

**EXPLANATORY MEMORANDUM TO
THE DRAFT LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION
SERVICES (SCOTLAND) ACT 2006 (CONSEQUENTIAL PROVISIONS AND
MODIFICATIONS) ORDER 2007**

2007 No.

1. This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 This Order makes provision consequential on Part 1 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (“the 2006 Act”) which replicates for local government elections in Scotland a number of the provisions dealing with the administration and conduct of elections introduced for parliamentary elections and local government elections in England and Wales by the Electoral Administration Act 2006. Section 15 of the 2006 Act introduces for local government elections in Scotland the offence relating to a false application for a postal or proxy vote with the intention of stealing another person’s vote or gaining a vote to which the applicant is not entitled. The penalty for this offence includes disqualification from standing for elective office.

2.2 The Order ensures that disqualification from standing as a result of this offence committed at a local government election in Scotland will apply to candidature at a Westminster, European or Scottish Parliament election or a local government election elsewhere than in Scotland.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This Order is to be made in exercise of the powers conferred by section 104, 112(1) and 113 of the Scotland Act 1998 (“the 1998 Act”). The Order is, by virtue of section 115 (1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, is subject to affirmative resolution in both Houses of the UK Parliament. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of any Act of the Scottish Parliament, in this case the 2006 Act.

3.2 A section 104 Order under the 1998 Act is necessary in consequence of the 2006 Act as the Scottish Parliament does not have the legislative competence under the 1998 Act to make changes to the law of England and Wales or to make changes in relation to the reserved matter of House of Commons disqualification. This Order makes the necessary consequential modifications.

4. Legislative Background

4.1 The 2006 Act was introduced to the Scottish Parliament on 19 December 2005, approved by the Parliament on 22 June 2006 and received Royal Assent on 1 August 2006. The provisions of Part 1 of the Act will come into effect by mid-February. Both the 2006 Act

and the Electoral Administration Act 2006 establish a new offence and provide that applying for a postal or proxy vote with the intention of stealing another person's vote or gaining a vote to which the applicant is not entitled is a corrupt practice and criminal offence.

4.2 The consequences of a corrupt or illegal practice are set out in sections 160, 173 and 173A of the Representation of the People Act 1983 (the 1983 Act) which provide that a candidate or other person reported by an election court as personally guilty of a corrupt or illegal practice will not be able to be registered as an elector or vote at parliamentary elections or any local government election in Great Britain or be elected to an elective office for a specified period.

4.3 As a result of the reserved/devolved split of responsibility, a difficulty arose during drafting of the offence provision in the Electoral Administration Act in ensuring that the penalty of disqualification from standing as a candidate as a result of the offence committed at any parliamentary or local government election elsewhere than in Scotland extended to all of those elections. A subsequent combination of measures in both that Act and the 2006 Act ensures that the penalty for the offence committed at a parliamentary election or a local government election elsewhere than in Scotland will extend to candidature for local government election in Scotland.

4.4 However, whilst the offence provision in the 2006 Act ensures disqualification from candidature at Scottish local government elections, it will not result in equivalent disqualification at a Westminster, European or Scottish Parliament election or a local government election in England and Wales. Parliamentary elections are reserved matters and, as the Scottish Parliament does not have the competence to legislate for reserved matters, it was not possible to specify in the 2006 Act that the penalty would apply to these elections. It was considered that a section 104 Order would be the best means of providing the solution.

5. Territorial Extent and Application

5.1 This Order extends to England, Wales, Scotland and Northern Ireland, with a variation for parts of article 2(3) and (5), which are extending to the rest of the United Kingdom provisions which already apply in Scotland.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Scotland has made the following statement under [section 19(1)(a)] of the Human Rights Act 1998:

“In my view the provisions of the draft Local Electoral Administration and Registration Services (Scotland) Act 2006 (Consequential Provisions and Modifications) Order 2007 are compatible with Convention rights.”

7. Policy Background

7.1 The overall policy intention of the 2006 Act is to improve access to and participation at elections, provide for increased security against electoral fraud and improve administrative effectiveness. Ensuring that the same level of penalties for cases of electoral fraud apply to

all UK elections forms part of the increased security and failure to complete the legislative loop in this respect would mean that this particular policy aim would not be met. This Order seeks to ensure that where a person commits an offence under section 15 of the 2006 Act, he or she will be unable to stand as a candidate at European, Westminster and Scottish Parliament elections and local government elections elsewhere than in Scotland.

7.2 If this measure were not taken, it would mean that a person found guilty of a corrupt practice at a Scottish local government election could still stand as a candidate and be elected to hold office at a European, Westminster or Scottish Parliament election or a local government election in England and Wales. This would clearly be an unsatisfactory and untenable position.

7.3 In addition to the option of a section 104 Order, two further options were considered as a means of resolving the drafting difficulty mentioned in paragraph 4.3:

a) to create both an offence and penalty in the Electoral Administration Act 2006 but with a provision that disapplied them insofar as they impinged on devolved competence in Scotland. Subsequent legislation in Scotland would then remove that disapplying provision.

b) to provide for an offence and penalty in the Electoral Administration Act 2006 for reserved elections together with a power to extend the disqualifications by subordinate legislation after the 2006 Act had come into effect. The subordinate legislation would adopt the offence provision in the 2006 Act and impose the penalty.

7.4 The first option was rejected as it may have raised issues about cross-border extent of the Scottish repeal. The second option was also rejected as it had no obvious advantage over a section 104 Order and may have raised concerns in Parliament that there was a wider agenda. With this in mind, it was agreed that the section 104 Order offered the most sensible solution.

8. Impact

8.1 This proposal will have no effect on the devolution settlement or the Government's wider devolution policy. Nor will it impact on delivery of functions or services. The proposal will not impact on accountability or public spending.

8.2 A Regulatory Impact Assessment has not been prepared as the measure has no impact on business, charities or voluntary bodies. There will be no impact on the public sector.

9. Contact

9.1 Adam Pile at the Scotland Office, (email adam.pile@scotland.gsi.gov.uk) can answer any queries regarding the instrument.