Local Government and Transport Committee

3rd Meeting, 2006

Tuesday 31 January 2006

The Committee will meet at 2 pm in Committee Room 4

1. **Items in private:** The Committee will consider whether to take item 4 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   - the Road User Charging Schemes (Liability for Charges) (Scotland) Regulations 2005, (SSI 2005/651)
   - the Road User Charging Schemes (Penalty Charges) (Scotland) Regulations 2005, (SSI 2005/652)
   - the Road User Charging Schemes (Keeping of Accounts and Relevant Expenses) (Scotland) Regulations 2005, (SSI 2005/654)
   - the M77 (Malletsheugh) (Speed Limit) (Scotland) Regulations 2005, (SSI 2005/655)

3. **Local Electoral Administration and Registration Services (Scotland) Bill:** The Committee will take evidence at Stage 1 from—

   **Panel 1**
   Neville Dundas, Head of Corporate Administration, Scottish Borders Council

   **Panel 2**
   Gordon Blair, Chief Legal Officer, West Lothian Council, SOLAR; and
   Rod Richardson, Principal Administration Officer, Clackmannanshire Council, Association of Electoral Administrators

   **Panel 3**
   Jeanette Wilson, Solicitor to the Church of Scotland; and
   Graham Blount, Parliamentary Officer, Scottish Churches
4. **Freight Transport Inquiry:** The Committee will consider a summary of written evidence. The Committee will also consider a programme of evidence to inform the inquiry.

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**Agenda item 2**  
Covering note on the Road User Charging Schemes (Liability for Charges) (Scotland) Regulations 2005, (SSI 2005/651)  
LGT/S2/06/3/1

Copy of the instrument  
LGT/S2/06/3/2

Covering note on the Road User Charging Schemes (Penalty Charges) (Scotland) Regulations 2005, (SSI 2005/652)  
LGT/S2/06/3/3

Copy of the instrument  
LGT/S2/06/3/4

Covering note on the Road User Charging Schemes (Keeping of Accounts and Relevant Expenses) (Scotland) Regulations 2005, (SSI 2005/654)  
LGT/S2/06/3/5

Copy of the instrument  
LGT/S2/06/3/6

Covering note on the M77 (Malletsheugh) (Speed Limit) (Scotland) Regulations 2005, (SSI 2005/655)  
LGT/S2/06/3/7

Copy of the instrument  
LGT/S2/06/3/8

**Agenda item 3**  
Submission from SOLAR  
LGT/S2/06/3/9

Submission from the Association of Electoral Administrators (to follow)  
LGT/S2/06/3/10

**Agenda item 4**  
Summary of written evidence (private)  
LGT/S2/06/3/11(P)

Witness paper (private)  
LGT/S2/06/3/12(P)
SS1 Cover Note For Committee Meeting

SSI title and number: The Road User Charging Schemes (Liability for Charges) (Scotland) Regulations 2005, (SSI 2005/651)

Type of Instrument: Negative

Meeting: 3rd meeting, 31 January 2006

Date circulated to members: 6 January 2006

SSI drawn to Parliament’s attention by Sub Leg Committee: No

Purpose: These Regulations specify the persons liable for charges for road user charging schemes, under section 49(4) of the Transport (Scotland) Act 2001.
SSI Cover Note For Committee Meeting

SSI title and number: The Road User Charging Schemes (Penalty Charges) (Scotland) Regulations 2005, (SSI 2005/652)

Type of Instrument: Negative

Meeting: 3rd meeting, 31 January 2006

Date circulated to members: 6 January 2006

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes (see Annex)

Purpose: These Regulations make provision for the procedures relating to imposition and liability for penalty charges; examination of, and entry to vehicles; powers of removal and disposal of vehicles; recovery of penalty charges in relation to removed vehicles; taking possession of vehicles; and claims by registered keepers of vehicles after their disposal.
Annex

The Road User Charging (Penalty Charges) (Scotland) Regulations 2005, (SSI 2005/652)

1. The Executive was asked to explain the drafting of regulation 8(1), and asked whether it should read “purpose specified in section 56(2)(a)” rather than “purpose of” that section.

2. The Executive agreed that the wording proposed by the Committee would be more appropriate, although it considered that the purpose of the provision is clear from the existing drafting.

