These documents relate to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005.

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Local Electoral Administration and Registration Services (Scotland) Bill introduced in the Scottish Parliament on 19 December 2005:
   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 52–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. 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.

THE BILL – PART 1: ELECTORAL ADMINISTRATION

Introduction

4. The overall objectives of the electoral administration provisions of the Local Electoral Administration and Registration Services (Scotland) Bill and related secondary legislation are to improve access to and participation at elections, enhance security and improve administrative effectiveness. The provisions will mirror some of those changes set out in the UK Electoral Administration Bill which the UK Government introduced on 11 October this year, which introduced changes to the administration and regulation of elections. These changes also link into the wider policy objective of reforming voting arrangements in order to increase participation as set out in the Partnership Agreement.

5. Discussions with Department for Constitutional Affairs on the provisions of the UK Bill have been conducted on the basis that the UK Bill should not extend to local government elections in Scotland in relation to devolved areas of responsibility. The UK Bill includes subjects that are reserved and which extend to all statutory elections and subjects that are considered as devolved as they relate to the conduct of elections. Those that relate to the conduct of elections do not extend to Scottish local government elections and it is those provisions that will be reflected partly through primary legislation in this Bill and partly in changes to the elections rules by secondary legislation.

Overview

6. The sections in Part 1:
   - introduce performance standards for returning officers in relation to elections
   - give returning officers and their staff powers to correct minor procedural errors
   - introduce provisions on the inspection and supply of local government election documents and allow for regulations to impose conditions on access to such documents and to charge for the provision. Non-compliance with the regulations will be a criminal offence
   - deal with the attendance of observers at elections
These documents relate to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005

- introduce new electoral offences and strengthen the range of existing offences in order to provide stronger deterrents to electoral fraud
- deal with matters relating to election expenses
- make a number of miscellaneous amendments linked to the procedure at elections involving voters who are registered anonymously
- deal with the piloting of personal identifiers at local government elections in Scotland
- introduce a number of miscellaneous changes covering tendered votes, election campaigns and proceedings, details to appear on election publications, the timetable for local government elections, providing election documents in different formats and languages and a number of consequential amendments to existing legislation.

Section by section

Performance of local authorities in relation to elections etc.

Section 1 Setting of performance standards
7. Section 1 enables Scottish Ministers to set and publish performance standards for returning officers relating to the administration of a local government election. After they are published the performance standards must be laid before the Scottish Parliament.

Section 2 Returns and reports on performance standards
8. Section 2 enables Scottish Ministers to direct returning officers to submit reports regarding their level of performance against the standards set under section 1. Ministers are required to specify to whom the direction is issued and may also specify the elections to which the report relates and the form in which the report is to be provided. It further enables Ministers, upon receipt of such reports, to publish assessments of the level of performance of the returning officer (or officers) against the standards set.

Section 3 Correction of procedural errors
9. This section allows returning officers to correct errors or omissions that arise during the preparation for and conduct of elections. These errors and omissions are those made by those administering the elections and those supplying goods and services to the administrators. The provisions of this section do not allow a returning officer to re-count votes at an election after the result has been declared. Subsection (4) provides that a returning officer will not be guilty of the offence of breach of official duty set out in section 53 of the Representation of the People Act 1983 if the act or omission causing the breach of official duty is remedied in full.

Access to election documents

Section 4 Access to election documents
10. This section provides for access to election documents and gives Scottish Ministers a power to make regulations to impose conditions on that access and to charge for it.
11. Subsection (2) imposes requirements on the proper officer who holds documents for local government elections in Scotland to make them available for public inspection. The meaning of the term “proper officer” is set out in section 6 below. Subsection (3) identifies who can request copies of the register and the list of proxies marked to show who has been issued with a ballot paper in a polling station, and the marked lists of postal and postal proxy voters who returned their ballot papers.

12. Subsections (4) to (8) contain regulation-making powers and define what the regulations may or may not provide. The regulations may impose conditions on the inspection and supply of documents, how they are supplied and whether they are subject to payment of a fee, making copies of the documents, the purposes for which the information in the documents is to be used and the disclosure and supply of the documents to another person or use of the information for a different purpose than the one for which the documents were originally provided.

Section 5 Access to election documents: contravention of regulations

13. This section creates an offence of contravening regulations governing access to post-election documentation. The maximum penalty for those found guilty on summary conviction is a fine of £5,000. Subsection (1) provides that any person who breaches any of the conditions set out in regulations made under section 4 is guilty of an offence. Subsection (2) provides that it is a separate and unconnected offence to be an appropriate supervisor of a person who breaches any of these conditions but subsection (2)(b) provides a statutory defence if the supervisor takes steps to stop the breach of conditions. Subsection (3) provides that a person who would otherwise have committed an offence under subsection (1) is not guilty if he has followed the supervisor’s instructions. Subsection (4) provides that a person who is unsupervised and who breaches conditions is not guilty of an offence if he has taken all reasonable steps to comply with the conditions. Subsection (5) sets out the meaning of the terms “appropriate supervisor” and “appropriate steps” in relation to this section.

Section 6 Access to election documents: supplementary

14. This section defines some of the terms used in section 4. It sets the meaning of the “proper officer” at subsection (2); “registered party” is defined with reference to Part 2 of the Political Parties, Elections and Referendums Act 2000 (c.41) (“the 2000 Act”) and the definition of “local government area” is that detailed in section 204(1) of the 1983 Act. The remaining terms are to be interpreted in a manner consistent with the interpretation they bear in the local government rules (The Scottish Local Government Elections Rules 2002 no. 457). Subsection (10) refers to the order-making power in section 3(1) of the Local Governance (Scotland) Act 2004 which replaces the power under section 42 of the 1983 Act to make provision for the conduct of Scottish local government elections. The current local government rules were made under section 42 and transitional provisions may be used to relate subsection (10) to the current rules.

Observers

Section 7 Observers: individuals

15. This section allows for individual observers, over the age of 16, to apply to attend and observe certain proceedings at a local government election. Such proceedings that may be
observed are the issue and receipt of postal votes, the poll and the count. Applicants will need to apply to returning officers for permission to attend the proceedings in question and returning officers will have the power to refuse or revoke an application and must give the reasons for their decision in writing.

Section 8 Observers: organisations

16. This section allows organisations to apply for nominated members to attend and observe those same proceedings which an individual observer may attend. Applicants will need to apply to returning officers for permission to attend the proceedings in question and returning officers will have the power to refuse or revoke an application but they must give the reasons for their decision in writing.

Section 9 Code of practice on attendance of observers at elections etc.

17. This section requires Scottish Ministers to prepare and publish a code of practice to regulate the processes involved in applying for access as an observer and determining applications and any subsequent revocations of permissions for access.

False information

Section 10 False information in applications relating to absent voting

18. This section inserts a new section 13CA of the Representation of the People Act 1983 to provide that it will be an offence to give false information in connection with an application for a postal or proxy vote at a local government election in Scotland. Section 13CA(3) states that in relation to a signature, “false information” means a signature which is not the usual signature of the person, or was written by a person other than the person whose signature it purports to be.

Section 11 False information in nomination papers etc.

19. This section inserts a new section 65B of the 1983 Act. Subsection (2) provides that a person will be guilty of a corrupt practice if he knowingly causes or allows a document to be supplied to a returning officer for use at an election if:

(a) it contains a false statement of the name or home address of a candidate at the election

(b) it contains anything which claims to be the signature of an elector who is proposing, seconding or assenting to the nomination of a candidate but which he knows was not written by the elector or which was not written by the elector for any of those purposes.

