

SCOTTISH LOCAL GOVERNMENT (ELECTIONS) ACT 2009

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes have been prepared by the Scottish Government in order to assist the reader of the Act. 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.

BACKGROUND TO THE ACT

3. In May 2007 the Electoral Commission appointed Ron Gould, former Assistant Chief Electoral Officer of Canada and international elections expert to carry out an independent review of the problems that had arisen during the 2007 Scottish local government elections and elections to the Scottish Parliament. The Gould Report¹ was published in October 2007. One of the key recommendations in the Report was that local government elections in Scotland should be decoupled from elections to the Scottish Parliament. Separating the elections would prevent national issues from dominating local government campaigns and would give greater prominence to local issues. Separation would also minimise the potential for voter confusion caused by two elections being held at the same time for different institutions and using different voting systems. The Act implements this Gould recommendation.

THE ACT: OVERVIEW

4. The Act changes the date of the local government elections in Scotland so that they are no longer held in the same year as elections to the Scottish Parliament. The Act also gives the Scottish Ministers powers to make secondary legislation relating to the publication of information about votes cast at local government elections.

COMMENTARY ON SECTIONS

Section 1 – Year of local government elections

5. Under the Act the next two ordinary local government elections will be held in 2012 and 2017. After 2017, ordinary local government elections will revert to taking place every fourth year. The effect of this will be that the local government elections will take place halfway through the term of the Scottish Parliament. Section 1 of the Act does this by amending section 5 of the Local Government etc. (Scotland) Act 1994 which contains provision about the timing of local government elections. The Act inserts two

¹ *Independent Review of the Scottish Parliamentary and Local Government Elections 3 May 2007, 23 October 2007, Ron Gould CM* <http://www.electoralcommission.org.uk/document-summary?assetid=13223>

new subsections into section 5 of the 1994 Act and repeals subsections (2) and (3) of that section (subsection (2) contains a historical date for local government elections and subsection (3) is the provision that links the date of local government elections to that of the Scottish Parliament elections).

6. Subsection (2) introduces the schedule which contains consequential modifications and repeals.

Section 2 – Voting information from local government elections

7. This section inserts a new section 3A (Voting information from local government elections) into the Local Governance (Scotland) Act 2004. Subsection (1) of the new section confers power on the Scottish Ministers to make orders about the publication of information about votes cast at elections of councillors. Any order under new section 3A would attract the affirmative procedure in terms of Parliamentary scrutiny.
8. An order under new section 3A may specify the information to which the order is to apply, the limits to be placed on the publication of the information and the parts of an electoral ward which may be identified in the order. The order may also make provision about granting access to the information for the purposes of publication (see subsection (2) of the new section 3A).
9. This order making power could be used to authorise the publication of voting information at polling station level (subject to certain limitations). The Scottish Local Government Elections Order 2007, made under section 3(1) of the Local Governance (Scotland) Act 2004, sets out the rules governing the conduct of Scottish local government elections. Rule 55 requires the returning officer to publish at ward level the following information upon declaration of the result:
 - the name(s) of the candidate(s) elected;
 - the number of first and subsequent preference votes for each candidate;
 - the number of ballot papers transferred and transfer values (under the STV process) at each stage of the count;
 - the number of votes credited to each candidate at each stage of the count; and
 - the number of non-transferable ballot papers at each stage of the count.
10. An order under new section 3A could be used to authorise the publication at polling station level of information similar to that detailed in paragraph 10 above. In circumstances where the number of voters using a particular polling station was small enough to run the risk of an individual elector's vote being identified, or at least assumed with some degree of accuracy, the order could specify that the data from a number of polling stations could be amalgamated until the combined number of voters reached a minimum threshold. Such an amalgamation might be required, for example, in remote rural locations.
11. Nothing may be done under an order made under new section 3A which would identify whether a particular person has voted. Given that nothing may be done to identify if a person has voted it follows that an order under new section 3A cannot authorise anything which would disclose how a particular person voted (see subsection (3) of the new section 3A). This prohibition on disclosure of whether a person has voted does not prejudice other enactments where certain specific and confidential information can be accessed in certain circumstances and subject to certain safeguards. Sections 5, 6 and 7 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 provide that registered political parties and candidates in an election may have access to a marked copy of the electoral register, the postal voters list, the list of proxies and the proxy postal voters list. Access is given under specified restrictions. The information

*These notes relate to the Scottish Local Government (Elections)
Act 2009 (asp 10) which received Royal Assent on 21 July 2009*

released in this way does not allow parties or candidates to identify how individuals voted.

12. An order under new section 3A may specify that the terms of the order may apply to information relating to the local government elections of 2007 (see subsection (4) of the new section 3A).

Schedule

13. The schedule contains a number of consequential modifications and repeals.

PARLIAMENTARY HISTORY

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

<i>Proceedings and Reports</i>	<i>Reference</i>
Introduction	
Bill as introduced - 3 February 2009	SP Bill 21 2009
SPICe Briefing (SB 09-21) on Bill (as introduced), published 19 March 2009	SPICe briefing SB09-21
Stage 1	
(a) Lead Committee – Local Government and Communities	
Local Government and Communities Committee’s Stage 1 report, published 30 April 2009	8th Report 2009, Session 3
(b) Finance Committee	
4th Meeting, 10 February 2009	Col 981
7th Meeting, 10 March 2009	Col 997-1007
Finance Committee’s report on Financial Memorandum, published 25 March 2009	Report 2009 (Session 3) - Finance Committee
(c) Subordinate Legislation	
9th Meeting, 10 March 2009	Col 517
Subordinate Legislation Committee’s report, published 17 March 2009	Report 2009 (Session 3), Subordinate Legislation Committee
(d) Consideration by the Parliament	
Stage 1 debate – 14 May 2009	Col 17439 - 17476

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<i>Proceedings and Reports</i>	<i>Reference</i>
Stage 2	
Stage 2 debate – 3 June 2009	Col 2051
Bill (no amendments at Stage 2) – 17 December 2008	SP Bill 21 2009
Stage 3	
Consideration by the Parliament	
Stage 3 debate – 17 June 2009	Col 18456 - 18479
Bill as passed – not produced for this Stage as no amendments were lodged.	
Royal Assent	
21 July 2009	Scottish Local Government (Elections) Act 2009 asp 10