



Local Electoral Administration (Scotland) Act 2011

2011 asp 10

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 16th March 2011 and received Royal Assent on 20th April 2011

An Act of the Scottish Parliament to establish an Electoral Management Board for Scotland; to confer functions on the Electoral Commission in relation to local government elections; and for connected purposes.

PART 1

ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Establishment of Board etc.

1 Electoral Management Board for Scotland

- (1) There is established a committee to be known as the Electoral Management Board for Scotland.
- (2) The Board has the general function of co-ordinating the administration of local government elections in Scotland.
- (3) That function includes—
 - (a) assisting local authorities and other persons in carrying out their functions in relation to local government elections,
 - (b) promoting best practice in local government elections by providing information, advice or training (or otherwise).

2 Membership

- (1) The Board is to have—
 - (a) a convener, who must be a returning officer,
 - (b) 8 other members of whom—
 - (i) 5 are to be returning or depute returning officers,

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(ii) 3 are to be electoral registration officers.

- (2) The Scottish Ministers are to appoint the convener.
- (3) The convener is to appoint the other members.
- (4) When appointing members, the convener is to have regard to the desirability of the membership taken as a whole having a broad range of experience in relation to different local authority areas (including different kinds of areas) throughout Scotland.

3 Duration of appointment

- (1) A person is to be appointed to the Board for a period of 4 years.
- (2) A person may be reappointed to the Board (once or more).

4 Procedure etc.

- (1) It is for the Board to regulate its own procedure (and quorum).
- (2) The convener may (with the agreement of the other members of the Board) invite a person to attend a meeting of the Board for the purpose of providing advice or otherwise assisting the Board in carrying out its functions.

Directions

5 Directions to returning officers

- (1) The convener may give directions in writing to returning officers about the exercise of their functions in relation to—
 - (a) local government elections generally, or
 - (b) a particular local government election.
- (2) A direction may require a returning officer to provide the convener with information.
- (3) A returning officer to whom a direction is given must comply with the direction.

6 Directions to electoral registration officers

- (1) The convener may give directions in writing to electoral registration officers about the exercise of their functions in relation to a particular local government election.
- (2) But a direction is of no effect if it is inconsistent with any direction given under section 52 of the 1983 Act.
- (3) An electoral registration officer to whom a direction is given must comply with the direction.

7 Consultation before giving direction

Before giving a direction under section 5 or 6, the convener must consult—

- (a) the other members of the Board,
- (b) the Electoral Commission.

Annual report

8 Annual report

- (1) The convener must, as soon as practicable after the end of each financial year, prepare a report on the carrying out of the Board’s functions during the year.
- (2) After securing the Board’s approval of the report, the convener must—
 - (a) lay the report before the Scottish Parliament, and
 - (b) send a copy of the report to the Scottish Ministers.

Interpretation

9 Interpretation of Part 1

In this Part—

- “the 1983 Act” means the Representation of the People Act 1983,
- “convener” means the convener of the Board,
- “depute returning officer” means a person appointed under section 41(2) of the 1983 Act,
- “electoral registration officer” means an officer appointed under section 8(3) of the 1983 Act,
- “local government election” has the meaning given in section 204(1) of the 1983 Act,
- “returning officer” means an officer appointed under section 41(1) of the 1983 Act.

PART 2

ELECTORAL COMMISSION: LOCAL GOVERNMENT ELECTIONS

Functions of Commission

10 Reports on elections

In section 5 of the 2000 Act (reports on elections and referendums), after subsection (2A) insert—

- “(2B) After an ordinary election of councillors for local government areas in Scotland, the Commission must prepare and publish (in such manner as the Commission may determine) a report on the administration of the election.”.

11 Electoral Commission representatives and observers

- (1) In section 6A(5) of the 2000 Act (elections which may be attended by Commission representative), after paragraph (e) insert—
 - “(ea) a local government election in Scotland;”.
- (2) Section 6B(3) of that Act (observation of local government elections in Scotland not permitted) is repealed.

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- (3) In section 6C(3) of that Act (accredited observers: individuals), after “6F” insert “or, in relation to a local government election in Scotland, section 6G”.
- (4) In section 6D(4) of that Act (accredited observers: organisations), after “6F” insert “or, in relation to a local government election in Scotland, section 6G”.
- (5) In section 6F of that Act (code of practice)—
 - (a) in subsection (1), after “6A” insert “(other than a local government election in Scotland)”,
 - (b) in subsection (10), after “section” insert “and section 6G”.
- (6) After section 6F of that Act insert—

“6G Code of practice on attendance of observers at local government elections in Scotland

