

Local Governance (Scotland) Bill

[AS INTRODUCED]

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Local Governance (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the election of councillors by single transferable vote and in relation to candidates to be councillor; to make provision in relation to certain restrictions upon being a councillor and upon former councillors; to make new provision about remuneration for and other payments to councillors; and for connected purposes.

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PART 1

LOCAL GOVERNMENT ELECTIONS

1 Electoral wards

- (1) Each local government area shall be divided into electoral wards; and there shall be a separate election for each electoral ward.
- (2) The number of councillors to be returned in an electoral ward shall be either three or four, as determined by order made under section 17 (order giving effect to proposals made by Boundary Commission) of the Local Government (Scotland) Act 1973 (c.65) (“the 1973 Act”).
- (3) Different numbers may be determined in relation to different electoral wards.

10

2 Single transferable vote

In each electoral ward in which there is a contested election, a poll shall be held at which each person entitled to vote as an elector may vote by marking on the ballot paper—

- (a) the voter’s first preference from among the candidates to be councillor, and
- (b) if there are three or more candidates and the voter wishes to express a further preference, the voter’s second and, if the case requires, subsequent preferences from among those candidates.

20

3 The quota

- (1) The returning officer shall divide the number of ballot papers by a number exceeding by one the number of councillors to be elected at the election.

25

- (2) The result of the division under subsection (1) (ignoring any decimal places), increased by one, is the number of votes needed to secure the return of a candidate as a councillor (in this Part referred to as “the quota”).

4 Return of councillors

Where, at any stage of the count, the number of votes for a candidate equals or exceeds the quota, the candidate is returned as a councillor.

5 Transfer of ballot papers

- (1) Where the number of votes for any candidate as first preference exceeds the quota and, subject to section 8, one or more vacancies remain to be filled, the returning officer shall sort the ballot papers on which such votes are given for that candidate into parcels so that they are grouped—

- (a) according to the next available preference given on those papers, and
- (b) where no such preference is given, as a parcel of non-transferable papers.

- (2) The returning officer shall, in accordance with this section and section 6, transfer each parcel of ballot papers referred to in subsection (1)(a) to the continuing candidate for whom the next available preference is given on those papers.

- (3) The vote on each ballot paper transferred under subsection (2) shall have a value (“the transfer value”) of whichever is the lower of—

- (a) one, and
- (b) the value which is calculated by dividing the surplus of the candidate from whom the papers are being transferred by the total number of the papers being transferred, the calculation being made to two decimal places (any remainder being ignored).

- (4) Where, at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota and, subject to section 8, one or more vacancies remain to be filled, the returning officer shall sort the ballot papers in the parcel of papers which was last received by that candidate into further parcels so that they are grouped—

- (a) according to the next available preference given on those papers, and
- (b) where no such preference is given, as a parcel of non-transferable papers.

- (5) The returning officer shall, in accordance with this section and section 6, transfer each parcel of ballot papers referred to in subsection (4)(a) to the continuing candidate for whom the next available preference is given on those papers.

- (6) The vote on each ballot paper transferred under subsection (5) shall have a value (“the transfer value”) of whichever is the lower of—

- (a) a value calculated as set out in subsection (3)(b), and
- (b) the transfer value which the vote had when that paper was received by the candidate from whom it is now being transferred.

- (7) Subject to subsection (8), the returning officer shall continue to transfer transferable papers until—

- (a) no candidate who is returned as a councillor has a surplus, or

(b) all the vacancies have been filled,
whichever is the earlier.

- (8) Transferable papers shall not be transferred under this section where any surplus (or, where two or more candidates have surpluses, the total of those surpluses) is—

(a) less than the difference between—

- (i) the number of votes then credited to the continuing candidate with the lowest number of votes, and
- (ii) the number of votes then credited to the continuing candidate next above that candidate, or

(b) less than the difference between—

- (i) the total number of votes then credited to the two or more continuing candidates with the lowest numbers of votes, and
- (ii) the number of votes then credited to the candidate next above such candidates.

6 Provision where two or more candidates have surpluses

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first.
- (2) If the surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest number of votes at the earliest preceding stage at which they had unequal numbers of votes shall be transferred first.
- (3) If the numbers of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide, by lot, which candidate's transferable papers are to be transferred first.

7 Exclusion of candidates

- (1) If—

- (a) the returning officer has transferred all transferable papers which are required by section 5 and this section to be transferred, and
- (b) subject to section 8, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest number of votes (or, where subsection (11) applies, the two or more candidates with the then lowest numbers of votes).

