

Local Governance (Scotland) Bill

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Local Governance (Scotland) Bill

An Act of the Scottish Parliament to make provision for the election of councillors by a system of transferable voting; 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.

Local government elections

1 Election of councillors

- (1) Councillors for each local government area shall, on and after the date of the first ordinary election of councillors for local government areas in Scotland following the coming into force of this section, be elected in accordance with the following provisions, the 1983 Act and the Scottish Local Government (Elections) Act 2002 (asp 1).
- (2) Each local government area shall be divided into electoral wards; and there shall be a separate election for each electoral ward.
- (3) Such number of councillors as may be prescribed by order made by the Scottish Ministers shall be returned in each electoral ward in a local government area.
- (4) Such an order may prescribe different numbers of councillors in relation to different electoral wards.

2 Transferable votes

- (1) 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 give the following vote or votes—
 - (a) one vote (referred to in the following provisions as a “first preference vote”) which may be given for the voter’s first preference from among the candidates to be councillor, and
 - (b) if there are three or more candidates to be councillor, one vote which may be given for the voter’s second (and, if the case requires, third, fourth and so on) preference from among those candidates.
- (2) If the candidate for whom such a vote is given —
 - (a) does not need the vote to secure the quota of votes which the candidate requires to be returned as a councillor; or
 - (b) is excluded from the list of candidates under section 6 below,

the vote is to be transferred, in accordance with the following provisions, to the next continuing candidate to whom the voter has given a vote as a subsequent preference.

3 The quota

- (1) The returning officer shall divide the number of ballot papers on which votes are given by a number exceeding by one the number of councillors to be elected for the electoral ward.
- (2) The result, increased by one, of the division under subsection (1) above (any fraction being disregarded) shall be the number of votes needed to secure the return of a candidate as a councillor (in these provisions referred to as “the quota”).
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota is, subject to subsection (4) below, returned as a councillor.
- (4) At any election where there is only one vacancy—
 - (a) section 4 below does not apply; and
 - (b) a candidate is not returned as a councillor until the procedure set out in subsections (1) to (3) of section 6 below has been completed.

4 Transfer of votes

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer shall sort all the ballot papers on which first preference votes are given for that candidate into parcels so that they are grouped—
 - (a) according to the next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as a parcel of non-transferable votes.
- (2) The returning officer shall, in accordance with this section and section 5 below, transfer each parcel of ballot papers referred to in subsection (1)(a) above 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) above shall be at a value (“the transfer value”) which is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the votes being transferred, the calculation being made to two decimal places (ignoring the remainder if any).
- (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, the returning officer shall sort the ballot papers in the parcel of transferred votes which was last received by that candidate into separate parcels so that they are grouped—
 - (a) according to the next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as a parcel of non-transferable votes.
- (5) The returning officer shall, in accordance with this section and section 5 below, transfer each parcel of ballot papers referred to in subsection (4)(a) above 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) above shall be at whichever is the lower of—
 - (a) a transfer value calculated as set out in subsection (3) above; and

- (b) the value at which that vote was received by the candidate from whom it is now being transferred.
- (7) Subject to subsection (8) below, 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 where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are—
 - (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

5 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 recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first.
- (3) If the 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.

6 Exclusion of candidates

- (1) If—
 - (a) all transferable papers which under the provisions of section 4 above (including that section as applied by subsection (9) below) and this section are required to be transferred, have been transferred; and
 - (b) subject to section 7 below, 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 vote (or, where subsection (10) below applies, the candidates with the then lowest votes).
- (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under subsection (1) above into two parcels so that they are grouped as—
 - (a) ballot papers on which a next available preference is given, and
 - (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are returned as a councillor or are excluded from the list of candidates under this section).

- (3) The returning officer shall, in accordance with this section and section 5 above, transfer each parcel of ballot papers referred to in subsection (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) If, subject to section 7 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under subsection (1) above into parcels according to their transfer value.
- (5) The returning officer shall transfer those papers in the parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are returned as councillors or are excluded from the list of candidates under this section).
- (6) The vote on each transferable paper transferred under subsection (5) above shall be at the value at which that vote was received by the candidate excluded under subsection (1) above.
- (7) Any ballot papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (8) After the returning officer has completed the transfer of the ballot papers in the parcel of ballot papers with the highest transfer value he shall proceed to transfer in the same way the parcel of ballot papers with the next highest value and so on until he has dealt with each parcel of a candidate excluded under subsection (1) above.
- (9) If, after a transfer of votes under any provision of this section, a candidate has a surplus, that surplus shall be dealt with in accordance with subsections (4) to (8) of section 4 and section 5 above.
- (10) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (11) 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,
 subsection (12) below shall apply.
- (12) 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
 - (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.

7 Filling of last vacancies

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be returned as councillors.
- (2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be returned as a councillor.

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

8 Power to make further provision about local government elections

- (1) The Scottish Ministers may by order make provision as to—
 - (a) the conduct of elections of councillors, and
 - (b) the questioning of such an election and the consequences of irregularities.
- (2) Such an order may, in particular—
 - (a) make provision about the limitation of the election expenses of candidates.
 - (b) apply, with or without modifications or exceptions, any provision made by or under any enactment
- (3) The return of a councillor may be questioned only under Part III of the Representation of the People Act 1983 (c.2) as applied by an order under subsection (1) above.

9 Timing of reviews of electoral arrangements etc.

The Local Government (Scotland) Act 1973 (c.65) is amended as follows—

- (a) in section 16(2) (duty of Boundary Commission to carry out periodic reviews of electoral arrangements), after “Act” there is inserted “(as amended by section 9(c) of the Local Governance (Scotland) Act”;
- (b) in section 28(2) (review of electoral arrangements to be carried out in compliance with certain enactments), for “section 5 of the Local Government etc. (Scotland) Act 1994” there is substituted “section 1 of the Local Governance (Scotland) Act; and
- (c) in paragraph 1 (date of first review of electoral arrangements) of Schedule 5, for “1st April 1996” there is substituted “the day on which section 9 of the Local Governance (Scotland) Act comes into force”.