3. The Committee therefore reports this instrument to the lead Committee and Parliament on the grounds of defective drafting.

4. The Committee asked for an explanation for the vires for regulation 10(6) and the provisions relating to the contents of a vehicle contained in regulations 11 and 13. The Committee also noted that regulation 12 makes no reference to the contents of a vehicle and asked whether this was deliberate.

5. The Executive cited section 81(2) as the vires for regulation 10(6) and the other provisions relating to the contents of a vehicle contained in regulations 11 and 13. There was no reference in regulation 12 to contents of a vehicle as it is not current policy that a charge is made in this regard.

6. The Committee reports to the lead committee and Parliament that further information was requested from and supplied by the Executive.

7. The Committee also asked the Executive to explain why regulation 13(3) was not drafted as a provision to be included in a charging scheme, as it seems to be inconsistent with the other provisions of regulation 13 and with the enabling powers.

8. The Executive agreed that regulation 13(3) could have been drafted in the manner suggested by the Committee but considered that it is something which will have had to be included in a charging scheme and is more relevant to section 64.

9. The Committee notes the Executive’s response and draws it to the attention of the lead Committee and the Parliament.

10. The Committee asked whether any progress has been made with the regulations referred to in regulation 13 (which will deal with appeals).

11. The Executive confirmed that it intends that the regulations referred to in regulation 13 will be in place prior to any charging scheme coming into force.

12. The Committee draws this information to the attention of the lead committee and the Parliament.
SSI Cover Note For Committee Meeting

SSI title and number: The Road User Charging Schemes (Keeping of Accounts and Relevant Expenses) (Scotland) Regulations 2005 (SSI 2005/654)

Type of Instrument: Negative

Meeting: 3rd meeting, 31 January 2006

Date circulated to members: 6 January 2006

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes (see Annex)

Purpose: These Regulations specify the expenses which may be deducted from the gross amount received under a charging scheme for a financial year in order to determine the net proceeds available for application or distribution.
The Committee asked the Executive why it was thought necessary to define “net proceeds” and by extension “relevant expenses” when the former term does not appear in the Regulations and the definition simply repeats the definition in the enabling power.

The Executive replied that the term “net proceeds” is used in regulation 3(a). The term “net proceeds” is defined only for the purpose of schedule 1 to the parent Act and therefore the Executive considered that express provision is required, in order that the term in these regulations attracts the same meaning as that contained in the schedule to the parent Act. The definition of net proceeds contains the term “relevant expenses” and regulation 4(1) determines what expenses are relevant expenses.

The Committee reports this instrument to the lead committee and Parliament on the grounds of failure to follow proper legislative practice.

The Committee also asked why the Executive considered it necessary to include a definition of “charging authority” when the definition simply refers the reader to the definition of that term in the parent Act.

The Executive explained that the reason for including the definition of “charging authority” was to ensure that the definition, which applies only to Part 3 of the Act, would apply to these regulations.

Again, the Committee reports this instrument to the lead committee and Parliament in the category of failure to follow proper legislative practice.

The Committee asked for the reason for the drafting approach adopted in relation to regulation 3, which appears to repeat the obligation imposed by the parent Act.

The Executive agreed that regulation 3 follows the general lay out but maintains that it does not repeat the obligation imposed by the parent Act. In general regulation 3 requires that the accounts must be kept, prepared and published in accordance with proper accounting practices, as defined in regulation 2.

The Committee brings this to the attention of the lead committee and Parliament on the grounds of defective drafting, and that regulation 3 is technically ultra vires. However, it is thought that the drafting of the regulation would not prevent fulfilment of the policy intention.

The Committee noted that the enabling power in paragraph 4 of schedule 1 to the Act includes a reference to joint accounts by charging authorities for which the Regulations do not appear to make provision. The Committee asked if this was deliberate.
11. The Executive explained that the Regulations focus on what is required for a single charging authority. There are no joint schemes currently in place and if a joint scheme were to be proposed it may seek to amend the regulations.

12. **The Committee noted the Executive's response. The Committee reports the instrument on the grounds of unusually limited use of the power.**

13. Although the Regulations do not directly make provision to this effect, it appeared from the Explanatory Note that the Executive may intend the references to enactments etc in the definition of “proper accounting practices” in regulation 2 to have ambulatory effect. The Committee asked whether this was the intention and if so, which provision authorises this approach.