Subsection (3) provides that it shall be a corrupt practice at a local government election in Scotland to make knowingly a false statement in the consent to nomination given by the candidate. The following would constitute a false statement:

(a) an erroneous date of birth

(b) an incorrect statement that a candidate is or will be qualified for election or that to the best of their knowledge and belief they are not disqualified, and
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(c) an incorrect statement that a candidate is standing as an independent and has not been selected or authorised to stand in the name of or on behalf of any registered party, organisation or other person.

20. Certain offences under the 1983 Act are designated “corrupt practices” which are offences created by the 1983 Act and which are punishable by the criminal courts. These include bribery, treating, undue influence and personation.

Offences relating to voting

Section 12 Undue influence

21. Section 12 amends section 115 of the 1983 Act (undue influence) and addresses attempts by persons to exert undue influence that do not prove to be successful. The amendment will remedy the fact that intended but unsuccessful attempts at preventing the free exercise of the franchise or prevailing upon an elector to vote or to refrain from voting may not at present amount to the corrupt practice of undue influence.

Section 13 Offences relating to applications for postal and proxy votes

22. Section 13 inserts a new section 62B of the 1983 Act which provides that it will be both a corrupt practice and a criminal offence to do certain acts in connection with applications for a postal or proxy vote with the intention of gaining certain specified advantages. Where by virtue of the new offences provisions in the Bill, a person is guilty of either a corrupt practice or an illegal practice, the consequences of committing such a practice are set out in sections 158 to 160 of the Representation of the People Act 1983. Section 160(4) of that Act, however, provides that a candidate or other person reported by an election court as personally guilty of a corrupt or illegal practice shall, for the relevant periods that are set out in section 160(5), be incapable of being registered as an elector or voting at UK Parliamentary elections or any local government election in Great Britain, of being elected to the House of Commons, or of holding other elective office. As elections to the UK Parliament and the franchise at local government elections are matters reserved to the UK Parliament, and as the Bill itself does not specify that these penalties in such reserved areas will apply where a person is guilty of a corrupt or illegal practice, these penalties stated in section 160(4) will not apply as a consequence of the Bill.

23. Section 160(4A) of the 1983 Act provides that the bar on being registered as an elector or voting, contained in section 160(4)(a)(i) as above, only applies to those found guilty of a corrupt practice under section 60 or of an illegal practice under section 61 (personation/other voting offences.) It will be a matter for consequential modification, by order, so that it would be proposed that section 160(4A) of the 1983 Act would insert a reference to the new section 62B for Scottish local government elections. This would have the effect that the bar contained in section 160(4A) would also be a consequence of where an offence is committed under the new section 62B.

24. Sections 168 to 173 of the 1983 Act deal with prosecutions for corrupt or illegal practices. Matters challenging the outcome or conduct of an election on petition would go before an election court. Matters dealing with criminal matters such as fraud would go before the appropriate criminal court in Scotland. If found guilty on a criminal prosecution, a person may be imprisoned for up to two years and fined.
25. Sections 62B(2) and (3) outline the intentions and the acts that must be proved in order to establish that the offence has been committed. Section 62B(2)(b) specifies that the intention that must be proved is that the person intended to deprive another of the opportunity to vote, or intended to gain a vote to which the person was not entitled, or intended to make some other financial gain.

26. Section 62B(3) gives details of the acts that underpin the offence. These include the applicant pretending to be another elector, or making any other false statement in an application for a postal or proxy vote. It also covers the applicant causing the diversion of communications from the entitled elector or preventing their delivery.

**Election expenses**

**Section 14 Prohibition of expenses not authorised by election agent**

27. Section 14 inserts a new section 75A of the 1983 Act which deals with the prohibition of election expenses incurred by a third party and re-enacts section 75 of that Act (so far as it applies to Scottish local government elections) with certain amendments to clarify the effect of an earlier amendment to section 75(1) of the 1983 Act by section 131 of the 2000 Act. The intention of the earlier amendment was to allow a third party to incur expenses up to the permitted sum (see paragraph 28 below) but the drafting gave rise to concerns about the circumstances to which this applied, in particular there was some doubt as to whom section 75 applied.

28. The amendments made by section 75A, with the exception of subsections (2), (12) and (13), are to be taken as having effect from 16 February 2001 (section 14(3)). The date of 16 February 2001 is the date when previous amendments made to section 75 of the 1983 Act by the 2000 Act came into effect. Section 131 of the 2000 Act increased the amount of expenditure that may be incurred by a third party who is campaigning for or against a candidate at an election. This was as a result of a ruling by the European Court of Human Rights in Bowman v UK which found the previous limit of £5 to be in violation of an individual’s right to freedom of expression. A new limit of £500 was set for parliamentary elections and a formula for local government elections was also inserted. Section 131 gave effect to these changes and allowed a third party to incur expenses up to the permitted sum on promoting or procuring the election of a candidate through any of the means listed in section 75(1)(a) to (d). However, there was scope for confusion in that it was possible to interpret section 75(1) to apply only to the circumstances detailed in section 75(1)(c) and (d). Section 14 seeks to remove the possibility for confusion and to clarify the provision.

29. As this section is designed to address a mismatch between the way in which section 75 has, to date, been interpreted and the intended effect of section 75, it is applied retrospectively to the date when the original limits were increased. The effect is that, while retrospective, the amendment will not place in jeopardy of prosecution anyone who was not already in such jeopardy and, because of the increased limit of permitted expenditure, could potentially remove individuals from such jeopardy. Also, as it will narrow the class of conduct which will constitute a breach of section 75, less people will be capable of being prosecuted under it.
30. Subsection (2) of section 75A provides that no expenses, with a view to promoting or procuring the election of a candidate at an election, shall be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account of:

(a) holding public meetings or organising any public display;
(b) issuing advertisements, circulars or publications;
(c) otherwise presenting to the electors the candidate or his views, or the extent or nature of his backing, or disparaging another candidate.

31. A breach of subsection (2) will amount to a corrupt practice in terms of subsection (7).

32. Subsection (3) provides that subsection (2)(c) will not restrict the publication of any matter relating to the election in a newspaper, a broadcast made by the BBC or a programme made under the appropriate Broadcasting Acts.

33. While subsection (2) specifies who can incur expenditure, by way of exception, subsection (4) provides that a third party campaigning for or against a candidate at a local government election in Scotland may incur expenditure up to a maximum of £50 together with an additional 0.05p per elector ("the permitted sum" – as defined in subsection (5)).

34. The effect of subsection (2) of the new inserted section 75A, read along with section 75A(12), is to provide that expenditure incurred by a third party will count against a candidate's election expenditure if it is incurred in the "relevant period", namely:

(a) the period of four months ending with the date of the poll in respect of a local government election (other than a local by-election); and
(b) the period starting with the day the vacancy occurs and ending with the date of the poll in respect of a local by-election.

35. Subsection (6) makes provision requiring returns of expenses, a declaration verifying the return and details of authority received from the election agent to be delivered to the appropriate officer within 21 days after the result of the election is declared. Failure to do so will constitute an illegal practice in terms of subsection (8).

36. Where a person is convicted of a corrupt practice (under subsection (7)) or an illegal practice (under subsection (8)), the court may, if it considers it just to do so, mitigate or entirely remit any incapacity incurred. Further, where the corrupt or illegal practice is the result of an agent acting without the candidate's consent or connivance, the candidate is not liable for the actions of the agent, nor is his election void by reason of the agent's corrupt or illegal practice (subsection (10)). Subsection (11) makes provision for corrupt or illegal practices committed by an association or body of persons, whether corporate or unincorporated.

