

# **LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. This document relates to the Local Electoral Administration and Registration Services (Scotland) Bill introduced in the Scottish Parliament on 19 December 2005. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament's Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 52–EN.

### **POLICY OBJECTIVES OF THE BILL**

#### **Background**

2. The Bill aims to make improvements in two nationally important services delivered by Scotland's 32 local authorities.

#### **Electoral administration**

3. The overall objectives of the electoral administration provisions of the Bill are to improve access to and participation at elections, enhance security and improve administrative effectiveness. The provisions will mirror some of the changes set out in the UK Electoral Administration Bill which the UK Government introduced at Westminster on 11 October this year and which makes a number of amendments to the legislation governing the administration 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.

4. The changes proposed in the UK Bill stem from a number of Electoral Commission reviews and recommendations in respect of Parliamentary elections, and local government elections in England and Wales. These were set out in the reports "Voting for Change" published in June 2003, "Delivering Democracy? – The Future for Postal Voting" published in December 2004 and "Securing the Vote" published in May 2005. The recommendations in these reports relate to the security of UK elections, the modernisation of elections procedures and the accessibility and convenience of voting for the electorate.

5. Whilst the administration of Scottish Parliamentary elections is reserved to the UK Parliament, the administration of local government elections in Scotland is devolved. The

Electoral Commission's remit does not extend to local government elections in Scotland and their original recommendations did not therefore cover those elections. The procedures for all statutory elections in England, Scotland and Wales are, however, broadly similar, and the Scottish Executive's policy has been to bring the procedures for local government elections into line with the procedures for the Scottish Parliament elections with which they are combined.

6. The majority of the UK Bill's provisions relate to reserved areas such as voter registration and the regulation of political parties and the UK Bill will therefore implement changes in respect of all statutory elections (including local government elections in Scotland). The Bill also legislates, for England and Wales, on subjects which are devolved in respect of local government elections in Scotland. Most of these proposed measures are administrative changes or are aimed at improving access to the electoral process and improving the security of postal voting. In addition, not making the changes might well result in a mismatch in procedures at combined elections which could cause practical difficulties for returning officers and their staff. For these reasons, Ministers have reached the conclusion that these changes should be mirrored for local government elections in separate Scottish legislation.

### **Registration Services**

7. The framework for the registration of births, deaths and marriages in Scotland is set by the Registration of Births, Deaths and Marriages (Scotland) Act 1965. Arrangements for marriage preliminaries and the solemnisation of civil marriages are governed by the Marriage (Scotland) Act 1977. The procedures set out in both pieces of legislation have generally worked well, and some major improvements have been made over the last quarter of a century within the existing legislative framework. For example, 98% of all vital events (births, marriages and deaths) are now registered through computers located in local registration offices. There are opportunities for further changes to make more use of information technology and to further improve the service to the public.

8. The registration service in Scotland 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 the legislation mentioned above as well as instructions and guidelines set by the Registrar General. This partnership has worked well and there are no plans to change the basic structure. Within that structure, the Bill aims to:

- provide a high quality, modern and efficient service;
- put the needs of citizens before the convenience of service providers;
- use information technology to make improvements in meeting the needs of citizens;
- link closely the formulation of policy and the delivery of services.

### **Proposals for Scottish legislation: electoral administration**

9. 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 the Scottish Bill and partly in changes to the elections rules by secondary legislation.

10. The package of changes to be covered in Scottish legislation include

- allowing children to be taken into polling stations by parents or other carers
- enabling administrators to provide guidance to voters in a variety of languages and formats
- strengthening the range of offences in order to provide stronger deterrents to electoral fraud, including a new offence of falsely applying for a postal vote
- introducing a marked register of postal votes received, similar to that currently used for polling station voters
- improving security markings on ballot papers, through watermarks or security printing
- replacing serial numbers on ballot papers with barcodes, allowing greater control of production and enabling any lost or stolen postal votes to be cancelled and removed and a new ballot paper to be issued
- introducing secrecy warnings for postal vote literature
- allowing certain persons at polling stations to observe voting, and at other parts of the process, such as the count
- providing clearer performance standards for returning officers and electoral administrators to encourage best practice
- recognising the difference between postal and polling station voting and supporting automated production of postal vote documents, including replacing the counterfoil on ballot papers with a separate list to record ballots issued to electors
- introducing a simpler and more convenient declaration of identity for postal votes with a security statement, removing the need for a witness
- clarifying administrators' powers to rectify clerical and other errors during the campaign period and on polling day

11. Many of these changes will be dealt with in secondary legislation and included in the revision of the current Scottish local government elections rules and regulations being undertaken to accommodate the introduction of the Single Transferable Vote system of election in 2007.

