

1960 No. 543 (L. 3)

The Election Petition Rules, 1960

<i>Made</i> - - - - -	21st March, 1960
<i>Laid before Parliament</i>	28th March, 1960
<i>Coming into Operation</i>	1st April, 1960

We, the authority having for the time being power to make rules of court for the Supreme Court, hereby make the following Rules in exercise of the power conferred on us by section 160 of the Representation of the People Act, 1949(a):—

1. These Rules may be cited as the Election Petition Rules, 1960.

2.—(1) The Interpretation Act, 1889(b), shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

(2) In these Rules, unless the context otherwise requires—

“the Act” means the Representation of the People Act, 1949;

“local election petition” means a petition questioning an election under the local government Act as defined in section 172 (1) of the Act;

“petition” means a parliamentary or local election petition;

“election petitions office” means the office of the Masters’ Secretary’s Department at the Royal Courts of Justice;

“rota judge” means a judge on the rota for the trial of parliamentary election petitions;

“Divisional Court” means a Divisional Court of the Queen’s Bench Division of the High Court;

“constituency” in relation to a local election petition means the local government area to which the petition relates;

“returning officer” means the returning officer of the constituency to which the petition relates.

(3) The master of the Supreme Court (Queen’s Bench Division) who is for the time being nominated under section 137 (4) of the Act as the prescribed officer in relation to parliamentary elections shall also be the prescribed officer in relation to elections under the local government Act, and references in these Rules to the prescribed officer shall be construed accordingly.

(4) Subject to the provisions of the Act and these Rules, the practice and procedure of the High Court, including the rules relating to the discovery and inspection of documents and the delivery of interrogatories, shall apply to a petition under these Rules as if it were an ordinary action within its jurisdiction, notwithstanding any different practice, principle or rule on which the committees of the House of Commons used to act in dealing with election petitions.

(5) Any document required to be filed in proceedings under these Rules shall be filed in the election petitions office.

3.—(1) Any jurisdiction conferred by these Rules on a judge shall, if practicable, be exercised by a rota judge and, if not, by some other judge of the Queen's Bench Division.

(2) Any jurisdiction conferred by these Rules on a master shall be exercised by the prescribed officer or in his absence by some other master of the Supreme Court (Queen's Bench Division).

4.—(1) A petition shall be in the form set out in the Schedule to these Rules or a form to the like effect with such variations as the circumstances may require, and shall state—

(a) in which of the capacities mentioned in section 108 (1) or section 113 (1) of the Act the petitioner or each of the petitioners presents the petition ;

(b) the date and result of the election to which the petition relates, showing in the case of a parliamentary election the date on which the return was made to the Clerk of the Crown of the member declared to have been elected ;

(c) in the case of a petition mentioned in subsection (2) or (3) of section 109 or subsection (2), (3) or (4) of section 114 of the Act, the date from which the time for the presentation of the petition is to be calculated ; and

(d) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved ;

and shall conclude with a prayer setting out particulars of the relief claimed.

(2) The petition shall be presented by filing it and at the same time leaving three copies at the election petitions office.

5.—(1) Within five days after the presentation of the petition, the petitioner shall serve on the respondent within the meaning of section 108 (2) or section 113 (2) of the Act and on the Director of Public Prosecutions a notice of the presentation of the petition, and of the nature of the security for costs which the petitioner proposes to give pursuant to section 119 of the Act, together with a copy of the petition.

(2) Service shall be effected in the manner in which a writ of summons is served and an affidavit of service shall be filed as soon as practicable after service has been effected.

6.—(1) Where, in the case of a local election petition, the amount of the security for costs which the petitioner proposes to give is the maximum which may be directed under the Act, an application to fix the security at that amount may be made *ex parte* by summons to a master.

(2) A recognisance as security for costs shall be acknowledged before a person authorised to take affidavits under the Commissioners for Oaths Acts, 1889 to 1891, and shall be filed forthwith after being acknowledged.

(3) The recognisance shall be accompanied by an affidavit sworn by each surety and stating that after payment of all his debts he is worth a sum not less than that for which he is bound by his recognisance, and a copy of the affidavit shall forthwith be served by the petitioner on the respondent.

7.—(1) Where the respondent intends to object to a recognisance on any ground mentioned in section 119 (4) of the Act, he shall, within five days after service on him of the notice referred to in Rule 5, serve on the petitioner notice of his objection, stating the grounds thereof, and issue and

serve on the petitioner a summons to determine the validity or otherwise of the objection.