14. The Executive confirmed that the definition of “proper accounting practices” should have ambulatory effect. The Executive would not want to amend the regulations for each change in proper accounting practices. The Executive considered that the power contained in section 81(2) is sufficiently wide to allow for this.

15. **The Committee reports this instrument to the lead committee and Parliament in relation to the definition of “proper accounting practices” and considers that whilst the current regulations are intra vires, future changes to accounting standards would not be covered by this instrument.**

16. The Committee asked the Executive to explain the purpose of regulation 4(1).

17. The Executive explained that regulation 4(1) determines relevant expenses as all of the expenses incurred by a charging authority in making and operating the scheme.

18. **The Committee reports this regulation to the lead committee and Parliament on the grounds of failure to follow proper legislative practice.**
SSI Cover Note For Committee Meeting

SSI title and number: The M77 (Malletsheugh) (Speed Limit) (Scotland) Regulations 2005, (SSI 2005/655)

Type of Instrument: Negative

Meeting: 3rd meeting, 31 January 2006

Date circulated to members: 6 January 2006

SSI drawn to Parliament’s attention by Sub Leg Committee: Yes (see Annex)

Purpose: These Regulations impose a speed limit of 60mph on the special road authorised to be provided by the M77 Special Road (Floak to Malletsheugh) Special Road Scheme 1999.
Annex

The M77 (Malletsheugh) (Speed Limit) (Scotland) Regulations 2006, (SSI 2005/655)

1. The Committee asked for an explanation of the purpose of regulation 1(2) and, in particular, the reference to “regulation 1(1)” in that paragraph given that paragraph (1) is a citation provision and does not refer to a “special road”.

2. In its response the Executive agreed that regulation 1(1) is a citation provision and does not refer to the special road. The reference to the special road is not in regulation 1(1) but unfortunately an erroneous cross reference was used inadvertently by following an earlier precedent for the exercise of this power where the cross reference was correctly stated as regulation 1(1).

3. Given the terms of the substantive provisions of the Regulations, including the correct cross-reference being made in regulation 2, the Executive considered that for this Order the special road affected is sufficiently identified. Accordingly, it is considered that the instrument achieves its effect even with the erroneous cross reference.

4. The Committee reports the instrument to the lead committee and Parliament on the grounds of defective drafting. However, the Committee agrees that it will not damage the effectiveness of the regulations for the reasons advanced by the Executive.

5. The Committee noted that paragraph (2) appears to be an interpretation provision relevant to the whole of the Regulations and asked, if so, why the heading to regulation 1 is “Citation” rather than “Citation and interpretation”.

6. The Executive confirmed that regulation 1(2) was intended to be an interpretation provision. Accordingly, the heading to regulation 1 should have been “Citation and interpretation”.

7. Again, the Committee reports this instrument for defective drafting to the lead committee and Parliament, although it is unlikely to affect the validity of the instrument.

8. Finally, the Committee asked the Executive to explain why, given that breach of regulation 3 is a criminal offence for which the penalty is provided in the parent Act, no information to this effect, together with a note of the current maximum penalty, is included in the Explanatory Note.

9. The Executive has confirmed that this is an oversight.

10. Again, the Committee reports the instrument on the ground of defective drafting of the Explanatory Note acknowledged by the Executive. This will not affect the validity of the instrument.
LOCAL ELECTORAL ADMINISTRATION & REGISTRATION SERVICES BILL

SUBMISSION TO LOCAL GOVERNMENT AND TRANSPORT COMMITTEE
SCOTTISH PARLIAMENT

1. General comments on Bill -

(1) Main Purpose - SOLAR welcomes the main effect of the Bill, ie that the election rules for local government elections should, unless for good reason, be similar to those for other types of election in Scotland where the conduct rules are reserved to Westminster, ie Scottish, UK and European Parliamentary elections. This approach minimises confusion for everyone interested in the conduct of elections.

(2) Timing - The timing of the receipt of Royal Assent for the Bill (and the UK Electoral Administration Bill) and the introduction of related regulations is critical as it impacts on the timetable for the preparation of new or amended Scottish local election rules and regulations required to deliver STV for May 2007 under the Local Governance (Scotland) Act 2004. SOLAR urges that the promulgation of new or amended primary and secondary electoral legislation be completed as soon as possible so as to give electoral administrators the maximum time to prepare for the 2007 elections with STV and e-counting, and produce the necessary training materials and election documents for that.