12. There are however a number of provisions, such as the offences, which will require primary legislation and it is these which make up the electoral administration provisions of the Local Electoral Administration and Registration Services (Scotland) Bill. The detail of these is set out in the paragraphs 14 to 21.

**Proposals for Scottish legislation: registration services**

13. The registration service changes include
- allowing the registration of births and deaths anywhere in Scotland (currently restricted to the local registration office)
  - adjusting registration boundaries and opening times to make them more convenient for customers
  - allowing electronic notification of registered events to government departments and local authorities - and, at the specific request of those registering the events, to other bodies
  - opening up opportunities for local authorities to provide family history search centres
  - allowing people with a Scottish connection to have events occurring abroad recorded in a book in Scotland held by the Registrar General
  - allowing for e-registration to be available once security requirements can be satisfied
  - allowing public information held by the General Register Office for Scotland to be used to assist government and business in the delivery of their services.
  - Establishing the National Infrastructure for the Citizen's Account.

**DETAIL OF THE ELECTORAL ADMINISTRATION PROVISIONS OF THE BILL**

14. The overall objective of these provisions is to improve access to and participation at elections, enhance security and improve administrative effectiveness. As part of the move to increase the efficiency of electoral administration, sections 1 and 2 of the Bill introduce performance standards for returning officers to encourage best practice in the delivery of electoral services and give Scottish Ministers powers to set and publish performance standards and direct returning officers to submit reports against these standards. Section 3 deals with the correction of procedural errors by returning officers and their staff.

15. Sections 4, 5, and 6 introduce provisions governing the inspection and supply of local government election documents and provide a power to make regulations to impose conditions on that access and to charge for it. It also makes it a criminal offence not to comply with the regulations. Sections 7-9 deal with the attendance of observers at elections.

16. Sections 10 to 13 deal with electoral offences and strengthen the range of offences in order to provide stronger deterrents to electoral fraud. Section 10 introduces a new offence of providing false information for the purposes of an application to vote by post, by proxy or by post as a proxy at local government elections in Scotland. Section 11 provides that making a false statement in the consent to nomination given by a candidate constitutes corrupt practice. The false statement would relate to

- an erroneous date of birth
- 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

- 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.

17. Section 12 changes existing legislation on the offence of undue influence and provides that intended, but unsuccessful, attempts to prevent electors from voting freely or make them vote a certain way or stop them voting may amount to the corrupt practice of undue influence. Section 13 provides that applying for postal or proxy vote, with the intention of stealing another person's vote or gaining a vote to which the applicant is not entitled, will be both a corrupt practice and criminal offence.

18. Sections 14 to 17 deal with matters relating to election expenses. Section 14 lifts a restriction on the activities on which third party expenditure unauthorised by an election agent can be spent. Section 15 changes existing legislation to clarify which items qualify as candidates' expenses. Section 16 deals with amendments to existing legislation on financial limits applying to election expenses and section 17 deals with the way in which information on expenses is to be provided.

19. The UK Electoral Administration Bill makes a number of changes to the electoral registration process and one of the changes establishes a scheme of anonymous registration for people for whom the publication of their name and address on the electoral register would pose a threat to their safety. Although electoral registration is a reserved issue, there are a number of procedural matters which come within the remit of the conduct of local government elections and are therefore devolved. Section 18 deals with a number of miscellaneous amendments linked to the procedure at elections involving voters who are registered anonymously.