37. Subsection (13) provides that, for the purposes of subsection (2), where third party expenditure has been incurred before the relevant period, the expenditure is to be treated as having been incurred during the relevant period if it is incurred in connection with anything...
which is used or takes place during the relevant period. Subsection (13)(b) provides that it is
inmaterial whether at the time the expenditure is incurred it is known who will be a candidate at
the election.

**Section 15  Meaning of election expenses for purposes of the 1983 Act**

38. Section 15 repeals sections 90A (meaning of election expenses) of the 1983 Act and 90B
(incurring of election expenses) and inserts a new section 90ZB which provides that "election
expenses" in relation to a candidate at a local government election in Scotland means any
expenses incurred at any time in respect of any matter specified in Part 1 of Schedule 4B
(inserted by the schedule to this Bill – see below), which is used for the purposes of the
candidate's election during the relevant period. The new section also defines the "relevant
period" as per section 75A(12) as inserted by section 14. The modification in subsection (2) is
consequential to the insertion of the new section 90ZB.

39. Parts 1 and 2 of the new Schedule 4B list those items qualifying as election expenses and
those that are excluded. Part 3 of the Schedule also empowers Scottish Ministers to amend Parts
1 and 2 of the Schedule by order. An order made under this provision must be laid before the
Scottish Parliament and is subject to the affirmative resolution procedure.

**Section 16  Financial limits applying to candidates’ election expenses**

40. This section amends provisions in the 1983 Act and the Political Parties, Elections and
Referendums Act 2000 dealing with financial limits applying to candidates’ election expenses.
Subsection (1) amends section 76(4) of the 1983 Act to provide that the register of electors to be
used when calculating candidates’ expenses is the one in existence on the first day of the
“relevant period” (as defined by the new section 90ZB(6) (inserted by section 15 of this Bill)) in
which a candidate’s expenditure will count towards those limits. Subsection (3) provides that the
amendment made by subsection (1) applies to section 76(4) only insofar as it applies to a local
government election in Scotland.

41. Subsection (2) removes subsection (6) of section 132 of the 2000 Act and extends, in
relation to local government elections in Scotland, some of the changes made by that section to
section 76 of the 1983 Act. Section 132(2) inserts a new section 76(1) and the effect is to align
this provision with the new definition of election expenses inserted in section 90A by section 134
of the 2000 Act. Section 132(4) inserts new subsection (1B) into section 76 which re-casts the
criminal offence of exceeding the election expenses limit so that it is in similar terms to parallel
offences created by this Act in respect of, for example, campaign expenditure by political parties.

**Section 17  Return as to election expenses**

42. This section amends section 81(3) of the 1983 Act which provides that a return giving
details of all the election expenses incurred by or on behalf of the candidate and payments made
by the elections agent has to be submitted within 35 days of the declaration of the result of the
election. Subsection (3) is only repealed insofar as it relates to Scottish local government
elections and is replaced with a new sub-section (4A) which allows greater flexibility in
prescribing the form in which information on election expenses should be presented without
reducing the amount of information that has to be provided.
43. New subsection (4A) allows Scottish Ministers greater flexibility in prescribing the information required and the form in which it is presented. An order made under this provision must be laid before the Scottish Parliament and is subject to the affirmative resolution procedure.

Anonymous entries

Section 18 Anonymous registration: miscellaneous amendments

44. This section provides for a number of miscellaneous amendments to the 1983 Act and the Representation of the People 2000 Act linked to the procedure at elections involving voters who are registered anonymously. These include procedures for the sending of electoral registration material by post to voters registered anonymously, the exclusion of any person who is registered anonymously from presenting a petition questioning a local government election in Scotland and procedures involving absent voting. The provisions referred to are prospectively inserted into the 1983 and 2000 Acts by the UK Electoral Administration Bill and do not currently apply to Scottish local government elections. This section will extend those UK Bill provisions (when enacted) so that they apply also to Scottish local government elections.

Personal identifiers

Section 19 Personal identifiers: piloting etc.

45. The UK Electoral Administration Bill extends the use of personal identifiers when registering to vote and when voting. Subsection (1) inserts a provision in the 1983 Act to replicate for Scottish local government elections subsection (10) of the new section 13E of the 1983 Act inserted by the UK Bill and provides that, for the purposes of any provision made in connection with the conduct of elections under section 3(1) of the Local Governance (Scotland) Act 2004, the list of personal identifiers mentioned in that section is a special list prepared for those elections.

46. The use of personal identifiers will be piloted before full roll-out and subsection (2) deals with issues relating to the piloting of personal identifiers at local government elections in Scotland. Section 5 of the Scottish Local Government (Elections) Act 2002 is amended so that the use of personal identifiers can be piloted for Scottish local government elections. Personal identifiers are defined as meaning the person’s signature, his date of birth, or such information as the Scottish Ministers may prescribe by statutory instrument.

47. Orders made under section 5 of the 2002 Act must make such provision for and in connection with the implementation of the proposed scheme as are considered appropriate and may include provisions which modify or disapply any enactment. Such orders are not subject to Parliamentary procedure.

Miscellaneous

Section 20 Tendered votes in certain circumstances

48. Subsection (1) inserts a new subsection (6B) into section 61 of the 1983 Act, which relates to certain voting offences.
49. The new provision excepts from the scope of voting offences an elector who discovers, upon attending his polling station, that he has without his knowledge been included on the list of postal voters or postal proxy voters who may not vote in person at a polling station. It will be possible for such a voter to be issued with a tendered ballot paper at a polling station before the close of voting where the deadline for requesting a replacement postal ballot paper has expired.

50. The elector will be allowed to mark a tendered ballot paper if their answer satisfies the presiding officer that they have lost or not received their postal ballot paper. A person who votes at a polling station when entitled to vote by post is not guilty of a voting offence if the vote cast is a tendered ballot paper. Similarly, a person who votes in person as a proxy for another elector when entitled to vote as a postal proxy, is not committing an offence when voting by a tendered ballot paper.

51. Subsection (2) makes two amendments to Schedule 4 of the Representation of the People Act 2000. The insertion of paragraph 2(6B) of the Schedule removes the prohibition on absent voters voting at a polling station. The effect is that paragraph 2 does not apply to voters casting a tendered ballot paper in the circumstances referred to above. Similarly, the insertion of paragraph 7(11) means that paragraph 7 of Schedule 4 does not prohibit postal proxies casting a tendered vote at a polling station in the circumstances referred to above.

Section 21 Election campaign and proceedings: miscellaneous amendments

52. This section makes a minor amendment to section 81 of the 1983 Act dealing with the return as to election expenses by providing that any reference to the Electoral Commission is to be read as if it were a reference to the Scottish Ministers (subsection (1)). Subsection (1) is consequential on subsection (2) in that it makes a further modification of one of the amendments which is extended to Scottish local government elections by subsection (2).

53. The paragraphs in Schedule 18 to the 2000 Act which are now applied to local government elections in Scotland by virtue of subsection (2) update provisions in the 1983 Act or omit those that are out of date and no longer serve a useful purpose. The Schedule 18 provisions principally amend sections in Part V of the 2000 Act, dealing with control of campaign expenditure. Amendments are made to sections 72 (campaign expenditure), 73 (notional campaign expenditure), 74 (officers of registered party with responsibility for campaign expenditure), a new section 74A is inserted, 78 (disputed claims), 81 (auditor’s report on return), 82 (delivery of returns to Commission), 89(1) (register of notifications for purposes of section 88), and 90 (restriction on incurring controlled expenditure). Sections 79(3) (limits on campaign expenditure), 101 – 105 (dealing with referendums) and 108 (Designation of organisations to whom assistance is available) are deleted.