2. Section 1 - Performance Standards for Returning Officers - SOLAR accepts the principle of performance standards as a means of providing benchmarking information to facilitate continuous improvement of electoral services. SOLAR is already participating in a national exercise being undertaken on behalf of the Electoral Commission by KPMG. In the interests of uniformity, performance standards for Returning Officers in respect of Scottish local government elections should be based as far as possible on national standards, but should be flexible enough to recognise that, in Scotland, the role of Returning Officer is not ordinarily combined with that of Electoral Registration Officer. It is important to ensure that prescribed standards applying to Returning Officers are all within their control since Scottish Ministers will be empowered to publish assessments of the level of performance by Returning Officers (Section 2). It is also important that the standards set by Scottish Ministers for local government elections are compatible with the standards to be set by the Electoral Commission for other elections in Scotland under section 64 of the UK Bill on Electoral Administration (as printed for the House of Lords on 12 January 2006).

3. Section 3 – Correction of Procedural Errors - SOLAR welcomes Returning Officers being empowered to take positive action to correct errors or omissions that arise during the preparation for the conduct of elections. This section will amend Section 63 of the Representation of the People Act 1983 so that a Returning Officer is not guilty of a breach of official duty if he/she remedies the act or omission in question. This new power will supplement the current provisions of sections 23(3) and 50 of the 1983 Act which prevent elections being declared void because of acts or omissions of RO's and their staff which
breach the elections rules but do not affect the election result, and allow any misnomer or inaccurate description of any person or place named in an election document, eg ballot paper, to be disregarded if such description is commonly understood.

However, this new power may not go far enough to correct a procedural error which cannot be rectified, eg the Presiding Officer writes the voter's electoral number on the ballot paper, or the security mark (official mark such as a water mark) or the unique identifying mark (eg a bar code) for some reason, such as printing error, does not appear on the ballot paper. It would be improper for the RO to score out the PO's writing and impractical for the RO to add the official mark or unique identifying mark to a ballot paper which, without any other statutory provision, would require to be declared void. So, SOLAR would support an additional provision to the effect that any ballot paper which does not bear the official mark or unique identifying mark, or on which anything is written by which the elector can be identified should not, by itself, make the ballot paper void where the RO is satisfied that the error has been made by him/her or a relevant person (defined in section 3(3) of the Bill).

A similar provision would need to be inserted into section 46 of the UK Bill for Westminster elections to keep the rules similar for council and other elections.

4. **Sections 4 to 6 – Access to Electoral Documents** - These sections mirror clauses 41 and 45 of the UK Electoral Administration Bill. Clause 45 will require for UK parliamentary elections that RO's mark the list of postal voters and the list of postal proxies to show who has returned a postal vote, and clause 41 will require these marked lists to be available for inspection by the public and for registered parties and candidates to receive copies of these.

SOLAR is concerned that the process of marking these lists at the opening of postal votes will cause significant logistical problems for RO's staff because it will be time consuming and require significant resources to complete, if done manually, bearing in mind the volume of postal votes that RO's now require to issue. SOLAR has already made representations to the DCA/ODPM that this requirement should not be brought in until technology is available to carry out this task electronically, and repeats this view for local government elections.

SOLAR is also concerned that there is the potential risk to maintaining the secrecy of the poll during the opening of the postal votes if the requirement to provide marked lists of returned votes is brought in before technology is available to carry this task out electronically, particularly with sections 7 and 8 of the LEAR Bill providing for additional observers at these proceedings.

5. **Sections 7 and 8 – Observers at Election Proceedings** - these sections will enable observers, both individuals and organisations, to attend various proceedings at a local government election. Observers will have the right to attend the issue as well as the opening of postal votes, but currently this right does not apply to candidates and agents who only have the right to attend the opening of postal votes.

SOLAR questions the logic of this difference between observers (who can be as young as 16), and candidates and agents. The rules for observance should be the same for both categories. SOLAR suggests that equal rights be given to observe the opening of postal votes only, bearing in mind that postal votes can be issued on a multiple, rolling basis due to their number.