20. As part of the range of anti-fraud measures being introduced for UK elections, the use of "personal identifiers" is being extended from Northern Ireland to Great Britain. Personal identifiers in Great Britain are specified as a signature and date of birth and will be used when registering to vote and when voting. The UK Bill provides for the use of these identifiers to be piloted before full roll-out. As the conduct of local government elections is devolved, section 19 enables pilots relating to the conduct of elections to be held at local government elections in Scotland. The scope of the pilots is limited however and they can only deal with the use of personal identifiers when voting and cannot stray into registration issues.

21. Sections 20 to 25 deal with a number of miscellaneous changes to existing electoral legislation. Section 20 adds to the circumstances in which a voter is permitted to cast a tendered vote at a polling station. Section 21 deals with miscellaneous amendments to legislation dealing with elections campaigns and proceedings. Section 22 changes the details to be included on election material and requires these to include the names and address of the printer of the material, promoter of the material and the person on behalf of whom the material is published. Section 23 removes the reference to Maundy Thursday from the legislation dealing with the computation of the timetable for local government elections in Scotland. Section 24 gives returning officers and other authorised persons the discretion to make available, in graphical format, Braille and languages other than English and Welsh, documents which are given to voters or publicly displayed for the purposes of an election. Section 25 introduces a number of miscellaneous minor amendments.

## **DETAIL OF THE REGISTRATION SERVICES PROVISIONS OF THE BILL**

22. Sections 27 and 28 dispense with the traditional registration district boundaries (currently around 230 registration districts), and provide for more flexible opening hours. Section 27 creates 32 registration districts, the boundaries of which are coterminous with the local authority administrative boundaries. Section 28 allows different registration offices in a registration district to have different opening hours, where the Registrar General considers it appropriate.

### *Alternative consideration (sections 27 and 28)*

23. There was no suggestion during consultation that the existing registration district set-up (based largely on traditional parish boundaries) should remain, and no alternative models were suggested. However, there was a strong desire in some local areas to retain traditional district names to which GROS has agreed. No responder disagreed with the proposal to make opening hours more flexible.

24. Sections 29 to 32 deal with the registration of births, still-births and deaths. Sections 29 and 30 allow births and still-births to be registered anywhere in Scotland, and enable on-line registration, and associated administrative matters to be undertaken electronically, including provision of information by Health Boards. Section 31 makes provision, in certain circumstances, for registrars to handle applications for the re-registration of births, in addition to the Registrar General. Section 32 makes provision for deaths to be registered anywhere in Scotland, and enables on-line registration, and associated administrative matters to be undertaken electronically, including provision of information by Health Boards.

### *Alternative consideration (sections 29 to 32)*

25. No alternative proposals to enabling births, deaths and still-births to be registered anywhere in Scotland emerged in consultation, and the status quo would continue to deny the public better service. Compelling the public to visit a particular registration office because of where they live, or where an event occurred was no longer administratively necessary to ensure that every event is registered – new, recently introduced, computer systems could now achieve this. Similarly, there were no suggested alternatives to devolving the re-registration of births, in certain circumstances, to registrars.

26. Sections 33 to 36 deal with registration information. Section 33 enables the statutory registers of births, still-births, deaths and marriages and the Register of Corrections Etc. to be in electronic form rather than paper-based, should it become desirable in future to do so. It also provides for a more contemporaneous examination of the registers, rather than the current annual examination.

27. Section 34 enables the Registrar General or a district registrar, at the request of the relevant person, to notify nominated private-sector bodies such as insurance and pension firms, banks and utility firms etc. of a birth, death or marriage. In addition, it enables third parties such as insurance and pension firms to ask the Registrar General to notify them of the death of a person once the death is registered. The section also makes provision for local registrars to have access to divorce records and parochial registers not currently available to them, and for them to issue copies of those records. Provision is made for a new abbreviated death extract which will not contain details of the cause of death, and which will be provided free of charge at the time of registration.

28. Section 35 makes provision for certain errors in the registers to be more easily corrected by the registrar, without the need to require the attendance of the informant.

29. Section 36 specifies that only persons with parental responsibilities may apply to the Registrar General to change the name of a child. Provision is also made to enable an official change of name to take place at an earlier stage, rather than waiting for the current 2 year qualifying period.