Section 22 Details to appear on election publications

54. This section repeals section 110 of the 1983 Act, so far as it applies to Scottish local government elections, covering the details to appear on election material and replaces it with a new section 110A. The new section 110A has the effect of introducing for local government elections in Scotland the amendment made by paragraph 14 of Schedule 18 to the 2000 Act. It widens the scope of the original section 110 by extending whose details are to be provided on the election publication and does this by replacing the term “publisher” with “promoter” and by
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providing that the name and address of any person on behalf of whom the material is being published (and who is not the promoter) are to be provided on the election publication.

Section 23 Repeal of reference to Maundy Thursday

55. This section removes Maundy Thursday from the list of days that are to be disregarded for the purposes of calculating the timetable for local government elections.

Section 24 Translations etc. of certain documents

56. This section inserts a new section 199C of the 1983 Act which allows returning officers at Scottish local government elections and their staff to make election documents (other than a nomination paper or ballot paper), which are displayed or given to voters, available in graphical format, Braille or a language other than English.

Section 25 Miscellaneous amendments

57. This section makes a number of minor amendments to the 1983 Act. Subsection (1)(a) amends the offence provision in section 65 (tampering with nomination papers, ballot papers etc.), insofar as it applies in relation to a local government election in Scotland, to add a reference to the new form of postal voting statement which will be used in place of the current declaration of identity. Subsection (1)(b) amends section 66 (requirement of secrecy of those persons attending the poll and counting of votes) and adds a reference to a unique identifying mark used on the back of any ballot paper to those items about which information is not to be communicated.

58. Subsection (2) amends section 173A (incapacity to hold public or judicial office in Scotland) and removes the restriction imposed by paragraph 104 of Schedule 1 to the UK Electoral Administration Bill. This has the effect of extending to the office of councillor for a local government area in Scotland the provisions of section 173A which set out that a person convicted of a corrupt practice is prevented from holding public or judicial office in Scotland for a period of five years starting from the date of his conviction or, if holding such office, shall vacate it from that date. Subsection (3) amends Schedule 2 of the 1983 Act (provisions which may be contained in regulations as to registration etc.) and inserts a new paragraph 12A which provides that regulations made in relation to local government elections in Scotland may also make provision authorising the cancellation or removal of ballot papers at such an election in any prescribed circumstances.

Section 26 Interpretation of Part 1

59. The section deals with the interpretation of terms used in Part 1.

THE BILL – PART 2: REGISTRATION SERVICES

Introduction

60. The main objective of the registration services provisions in the Bill is to improve the registration service in Scotland, both for people registering births, deaths and marriages and for other users of registration information.
61. The registration service is a partnership between the Registrar General’s department – the General Register Office for Scotland (GROS), which is part of the devolved Scottish Administration – and the 32 local councils. Registrars are employees of local authorities, which are responsible for pay and conditions and for accommodation, but their registration work is governed by instructions and guidelines set by the Registrar General within the existing legislative framework. The registration of births, deaths and marriages in Scotland operates under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 – “the 1965 Act”. Arrangements for marriage preliminaries and the solemnisation of civil marriages are governed by the Marriage (Scotland) Act 1977. Arrangements for civil partnership preliminaries and the registration of civil partnerships are governed by the Civil Partnership Act 2004. The Bill does not change that basic framework.

Overview

62. The sections in Part 2:

- bring registration district boundaries into line with council boundaries and allow more flexible opening hours for registration offices
- allow births and deaths to be registered anywhere in Scotland and allow registrars, as well as the Registrar General, to handle applications for the re-registration of births
- pave the way for wider use of electronic processes, including allowing registrations to be initiated on-line, for the registers to be held electronically rather than in paper form and for contemporaneous electronic checking of the registers by GROS instead of the current annual physical examination
- allow the registration service, at the request of the citizen, to notify registered events to third parties such as solicitors, insurance and pension firms (and to notify deaths at others’ request)
- make it easier to correct certain errors in the registers, allow an official change of name to take place at an earlier stage and provide that only persons with parental responsibilities may apply to the Registrar General to change the name of a child
- introduce a new offence of giving false information to the Registrar General
- simplify the arrangements for registering marriages and civil partnerships
- establish a “Book of Scottish Connections” in which people throughout the world with a Scottish connection can arrange for a birth, death or marriage to be recorded, as part of their family history records in Scotland
- allow the Registrar General to provide registration information to any public body or office holder, to keep a central population register for NHS and Local Authority purposes and to clarify the powers of district registrars to release records held by the Registrar General.
These documents relate to the Local Electoral Administration and Registration Services
(Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005

Section by section

Reorganisation of local registration services

Section 27 Registration districts and authorities

63. At present, there are 230 Registration Districts (RDs) in Scotland. The RD sometimes matches the area covered by one of the 32 local councils (a large example is the City of Glasgow; a smaller one is Clackmannanshire). More often, the local council is responsible for more than one RD. In some cases, for historical reasons, a single RD may overlap a council boundary and include the territory of 2 or more councils. It may not always be obvious to the citizen where the birth of a baby should be registered or in which RD the death of a relative has occurred. Subsection (2) therefore amends the 1965 Act by providing that each local authority area will be a registration district and that the relevant local authority will be the local registration authority. Subsection (3) repeals the current provision for a local authority or local authorities to alter the boundaries of their registration districts – in future these will simply be the local authority area. Subsections (4) to (6) make changes to the administrative provisions on senior and district registrars and other staff, registration offices and area repositories in the 1965 Act which are consequential on the changes in subsections (2) and (3).

Section 28 Registration offices: opening times

64. At present, under section 8(3) of the 1965 Act, all the registration offices in an RD must have the same hours of business. This has made it more difficult for councils to run local offices, because they must be open throughout normal working hours even if there is little demand. This could become a greater problem when the entire council area is a single RD. Section 28 therefore amends the 1965 Act to allow the local registration authority to set different opening hours for different registration offices, subject to the approval of the Registrar General.

Registration of births and deaths

Section 29 Registration of births

65. At present, the family has the option of registering a birth in the RD where the birth occurred or – if this is different - in the RD where the mother is usually resident. This option is important where a mother is well enough to take her new baby back to her home in another area after only a day or two in hospital, perhaps before the baby’s name is decided on. The 2 district registrars make appropriate cross-indexing arrangements, so that the birth-entry can readily be found. Computer links now allow this option to be extended to allow the birth to be registered in any Scottish RD, which may be more convenient in today’s highly mobile society. Subsection (2) therefore amends the 1965 Act to specify that every child born in Scotland must be registered in the birth and still-birth registers to be kept by district registrars – but dispenses with the existing restrictions on the choice of RD in which the birth must be registered.

66. Subsection (3) amends section 14 of the 1965 Act, by removing the requirement that a person registering the birth must attend personally at the registration office and sign the register in the presence of the registrar. This paves the way for registration of births to be initiated electronically. Birth or death registration by internet could be more convenient to the family than the present face-to-face interview with the registrar. Births are not required to be registered electronically, because many people value the help of the registrar. But personal attendance will
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No longer be obligatory - for electronic registration which is not face to face the opportunity for fraud will be reduced by taking advantage of advances in NHS information services, which would allow details of births and deaths to be independently corroborated before the registration of the event was finalised.

67. Subsection (4) amends section 15 of the 1965 Act, which concerns abandoned infant children, to reflect the changes described in paragraphs 65 and 66. Subsection (5) amends the registrar’s power under section 16 of the 1965 Act to obtain information concerning a birth, to reflect the same changes.

68. Subsection (6) adds 2 new sections to the 1965 Act. Both are designed to pave the way for electronic registration of birth. The first obliges NHS Health Boards to provide to the Registrar General information about every birth in their area – and for the Registrar General to make these details available to the district registrars. The second requires the district registrar, once corroborative information has been received from the health service, to complete the registration of a birth which has been initiated electronically as described in paragraph 66 above.