6. **Section 9 – Code of Practice on Observers’ Attendance** - this section makes provision for Scottish Ministers to prepare and publish a code of practice on the attendance of observers at elections and this is to be welcomed. SOLAR would welcome consultation
with Returning Officers and electoral administrators on the detail of this Code and believes that it is important that the Returning Officer remains in control over the conduct of the opening of postal votes, the poll and the count, and that any code of practice will ensure the integrity of these processes.

7. **Sections 10 and 11 – False Information** - these sections contain provisions to deal with false information provided in connection with applications for absent voting and also on nomination papers. These provisions are **welcomed**.

8. **Sections 12 and 13 – Offences relating to Voting** - these sections amend the offence provisions relating to voting. The undue influence provisions of Section 115 of the 1983 Act are amended to ensure that intended but unsuccessful attempts at preventing the free exercise of the franchise etc. amount to the corrupt practice of undue influence. Section 13 fortifies the law in relation to offences concerning applications for postal and proxy votes. A new section 62(b) of the 1983 Act is inserted covering these issues for local government elections. These sections are **welcomed**.

9. **Sections 14 to 17 – Candidates’ Election Expenses** - These deal with various facets of candidates’ election expenses and are **welcomed** as they are very helpful. Historically, this area has been complex and confusing and the proposed amendments go a considerable way towards clarifying various areas of uncertainty particularly in relation to “the relevant period” during which election expenses are incurred.

10. **Section 18 – Anonymous registration.** This section provides a mechanism to extend those UK Bill provisions (when enacted) in relation to anonymous registrations so that they apply to Scottish local government elections. This is **welcomed** as it maintains the policy of similarity among different types of election.

11. **Section 19 – Personal identifiers.** This provision allows the piloting of the use of personal identifiers in Scotland for local government elections, but only for the purposes of voting not for registration. The collecting of personal identifiers for registration purposes is a reserved matter dealt with under sections 13 to 19 of the UK Bill. Personal identifiers are defined as meaning the person’s signature, date of birth, and such information as Scottish Ministers may prescribe in the statutory instrument.

    SOLAR agrees with the principle of personal identifiers and piloting their introduction to tease out the practical issues for both Electoral Registration Officers in collecting the personal identifiers and Presiding Officers in using them for comparison purposes in the voting process. SOLAR is concerned that, if this is extended across Scotland for the elections in May 2007, it will create considerable logistical problems with voters signing for three ballot papers. Voters may need a replacement for a spoilt paper and sometimes a printing error means that there is a ballot number missed which could make a combined ballot paper number list impractical. Also, it can be expected that polling station staff will have to spend time explaining to voters why this is being done and assuring them that their vote is still secret. SOLAR’s view is that personal identifiers should not be brought in across the board until after the 2007 elections, and not before the feasibility of their collection and use has been tested through pilots.

12. **Section 20 – Tendered votes in certain circumstances.** The intention of this section is to extend entitlement to a tendered ballot paper to (a) a person who alleges that
he/she has been included on the absent voters list without his or her knowledge and (b) a person who alleges loss or non receipt of their postal ballot paper. Consequential amendments to legislation are proposed to provide that 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. While SOLAR accepts the introduction of this provision to mirror other elections, it questions the logic and purpose of the UK Bill extending the use of tendered votes because such votes cannot be counted and remain sealed up in the packets returned by the Presiding Officers unless challenged under an election petition. Casting a tendered vote is likely to raise electors’ expectations that their vote will count for something. The emphasis should be on investigating any electors’ claims that they did not apply for a postal or proxy vote or why their postal vote was not delivered.

13. **Section 22 – Details to appear in election publications.** There has been some toing and froing on this particular matter over the last three or four years but this section proposes to repeal Section 110 of the 1983 Act so far as it applies to Scottish local government elections by widening the scope of details that are to be provided on an election publication. The term “publisher” is replaced by “promoter”. 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. **SOLAR welcomes** this provision as clarifying the law.

14. **Section 23 – Repeal of reference to Maundy Thursday.** This section removes Maundy Thursday from the rules on computing time for Part II of the 1983 Act dealing with the electoral campaign, eg appointment of election agents. The amendment is required in this Bill because Part II of the 1983 Act applies to Scottish local government elections. **SOLAR welcomes** this amendment because it brings the election rules for Scottish local elections into line with the Scottish Local Election Rules 2002 which have already removed Maundy Thursday from the rules dictating the timetable for council elections in Scotland.

