

# **SCOTTISH LOCAL GOVERNMENT (ELECTIONS) 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 Scottish Local Government (Elections) Bill introduced in the Scottish Parliament on 3 February 2009:

- Explanatory Notes;
- a Financial Memorandum;
- a Scottish Government Statement on legislative competence; and
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 21-PM.

## **EXPLANATORY NOTES**

### **INTRODUCTION**

2. These Explanatory Notes have been prepared by the Scottish Government 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.

### **BACKGROUND TO THE BILL**

4. In May 2007 the Electoral Commission appointed Ron Gould, former Assistant Chief Electoral Officer of Canada and international elections expert to carry out an independent review of the problems that had arisen during the 2007 Scottish local government elections and elections to the Scottish Parliament. The Gould Report<sup>1</sup> was published in October 2007. One of the key recommendations in the Report was that local government elections in Scotland should be decoupled from elections to the Scottish Parliament. Separating the elections would prevent national issues from dominating local government campaigns and would give greater prominence to local issues. Separation would also minimise the potential for voter confusion caused by two elections being held at the same time for different institutions and using different voting systems. The Bill implements this Gould recommendation.

### **THE BILL: OVERVIEW**

5. The Bill changes the date of the local government elections in Scotland so that they are no longer held in the same year as elections to the Scottish Parliament. The Bill also gives the Scottish Ministers powers to make secondary legislation relating to the publication of information about votes cast at local government elections.

### **COMMENTARY ON SECTIONS**

#### **Section 1 – Year of local government elections**

6. Under the Bill the next two ordinary local government elections will be held in 2012 and 2017. After 2017, ordinary local government elections will revert to taking place every fourth year. The effect of this will be that the local government elections will take place halfway through the term of the Scottish Parliament. Section 1 of the Bill does this by amending section 5 of the Local Government etc. (Scotland) Act 1994 which contains provision about the timing of local government elections. The Bill inserts two new subsections into section 5 of the 1994

---

<sup>1</sup> *Independent Review of the Scottish Parliamentary and Local Government Elections 3 May 2007, 23 October 2007, Ron Gould CM* <http://www.electoralcommission.org.uk/document-summary?assetid=13223>

Act and repeals subsections (2) and (3) of that section (subsection (2) contains a historical date for local government elections and subsection (3) is the provision that links the date of local government elections to that of the Scottish Parliament elections).

7. Subsection (2) introduces the schedule which contains consequential amendments and repeals.

## **Section 2 – Voting information from local government elections**

8. This section inserts a new section 3A (Voting information from local government elections) into the Local Governance (Scotland) Act 2004. Subsection (1) of the new section confers power on the Scottish Ministers to make orders about the publication of information about votes cast at elections of councillors. Any order under new section 3A would attract the affirmative procedure in terms of Parliamentary scrutiny.

9. An order under new section 3A may specify the information to which the order is to apply, the limits to be placed on the publication of the information and the parts of an electoral ward which may be identified in the order. The order may also make provision about granting access to the information for the purposes of publication (see subsection (2) of the new section 3A).

10. This order making power could be used to authorise the publication of voting information at polling station level (subject to certain limitations). The Scottish Local Government Elections Order 2007, made under section 3(1) of the Local Governance (Scotland) Act 2004, sets out the rules governing the conduct of Scottish local government elections. Rule 55 requires the returning officer to publish at ward level the following information upon declaration of the result:

- the name(s) of the candidate(s) elected;
- the number of first and subsequent preference votes for each candidate;
- the number of ballot papers transferred and transfer values (under the STV process) at each stage of the count;
- the number of votes credited to each candidate at each stage of the count; and
- the number of non-transferable ballot papers at each stage of the count.

11. An order under new section 3A could be used to authorise the publication at polling station level of information similar to that detailed in paragraph 10 above. In circumstances where the number of voters using a particular polling station was small enough to run the risk of an individual elector's vote being identified, or at least assumed with some degree of accuracy, the order could specify that the data from a number of polling stations could be amalgamated until the combined number of voters reached a minimum threshold. Such an amalgamation might be required, for example, in remote rural locations.