- (2) The returning officer shall sort the ballot papers on which votes are given as first preference for the candidate or candidates excluded under subsection (1) into parcels so that they are grouped—

- (a) according to the next available preference given on those papers, and
- (b) where no such preference is given, as a parcel of non-transferable papers.

- (3) The returning officer shall, in accordance with this section, transfer each parcel of ballot papers referred to in subsection (2)(a) to the continuing candidate for whom the next available preference is given on those papers.

- (4) The vote on each ballot paper transferred under subsection (3) shall have a value of one.

- (5) If, subject to section 8, one or more vacancies still remain to be filled, the returning officer shall then sort the ballot papers, if any, which had been transferred to any candidate excluded under subsection (1) into parcels according to the transfer value of the votes.
- 5 (6) The returning officer shall sort the ballot papers in the parcel of papers with votes of the highest transfer value into further parcels so that they are grouped—
 - (a) according to the next available preference given on those papers, and
 - (b) where no such preference is given, as a parcel of non-transferable papers.
- 10 (7) The returning officer shall, in accordance with this section, transfer each parcel of ballot papers referred to in subsection (6)(a) to the continuing candidate for whom the next available preference is given on those papers.
- (8) The vote on each ballot paper transferred under subsection (7) shall have the value which the vote had when that paper was received by the candidate excluded under subsection (1).
- 15 (9) After the returning officer has completed the transfer of the ballot papers in the parcel of ballot papers with votes of the highest transfer value the returning officer shall proceed to transfer in the same way the parcel of ballot papers with votes of the next highest value and so on until the returning officer has dealt with each parcel of a candidate excluded under subsection (1).
- 20 (10) If, after a transfer under any provision of this section, a candidate has a surplus, the ballot papers in the parcel which was last received by the candidate shall be dealt with in accordance with sections 5(4) to (8) and 6.
- (11) Where the total number of votes then credited to the two or more candidates with the lowest numbers of votes, together with any surpluses, is less than the number of votes then credited to the candidate next above such candidates, the returning officer shall in one operation exclude such two or more candidates.
- 25 (12) If, when a candidate has to be excluded under this section—
 - (a) two or more candidates each have the same number of votes, and
 - (b) no other candidate has fewer votes,
- 30 subsection (13) applies.
- (13) Where this subsection applies—
 - (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - 35 (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide, by lot, which of those candidates is to be excluded.

8 Filling of last vacancies

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled, the continuing candidates are returned as councillors.
- 40 (2) Where only one vacancy remains unfilled and the number of votes then credited to any one continuing candidate (“the highest continuing candidate”) is equal to or greater than the total number of votes then credited to the other continuing candidates together with any surpluses, the highest continuing candidate is returned as a councillor.

- (3) Where the last vacancies can be filled under this section, no further transfer shall be made.

9 Power to make further provision about local government elections

- (1) The Scottish Ministers may by order make provision as to—
- 5 (a) the conduct of elections of councillors,
- (b) the questioning of such an election and the consequences of irregularities.
- (2) Such an order may, in particular—
- (a) provide that ballot papers of a type described in the order are to be ignored for the purposes of calculating the quota,
- 10 (b) modify the effect of any provision of this Part by providing that—
- (i) transferable papers of a type so described are to be treated, at any stage of the count, as non-transferable papers,
- (ii) non-transferable papers of a type so described are to be treated, at any stage of the count, as transferable papers,
- 15 (c) make provision about the limitation of the election expenses of candidates,
- (d) apply, with or without modifications or exceptions, any provision made by or under any enactment.
- (3) Provision made by such an order by virtue of subsection (1)(b) must include provision applying Part III of the Representation of the People Act 1983 (c.2) (“the 1983 Act”) (with such modifications or exceptions as the order may specify).
- 20 (4) The return of a councillor may be questioned only under Part III of the 1983 Act as applied by an order under subsection (1).

10 Reviews of electoral arrangements

- (1) As soon as practicable after the commencement of this section the Boundary Commission shall—
- 25 (a) review the electoral arrangements for all local government areas for the purpose of considering future electoral arrangements for those areas, and
- (b) formulate proposals for those arrangements.
- (2) Part II of the 1973 Act applies to a review under subsection (1) as it applies to a review under section 16 of that Act except that section 17 of that Act has effect as if it required—
- 30 (a) the Boundary Commission to submit a report on any review before such date as the Scottish Ministers may direct, and
- (b) the Scottish Ministers to make an order under section 17 giving effect to the proposals of the Commission under subsection (1) (whether as submitted to them or with modifications).
- 35 (3) The 1973 Act is amended as follows—
- (a) in section 16(2) (duty of Boundary Commission to carry out periodic reviews of electoral arrangements), for “Schedule 5 to this Act” substitute “section 10(1) of the Local Governance (Scotland) Act 2004 (asp 00)”,
- 40