15. **Section 24 – Translations etc. of certain documents.** Returning Officers and their staff will be empowered 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. **SOLAR welcomes** this provision.

**OTHER MATTERS**

SOLAR would like to bring the attention of the Committee to two further legislative points:-

**(a) Electoral Administration Bill – Section 20 – Review of Polling Places -** Section 20(1) [latest House of Lords version] will create a new section 18A of the 1983 Act, which will provide [at subsection (3)(d)] that in Scotland each electoral ward, within the meaning of Section 5 of the Local Government Etc. (Scotland) Act 1994, is to be a separate polling district. Since the new multi-member wards for councils will not be based on the current constituencies for Westminster or the Scottish Parliaments, the ward boundaries will cut across these parliamentary constituency boundaries making it impossible for each electoral ward to be a separate polling district.

**SOLAR has suggested** to the Scotland Office that this section should provide that wards can contain as many polling districts as the local authority sees fit but that polling districts must never straddle ward boundaries. Since a polling place must be designated for each polling district, the effect of section 20(1) of the UK Bill, as it currently stands, is that each
multi-member ward in 2007 would be a single polling district, and the voters for each ward would all be voting in the one place – clearly undesirable.

**SOLAR stresses** that carefully plotted polling districts are the building blocks upon which polling schemes are made. Polling districts are made up of streets in geographical proximity and are not split between polling places. Careful designation of polling districts within wards ensures that voters are allocated, as far as reasonably possible, to the most conveniently located polling places. However, this can only happen when the local authority has discretion on the boundaries of polling districts within wards.

**(b) Scottish Local Government Election Rules 2002 – Rule 48** - This rule provides that in the case of abandonment or countermanding of the poll in the case of the death of a candidate, Section 45 of the 1983 Act is invoked whereby Scottish Ministers would fix the date of a new poll. This is considered to be anomalous as Section 39 of the same Act requires the Returning Officer for local elections in England and Wales to order a fresh election within 35 days of the first polling day. **SOLAR has raised** this point with Scottish Executive officials who have indicated that this anomaly can be remedied during finalisation of the Local Electoral Administration and Registration (Scotland) Bill.

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26 January 2006

Gordon Blair,
Member, SOLAR’s Elections Working Group.
The Association of Electoral Administrators is the main organisation that represents staff involved in electoral registration and electoral administration in the UK. It has over 1300 members spread across most British local authorities divided into branches. Membership is voluntary. The Scotland Branch covers all Scotland as well as Northern Ireland, where there are insufficient members to form a separate branch. The Scotland Branch is authorised to speak on behalf of the AEA on matters relating solely to Scotland (or solely to Northern Ireland). The AEA will be represented by Rod Richardson, Clackmannanshire Council. The AEA welcomes, and is grateful for, the opportunity to present evidence to the Committee.

1 General

The AEA is pleased that The Scottish Parliament is bringing forward this Bill so that election law in the UK will be in tandem. It would be hoped that the enactment of this Bill will be in sufficient time to allow adequate preparation for the local government elections scheduled to take place in May 2007. The AEA has concerns that previous election legislation (from the UK Parliament) has not received Royal Assent until later than envisaged, with the consequence that preparations cannot be made until the legislation is in place and then have to be accomplished in a short period of time.

2 Section 1 - Performance Standards for Returning Officers

The AEA has concerns generally about the principle of performance standards as a means of providing benchmarking information to facilitate continuous improvement of electoral services, however as this is expected to be enacted for other elections in a UK Bill, the AEA accepts that these will be introduced and it makes sense also to do so for Scottish local government elections. The AEA is already participating in the exercise being undertaken on behalf of The Electoral Commission by KPMG on this matter. In the interests of uniformity, performance standards for Returning Officers in respect of Scottish local government elections should be based, as far as possible on national standards, but should be flexible enough to recognise that, in Scotland, the role of Returning Officer is not usually combined with that of the Electoral Registration Officer. It is important that any prescribed standards applying to Returning Officers are within their control. As Scottish Ministers will be empowered to publish assessments of the level of performance by Returning Officers (Section 2) it follows that the standards set by Scottish Ministers for local government elections should be compatible with the standards to be set by The Electoral Commission for other elections in Scotland.
Section 3 – Correction of procedural error

The AEA supports the provision that Returning Officers be empowered to take positive action to correct errors or omissions that arise during the preparation for the conduct of elections.