12. Nothing may be done under an order made under new section 3A which would identify whether a particular person has voted. Given that nothing may be done to identify if a person has voted it follows that an order under new section 3A cannot authorise anything which would

disclose how a particular person voted (see subsection (3) of the new section 3A). This prohibition on disclosure of whether a person has voted does not prejudice other enactments where certain specific and confidential information can be accessed in certain circumstances and subject to certain safeguards. Sections 5, 6 and 7 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 provide that registered political parties and candidates in an election may have access to a marked copy of the electoral register, the postal voters list, the list of proxies and the proxy postal voters list. Access is given under specified restrictions. The information released in this way does not allow parties or candidates to identify how individuals voted.

13. An order under new section 3A may specify that the terms of the order may apply to information relating to the local government elections of 2007 (see subsection (4) of the new section 3A).

### **Section 3 – Short title and commencement**

14. This section provides that the Scottish Ministers may by order appoint a day (or days) on which the provisions of the Bill are to come into force.

### **Schedule**

15. The schedule contains a number of consequential amendments and repeals.

---

## **FINANCIAL MEMORANDUM**

### **INTRODUCTION**

16. This document relates to the Scottish Local Government (Elections) Bill introduced to the Scottish Parliament on 3 February 2009. It has been prepared by the Scottish Government to satisfy Rule 9.3.2 of the Parliament's Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

17. The Bill provides that the next two ordinary (general) local government elections in Scotland will be held in 2012 and 2017. Thereafter, ordinary local government elections will return to being held every four years. This means that in future local government elections in Scotland will not be held on the same day as elections to the Scottish Parliament as they were in 2003 and 2007. The Bill also provides that in future information about voting patterns in local government elections will be collated and published at polling station level rather than at ward level as at present. There will be costs arising from the move to decouple local government elections from elections to the Scottish Parliament and these are estimated below.

### **COSTS ON THE SCOTTISH GOVERNMENT**

18. The cost of running local government elections in Scotland is met by local authorities from the funding which they receive from the Scottish Government. In addition the Scottish

Government funds public information campaigns (about the electoral process) itself in the run up to the election. The separation of local government elections from elections to the Scottish Parliament will not have an effect on the costs incurred by the Scottish Government. No additional local government elections will be held as a result of the Bill's provisions. Instead of funding information campaigns for local government elections in 2011 and 2015 the Government will fund campaigns in 2012 and 2017.

## **COSTS ON LOCAL AUTHORITIES**

### **Decoupling elections**

19. Local authority returning officers are currently responsible for the administration of local government elections, which are funded by local authorities themselves. The Bill does not seek to change these administrative or financial arrangements, but it does change the timing of future local government elections. The Scottish Government recognises that the additional costs arising from the section of the Bill which separates the date of future local government elections from elections to the Scottish Parliament will fall upon Scottish local authorities. The Scottish Government consultation on the proposal to decouple the two sets of elections received overwhelming support from respondents. A number of responses to the consultation noted that decoupling would result in additional costs, although no estimate of the national cost was offered during the consultation. Local authorities meet the costs associated with the running of local government elections from their existing budget allocations. However, at present these allocations reflect the fact that local government and Scottish Parliamentary elections have previously been combined. The combined elections in 2003 and 2007 resulted in economies of scale achieved by using largely the same staff, resources and facilities on election day for both sets of elections.

20. The cost of decoupling local government and Scottish Parliamentary elections will differ across each local authority in Scotland depending largely on the size of the electorate in each area. Generally speaking, areas with higher electorates will incur greater costs although transport links and geography will also play a part. In 2007 the number of registered voters in mainland local authority areas ranged from 427,582 in Glasgow (with 505 polling stations) to 44,646 in Inverclyde (with 46 polling stations). The Orkney and Shetland Islands have 16,195 registered voters (24 polling stations) and 17,108 voters (36 polling stations) respectively.

21. The costs incurred by local authorities in the 2007 elections have been used to estimate the cost of decoupling the elections (i.e. how much extra will it cost local authorities to run local government elections in a different year to elections to the Scottish Parliament). Broadly speaking, the overall costs can be broken down into staff costs and facilitation (or other) costs. Staff costs include fees paid to presiding officers, clerks and information officers. Staff training and travelling expenses have also been included. Facilitation costs include the renting of polling stations, adaptation of polling stations, voting compartments, conveyance (or transport) costs, election stationery (ballot papers and explanatory information material) and security costs. The 2007 costs also take into account the preparation, revision and issue of poll cards; the issue and receipt of postal ballots and the use of count staff to scan and verify all ballot papers. Economies of scale were achieved in 2007 by holding combined elections because some of these costs were incurred only once for the two sets of elections. So, for example, ballot papers for both sets of elections were transported together.