*Alternative consideration (sections 33 to 36)*

30. Allowing the statutory registers to be in electronic form rather than paper based future-proofs the keeping of the statutory registers in line with Government policy.

31. There was general and widespread support in consultation for the provisions relating to notifying private-sector bodies and third parties. While it would have been possible to centralise much of this service by providing for GROS to be the exclusive source, it was seen as important that the local authorities were involved too, both for the convenience of the public and to ensure that local authority income streams were not diminished.

32. No alternative suggestions were offered to the proposals for correcting errors and no responses against the proposals were received.

33. Consultation responses to change of name without a qualifying period included a number who wished to retain the status quo, or suggested a reduced qualifying period to avoid frivolous frequent changes. However, the current statutory restriction on the number of name-changes a person can have would remain, and having no qualifying period was supported by, for example, United Kingdom Passport Service to obviate the need for people having an “unofficial” identity.

34. Section 37 introduces a new offence of giving false information to the Registrar General, to mirror the current offence of giving false information to a registrar. The section also enables documents to be in electronic form and for attestation of documents and for the manner of attestation to be prescribed.

*Alternative consideration (section 37)*

35. No alternative suggestions in consultation were received to these proposals.

36. Sections 38 to 43 deal with marriage, and with civil partnerships. Section 38 makes provision for the solemnisation of marriage in Scottish waters to be more convenient, and for the location to be more easily identified. Section 39 deals with maintaining and displaying a local list of intended marriages, and enables the Registrar General to maintain an all-Scotland list. Section 40 makes provision for marriage notices and legal objections to marriage to be submitted electronically, and for other associated written communications in relation to marriage and the appointment of celebrants to be in electronic form.

37. Section 41 makes provision for civil partnerships to be registered in Scottish waters. Section 42 makes a minor amendment to the Civil Partnership Act 2004 to bring arrangements for

publicising intended civil partnerships into line with arrangements for publicising marriage. Provision is made to mirror for civil partnership registration existing marriage law which prevents challenge to the validity of a marriage on a minor technical flaw in the preliminaries to a marriage. The section also provides for other administrative arrangements, such as the examination and correction of the civil partnership register and the issuing of extracts from the register.

38. Section 43 makes provision for the issue of extracts from the civil partnership register for certain specified purposes, in the same way as the other statutory registers.

*Alternative consideration (sections 38 to 43)*

39. The primary purpose of the provisions enabling marriage to be solemnised and civil partnerships to be registered in Scottish waters is to remove uncertainty in determining the registration district in which the marriage or civil partnership takes place. Following consultation, the policy to create a new registration district, which would comprise of all Scottish “internal waters and territorial sea”, was simplified to make the associated administrative processes clearer for the public and for registrars, without the need to create a new registration district.

40. The proposal for the Registrar General to maintain a new all-Scotland list of marriages, in addition to the local list maintained by registrars, caused some concern that it would, for example, make unwelcome media intrusion much easier. However, on balance it was felt that announcing publicly intended marriages in this way better facilitated the lodging of legal objections to marriage.

41. The provisions relating to civil partnerships were not the subject of consultation and are consequential upon the Civil Partnership Act 2004, and the general policy that the administrative procedures for civil partnership should mirror as closely as possible the administrative procedures for marriage.

42. Sections 44 and 45 make provision for the creation of a new public record known as the Book of Scottish Connections (BSC). Citizens, whose parent or grandparent was born in Scotland or are the subject of an entry in the Book, will be able to apply to the Registrar General to have recorded in the Book births, deaths, marriages, civil partnerships (including overseas relationships), divorces and dissolutions of civil partnerships which occur, and are registered, outwith Scotland.

*Alternative consideration (sections 44 and 45)*

43. The original policy was to restrict the availability to citizens whose parent or grandparent was born in Scotland. At the suggestion of a member of the public, who responded to the consultation exercise, this was changed to include citizens whose parent or grandparent was the subject of an entry in the BSC, thus potentially extending its operation over several generations.

44. Section 46 makes provision for the General Register Office for Scotland to share information already publicly available with any public body or office holder.

*Alternative consideration (section 46)*

45. No alternative suggestions in consultation were received to this proposal. All but one of the responders to this proposal supported it.