69. Section 17 of the 1965 Act prohibits registration more than 3 months after the birth without the written authority of the Registrar General. Subsection (7) amends section 17 to enable the Registrar General to authorise electronically the late registration of a birth. Subsection (8) amends section 18 of the 1965 Act, which provides for the registration of children born to unmarried parents, in order to reflect the changes described in paragraphs 65 and 66.

Section 30 Registration of still-births

70. Section 21 of the 1965 Act makes provision for where a still-birth may be registered (applying unless otherwise provided for in section 21 the same rules as for a birth - as described in paragraph 65). It also provides for the certification of a still-birth and for the certification of registration of a still-birth. Section 30 makes minor amendments to section 21 including for documents to be attested, rather than signed, to pave the way for electronic registration of still-births.

Section 31 Re-registration of births

71. Section 31 amends sections 20 and 54 of the 1965 Act. Section 20 allows the Registrar General to authorise the re-registration of a birth in the case of any person, if:

(a) the entry relating to him in the register of births is affected by any matter contained in the Register of Corrections Etc. respecting his status or parentage or non-parentage, or

(b) the entry relating to him in the register of births has been so made as to imply that he was found exposed, or

(c) the entry relating to him in the register of births has been so made as to imply that his parents were not then married to one another and his parents have subsequently married one another.

72. Section 31 allows registrars, in certain circumstances, to handle applications for the re-registration of births in addition to the Registrar General. It does so by empowering the
Registrar General to prescribe cases or classes of case where a birth may be re-registered. The Registrar General would prescribe cases by regulations contained in a statutory instrument made under section 54 of the 1965 Act, but which would be subject to negative resolution by the Parliament.

73. The Registrar General plans to use this power to authorise local registrars to re-register a birth where:

- the parents have subsequently married, paternity has previously been acknowledged by statutory declaration or a court decree and the child’s father’s details are already recorded;
- paternity has been shown in the Register of Corrected Entries, the applicant is the child’s mother who has parental responsibilities and is also the qualified informant;
- the child has died, details are missing from the child’s birth entry and the responsible parent wants to include either the father’s details or the parents’ marriage; or
- the child is still-born and the parents apply to re-register the child’s still-birth to include either the father’s details or the parents’ subsequent marriage.

Section 32 Registration of deaths

74. Subsections (2) to (3) and (5) to (7) amend the 1965 Act provisions about the registration of deaths, in the same way that section 29(2) to (7) amends the provisions on the registration of births – see paragraphs 65, 66, 68 and 69 above.

75. Subsection (4) reflects the creation of a single registration district for each local authority area and paves the way for electronic registration by making minor amendments to section 24 of the 1965 Act, which provides for a medical certificate of cause of death.

76. Section 27 of the 1965 Act provides for a free certificate of registration of death for use by the person having charge of the place of interment or cremation. It also makes provision for the person having charge of the place of interment to notify the registrar where a burial has taken place without a certificate of registration of death. Subsection (8) makes minor consequential amendments to existing provisions as a result of the provisions in section 32 that enable a death to be registered anywhere in Scotland.

Registration information

Section 33 Registers kept by district registrars

77. Since 1855, identical “master copies” of every register of births, deaths and marriages have been held locally and in Edinburgh. GROS, having in the 1990s completed the electronic indexing of all the registers, has recently completed a project to provide a digital image of every register page, linked to the searchable electronic indexes. This gives registrars throughout Scotland access through a secure computer network to the indexes and to the digital image of any register page. The paper register, however, remains the authoritative source. Subsection (2) would allow the Registrar General to allow the registers to be kept in electronic rather than in paper form.
78. To ensure the accuracy of register entries, the registers are inspected by “District Examiners” nominated by the Registrar General under section 34 of the 1965 Act. The District Examiner visits each registration district once per year, and checks the previous year’s register entries. Subsection (3) substitutes new wording for the existing section 34 allowing the District Examiner to examine the electronic version of the register continuously throughout the year instead of by an annual visit – in order to identify and correct any errors more swiftly.

79. Subsection (4) repeals section 35 of the 1965 Act, which allows the Registrar General to copy the paper registers once submitted to him. This would be unnecessary once the electronic register comes into force. Subsection (5) is consequential.

80. Subsection (6) adjusts the District Examiner’s power to correct errors in the registers, to reflect the introduction of electronic registers.

Section 34 Indexing of registers and provision of registration information

81. This section takes advantage of the flexibility of electronically-available registration information to provide for new registration services.

82. Subsection (2) repeals section 37 of the 1965 Act, which is superseded by other provisions in this section (see paragraph 88 below). Section 37 at present requires the district registrar to draw up an alphabetical index of registered entries, to search the indexes on request and to issue extracts of any entry which the applicant may require (subject to the consent of the Registrar General for extracts from the still-birth registers).

83. Subsection (3) amends section 38 of the 1965 Act, to delete a requirement on the Registrar General to keep alphabetical indexes in the General Register Office – which is redundant with the introduction of electronic indexes.

84. Subsection (4) replaces sections 39 and 40 of the 1965 Act with 5 new sections. Section 39 is concerned with the process of producing paper extracts from the register, which is redundant now that extracts are produced electronically, and section 40 with the issuing of abbreviated birth certificates (which is superseded by new section 39E).

85. New section 39A allows the Registrar General, for a fee to be prescribed by regulations, to give official notification of a birth, death, marriage or change of name to nominated private-sector bodies (insurance firms, banks, solicitors, utility firms etc). This is a new service. It would require to be triggered by a qualified informant (in the case of a birth or death), a party to a marriage or, in the case of a change of name, the person concerned or (for a child) a person who has parental responsibilities. The request for this service would most likely be made to the district registrar when registering a birth or death or when submitting notice of intention to marry.

86. New section 39B allows third parties to ask the Registrar General to notify them of the death of a person if and when it occurs in Scotland, in return for a fee to be prescribed by regulations. Such requests might be made individually or relate to batches of names. This would enable for instance pensions or insurance firms to check whether pensioners or annuitants
had died. The provision makes the existing “particular search” process, which is open to any member of the public on payment of a prescribed fee, more automatic.

87. New section 39C authorises the operation of electronic arrangements to provide information to district registrars. It requires the Registrar General to provide to district registrars throughout Scotland the images of all Scottish register entries (including divorce records and pre-1855 parish registers not currently available to them), together with an alphabetical index. It gives the Registrar General flexibility to provide copies in the way which best suits the needs of the area concerned – on paper or in digitised form.

88. New section 39D similarly updates the powers under which district registrars search the indexes and issue extracts of events in return for payment of a fee. It replaces section 37 of the 1965 Act and paves the way for local authorities to provide family history research centres.

89. New section 39E makes provision for issuing abbreviated extracts, replacing section 40 of the 1965 Act. In addition, it introduces an abbreviated extract from the death register. The 1965 Act does not allow the issue of an abbreviated extract from the death register, as can be issued for births under section 19 of the Act. A paper extract from the register of deaths shows the full entry on the page of the public register, omitting nothing. In some circumstances, the deceased’s executors may wish to have an official document attesting to the fact and date of the death, but leaving out (possibly embarrassing) details of the cause of death. The new abbreviated extract from the death register could be used for purposes such as closing a bank account where the bank manager has no need to know the cause of death of the account-holder.

90. Subsection (5) replaces section 41 of the 1965 Act (which deals with the authentication of extracts and their admissibility as evidence) with 2 new sections. The changes are consequential on new sections 39A and 39B. Subsection (6) makes a similar consequential change to section 44 of the 1965 Act, removing wording superseded by new section 39E. Subsection (7) similarly amends section 53 of the 1965 Act, removing words superseded by the replacement of section 41 of the 1965 Act by new sections 41 and 41A.