*These documents relate to the Scottish Local Government (Elections) Bill (SP Bill 21) as introduced in the Scottish Parliament on 3 February 2009*

22. The total cost to local authorities of the combined 2007 local government elections was approximately £6.6m. This does not include the cost of the electronic counting system which was used in the local government and Scottish Parliament elections. The cost of e-counting was shared between the Scottish Government and the Scotland Office (see paragraphs 27 and 28 below). The cost to local authorities of the 2007 elections was broken down as follows:

i)	Fees (information officers, clerks etc.)	£2.1m
ii)	Staff training and travelling expenses	£0.8m
iii)	Renting and adapting of polling stations etc.	£1.5m
iv)	Transport, stationery and security costs	£0.9m
v)	Preparation and issue of poll cards and postal ballot papers etc.	£1.3m
TOTAL		£6.6m

23. The estimated costs associated with conducting future elections separately assume there will not be any drastic fluctuation in the size of the electorate in any area and that population and electoral registration levels remain constant throughout the country. A proportion of the £6.6m cost to local authorities in 2007 was re-imbursed by the Scotland Office because the costs covered both sets of elections and the Scotland Office is responsible for meeting the cost of Scottish Parliamentary elections. In most areas of expenditure the split was 50/50 or 60/40 with the Scotland Office paying 60%, the split in expenditure in various areas being historic and by agreement. The Scotland Office met the full cost of staff training, voter compartments and item (v) above. In total the Scotland Office paid around £4.7m towards the cost of the combined elections. The remaining £1.9m was met by individual local authorities from the allocation they received from the Scottish Government and is therefore within their baseline for future elections whenever they are held.

24. To estimate a range for the additional cost of decoupling we have considered two options. The first option assumes that most, if not all, of the costs of the 2007 combined elections (summarised in paragraph 22 above) will be incurred by local authorities when they hold the next set of (separate) local government elections. Fees, staff training and travel, renting and adapting polling stations etc. and transport, stationery and security costs will all need to be met for stand alone local government elections. The cost of separate local government elections will not differ greatly from the cost of the 2007 combined elections. We have estimated that the cost to local authorities of running decoupled local government elections will be the same as the cost to them of running combined elections in 2007 (i.e. £6.6m) plus a sum of £300,000 to take account of the potential additional cost caused by the introduction of absent vote identifiers (AVIs). In order to increase the security of postal and other absent voting, AVIs will be introduced whereby a voter wishing to register for a postal vote will be required to provide a signature and date of birth. The “identifiers” will be checked when the vote is cast. The additional cost to local authorities will therefore be around £5m (because local authorities already have £1.9m in their allocation for elections).

25. The second option assumes that de-coupling the elections will bring some reduced costs compared to the estimated costs of decoupled elections set out in the previous paragraph. In 2007, in the vast majority of cases, returning officers employed two polling clerks (i.e. one for each election). Only one polling clerk would be required for a single election. The fees paid to polling clerks in 2007 amounted to £660,000 - £260,000 of this came from local authorities’ budgets. If half the number of polling clerks are employed this would suggest the need for

£330,000 in fees. The additional cost to local authorities would therefore be £70,000 rather than £400,000 if they were required to employ the same number of polling clerks as in 2007 – a saving of £330,000. It is also possible that the de-coupling could lead to a reduction in the number of polling stations required. This would reduce the cost of renting and adapting the buildings used. In 2007 the cost of renting and adapting polling stations was approximately £1,210,000. A 15% reduction in the number of polling stations used would lead to a saving of £180,000. Fewer polling clerks and polling stations could therefore reduce the additional cost of decoupled elections by approximately £500,000 to £4.5m.

26. We have discussed these estimates and our methodology with the Convention of Scottish Local Authorities (COSLA) and the Society of Local Authority Chief Executives and Senior Managers in Scotland (SOLACE) representatives. Combining the figures available for the cost to each local authority in Scotland of the 2007 elections and then interpreting the information in accordance with the assumptions above we estimate that the additional costs incurred by local authorities across Scotland will be in the region of between £4.5m and £5m at 2007 prices. Taking the higher figure, the average additional cost per local authority will therefore be £156,000. Within this average figure the cost for individual local authorities will obviously vary considerably from the larger authorities such as Glasgow and Edinburgh to the smaller authorities such as Orkney and Shetland Islands. The average figure is therefore for illustrative purposes only. Assuming that the next local government elections are held in May 2012 these costs will be incurred predominantly in financial year 2012/2013.

