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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 456**

**The Crofting Commission (Elections)  
(Scotland) Regulations 2011**

**PART II**

**ELECTIONS**

**Crofting electoral register**

**3.** The registration officer must compile and maintain a register of electors for each constituency which must contain the name, home address and croft address of each of those persons entitled to vote in that constituency and which register must be supplied to the returning officer in accordance with regulation 11.

**Electors – eligibility**

**4.—(1)** Subject to the following paragraphs of this regulation, a person is entitled to vote in an election in respect of a constituency, if—

- (a) on the day on which the election notice is published, the person—
  - (i) is not disqualified under regulation 5;
  - (ii) is aged 16 years or over; and
  - (iii) has his or her name entered in the Register of Crofts or registered in the Crofting Register as a crofter of a croft situated in the constituency or the owner-occupier crofter of an owner-occupied croft situated in the constituency; and
- (b) the person's name is entered in the crofting electoral register not later than 8 weeks before the day of the count in the election.

(2) Where there are in relation to the same owner-occupied croft 2 or more persons who would be entitled to vote by virtue of paragraph (1)—

- (a) if both or all of those persons ordinarily reside at the same address, those persons are treated as a single elector;
- (b) if both or all of those persons do not ordinarily reside at the same address, those persons are to nominate, in writing to the registration officer, one such person as entitled to vote in an election.

(3) Any function which may or must be carried out under these Regulations by an elector must, in the case of an elector by virtue of paragraph (2)(a), be carried out by one of the persons concerned as agreed by both, or all, of them.

(4) If a person—

- (a) is the crofter or owner-occupier crofter of more than one croft or owner-occupied croft and those crofts or owner-occupied crofts are situated in different constituencies; and
- (b) resides in one of those constituencies,

that person is entitled to a vote only in an election in respect of the constituency in which the person resides.

(5) If a person—

- (a) is the crofter or owner-occupier crofter of more than one croft or owner-occupied croft and those crofts or owner-occupied crofts are situated in different constituencies; and
- (b) does not reside in any of those constituencies,

that person is entitled to a vote only in an election in respect of whichever of those constituencies is determined by the registration officer, before the crofting electoral register is supplied to the returning officer in accordance with regulation 11, to be closest to the person's residence.

(6) For the purpose of this regulation, the situation of a croft or owner-occupied croft is determined by reference to the parish to which the croft or owner-occupied croft is assigned in its entry in the Register of Crofts.

### **Electors – disqualification**

5. A person is disqualified from voting in an election if on the day on which the election notice is published—

- (a) the Commission has determined under section 22 of the 1993 Act<sup>(1)</sup> that, being a crofter, the person is not ordinarily resident on, or within 16 kilometres of, the croft or decided under section 26C(5) of the 1993 Act<sup>(2)</sup> that the residency duty is not being complied with by the person; and
- (b) either—
  - (i) the Commission has not granted consent under section 21B of the 1993 Act<sup>(3)</sup> for that person to be absent from the croft or the owner-occupied croft; or
  - (ii) that person has not complied with an undertaking in relation to the residency duty.

### **Returning officer**

6.—(1) The returning officer at an election is the person appointed by the registration officer.

(2) The returning officer may authorise any person to perform any of the officer's functions (but such an authorisation does not affect the returning officer's responsibility for the exercise of the function or the officer's ability to perform the function personally).

(3) An election may not be questioned by reason of a defect in the title, or want of title, of the person acting as the returning officer, if that person was then in actual possession of, or acting in, the office giving the right to act as returning officer.

### **Payment of fees and expenses of returning officer**

7.—(1) The Scottish Ministers may pay to the returning officer such fees as they consider appropriate.

(2) Any expenses properly incurred by the returning officer in the performance of his or her functions under these Regulations (in this regulation referred to as "returning expenses") are to be paid by the Scottish Ministers.

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(1) Section 22 was repealed by paragraph 3(13) of Schedule 4 to the 2010 Act but was saved by article 6 of the Crofting Reform (Scotland) Act 2010 (Commencement No. 2, Transitory, Transitional and Saving Provisions) Order 2011 (S.S.I. 2011/334).