46. Section 47 makes provision for the establishment of a new central register which is to be created and maintained to facilitate the carrying out of Health Board and local authority functions. Information may be shared from this register. This process will be regulated by regulations and agreements. One of the anticipated data sharing uses for certain information from the register will be with local authorities to facilitate the creation of new citizen's accounts.

*Alternative consideration (section 47)*

47. This proposal was added to the provisions in the Bill after consultation. The alternative is not to use the register in this way

48. Section 48 provides for local registrars to have access to minor records held centrally by the Registrar General, and for copies or extracts to be made available to the public.

*Alternative consideration (section 48)*

49. All but one responder to the consultation agreed with this proposal about local access to records. Digitally imaging the records held in Edinburgh and making them available on-line to the public via local registrars resolved the previous access difficulties. It is GROS general policy to make information available locally as well as centrally where it is possible to do so.

## **ALTERNATIVE APPROACHES**

50. The paragraphs setting out the policy objectives of part 1 of the Bill make it clear that one of the main underlying objectives in the Executive's policy on electoral administration is to ensure that as far as possible procedures for local government elections in Scotland are the same as those for the Scottish Parliament elections with which they are combined. Not making those changes could well mean a mismatch of procedures creating difficulties for returning offices and their staff and, potentially, voters. In addition, the policy solutions drawn up by the Electoral Commission (an independent body whose remit is electoral modernisation) and the UK Government were the result of extensive consultation. Further, many of the Part 1 provisions supplement or amend existing legislation (e.g. several of the provisions aimed at the prevention of electoral fraud), and accordingly non-legislative policy solutions would be inappropriate. For these reasons, alternative policy approaches were not a factor. There were however three options for introducing these legislative changes for local government elections in Scotland which were considered:

- ***await a suitable legislative opportunity at some future date*** This would mean that there would be a delay in introducing measures to tackle absent voting fraud for local government elections in Scotland and would result in a mismatch between procedures for local government elections and those for the Scottish Parliament held on the same day
- ***bring forward a Sewel motion to extend the provisions of the UK Electoral Administration Bill to local government elections in Scotland*** Whilst this approach would avoid the need for separate primary legislation and introduce the changes for all

UK elections on the same timescale, there were areas where the legislation already diverged and a Sewel motion would not be sufficient to bring it back in line. There was a possibility that the timing of these changes by the UK Government might cut across preparations for the introduction of STV in the run up to the 2007 elections.

- ***bring forward a separate Scottish Bill*** Legislating separately for local government elections allows control of the timing of implementation of the changes to ensure that it does not cause difficulties with the preparations for the introduction of STV in 2007.

For the reasons outlined above, Ministers opted to legislate separately for Scotland and bring forward a Bill to replicate the changes set out in the UK Bill in respect of local government elections in Scotland.

51. The main policy alternative to introducing legislative change in the registration service is to maintain the status quo. However, the existing legislative framework, under which the registration service operates, is dated, and consultation showed support for modernisation and better use of technology to meet citizens' needs in the 21<sup>st</sup> century. The only mechanism available to modernise in this way is to amend existing statute to remove unwelcome constraints that are no longer appropriate. Much of the registration content of the Bill affects the registration process and day-to-day practice and aims to make the service more convenient and user friendly for citizens.

## **CONSULTATION**

52. The proposals which form the basis of the UK Electoral Administration Bill have emerged from a series of detailed studies and consultations carried out by the Electoral Commission since 2003. The recommendations included in the Commission reports "Voting for Change" (June 2003) and "Delivering Democracy? – the Future for Postal Voting" (December 2004) and "Securing the Vote" (May 2005) followed extensive consultation of the electoral community (primarily returning officers, electoral registration officers, elections administrators, politicians political parties and equality groups) throughout the UK. In total, the Commission received 2,800 responses through its programme of policy reviews. The consultation process undertaken by the UK Government included policy discussion seminars with political parties, disability groups and the professional associations representing returning officers and electoral administrators across the UK. The parties consulted were broadly supportive of the proposals for change. Given this extensive consultation, no separate consultation has taken place specifically in relation to the adoption of these changes for Scottish local government elections as the main interested parties will have already given their views. The Bill and the text of its draft provisions is being discussed however with the representatives of the electoral community who are represented on the Steering Group overseeing the preparations for the 2007 Scottish elections to provide the opportunity for any additional views to be considered.