Sections 4 to 6 – Access to electoral documents

These sections reflect clauses 41 and 45 of the UK Electoral Administration Bill. Clause 45 will require for UK parliamentary elections that Returning Officers mark the list of postal voters and the list of postal proxies to show where a returned postal vote is received, and clause 41 will require these marked lists to be available for inspection by the public and for registered parties and candidates to receive copies of these.

The AEA is of the view that the process of marking these lists at the opening of postal voters’ ballot paper envelopes will cause significant logistical problems for Returning Officers’ staff because it will be time consuming and require significant resources to complete, if done manually, at a time when staff resources are already stretched. As there is now a greater volume of postal ballot papers to be processed this will place a new burden on Returning Officers.

Sections 7 and 8 – Observers at election proceedings

These sections will enable observers, both individuals and organisations, to attend various proceedings at a local government election. This will bring Scottish local government elections into line with the proposals for other elections.

Section 9 – Code of Practice on observers’ attendance

This section makes provision for Scottish Ministers to prepare and publish a code of practice on the attendance of observers at elections and this is welcomed, however, it is hoped that consultation with Returning Officers and electoral administrators on the detail of this Code would take place prior to its introduction.

Sections 10 and 11 – False information

The AEA supports the introduction of these provisions.

Sections 12 and 13 – Offences relating to voting

The AEA supports the introduction of these provisions.

Sections 14 to 17 – Candidates’ election expenses

The AEA supports the introduction of these provisions. This should alleviate the confusion that exists at present.
Section 18 – Anonymous registration

This section provides a mechanism to extend those UK Bill provisions (when enacted) in relation to anonymous registrations so that they apply to Scottish local government elections. This is supported as it maintains the policy of similarity among different types of election.

Section 19 – Personal identifiers

The AEA supports the principle of personal identifiers and piloting their introduction. There will be the practical issues for both Electoral Registration Officers in collecting the personal identifiers and Presiding Officers in using them for comparison purposes in the voting process, however the AEA is of the view that, if this is extended across Scotland for the elections in May 2007, it would create considerable logistical problems as voters would have to sign for three ballot papers. The AEA is of the view that personal identifiers should not be introduced universally until after May 2007.

Section 20 – Tendered votes in certain circumstances

The AEA accepts that the introduction of this provision is to keep procedures in line with other elections, although the Scotland Branch has misgivings about its introduction at all as it is likely to lead voters to think that their vote will be valid and counted in this circumstance, when it will not be included in the count.

Section 22 – Details to appear in election publications

The AEA supports this provision.

Section 23 – Repeal of reference to Maundy Thursday

This section removes Maundy Thursday from the rules on computing time for Part II of the 1983 Act dealing with the electoral campaign, eg appointment of election agents. The AEA supports this amendment because it brings the election rules for Scottish local government elections into line with The Scottish Local Election Rules 2002 from which Maundy Thursday had previously been removed as a dies non.

Section 24 – Translations, etc of certain documents

The AEA supports the introduction of this provision. However, the AEA is concerned that a Returning Officer may be challenged on an election petition about, either providing a translation in one language and not another thereby being accused of bias towards one group of voters in preference to another group and, also about being accused of mistranslating a language that may be construed as influencing electors. Whilst the AEA accepts that the Returning Officer has to rely on professional assistance to provide such translations, he/she (unless fluent in such language) will be ignorant of the accuracy, impartiality, or veracity of the translation.
OTHER MATTERS

Scottish Local Government Election Rules 2002 – Rule 48

The AEA supports the submission made by SOLAR relating the rule that provides that, in the case of abandonment or countermanding of the poll in the event of the death of a candidate, Section 45 of the 1983 Act is invoked whereby Scottish Ministers would fix the date of a new poll. This is considered to be anomalous, as Section 39 of the same Act requires the Returning Officer for local elections in England and Wales to order a fresh election within 35 days of the original polling day. SOLAR has raised this point with Scottish Executive officials who have indicated that this anomaly can be Remedied during finalisation of the Local Electoral Administration and Registration (Scotland) Bill.

WILLIAM A POLLOCK

Scotland Branch Chair
Association of Electoral Administrators

30 January 2006