- (1) The Commission must prepare a code of practice on the attendance of—
 - (a) representatives of the Commission;
 - (b) accredited observers; and
 - (c) nominated members of accredited organisations,
 at local government elections in Scotland.
- (2) The code must in particular—
 - (a) specify the manner in which applications under section 6C(1) and 6D(1) are to be made to the Commission;
 - (b) specify the criteria to be taken into account by the Commission in determining such applications;
 - (c) give guidance to relevant officers (within the meaning of section 6E) as to the exercise of the power conferred by subsection (1) of that section;
 - (d) give guidance to such officers as to the exercise of the power mentioned in subsection (2) of that section as it relates to a person having the permission mentioned in subsection (1) of that section;
 - (e) give guidance to such officers as to the exercise of any power under any enactment to control the number of persons present at any proceedings relating to an election as it relates to a person having such permission;
 - (f) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations on the exercise of the rights conferred by sections 6A, 6B, 6C and 6D.
- (3) The code may make different provision for different purposes.
- (4) Before preparing the code, the Commission must consult the Scottish Ministers.
- (5) The Commission must lay the code before the Scottish Parliament.
- (6) The Commission must publish the code (in such matter as they may determine).
- (7) The following persons must have regard to the code in exercising any function conferred by section 6A, 6B, 6C, 6D or 6E—

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- (a) the Commission;
- (b) representatives of the Commission;
- (c) relevant officers (within the meaning of section 6E).

(8) The Commission may at any time revise the code.

(9) Subsections (4) to (7) apply in relation to a revision of the code as they apply in relation to the code.”.

(7) Sections 8 to 11 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

12 Consultation on changes to electoral law

In section 7(2) of the 2000 Act (instruments to be consulted upon), after paragraph (i) insert—

“(j) an order under section 3(1) of the Local Governance (Scotland) Act 2004.”.

13 Performance standards

(1) In section 9A(6) of the 2000 Act (setting of performance standards), after paragraph (e) insert—

“(f) a local government election in Scotland.”.

(2) Sections 1 to 3 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 are repealed.

14 Advice and guidance

(1) Section 10 of the 2000 Act (giving of advice and assistance) is amended as follows.

(2) In subsection (7), the words “other than a local government election in Scotland” are repealed.

(3) Subsections (8) to (10) are repealed.

15 Education about electoral systems

(1) Section 13 of the 2000 Act (promotion of public awareness of electoral and government systems) is amended as follows.

(2) Subsections (3) and (7) are repealed.

(3) In subsection (8), for “by virtue of an order made by the Scottish Ministers under subsection (7)” substitute “in relation to local government elections in Scotland”.

Financing and reports etc.

16 Financing of Commission

(1) The 2000 Act is amended as follows.

(2) In section 13—

- (a) in subsection (8), the words from “but” to “Ministers” are repealed,
- (b) subsections (9) to (11) are repealed.

(3) After section 13 insert—

“13A Reimbursement of costs by Scottish Ministers etc.

- (1) The Scottish Ministers must reimburse the Commission for any expenditure incurred by them which is attributable to the exercise of the functions mentioned in subsection (2).
- (2) The functions are the Commission’s functions under this Part in relation to local government elections in Scotland.
- (3) The total expenditure incurred in any financial year by the Commission in performing the functions mentioned in subsection (2) must not exceed such sum as is for the time being specified by an order made by the Scottish Ministers.
- (4) The power to make an order under subsection (3) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.”.

(4) In paragraph 14(1)(a) of Schedule 1, for “13(9)” substitute “13A”.

17 Reports on Commission’s functions

(1) Schedule 1 to the 2000 Act is amended as follows.

(2) In paragraph 20 (reports), after sub-paragraph (2) insert—

“(3) The functions referred to in sub-paragraph (1) do not include the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

(3) After paragraph 20 insert—

- “20A (1) The Commission must, as soon after the end of each financial year as may be practicable, prepare and lay before the Scottish Parliament a report about the performance of the functions mentioned in sub-paragraph (3) during that financial year.
- (2) On laying the report, the Commission must publish the report in such manner as they may determine.
- (3) The functions are the Commission’s functions under Part 1 in relation to local government elections in Scotland.”.

18 Consequential amendments

The Scottish Public Services Ombudsman Act 2002 is amended as follows—

(a) in section 7 (restrictions on investigations), after subsection (6C) insert—

“(6D) The Ombudsman must not investigate action taken by or on behalf of the Electoral Commission unless the action taken concerned local government elections in Scotland.”,

- (b) in Part 2 of schedule 2 (listed authorities), after paragraph 91B insert—
“91BA The Electoral Commission.”.

Interpretation

19 Interpretation of Part 2

In this Part, “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000.

PART 3

GENERAL

20 Ancillary provision

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental, consequential, transitional, transitory, or saving provision (including by modifying an enactment) as they consider necessary or expedient for the purposes of or in connection with this Act.
- (2) Subject to subsection (3), a statutory instrument containing an order under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (3) A statutory instrument containing an order under this section which adds to, replaces or omits any part of the text of an Act is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

21 Commencement

- (1) This Act (except this section and sections 20 and 22) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) An order under subsection (1) may include such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with the commencement of this Act.

22 Short title

The short title of this Act is the Local Electoral Administration (Scotland) Act 2011.