- (b) section 20 is repealed,
- (c) in subsection (1) (interpretation) of section 28, in the definition of “electoral arrangements”, after “councillors”, where second occurring, insert “, the number of councillors for each electoral ward”,
- 5 (d) after that subsection insert—
 - “(1A) It is for the Scottish Ministers to make rules in relation to the consideration, for the purposes of this Part of this Act, of electoral arrangements for local government areas.
 - (1B) No rules shall be made under subsection (1A) above unless a draft of the instrument containing the rules has been laid before, and approved by resolution of, the Scottish Parliament.”,
- (e) in subsection (2) (review of electoral arrangements to be carried out in compliance with certain enactments) of that section—
 - 15 (i) after “Act”, where first occurring, insert “or section 10(1) of the Local Governance (Scotland) Act 2004 (asp 00)”,
 - (ii) for “the rules set out in Schedule 6 to this Act” substitute “any rules made under subsection (1A) above”, and
 - (iii) for “section 5 of the Local Government etc. (Scotland) Act 1994” substitute “section 1 of the Local Governance (Scotland) Act 2004 (asp 00)”, and
- 20 (f) Schedules 5 and 6 are repealed.

11 Consequential amendments and repeals

- (1) The 1983 Act is amended as follows—
 - (a) in section 42 (conduct of local elections), subsections (1) to (4) and (7) are repealed,
 - 25 (b) in section 166(3) (vote to be void if voter is subject to incapacity to vote by reason of corrupt or illegal practices), for “or an election to any elective office or” substitute “, local government election or an election under the Local Government (Scotland) etc. Act 1994 (c.39)”,
 - (c) in section 187(2) (application of certain provisions to elections other than elections of councillors)—
 - 30 (i) the word “other” is repealed, and
 - (ii) for “local government Act” substitute “Local Government etc. (Scotland) Act 1994 (c.39)”,
 - (d) section 188 is repealed, and
 - 35 (e) in section 204 (general application to Scotland), in the definition of “local government Act”, for “Local Government etc. (Scotland) Act 1994” substitute “Local Governance (Scotland) Act 2004 (asp 00)”.
- (2) In section 5 (elections and term of office of councillors) of the Local Government etc. (Scotland) Act 1994 (c.39), subsections (1), (5) and (6) are repealed.

12 Interpretation of Part 1

In this Part—

“Boundary Commission” means the Local Government Boundary Commission for Scotland,

“continuing candidate” means any candidate not returned as a councillor and not excluded from the list of candidates under section 7,

“count” means all the operations involved in the counting of the first preferences for candidates, the transfer of transferable papers from candidates returned as councillors who have surpluses, and the transfer of the ballot papers containing votes for excluded candidates,

“electoral arrangements” has the same meaning as in Part II of the 1973 Act,

“local government area” is to be construed in accordance with section 1 (local government areas) of the Local Government etc. (Scotland) Act 1994 (c.39),

“next available preference” means a preference which is the second or, as the case may be, subsequent preference in consecutive order for a continuing candidate (any preferences for any candidate who is returned as a councillor or is excluded from the list of candidates under section 7 being ignored),

“non-transferable paper” means a ballot paper on which there is no next available preference,

“quota” has the meaning given by section 3(2),

“returning officer” means, in relation to an election, the returning officer appointed for the election under section 41(1) (duty of local authority to appoint returning officer for each local authority election) of the 1983 Act,

“stage of the count” means—

- (a) the determination of the number of votes for each candidate as first preference,
- (b) the transfer of transferable papers from a candidate returned as a councillor who has a surplus, or
- (c) the exclusion of one or more candidates at any given time,

“surplus” means the number of votes, if any, by which the total number of votes credited to a candidate returned as a councillor exceeds the quota,

“transferable paper” means a ballot paper on which a next available preference is given,

“transfer value” means the value of a vote on a ballot paper calculated in accordance with section 5(3) or (6).

PART 2

MEMBERSHIP OF LOCAL AUTHORITIES ETC.

13 Disqualification

- (1) In section 31 of the 1973 Act, subsection (1)(a) (disqualification of officers, employees etc. and their partners from nomination, election and holding office as members of local authorities) is repealed.