53. A first round of consultation on the registration services proposals was launched in October 2000 and proposals for legislation were announced on 5 November 2001. Consultation on a draft Bill took place in January-March 2005 - a total of 50 responses were received. The bulk of responses (74%) were from the "service providers" (local authorities and registrars). The draft Bill contained 23 proposals for change. Of the 23 proposals, 9 attracted no negative response, and all but 1 of the other 14 proposals attracted more support than opposition. Dialogue with local authorities, the Association of Registrars of Scotland and others continued after the end of the

consultation period. The current draft of the Bill contains changes made in the light of those discussions and consultation responses generally, as described in the preceding paragraphs on the detail of the registration services provisions. The consultation paper, draft Bill and analysis of the consultation responses are available at [www.gro-scotland.gov.uk](http://www.gro-scotland.gov.uk).

## **EQUAL OPPORTUNITIES**

54. The Scottish Executive is committed to promoting equality of opportunities and one of the fundamental objectives of the overall package of changes to electoral administration being introduced by the UK Electoral Administration Bill, this Bill and related secondary legislation is improving access to and participation in the electoral process. A specific example of this is the provision which will allow election administrators to provide documents and guidance to voters in a variety of languages and formats.

55. The provisions on registration services will make access to the registration service easier by enabling the public to register events at the registration office most conveniently located to them and, in addition, by providing for on-line registration via a home computer, interactive television, or local service point, as an alternative to face-to-face registration.

## **HUMAN RIGHTS: ELECTORAL ADMINISTRATION**

56. The Bill contains measures which will improve the efficient administration of elections and safeguards against abuse of voting and, as these measures are designed to support the conduct of free and fair elections, the Scottish Executive considers that these are consistent with the European Convention on Human Rights. In general terms, the main Convention right most likely to be engaged in electoral law is Article 3 of Protocol 1 (right to free elections). Electoral law “corrupt” and “illegal” offences are a combination of criminal law and electoral law offences – the latter taking the form of disqualifications for specified periods from voting or standing as a candidate, or from standing for other public offices. Electoral disqualifications necessitate consideration of whether the Article 3 –P1 Convention right is engaged and, if so, whether interference is justified.

57. Particular sections of the Bill where Convention rights are likely to be engaged are Section 11 dealing with the offence of providing false information in nomination papers and Section 13 which provides for offences relating to applications for postal and proxy votes. Section 11 creates a new offence of making a false declaration in the candidate’s consent to nomination that the candidate is not disqualified from being elected. It will also deter abuse of the new power for independent candidates to include a description on the ballot paper.

58. The offence attracts both criminal law and electoral law penalties by being added to those classified as a “corrupt” practice. The appropriate criminal courts can impose criminal law penalties of up to two years imprisonment and or a maximum fine of up to £5,000. The offence also attracts an electoral law penalty of disqualification from standing for election for five years and standing for certain other public offices, subject to the report of the election court. The candidate will not be disqualified from being a voter.

59. Section 13 creates a new offence of making false applications for postal or proxy votes with the intention of, in effect, stealing others’ votes. Jurisdiction to determine offences is

conferred on the criminal or election courts, as appropriate. It will be classified as a “corrupt” practice, attracting the same maximum criminal and electoral penalties as referred to above for Section 11. It will also attract an electoral law penalty of disqualification from voting for 5 years. A person commits an offence if an application is made with the intention of seeking to deprive another person of their vote or to gain a vote to which they are not entitled. The provision also catches the making of a false statement in connection with the application, or inducing the registration officer or returning officer to send electoral communications to the wrong address or diverting them away from the intended recipient.

60. The Scottish Executive is of the view that Article 3 of Protocol 1 does not apply to local government elections due to the interpretation of the word ‘legislature’ contained in this Article. The European Court of Human Rights has made it clear that local authorities, by virtue of the subordinate nature of their powers and functions, which they derive from Parliament, cannot be considered to be part of the legislature or legislative body. If Article 3 of Protocol 1 does not apply to elections at local government level, it follows that there can be no breach of this Article.