Section 35 Correction of errors in registers

91. Section 42(2) of the 1965 Act enables a registrar to correct any clerical errors in entries in the birth and death registers, from the faulty transcription of particulars provided by an informant. The registrar may also correct other errors that are prescribed by the Registrar General. If the error is discovered after the entry in the registers has been signed, then the error may still be corrected – but only within 7 days and in the presence of the informant. A similar provision in section 42(3) relates to the correction of errors in the marriage register due to faulty transcription of particulars from a Marriage Schedule. The correction can be made within one month of the date of registration, provided that no extract containing the information has been issued.

92. These rules place unrealistic prohibitions on the registrars. It can also be inconvenient for the informant to go to the registration office simply to witness the correction of what could be a trivial error (e.g. “McKenzie” entered as “MacKenzie”). Subsection (2) allows registrars to correct errors of transcription or other prescribed errors without the informant being present or without the restriction, in relation to marriages, for there to have been no extract issued. In cases
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where a more significant error is discovered, the other provisions in section 42 of the 1965 Act would continue to apply.

93. Subsection (3) provides for the correction of an error in the pre-1855 registers kept by individual parishes. It allows the Registrar General to take into account suitable electronic evidence that an error has been made, as well as written evidence.

Section 36 Recording change of name or surname

94. Section 43(3)(a) of the 1965 Act at present allows the registration of a new baptismal name if, within 12 months of the birth, the child’s name is changed, or given, in baptism. That has the unintended side effect of allowing a mother or father to change a child’s name through baptism without the knowledge or agreement of the other parent. This could allow the ceremony of baptism to take precedence over parental responsibilities in a way which is incompatible with the Children (Scotland) Act 1995. Section 36(a) makes amendments to section 43(3) which mean that only persons who have parental responsibilities for a child may apply to the Registrar General to change the name of the child.

95. At present, somebody born in Scotland can have a change of name (forenames and/or surname) recorded in the registers in such a way that a new birth certificate, issued after the change, will show the new name, together with the former name, for purposes of continuity. It is generally possible at present to record a change of name only after documentary evidence has been produced that the new name has been in use for 2 years. Section 36(b) amends section 43 of the 1965 Act to remove the 2 year time limit. That means that it would be possible for anyone whose birth has been registered in Scotland to apply immediately to the Registrar General to record a change of forename or surname.

Other amendments of the 1965 Act

Section 37 Other amendments of the 1965 Act

96. Section 37, subsection (2) extends the offence of giving false information to a district registrar, to cover any information given to the Registrar General. This is necessary because of the increasing volume of information provided directly to GROS, examples of which have later been discovered to be false. Subsection (3) adds a new section 54A to the 1965 Act which enables documents to be prescribed in electronic form and for the manner of attestation of documents to be prescribed.

Marriages and civil partnerships: procedure

Section 38 Marriage procedure: marriages at sea

97. Subsection (1) refers to the Marriage (Scotland) Act 1977 (“the 1977 Act”), which is the principal Scottish marriage legislation.

98. Subsection (2) defines the “district registrar” in line with the changes made by section 27 of the Bill. It also makes special provision for the definition of the “district registrar”, where the marriage is to be solemnised in Scottish waters. The Marriage (Scotland) Act 2002 allowed civil marriages to be solemnised by registrars in a wide range of approved places, including on
vessels. Some couples may wish to be married while the vessel is at sea between 2 places which may be in different registration districts. This could lead to uncertainty in determining the registration district in which the marriage is solemnised. Subsection (2) provides that any district registrar can accept notification of intention to marry, in the case of a religious marriage. In the case of a civil marriage, notification has to be given to the district registrar for the registration district which is to provide the registrar who will solemnise the marriage.

99. Subsection (3) makes similar provision for the definition of the district registrar who will record the intended marriage in the marriage notice book and the list of intended marriages.

100. Subsection (4) deals with what happens when arrangements for a marriage change and the marriage is taking place at sea rather than in a registration district or vice-versa. It allows the Registrar General to decide whether a new marriage schedule needs to be issued, or whether the new location can be substituted in the marriage schedule, or whether the couple have to submit a new marriage notice.

101. Subsection (5) provides that, where a marriage has been solemnised in Scottish waters, it should be registered in the district of the registrar who issued the initial marriage schedule.

102. Subsection (6) adds to the choice of places at which civil marriage may be solemnised, an approved vessel, while in Scottish waters. It defines “approved vessel” as a vessel approved by the local registration authority whose registrar will solemnise the marriage. This parallels the arrangements for approving other places outwith registration offices at which marriages can be solemnised.

103. Subsection (7) widens Scottish Ministers’ regulation-making powers concerning the approval by local authorities of places in their areas where civil marriages may be solemnised. The amendments ensure that regulations can cover vessels operating in Scottish waters, as well as places on dry land.

104. Subsection (8) ensures that a marriage taking place on an approved vessel in Scottish waters is properly registered by the authorised registrar.

105. Subsection (9) makes various provisions for interpretation, deleting the definition of “district registrar” which is no longer required, defining “Scottish waters” in line with the Scotland Act 1998, defining the meaning of “vessel” as a vehicle or other structure and defining exactly when a vessel is part of a registration district (e.g. when it is berthed) and when it is in Scottish waters.

Section 39 Marriage procedure: miscellaneous amendments

106. This section changes the arrangements for the display of a list of people who have submitted notice of their intention to marry. At present, it must be displayed conspicuously at the registration office where the parties have submitted notice to marry. This could be burdensome for a local registration authority with many registration offices, each of which would have to display the forthcoming marriages for the entire registration district. Instead, it will be sufficient to display the list conspicuously at the main registration office in the local
registration authority area. In addition, however, the district registrar will be obliged to notify the intended marriage to the Registrar General, who will maintain a list of all proposed marriages in Scotland and make it available for public inspection, including on the GROS website. This would enable anyone with internet access, potentially anywhere in the world, to learn of a proposed marriage in Scotland and to offer a legal objection if they have good reason.

Section 40 Marriage procedure: electronic communications

107. This section paves the way for completion of certain parts of marriage arrangements by electronic means.

108. Subsection (2) allows the marriage notice to be submitted electronically, and the prescribed fee and birth certificate to be submitted separately. Subsection (3) allows for an objection to marriage to be submitted separately from a medical certificate showing that a party to the marriage is incapable of understanding or consenting to marriage, which certificate can be submitted electronically. Subsection (4) allows electronic submission of a request by a marriage party for the marriage to take place within the normal 14 day notification period. Subsection (5) makes similar provision for electronic submission of objections, where a Scottish resident is getting married outwith Scotland. Subsection (6) allows the Registrar General to give notice by electronic means instead of in writing, where he rejects a nomination as authorised celebrant for a religious marriage, subsection (7) where the Registrar General removes a person from the register of celebrants, subsection (8) where the Registrar General issues a temporary authorisation of a marriage celebrant and subsection (9) where a party wishes a civil marriage to take place within the normal 14 days period of notice. Subsection (10) adds a new section 24A of the 1977 Act which enables documents to be prescribed in electronic form and for the manner of attestation of documents to be prescribed.

Section 41 Civil partnership procedure: registrations at sea

109. Section 41 amends section 93 of the Civil Partnership Act 2004, which specifies where a civil partnership may be registered, to provide for which registrar is to register a civil partnership registered in Scottish waters, and in which register that registration is to be recorded, paralleling the provision made for marriage by Section 38 of the Bill.