(2) Section 26C was inserted by section 37 of the 2010 Act.

(3) Section 21B was inserted by section 35 of the 2010 Act.

(3) On the request of the returning officer for an advance on account of returning expenses, the Scottish Ministers may, if they think fit, make such an advance to him or her of such an amount and subject to such conditions as they may approve.

### **Election of members**

**8.—(1)** The Commission electoral area is divided into 6 constituencies, comprising the areas described in the Schedule and each such constituency must return one member only.

(2) The day of the count at the first election in respect of each constituency shall be 16th March 2012.

(3) Subject to regulation 54, the day of the count at elections subsequent to the first election shall be the first Friday occurring 5 years after the day of the count at the immediately preceding election.

(4) If they have not resigned office or otherwise ceased to be a member, elected members cease to hold office on the day of the count at the next election following that at which they were elected.

(5) In this regulation, “Commission electoral area” means the crofting counties and the areas designated for the purposes of section 3A(1)(b) of the 1993 Act(4) by the Crofting (Designation of Areas) (Scotland) Order 2010(5).

### **Qualification of candidates**

**9.—(1)** A person is, unless disqualified by virtue of regulation 10, qualified to be a candidate at an election if the person is—

(a) aged 16 years or over; and

(b) either—

(i) has his or her name entered in the Register of Crofts or registered in the Crofting Register as a crofter or owner-occupier crofter; or

(ii) has been nominated by an elector.

(2) A person qualified to be a candidate by virtue of paragraph (1)(b)(i) is entitled to stand only in an election in respect of the constituency in which that person is entitled to vote by virtue of regulation 4.

(3) A person qualified to be a candidate at an election by virtue of paragraph (1)(b)(ii) is entitled to stand only in an election in respect of the constituency in which the elector who nominated that person is entitled to vote by virtue of regulation 4.

### **Disqualification of candidates**

**10.—(1)** A person is disqualified from being a candidate at an election if, on the day on which the election notice is published—

(a) the person is, or has at any time during the previous year been, a member of—

(i) the House of Commons;

(ii) the Scottish Parliament; or

(iii) the European Parliament;

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(4) Section 61(1) of the 1993 Act defines “crofting counties” as comprising the former counties of Argyll, Caithness, Inverness, Orkney, Ross and Cromarty, Sutherland and Zetland. [S.S.I. 2010/29](#) designates the following areas for the purposes of section 3A(1)(b) of the 1993 Act: that part of the local government area of Highland that is outwith the crofting counties; the local government area of Moray; in the local government area of Argyll and Bute, the parishes of Kingarth, North Bute and Rothesay; and in the local government area of North Ayrshire, the islands of Arran (including Holy Island and Pladda), Great Cumbrae and Little Cumbrae.

(5) [S.S.I. 2010/29](#).

- (b) the Commission has determined under section 22 of the 1993 Act that, being a crofter, the person is not ordinarily resident on, or within 16 kilometres of, the croft or decided under section 26C(5) of the 1993 Act that the residency duty is not being complied with by the person; and either—
- (i) the Commission has not granted consent under section 21B of the 1993 Act for the person to be absent from the croft or owner-occupied croft; or
  - (ii) that person has not complied with an undertaking in relation to the residency duty;
- (c) the person holds any paid office or employment with the Commission or any other place of profit in the gift or disposal of the Commission;
- (d) the person is insolvent;
- (e) the person has been convicted of a criminal offence in the period of 5 years preceding the day on which the election notice is published in relation to which the candidate has been sentenced to imprisonment for a period of 3 months or more whether suspended or not;
- (f) the person is unable to perform properly the functions of a member of the Commission by reason of physical illness or mental disorder; or
- (g) the election takes place by virtue of regulation 54(4)(b) and the person holds office as an elected member of the Commission.

(2) A person who was previously a member of the Commission is disqualified from being a candidate at the next election under regulation 8 (and any election under regulation 54(4)(b) preceding or immediately following such an election) if he or she was absent from meetings of the Commission without the permission of the convener for a period exceeding 6 months.