(2) After that section, insert—

“31A Disqualification of officers, employees etc. from remaining members of local authority

- (1) A person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority is disqualified from remaining a member of the authority after the relevant day unless the person complies with subsection (2) below.
- (2) A person complies with this subsection by resigning, not later than the relevant day, from that office, employment or, as the case may be, other place of profit.
- (3) A resignation effected in pursuance of subsection (2) above terminates the holding of the office, employment or other place of profit with immediate effect notwithstanding any contrary provision in the terms and conditions under which the office, employment or place of profit is held.
- (4) In this section the “relevant day” is the day first occurring after that on which the person elected a member of the local authority was, under the local elections rules, declared to be so elected (no account being taken of a day which is a Saturday or Sunday or Christmas Eve, Easter Monday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c.80) or a day appointed for public thanksgiving or mourning in Scotland).
- (5) In subsection (4) above, the “local elections rules” means an order made under section 9(1) of the Local Governance (Scotland) Act 2004 (asp 00).
- (6) This section does not affect section 1 (disqualification and political restriction of certain local government officers and staff) of the Local Government and Housing Act 1989 (c.42).”

14 Reduction of age qualification

In section 29(1) (qualifications for nomination, election and holding office as member of local authority) of the 1973 Act, for “21” substitute “18”.

15 Eligibility for membership: politically restricted posts

In section 2 (politically restricted posts the holders of which are disqualified from membership of the local authority) of the Local Government and Housing Act 1989 (c.42), in subsection (2)—

- (a) paragraphs (a) and (b) and the word “and” immediately following the latter are repealed, and
- (b) in paragraph (c), the words “not falling within paragraph (a) or (b) above the” are repealed.

16 Prohibitions on appointment of councillors and ex-councillors to local authority posts

For section 67 (members of local authorities not to be appointed as officers) of the 1973 Act substitute—

“67 Members of local authorities not to be appointed as officers etc.

- (1) A person who is a member of a local authority is disqualified from being appointed by the authority to any paid office or employment (other than the office of convener or depute convener) or other place of profit in the gift or disposal of the authority.
- (2) A person who has ceased to be a member of a local authority is disqualified—
- (a) for a period of 3 months beginning with the day on which the person ceased to be a member of a local authority from being appointed by the authority to any such office, employment or place of profit which is not a politically restricted post;
 - (b) for a period of 12 months beginning with that day from being appointed by the authority to any such office, employment or place of profit which is a politically restricted post.
- (3) A person who—
- (a) has ceased to be a member of a local authority; and
 - (b) at any time during the period of 12 months ending with the day on which the person so ceased, participated directly in the appointing of any person to a politically restricted post,
- is, for the period of 12 months beginning on that day, disqualified from being appointed by the authority to any paid office or employment or other place of profit in the gift or disposal of the authority.
- (4) A reference to a politically restricted post is—
- (a) in subsection (2) above, a reference to a post held by a person who is within any of paragraphs (a) to (g) of subsection (1) of section 2 (politically restricted posts the holders of which are disqualified from membership of the local authority) of the Local Government and Housing Act 1989 (c.42);
 - (b) in subsection (3) above, a reference to a post held by a person who is within any of paragraphs (a) to (e) of that subsection.”

17 Pay, pensions etc. of councillors

- (1) The Scottish Ministers may, by regulations, provide for the payment by local authorities of remuneration and allowances to and reimbursement of expenses incurred by members of those authorities.
- (2) Those regulations may include provision by or under which—
- (a) an element of the remuneration, allowance or reimbursement payable to a member of a local authority is calculated by reference to activities carried out by the member in the discharge of the member’s functions as such,
 - (b) other such elements are calculated by reference to other factors,
 - (c) an element of the remuneration is payable by way of pension.
- (3) Those regulations may also include provision for—
- (a) local authorities to make contributions or other payments towards provision for such pensions,

(b) the establishment and administration, by local authorities or otherwise, of one or more pension schemes, or the adaptation of any pension scheme, for the purpose of making provision for such pensions,

(c) members of local authorities to be enabled to contribute to pension schemes so established or adapted and, otherwise than under subsection (2)(c), to benefit from them.

(4) Where the Scottish Ministers have made a requirement under subsection (2) of section 19 in relation to a matter specified in subsection (3)(a) of that section they shall, before making regulations under subsection (1) of this section, consider any information, advice or recommendations given to them by the Scottish Local Authorities Remuneration Committee in response to the requirement.

18 Severance payments for councillors

(1) The Scottish Ministers may, by regulations, provide for the making by local authorities of payments (“severance payments”) to persons who—

(a) were, immediately prior to the date of an ordinary election, members of local authorities,

(b) were not candidates to be councillor at that election, and

(c) meet such other criteria as may be specified in the regulations.

(2) Those regulations may include provision as to—

(a) the amounts of severance payments and the methods of calculating those amounts,

(b) the procedure for applying for severance payments and for dealing with such applications.