Section 42 Civil partnership procedure: miscellaneous amendments

110. Section 42 amends the Civil Partnership Act 2004. Subsection (2) paves the way for electronic submission of the notice of a proposed civil partnership, by allowing regulations to provide for this, for the fee and the prescribed documents (including the partners’ birth certificates) to be sent separately, and by allowing the notice to be attested rather than signed. Subsection (3) brings the period of notice which must be given to the registrar of a civil partnership in Scotland into line with the period of notice for a marriage, correcting an error in the 2004 Act. Subsection (4) paves the way for electronic submission of an objection to a civil partnership registration by regulations and by allowing any supporting certificate to be sent separately and to be attested rather than signed. Subsection (5) mirrors, for a civil partnership which has been validly registered, existing provisions preventing challenge to the validity of a marriage on a minor technical flaw. Subsection (6) brings section 98 of the 2004 Act, which applies to civil partnerships certain sections of the 1965 Act, into line with the 1965 Act as amended by the Bill.
Section 43  Provision of information about civil partnerships for certain purposes: fees

111. This section provides for fees for the issue of certificates or certified copies from the civil partnership register for certain specified purposes, and for those fees to be varied by order, in the same way as for the other statutory registers.

Recording of events relating to persons outwith Scotland

Section 44  Recording of certain events in Book of Scottish connections

112. Subsection (1) obliges the Registrar General to keep a new register to be known as the “Book of Scottish Connections” (BSC). In some circumstance and in certain countries, people with a Scots connection can arrange for a birth, death or marriage abroad to be recorded in the register held by the Registrar General in Edinburgh, who is thereafter able to issue an official copy, in English, of the entry in the foreign register. The event has first to be registered with the civil registration authorities of the country in question. The BSC will offer, for an appropriate fee, the facility for Scots abroad to apply directly to the Registrar General to add to the records held in Edinburgh a copy of any suitably-authenticated entry in a statutory register of births, deaths, marriages or divorces outwith Scotland, where the subject of the entry has or had a connection with Scotland to be preserved a part of the family history record.

113. Subsection (2) defines the events which can be recorded on the BSC – a birth, death, marriage or divorce, formation or dissolution of a civil partnership and entering into or dissolution of an overseas relationship – so long as the person involved qualifies under later subsections.

114. Subsection (3) defines an event occurring outside Scotland (in the rest of the UK or elsewhere in the world) and an overseas relationship (defined by reference to the Civil Partnership Act 2004).

115. Subsection (4) states that a person qualifies if a parent or grandparent was born in Scotland or if the BSC already records an event relating to a parent or grandparent.

116. Subsection (5) states that a person qualifies if born in Scotland or was normally resident in Scotland at the time of the event.

117. Subsection (6) requires the Registrar General to make an entry in the BSC on receipt of an application in the prescribed form containing the necessary information, together with a prescribed fee and any necessary supporting documents. The Registrar General is given discretion not to make an entry if he considers it is inappropriate to do so.

Section 45  Keeping of, and access to, the Book of Scottish Connections

118. This section gives details of the way in which the BSC and its index is to be kept, and the arrangements for access to the index and the BSC entries. The Registrar General is obliged to give district registrars access to all prescribed parts of the BSC and its index, in the same way as to the other registers in his care. The Registrar General and district registrars must make arrangements for the public to research the index and purchase an extract.
Other provisions about information held by Registrar General

Section 46 Provision of registration information to public bodies and office-holders

119. The 1965 Act already allows the Registrar General to exchange data concerning all births or deaths in Scotland with the National Health Service and to notify deaths to the Department for Work and Pensions as well as to local council tax departments. Otherwise, the basic personal details involved in birth, death or marriage registration, though publicly available, are not automatically passed on to other parts of government, even at the citizen’s request. In the interests of convenience for the citizen and of efficiency of public administration, section 46 allows for birth, death and marriage details already visible publicly on the registers to be supplied to any relevant government body. Examples are the departments interested in family tax credit, driving licence and passport records, benefits, income tax and student loans. This service would be provided in reaction to specific requests from the public bodies concerned and may be on payment by them of a fee. The consent of the individual citizen would not be required for the provision of this information which is already available on a public register.

120. Subsection (1) allows the Registrar General to provide any registration information to any public body or office holder in Scotland, the rest of the UK or outside the UK. Subsection (2) specifies the registers concerned – births, still births, deaths, marriages, civil partnerships, divorces, civil partnership dissolutions and corrections. Subsection (3) allows the Registrar General to make charges for the provision of the information.

Section 47 Keeping of central register for health and local authority purposes

121. Section 47 empowers the Registrar General to keep a central register of information about people, to help the efficient running of the NHS and local authorities in Scotland.

122. The Registrar General already runs the National Health Service Central Register (NHSCR) on behalf of the NHS in Scotland. The NHSCR, which dates from the early 1950s, contains basic details of everyone born in Scotland, plus anyone else who is (or has been) on the list of a GP in Scotland. The details are name, sex, date of birth, Health Board of current and past residence, and NHS number. The Register exists mainly to allow the smooth transfer of patients who move between Health Board areas (or across borders within the UK). The Bill would put the Register on a clear statutory footing (it operates at present partly under sections 1(3) and 51 of the 1965 Act as far as the Registrar General is concerned, but is not explicitly mentioned there) and would allow its information to be used to assist in the operation of local authority schemes, i.e. the Citizen’s Account.

123. The Citizen’s Account is a voluntary scheme, under which each citizen will be able to apply to have an account recording all entitlements and transactions with local authorities. A national infrastructure for the Citizen’s Account, holding basic details of every account holder (name, sex, date of birth, address and unique identifier) would be accessible to all authorities where a particular citizen has opted to allow that by giving their informed consent. The database would not contain information about the transactions relating to account holders which would be kept only by the individual authority. So the national infrastructure would in effect be an index.

124. The Registrar General’s powers do not allow the NHSCR data to be used for that purpose. Section 47 extends his powers in the necessary way, as well as giving a clearer...
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statutory basis for the NHSCR itself. The Registrar General may need to agree certain aspects of the information sharing with the recipient to ensure he is satisfied that it is appropriate to share the information.

125. Subsection (1) empowers the Registrar General to create and maintain a register of people to which Health Boards, the Common Services Agency and local authorities have provided or are providing statutory services. The subsection makes clear that the register is kept to help Health Boards and local authorities perform their functions.

126. Subsection (2) sets out the sources of the information on the register. It includes:
- information about births and deaths in Scotland;
- information about children who have been adopted;
- information provided by a Health Board or local authority;
- equivalent information from the rest of the UK – which is necessary when someone moves across the border to Scotland.

127. Subsection (3) specifies the information which may be held on the register. This is restricted to basic personal data, but may be extended to include other information prescribed by the Registrar General, by subordinate legislation requiring negative resolution procedure.

128. Subsection (4) gives access to the register for Health Boards, the Common Services Agency and local authorities – and other persons, or persons of a certain description, prescribed by the Registrar General (which would cover cases such as medical researchers).

129. Subsection (5) makes clear that the purposes for which information may be provided are not limited to those referred to in subsection (1).

130. Subsection (6) requires that the information which may be, or must not be, provided to those given access under subsection (4) must be prescribed in regulations.

131. Subsection (7) is consequential to subsection (6).

132. Subsection (8) makes clear that this section does not reduce the Registrar General’s other powers to provide information.

133. Subsection (9) defines “local authority” for the purpose of the section.

Section 48 Issuing of other material kept or held by Registrar General

134. Section 48 codifies the arrangements for issuing to the public and to the district registrar other information held by the Registrar General. These include the register of neglected entries (events recorded between 1801 and 1854 not recorded in the old parish records); other registers of births, deaths and marriages in foreign countries; foreign marriages and already publicly
available census records. The section specifies arrangements which parallel those for the main statutory registers.