(3) The reference in paragraph (1)(c) to paid office with the Commission does not include the office of member of the Commission.

(4) Unless disqualified under paragraph (1) or (2), an existing or previous member of the Commission is not disqualified from being a candidate at an election.

(5) For the purpose of paragraph (1)(d), a person is insolvent when—

- (a) the person's estate is sequestrated;
- (b) the person is adjudged bankrupt;
- (c) a voluntary arrangement proposed by the person is approved;
- (d) the person enters into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002(6) as the debtor; or
- (e) the person grants a trust deed for creditors.

### Timetable

**11.**—(1) The proceedings at an election are to be conducted in accordance with the following timetable—

<i>Proceeding</i>		<i>Time</i>
1.	Publication of election notice	Not later than 10 weeks before the day of the count
2.	Deadline for returning nomination papers and applications for proxy and absent votes	Not later than 7 weeks before the day of the count

<i>Proceeding</i>		<i>Time</i>
3.	Return of notices of withdrawals of candidature	By the deadline for the return of nomination papers at the election
4.	The registration officer must supply thecrofting electoral register to the returning officer	Not later than 4 weeks before the day of the count
5.	Issue of ballot papers	Not later than 2 weeks before the day of the count
6.	Deadline for returning ballot papers	Not later than 4.00 p.m. on the day before the day of the count

(2) In calculating any period of time for the purposes of the timetable prescribed in paragraph (1), a non-business day is disregarded and any such day is not treated as a day for the purpose of any proceedings up to the day of the count.

#### **Notice of election**

**12.** The returning officer must publish notice of the election in such form as he or she thinks fit.

#### **Nomination of candidates**

**13.—(1)** Each candidate must be nominated by a separate completed nomination paper, in such form as the returning officer thinks fit, delivered at a place fixed for the purpose by the returning officer.

(2) A nomination paper is completed if it—

- (a) states the candidate’s full name (the surname being placed first), date of birth and home address;
- (b) states, in the case of a candidate who is qualified by virtue of regulation 9(1)(b)(ii), that the candidate consents to nomination;
- (c) is signed and dated by the candidate and one witness or, in the case of a candidate who is qualified by virtue of regulation 9(1)(b)(ii), the elector nominating the candidate;
- (d) states the full name and home address of the witness or, in the case of a candidate who is qualified by virtue of regulation 9(1)(b)(ii), the elector nominating the candidate;
- (e) states, where the candidate is a crofter or owner-occupier crofter, the address of the croft or owner-occupied croft; and
- (f) states the constituency to which the nomination paper relates.

(3) A person may not witness more than one nomination paper nor may an elector nominate more than one candidate.

(4) At an election each candidate may deliver to the returning officer, before the deadline for return of nomination papers, one candidate statement which, if it complies with paragraph (5), must be sent by the returning officer to each elector with the ballot paper issued in accordance with regulation 28.

(5) A candidate statement complies with this paragraph if it—

- (a) does not exceed 250 words;
- (b) contains matters relating to the election only; and
- (c) does not appear to the returning officer to be defamatory or otherwise unlawful.

### **Validity of the nomination**

14.—(1) As soon as practicable after a nomination paper has been returned, the returning officer must examine it and decide whether the candidate has been validly nominated.

(2) Where the returning officer decides that a nomination paper is invalid, he or she must endorse and sign on the paper the fact and the reasons for his or her decision.

(3) The returning officer must send notice of a decision that a nomination paper is valid or invalid to the candidate at his or her home address as given in the completed nomination paper.

### **Withdrawal of candidates**

15. A candidate may withdraw his or her candidature, in accordance with the timetable set out in regulation 11, by notice of withdrawal in writing, which notice must be—

- (a) signed by him or her and by one witness; and
- (b) delivered to the returning officer at a place fixed by the returning officer for the purpose of return of nomination papers for the constituency.

### **Nomination in more than one constituency**

16.—(1) Where a candidate is nominated in respect of elections in more than one constituency occurring at the same time, the candidate must withdraw from his or her candidature in all but one of those constituencies.