#### **Costs of additional voter information**

27. Any additional costs to local authorities associated with the provision in the Bill relating to the publication of additional election data at polling station level will be incorporated into the contract for e-counting which will need to be let before the 2012 local government elections. The Local Governance (Scotland) Act 2004 introduced the single transferable vote (STV) system of proportional representation for local government elections in Scotland. Local government elections in 2007 were counted electronically and, subject to the development, testing and introduction of a reliable system of electronic counting it is likely that the 2012 elections will also be counted electronically. The cost of an e-counting system for 2012 will fall in the next spending review period. The bulk of the costs – for the delivery of the count itself – will fall in 2012-2013. Development and testing costs will fall in 2011-2012.

28. The contract for e-counting of the 2012 elections will specify that the additional information about voting patterns in particular polling stations, as provided for under the terms of this Bill, must be made available to the Returning Officer on completion of the count. Given that the costs of electronic counting for the 2012 elections do not arise as the direct result of provisions of this Bill, they are not included in this financial memorandum. The cost of the e-counting system for the 2007 elections was met jointly by the Scottish Government and the Scotland Office because the system covered both local government elections and elections to the Scottish Parliament. The Scotland Office is responsible for meeting costs associated with the Scottish Parliamentary elections. Under the funding agreement with the Scotland Office, the Scottish Government contribution to the cost of e-counting in 2007 was approximately £4.8m. £1.25m of this was to meet the cost of developing and testing the system and associated training costs. The invitation to tender and statement of requirement sent to bidders prior to the 2007 elections asked them to provide a system “to support the introduction of STV with facilities which will allow the rapid production of accurate and verifiable election results”. Among other

things, the system was required to comply with all relevant legislation. The requirements placed on the returning officer (by Rule 55 of the 2007 Elections Order) to publish information meant that the successful e-counting contractor had to produce a system capable of producing specific information at ward level. This involved combining the information from individual polling stations so that it could be published at ward level. The Scotland Office has said that they do not intend to use e-counting for the 2011 Scottish Parliamentary elections. The Scottish Government will work in partnership with local authority returning officers to put in place an e-counting system for 2012. The costs for a new system for 2012 will depend on technological developments and the outcome of a competitive procurement process. Funding of the system will be a matter for discussion between the Scottish Government and COSLA in the context of the next spending review. Any additional cost of providing information at polling station level (rather than at ward level as in 2007) is likely to be marginal to the overall cost of the contract, not least because polling station level information was already in the system used in 2007 and had to be amalgamated to provide ward level data. The initial specification will be different (to reflect the level of information required in the legislation) but the data being collected will be the same. The difference will be in how the data is presented and it is unlikely that this will result in significant additional cost.

#### **COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES**

29. The Scottish Government does not consider that the measures in the Bill will create additional costs for other bodies, individuals or businesses.

---

#### **SCOTTISH GOVERNMENT STATEMENT ON LEGISLATIVE COMPETENCE**

30. On 3 February 2009, the First Minister (Rt Hon Alex Salmond MSP) made the following statement:

“In my view, the provisions of the Local Government Elections Bill would be within the legislative competence of the Scottish Parliament.”

---

#### **PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE**

31. On 28 January 2009, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Local Government Elections Bill would be within the legislative competence of the Scottish Parliament.”



*These documents relate to the Scottish Local Government (Elections) Bill (SP Bill 21) as introduced in the Scottish Parliament on 3 February 2009*

# **SCOTTISH LOCAL GOVERNMENT (ELECTIONS) BILL**

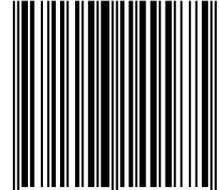
## **EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)**

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to: Information Policy, Office of the Queen's Printer for Scotland (OQPS), St Clements House, 2-16 Colegate, Norwich NR3 1BQ, or by e-mail to [licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk). OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR Donnelley.

ISBN 978-1-4061-4997-5



9 781406 149975