## **HUMAN RIGHTS: REGISTRATION SERVICES**

61. The Executive is satisfied that the provisions of the Bill are compatible with the requirements of the European Convention on Human Rights (“the ECHR”) for the reasons noted below.

62. Certain provisions in the Bill which relate to the sharing and exchange of certain types of registration information may impact on the rights set out in Article 8 of the ECHR which guarantees the right to respect for private and family life, home and correspondence. Most relevant to the Bill is the right to respect for private life. It has been held that the right to private life under Article 8 includes the right not to have private information disclosed to third parties without consent.<sup>1</sup>

63. Those rights are, however, not absolute and interference with them must be justified. Article 8(2) sets out justifications for limitations on the rights protected by Article 8. Such restrictions are justified where they are in pursuit of a legitimate aim as listed in Article 8(2), in accordance with the law and necessary in a democratic society.

64. The main provisions in the Bill which relate to data-sharing and which may engage Article 8 are sections 34, 46, 47 and 48, all of which enable certain registration information to be shared with particular groups. These provisions are wholly compatible with Article 8.

65. The restrictions on private life created by the Bill provisions are justified in terms of Article 8(2) as follows. Firstly, they are in pursuit of more than one legitimate aim. It is undoubtedly in the public interest to maintain public registers with accurate information about individuals in society and the basic status of those individuals. By allowing individuals to order their affairs in accordance with the law, this serves the economic well-being of the country. For instance this will allow information about individuals to be verified, which can help to prevent fraud.

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<sup>1</sup> *Eg Lingens v Austria* (1986) A 103 paras 37-47.

66. In relation to the central register to be created and maintained under section 47, there is a clear public interest in enabling systematic recording of information on a register to facilitate health and local authority purposes. There is also an economic benefit in so far as these bodies will be able to run their services more effectively and efficiently and furthermore, the keeping of the register will assist towards the protection of health.

67. Secondly, the restrictions will comply with that part of the ECHR which requires that they must be set out in adequately accessible and foreseeable domestic law, once the Bill is passed as an Act of the Scottish Parliament and the regulations needed under such an Act are in force.

68. Thirdly, it is considered that the maintenance of the existing public registers of life events and the use of that information are clearly necessary in a democratic society. In particular, in relation to the central register, bearing in mind the latitude afforded to State legislatures under ECHR in the context of information sharing of a type which is not highly sensitive, the restrictions on the right to private life (to the extent that there is a restriction) are necessary.

69. Given the general duty of the Registrar General to act in accordance with the ECHR by virtue of the functions conferred upon him including section 6 of the Human Rights Act 1998, he will ensure that any sharing of information with any body will comply with the requirements of Article 8.

70. Article 12 of the ECHR protects the fundamental right to marry. Part 2 of the Bill, whilst it makes changes to the way in which marriage procedures are conducted, does not abridge or restrict the ability to marry as it applies to anyone. There are, therefore no issues in terms of Article 12.

71. Article 14 of the ECHR sets out the principle of non-discrimination in terms of securing the enjoyment of the rights and freedoms set out in the ECHR. In so far as any of the Bill provisions treat persons differently this is achieved in such a way as to ensure compatibility with all other provisions of the ECHR. Accordingly, no issues arise in relation to Article 14.

## **ISLAND COMMUNITIES**

72. The Bill has no disproportionate effect on island communities.

## **LOCAL GOVERNMENT**

73. Both the functions with which the Bill is concerned are delivered by local authorities, which are directly responsible for the administration of local government elections and for the local registration service. As equivalent electoral administration changes are being introduced for Parliamentary elections across the UK, a decision not to implement these changes for local government elections in Scotland would result in two differing sets of procedures for elections held on the same day and the resulting imposition of a substantial burden for those who run elections.

*This document relates to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005*

**SUSTAINABLE DEVELOPMENT**

74. The Bill will have no significant effect on sustainable development.

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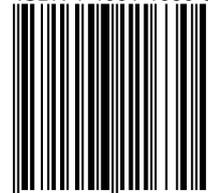
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