10 Repeals

- (1) In section 42 (conduct of local elections) of the 1983 Act, subsections (1), (2), (3), (4) and (7) are repealed.
- (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.

11 Interpretation of sections 1 to 10

In sections 1 to 10 above—

“continuing candidate” means any candidate not returned as a councillor and not excluded from the list of candidates under section 6 above;

“count” means all the operations involved in the counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of excluded candidates;

“local government area” shall be construed in accordance with section 1 (which provides that Scotland is to be divided into areas for the administration of local government) of the Local Government etc. (Scotland) Act 1994 (c.39);

“non-transferable vote” means a ballot paper on which no second or subsequent preference is recorded for a continuing candidate;

“next available preference” means a preference which is the second or, as the case may be, subsequent preference recorded 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 6 above being ignored);

“quota” has the meaning given by section 3 above;

“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 Representation of the People Act 1983 (c.2);

“surplus” means the number of votes by which the number of votes of first preference and any transferred votes for any candidate exceeds the quota (but, references in these sections to the transfer of the surplus means the transfer, at a transfer value, of all transferable papers from the candidate who has the surplus);

“stage of the count” means—

- (a) the determination of the first preference vote for each candidate;
- (b) the transfer of a surplus of a candidate returned as a councillor; or
- (c) the exclusion of one or more candidates at any given time;

“the 1983 Act” means the Representation of the People Act 1983 (c.2);

“transferable paper” means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;

“transferred vote” means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred;

“transfer value” means the value of a transferred vote calculated in accordance with subsection (3) or (6) of section 4 above.

Membership of local authorities etc.

12 Rules about disqualification of officers etc. from membership of local authority

- (1) In section 31 of the Local Government (Scotland) Act 1973 (c.65) (“the 1973 Act”), in subsection (1), paragraph (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, there is inserted—

“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 (other than the office of convener or depute convener) 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 shall terminate 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 there).
- (5) In subsection (4) above, the “local elections rules” means an order made under section 8(1) of the Local Governance (Scotland) Act.
- (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).”.

13 Reduction of age qualification for membership of local authority

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

14 Removal of higher salaried local government posts from politically restricted category

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), for the words from the beginning to “the”, where first occurring, there is substituted “posts”.

15 Prohibitions and restrictions on appointment of members and ex-members to local authority posts

- (1) For section 67 (members of local authorities not to be appointed as officers) of the 1973 Act there is substituted—

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

- (1) A person who is a member of a local authority shall be disqualified from being appointed by the authority to any paid office or employment (other than the office of convener or deputy 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 shall be disqualified—

- (a) for a period of 3 months beginning with the day on which the person so ceased from being appointed by the authority to any such office, employment or place of profit as is referred to in subsection (1) above and which is not a politically restricted post;
 - (b) for a period of 12 months beginning with that day from being so appointed to any such office, employment or place of profit as is there referred to and 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,
- shall, for the period of 12 months beginning on that day, be 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 section 2(1) (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 section.”.

Pay, pensions etc. of councillors

16 Pay, pensions etc. of councillors

- (1) The Scottish Ministers may, by regulations, provide for the payment by local authorities of remuneration 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 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;
 - (d) pension schemes are established or adapted for the purpose of making payments in that way;
 - (e) members of local authorities are enabled to contribute to pension schemes so established or adapted and, otherwise than under paragraph (c) above, to benefit from them.
- (3) The Scottish Ministers may, by order, modify this section.

17 The Scottish Local Authorities Remuneration Committee

- (1) There shall be a body, to be known as the “Scottish Local Authorities Remuneration Committee” (in this section and in section 18 below referred to as “the Committee”), having the functions set out in section 18 below.
- (2) The Committee shall have 7 members; they shall be appointed by the Scottish Ministers.
- (3) The Scottish Ministers shall appoint one of those members to be the convener of the Committee.
- (4) Before making any appointment under subsection (2) or (3) above, the Scottish Ministers shall consult such associations of local authorities and such other persons as they think appropriate.
- (5) The members of the Committee are entitled to payment from the funds of the Committee of such allowances as are fixed by the Scottish Ministers.
- (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 functions.
- (7) The Scottish Ministers may make grants to the Committee.
- (8) The procedure of the Committee is for it to determine.
- (9) The Committee is not to be regarded as a servant or agent of the Crown; nor its property that of or held on behalf of the Crown.
- (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.

18 Functions of Scottish Local Authorities Remuneration Committee

- (1) The Committee has the following functions—
 - (a) collecting information relating to the remuneration (including pensions) of and expenses incurred by members of local authorities;
 - (b) providing the Scottish Ministers with information and advice relating to those matters; and
 - (c) such other functions as are given to it by regulations made under section 16 above.
- (2) The Committee shall comply with any directions given to it by the Scottish Ministers as to the discharge of its functions.

General

19 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, supplementary, consequential, transitional or saving provision as the Scottish Ministers think necessary or expedient;
 - (b) different provision for different cases and for different classes of case.

- (3) A statutory instrument containing an order (other than an order made under section 16(3) above or section 20 below) or regulations made under this Act is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) No order may be made under section 16(3) above unless a draft of the statutory instrument containing it has been laid in draft before and approved by resolution of the Scottish Parliament.

20 Short title and commencement

- (1) This Act may be cited as the Local Governance (Scotland) Act.
- (2) This Act (except this section and section 19 above) comes into force on such day as the Scottish Ministers may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.