Section 49 Part 2: minor and consequential modifications

135. Subsection (1) repeals a requirement in the 1965 Act for the local registration authority to consult the Registrar General before removing registrars they have appointed from office. It also extends a provision in that Act which requires district registrars to account to their local registration authority for fees charged to the fees provided for in the Bill.

136. Subsections (2) and (3) repeal certain provisions of the statutes that provide for the structure of local authorities in Scotland, as a consequence of the reorganisation of local registration districts in the Bill.

137. Subsections (4) and (5) make consequential amendments to the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the Civil Partnership Act 2004 to reflect the changes made by sections 40(2) and 42(2) of the Bill which provide that a marriage or civil partnership notice no longer requires to be “accompanied by” a fee and certain documents. Those Acts currently refer to that procedure to identify and prevent sham marriages and civil partnerships for immigration purposes.

Section 50 Interpretation of Part 2

138. This section interprets 4 terms used in the registration services Part of the Bill, and also imports the interpretation provisions in the 1965 Act.

THE BILL – PART 3: GENERAL

Section 51 Orders and regulations

139. This section sets out the arrangements for Scottish Ministers to make orders or regulations by statutory instrument under the powers set out in the Bill. It provides that orders and regulations made under the Bill may make different provision for different purposes and may also make other provisions of a technical ancillary or transitional nature.

140. It also provides that statutory instruments (except for those orders of the type set out in subsections (4) and (5)) made under the Bill are to be subject to negative resolution procedure in the Scottish Parliament. That means the instrument is laid after making and is subject to being annulled in pursuance of a resolution of the Parliament passed within 40 days after making. This rule applies to all regulations made under the Bill, however there are two exceptions, set out in subsections (4) and (5) relating to orders.

141. The first exception is regulations made under section 4(2)(b), (4), (5) or (8) (powers relating to access to election documents) and orders made under section 52 which amend primary legislation. Those orders make ancillary provision of the kind set out in section 52. They are to be subject to affirmative resolution procedure in the Scottish Parliament which means the instrument is laid in draft and cannot be made until the draft as approved by resolution
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of the Parliament. The second exception is orders bringing provisions into force, made under section 53. Those are not subject to Parliamentary procedure.

Section 52 Ancillary provision
142. This section contains the common power for Scottish Ministers to make supplemental, incidental or consequential provisions for giving full effect to the Bill, and for transitional purposes as it comes into force.

Section 53 Short title and commencement
143. This section states the short title of the Bill and makes provision for the coming into force of the Bill. It is to come into force in accordance with provision made by the Scottish Ministers.

FINANCIAL MEMORANDUM

COSTS ON THE SCOTTISH ADMINISTRATION

144. As the costs of administering local government elections falls to local authorities from their existing budgets, no costs incurred by local authorities will fall to be met by the Scottish Executive. Although the Bill will create new electoral offences for local government elections in Scotland, it is difficult to estimate the number of additional prosecutions with any certainty. However the number of cases per year is expected to be minimal (less than 5 - the annual figure estimated for GB Parliamentary elections and local government elections in England and Wales is around 10). Prosecutions are likely to proceed at Sheriff summary level and the Crown Office and Procurator Fiscal Service confirm that they will be able to meet these additional costs within existing resources.

145. The registration services costs falling on the Scottish Administration will be relatively small and will be met from the existing resources available to the General Register Office for Scotland (GROS). Expenditure of about £100,000 has been budgeted for in 2007-08 to acquire computer software and hardware associated with delivering e-registration. Any new services, such as the provision of registration information to public bodies and office-holders, as provided for under section 46, will generally be self-financing and associated fees set on a cost recovery basis. The Bill contains proposals to create a “Book of Scottish Connections” that will enable someone with a Scots connection, if they so wish, to arrange for a birth, death or marriage abroad to be recorded. A fee for this and for any copy of the record will be charged by GROS on a cost recovery basis. While we think this will be popular, particularly with people interested in family history, it is almost impossible to predict the level of interest and the income it might generate.

COSTS ON LOCAL AUTHORITIES

146. Local authorities are themselves responsible for meeting the costs of their elections from within their own budgets. As these elections are combined with those for the Scottish Parliament, much of the procedure is common to both elections and it has proved difficult for
local authorities to provide an estimated cost for local government elections. No new associated costs are expected to arise from the procedural changes to elections administration and it is not therefore anticipated that there will be any extra burden in this respect.

147. No new associated administrative or compliance costs are expected in relation to the registration services provisions. GROS currently provide local authorities with registration software and specialised stationery, and that will not change. The involvement of the Registrar General in the Citizen's Account national infrastructure, for which section 47 of the Bill paves the way, by using systems currently in place rather than having to set up a separate database. By doing so, some efficiency savings potentially in the range of £0.5 million could be achieved but the margin of uncertainty is high.

148. In the long term, the provisions might result in local authorities’ income falling slightly as demand for paper extracts, for which they receive a statutory fee (currently £5 for searching the indexes to the statutory registers and £8.50 for an extract), is replaced by information provided directly by GROS to other government departments and agencies (eg to support a passport application). It is extremely difficult to predict how much impact on local authority income this might have. Any downturn in demand for extracts is most likely to occur in relation to deaths, because people are likely still to want birth certificates and marriage extracts for commemorative purposes. Over 50,000 deaths are registered in Scotland each year, which would generate at least £500,000 in fee income for local authorities (the bulk of death extracts are sold at the time of registration and would not incur the £5 fee for searching). Local authorities will in future receive revenue from electronic death notifications ordered locally, at the time of registration, where a person chooses that service as an alternative to buying a death extract. It is envisaged that this new service would enable a person to ask the registrar to notify banks and utility companies etc. The net effect of the proposals may well, therefore, be cost-neutral to local authorities, but it is almost impossible to know with any certainty.

149. It is also proposed to allow third parties such as insurance and pension firms to ask the Registrar General to notify them of the death of a person (a pensioner or annuitant) when it occurs. This is likely to have very little effect on local authority fee income because the next-of-kin will, in the bulk of cases, still need to notify other bodies such as banks and utility companies as described above.

150. Local authorities’ income from fees associated with registration services has been on the increase in recent years, mainly due to the introduction of civil marriages at approved places under the Marriage (Scotland) Act 2002, and local computerised registration offices now have on-line access to the whole public genealogical database of Scotland’s people, improving their efficiency, and enabling them to take advantage of new revenue streams from increased family history business. This will be further augmented by new income from selling copies of entries in the “Book of Scottish Connections”.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

151. The election administration provisions in the Bill will create new electoral fraud offences but the number of prosecutions for these offences is expected to be low (the Department of Constitutional Affairs have estimated around 10 per year in relation to Parliamentary elections
These documents relate to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005

and local government elections in England and Wales and the figure in relation to Scottish local government elections is likely to be lower). Any related costs are therefore expected to be minor.

152. The registration services provisions in the Bill will generally reduce costs to individual citizens – for example, by giving more choice over where an event can be registered and by allowing GROS to supply information directly to other government departments and agencies (removing the need for passport applicants to send their birth certificate with their application). New services such as the “Book of Scottish Connections”, which will enable someone with a Scots connection to arrange for a birth, death or marriage abroad to be recorded, will be optional. There will be no costs imposed on other bodies, individuals or businesses.

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EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

153. On 19 December 2005, the Minister for Finance and Public Service Reform (Mr Tom McCabe MSP) made the following statement:

“In my view, the provisions of the Local Electoral Administration and Registration Services (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

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PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

154. On 15 December 2005, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Local Electoral Administration and Registration Services (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005.

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)


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