(2) Where the candidate does not so withdraw by the close of nominations, he or she is deemed to have withdrawn from all.

### **Inspection of nomination papers**

17. Any person, at a place fixed for the purpose by the returning officer, may inspect and take copies of, or extracts from, nomination papers during ordinary office hours on any day other than a non-business day after the deadline for return of nomination papers and before the day of the count.

### **Method of election and notice of uncontested election**

18.—(1) If at the close of nominations for an election, 2 or more candidates remain validly nominated, the member must be elected from among them in accordance with the rest of this Part and Parts III and IV.

(2) If one candidate only remains validly nominated, the returning officer must cause public notice to be given that—

- (a) no further steps are to take place under regulations 19 to 47; and
- (b) on the day when the count at the election would have been held, that candidate is to be declared elected in accordance with regulation 48(2).

(3) The public notice to be given under paragraph (2) must be in such form as the returning officer thinks fit.

### **Manner of voting at elections**

19. An elector may only vote by post or by proxy.

### **Ballot papers**

20.—(1) Every ballot paper must be in such form as the returning officer thinks fit and must—

- (a) contain the names and addresses of the candidates as shown in their respective nomination papers and arranged alphabetically in the order of their surnames and, if there are 2 or more candidates with the same surname, of their other names;
- (b) not contain the names and addresses of any other persons; and
- (c) have a unique identifying number.

(2) In paragraph (1), “candidates” means the persons remaining validly nominated for an election after any withdrawals.

### **Absent electors**

**21.**—(1) An elector may apply to the registration officer for the elector’s ballot paper to be sent to an address in the United Kingdom other than the address in respect of which the elector will be registered at during an election and the registration officer must grant the application if satisfied that the applicant is eligible to vote in an election in accordance with regulation 4.

(2) The registration officer must, in respect of each election, keep a special list (“the absent electors list”) consisting of a list of those electors whose applications under paragraph (1) have been granted, together with the addresses provided in the applications to which the ballot papers are to be sent.

(3) The registration officer must remove an elector from the absent electors list if the elector applies to the registration officer to be removed.

### **Votes by proxy**

**22.**—(1) Where an elector is unable to vote by reason of disability or otherwise, the elector may apply to the registration officer for the elector’s ballot paper to be sent to a proxy authorised in writing by that elector.

(2) The application must contain the reason for the request of a proxy vote and the address of the proxy if different from that of the elector.

(3) The registration officer must grant the application if satisfied with the reason given.

(4) The registration officer must, in respect of each election, keep a special list (“the proxy list”) consisting of a list of those electors whose applications under paragraph (1) have been granted, together with the addresses provided in the applications to which the ballot papers are to be sent.

(5) The registration officer must remove an elector from the proxy list if the elector applies to the registration officer to be removed.

(6) On the day on which the election notice is published, a proxy must—

- (a) be aged 16 years or over; and
- (b) reside at an address in the United Kingdom.

(7) A person may not vote as a proxy at an election for more than 2 electors.

### **Closing dates for applications**

**23.**—(1) An application under regulation 21(1) or 22(1) must be disregarded for the purposes of any election if it is received by the registration officer after 5.00 p.m. on the day 7 weeks before the day of the count at that election.

(2) Where under paragraph (1) the registration officer disregards an application for the purposes of any particular election, he or she must, where practicable, notify the applicant of this.

### **Grant or refusal of applications**

**24.**—(1) Where the registration officer grants an application under regulation 21(1) or 22(1), he or she must, where practicable, notify the applicant of his or her decision.

(2) Where the registration officer disallows an application under regulation 21(1) or 22(1), he or she must notify the applicant of his or her decision and of the reason for his or her decision, and he or she must date such notification.

### **Lists kept under regulations 21 and 22**

**25.**—(1) The absent electors list and the proxy list are to be in such form as the registration officer thinks fit.

(2) The registration officer must make available for inspection at his or her office during ordinary office hours on any day, other than a non-business day, copies of the absent electors list and the proxy list.

### **Prohibition of disclosure of vote**

**26.** No elector who has voted at an election may be required to state for whom the elector voted in any legal proceeding to question the election.