulations made under the Act may make different provision for different purposes and may also make other provisions of a technical ancillary or transitional nature.

158. It also provides that statutory instruments (except for those orders of the type set out in subsections (4) to (5)) made under the Act are to be subject to negative resolution procedure in the Scottish Parliament. That means the instrument is laid after making and is subject to being annulled in pursuance of a resolution of the Parliament passed within 40 days after making. This rule applies to all regulations made under the Act, however there are three exceptions, set out in subsections (4) to (5) relating to orders.

159. The first exception is regulations made under section 5(2)(b), (4), (5) or (8) (powers relating to access to election documents) and orders made under section 62 which amend primary legislation. Those orders make ancillary provision of the kind set out in section 62. They are to be subject to affirmative resolution procedure in the Scottish Parliament which means the instrument is laid in draft and cannot be made until the draft is approved by resolution of the Parliament.

160. Subsection (5) provides that subsection (3) will apply to an order containing provisions under section 7(9) of the Act on access to documents only if that order has not been combined with an order containing provisions that attract affirmative resolution

procedure. This is intended to allow orders under s.7(9) of the Act to be combined with orders under s.3 of the Local Governance (Scotland) Act 2004 which may be subject to either negative or affirmative resolution procedure depending on their content.

161. The third exception is orders bringing provisions into force, made under section 63. Those are not subject to Parliamentary procedure.

Section 62 Ancillary provision

162. This section contains the common power for Scottish Ministers to make supplemental, incidental or consequential provisions for giving full effect to the Act, and for transitional purposes as it comes into force.

Section 63 Short title and commencement

163. This section states the short title of the Act and makes provision for the coming into force of the Act. Parts 1 and 2 come into force in accordance with provision made by the Scottish Ministers. Part 3 came into force on Royal Assent.

PARLIAMENTARY HISTORY

164. The following table sets out, for each stage of the proceedings in the Scottish Parliament on the bill for this Act, the dates on which the proceedings at that stage took place, the references to the Official Report of those proceedings, the dates on which Committee Reports and other papers relating to the Act were published, and references to those reports.

Proceedings and Reports	Reference
Introduction	
20 December 2005	Bill as introduced
Stage 1	
<i>Local Government and Transport Committee</i>	
1 st Meeting, 10 January 2006	Item in private
2 nd Meeting, 17 January 2006	Cols 3212-3244
3 rd Meeting, 31 January 2006	Cols 3247-3270
4 th Meeting, 7 February 2006	Cols 3272-3309
6 th Meeting, 28 February 2006	Cols 3371-3395
7 th Meeting, 7 March 2006	Item in private
9 th Meeting, 21 March 2006	Item in private
10 th Meeting, 28 March 2006	Item in private
<i>Subordinate Legislation Committee</i>	
4 th Meeting, 31 January 2006	Cols 1525-1531
5 th Meeting, 7 February 2006	Cols 1541-1546
6 th Meeting, 21 February 2006	Cols 1555-1558

*These Notes relate to the Local Electoral Administration and Registration Services
(Scotland) Act 2006 (asp 14) which received Royal Assent on 1 August 2006*

<i>Finance Committee</i>	
2 nd Meeting, 24 January 2006	Col 3339
<i>Consideration by the Parliament</i>	
Stage 1 Debate, 4 May 2006	Cols 25312-25337
Stage 2	
<i>Local Government and Transport Committee</i>	
15 th Meeting, 30 May 2006	Cols 3770-3816
After Stage 2	
<i>Subordinate Legislation Committee</i>	
21 st Meeting, 20 June 2006	Cols 1898-1899
29 th Report, 2006 (SP 603)	Report on the Bill as amended at Stage 2
Stage 3	
<i>Consideration by the Parliament</i>	
Stage 3 Debate, 22 June 2006	Cols 26838-26848 Morning Debate Cols 26888-26912 Afternoon Debate
Bill Passed, 22 June 2006	Local Electoral Administration and Registration Services (Scotland) Bill as passed
Royal Assent	
1 August 2006	Local Electoral Administration and Registration Services (Scotland) Act (asp 14)

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