POLICY NOTE

THE SCOTTISH LOCAL GOVERNMENT ELECTIONS AMENDMENT ORDER 2021

SSI 2021/XXX

1. The above instrument was made in exercise of the powers conferred by sections 3 and 16 of the Local Governance (Scotland) Act 2004 and all other powers enabling the Scottish Ministers to do so. This instrument is subject to affirmative procedure.

Summary Box

This Order makes a number of changes to the rules which set out how Scottish Local Government elections should be run.

Changes are made in the following areas:

- Decisions as to the validity of nomination papers;
- Issue of official poll cards and notifications;
- Filling of last vacancies;
- Limitation of election expenses;
- Publication of time and place for inspection of returns and declarations;
- Meaning of election expenses;
- Power to amend Parts 1 and 2 of schedule 4B to the Representation of the People Act 1983; and
- Proxies at elections

Policy Objectives

2. The purpose of this instrument is to amend the Scottish Local Government Elections Order 2011 (the "2011 Order"), the Representation of the People Act 1983 (the "1983 Act") and the Representation of the People Act 2000 (the "2000 Act") to reflect changes to the rules and procedures for the running of Local Government elections in Scotland. The changes are set out in more detail below.

3. In terms of section 5 of the Local Government etc. (Scotland) Act 1994 (as amended by the Scottish Elections (Dates) Act 2016), the next ordinary Local Government election is scheduled to take place on 5 May 2022.

4. If approved, this Order will apply to any election for which the date of the poll is on or after 5 May 2022.

Amendments

5. The changes set out in this order are as follows:

Decisions as to the validity of nomination papers *(article 2(2))*

6. The statutory requirement to publish a candidate and their witness' home addresses was removed by the Scottish Local Government Elections Amendment Order 2020. This consequential change removes the absence of the home address of a witness from the list of reasons why a returning officer may hold a nomination paper invalid.

Issue of official poll cards and notifications *(article 2(3))*

7. Part 3 of the Scottish Elections (Franchise and Representation) Act 2020 extended the franchise at devolved elections to convicted persons detained in a penal institution in Scotland for a sentence of 12 months or less. This change allows for a prisoner's, or a person remanded in custody's, official poll card to be sent to their address in prison as opposed to their registered address.

Filling of last vacancies *(article 2(4))*

8. This is a technical change to clarify the legislation and promote consistent practice across Scotland.

Limitation of election expenses *(article 3(2))*

9. Article 3(2) make amendments to section 76(5A) of the 1983 Act as regards candidate election expenses and pre-candidacy election expenses at Scottish Local Government elections, in line with the position already agreed by the Parliament for Scottish Parliament elections. Accordingly, reasonable additional costs incurred in connection with adapting campaign materials for those with disabilities, providing security at election events and translating election materials into other languages will not count against expenditure limits. However, the costs of providing these services will still have to be funded by campaigners and parties.

10. Disability related expenses include, but are not limited to, the cost of providing transport support for mobility impaired candidates or support workers, British Sign Language (BSL) interpretation for hearing impaired candidates during election campaigns and the transcription of campaign material into braille for visually impaired candidates. Matters of expenditure that would be common to both disabled and non-disabled candidates, such as the normal printing of campaign leaflets for distribution to the public, would not fall within the scope of this exemption.

11. The translation provision is intended to cover the reasonable additional costs of translating campaign material into other languages. This will include translation of material into English from other languages.

Publication of time and place for inspection of returns and declarations *(article 3(3))*

12. This provision introduces a requirement for a returning officer to publish a notice setting out the time and place where candidates' expenditure returns and declarations can be inspected. This brings practice at Scottish Local Government elections into line with that at Scottish Parliament elections.

Meaning of election expenses *(article 3(4))*

13. This article amends section 90ZB to limit the period for which a candidate can incur "election expenses" to after the date when they become a candidate at an election. Concerns had been expressed that without such a restriction, a candidate may have to account for expenditure which took place before they became a candidate. For example, this may have affected newsletters issued to constituents by existing councillors, which could be viewed by some people as "campaigning".

14. Expenses which are incurred prior to the individual becoming a candidate, but are used for the purposes of their election after they become a candidate (e.g. renting or buying office space for a campaign office), would still be covered.

Consultation

15. The following bodies and stakeholders were consulted on these proposals:

- Electoral Commission
- Electoral Management Board for Scotland
- Association of Electoral Administrators
- Electoral Registration Committee of the Scottish Assessors Association
- Society of Local Authority Lawyers & Administrators in Scotland
- Society of Local Authority Chief Executives and Senior Managers
- COSLA
- Political Parties represented in the Scottish Parliament

Responses were received from:

- Electoral Commission;
- Electoral Management Board for Scotland, which incorporated the views of Electoral Registration Committee of the Scottish Assessors Association; and
- Association of Electoral Administrators; and
- a political party

16. The proposed changes were generally welcomed by those that responded and appropriate changes were adopted to reflect concerns raised.

Impact Assessments

17. An equality impact assessment (EQIA) has been produced for the instruments laid ahead of the 2021 Scottish Local Government elections. It will be published alongside the SSIs when they are laid before Parliament.

18. The Scottish Government view is that this order will have no significant impact on child rights and wellbeing, data protection, the environment, or island communities and therefore no impact assessments are required for those areas.

Business and Regulatory Impact Assessment (BRIA)

19. The Scottish Government does not consider that a BRIA is necessary as the policy changes will not lead to any significant new costs or savings for business, third or public sector organisations, regulators or consumers and there is no transfer of costs or benefits from one group to another.

Financial Implications

20. Local authorities are responsible for meeting the cost of Local Government elections from within their overall budget. This order are not expected to result in any significant increased costs.

Scottish Government
Directorate for Constitution and Cabinet
September 2021