(3) Where the Scottish Ministers have made a requirement under subsection (2) of section 19 in relation to a matter specified in subsection (3)(b) of that section they shall, before making regulations under subsection (1) of this section, consider any information, advice or recommendations given to them by the Scottish Local Authorities Remuneration Committee in response to the requirement.

(4) In section 29 (qualifications for nomination, election and holding office as member of local authority) of the 1973 Act, after subsection (1) insert—

“(1A) A person who has received a severance payment (within the meaning of section 18 of the Local Governance (Scotland) Act 2004 (asp 00)) shall not be so qualified.”

(5) In this section, “ordinary election” means an ordinary election of councillors for local government areas (within the meaning of section 12) in Scotland.

19 The Scottish Local Authorities Remuneration Committee

(1) There shall be a body, to be known as the “Scottish Local Authorities Remuneration Committee”.

(2) The Scottish Ministers may require the Committee to—

(a) provide them with information in relation to, or

(b) review, and prepare and submit to the Scottish Ministers advice or recommendations in relation to,

such of the matters mentioned in subsection (3) as the requirement may specify.

(3) Those matters are—

(a) the payment by local authorities of remuneration (including pensions) and allowances to and reimbursement of expenses incurred by members of local authorities,

(b) the payment of severance payments (within the meaning of section 18) in relation to members of local authorities.

(4) A requirement under subsection (2)(b) may specify criteria by reference to which the Committee is to prepare advice or recommendations.

(5) The Committee shall comply with any directions given to it by the Scottish Ministers as to the discharge of its functions.

(6) The schedule makes further provision about the constitution etc. of the Committee.

PART 3

MISCELLANEOUS AND GENERAL

20 Election expenses etc.

(1) The Political Parties, Elections and Referendums Act 2000 (c.41) is amended as follows.

(2) Sections 134(2) and 135(3) (which restrict, in relation to local government elections in Scotland, the effect of amendments to the meanings of “election expenses” and “candidate” in Part II of the 1983 Act) are repealed.

(3) In section 138(2) (which restricts, in relation to local government elections in Scotland, the effect of other amendments to the 1983 Act), after “18” insert “(other than paragraphs 8 and 15(a))”.

(4) In section 158(3) (which restricts, in relation to local government elections in Scotland, the effect of repeals relating to the 1983 Act), after “II” insert “(other than section 82(4))”.

21 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes or in consequence of this Act.

22 Orders and regulations

(1) Any power of the Scottish Ministers under this Act to make an order or regulations is exercisable by statutory instrument.

(2) Any such power includes power to make—

(a) such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers think necessary or expedient,

(b) different provision for different purposes.

(3) An order under section 9(1) may modify any enactment.

- (4) A statutory instrument containing an order (other than an order made under section 9(1) (where subsection (5) applies) or 23(2)) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) No order under section 9(1) containing provisions which add to, replace or omit any part of the text of an Act may be made unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Parliament.

23 Short title and commencement

- (1) This Act may be cited as the Local Governance (Scotland) Act 2004.
- (2) This Act (except this section and sections 21 and 22) comes into force on such day as the Scottish Ministers may by order appoint.

SCHEDULE
(introduced by section 19)

CONSTITUTION ETC. OF SCOTTISH LOCAL AUTHORITIES REMUNERATION COMMITTEE

- 1 The Scottish Local Authorities Remuneration Committee is to be a body corporate.
- 5 2 The Committee is to have 7 members to be appointed by the Scottish Ministers.
- 3 3 The Scottish Ministers shall appoint one of those members to be the convener of the
Committee.
- 4 4 Before making any appointment under paragraph 2 or 3, the Scottish Ministers shall
consult such associations of local authorities and such other persons as they think
10 appropriate.
- 5 5 The members of the Committee are entitled to payment from the funds of the Committee
of such allowances as are determined by the Scottish Ministers.
- 6 6 The Committee may, with the prior consent (given either generally or in relation to
particular cases) of the Scottish Ministers, appoint staff to assist it in the discharge of its
15 functions.
- 7 7 The Scottish Ministers may make grants to the Committee.
- 8 8 The procedure of the Committee is for it to determine.
- 9 9 The Committee—
- 20 (a) is not to be regarded as a servant or agent of the Crown,
 (b) does not have any status, immunity or privilege of the Crown,
and its property is not to be regarded as property of, or held on behalf of, the Crown.
- 10 10 The validity of the proceedings or actings of the Committee is not affected by any
vacancy among its members or defect in the appointment of those members.

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[AS INTRODUCED]

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Bill type: Executive Bill

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