(2) The summons shall be heard in chambers by a master, subject to an appeal to a judge within five days after the master's decision.

(3) If the objection is allowed, the master or judge having cognisance of the matter shall at the same time determine what sum of money will make the security sufficient, and the petitioner may within five days thereafter remove the objection by deposit of that sum.

8. The list of petitions at issue kept by the prescribed officer pursuant to section 121 (1) of the Act shall be conspicuously displayed in the election petitions office and shall be available for inspection by the public during office hours.

9.—(1) Within twenty-eight days after the first day on which a petition is at issue the petitioner shall apply by summons to a rota judge for a time and place to be fixed for the trial of the petition and, if the petitioner fails to do so, any respondent may, within a further period of twenty-eight days, apply in the same manner as the petitioner could have done.

(2) If no application to fix a time and place for the trial of a petition is made in accordance with the last foregoing paragraph, the prescribed officer shall refer the matter to a rota judge, who shall thereupon fix such a time and place.

(3) In the case of a parliamentary election petition not less than fourteen days, and in any other case not less than seven days, before the day so fixed, the prescribed officer shall cause notice of the time and place of the trial to be displayed in a conspicuous place in the election petitions office and sent by post to—

(a) the petitioner,

(b) the respondent,

(c) the Director of Public Prosecutions, and

(d) in the case of a parliamentary election petition the sheriff or mayor by whom the judges trying the petition are to be received and in any other case the clerk of the authority for which the election was held.

(4) The said sheriff, mayor or clerk shall upon receipt of the notice forthwith publish it in his county or borough or in the area of his authority, as the case may be.

(5) The judge fixing the time and place of trial shall also appoint an officer of the Supreme Court to act as registrar of the election court for the purposes of the trial.

10.—(1) Where the petition claims the seat or office for an unsuccessful candidate on the ground that he had a majority of lawful votes, every party shall, not less than seven days before the day fixed for the trial, file a list of the votes which he contends were wrongly admitted or rejected, stating in respect of each such vote the grounds for his contention, and serve a copy of the list on every other party and the Director of Public Prosecutions.

(2) Where the respondent to a petition complaining of an undue election and claiming the seat or office for some other person intends to give evidence, pursuant to section 122 (5) of the Act, to prove that that person was not duly elected, the respondent shall, not less than seven days before the day fixed for the trial of the petition, file a list of his objections to the election of that person on which he intends to rely and serve a copy of the list on the petitioner and the Director of Public Prosecutions.

(3) Any party to the petition may inspect and obtain an office copy of any list filed pursuant to either of the two last foregoing paragraphs.

(4) Except by leave of the election court—

(a) no evidence shall be given by a party against the admission or rejection of any vote, or as to any ground of contention, which is not specified in a list filed by him pursuant to paragraph (1) of this Rule; and

(b) no evidence shall be given by a respondent of any objection to a person's election which is not specified in a list filed by him pursuant to paragraph (2) of this Rule.

11. An application for a special case to be stated pursuant to section 126 (1) of the Act shall be made by motion to a Divisional Court.

12.—(1) An application for leave to withdraw a petition shall be made by motion to the election court or a Divisional Court at such time and place as the court may appoint.

(2) Not less than seven days before the day so appointed the petitioner shall—

(a) serve notice of motion on the respondent, the returning officer and the Director of Public Prosecutions and lodge a copy in the election petitions office;

(b) publish notice of the intended motion in at least one newspaper circulating in the constituency to which the petition relates.

(3) The notice of motion shall state the grounds on which the application to withdraw is made and contain a statement to the effect that on the hearing of the application any person who might have been a petitioner in respect of the election may apply to the court to be substituted as a petitioner.

(4) The returning officer shall upon receipt of the notice forthwith publish it in his constituency.

(5) Where on the hearing of the application a person is substituted as a petitioner, any security required to be given by him shall be given within three days after the order of substitution.

13.—(1) An application by a respondent to stay or dismiss a petition before the day fixed for the trial shall be made by motion to the election court or a Divisional Court at such time and place as the court may appoint.

(2) Not less than seven days before the date so appointed the respondent shall serve notice of motion, stating the grounds thereof, on the petitioner, any other respondent, the returning officer and the Director of Public Prosecutions, and shall lodge a copy at the election petitions office.

14.—(1) Where a petition is abated by the death of a sole petitioner or the survivor of several petitioners, the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, any respondent learning of his death shall—

(a) lodge notice thereof in the election petitions office;

(b) serve notice thereof on the returning officer, who shall forthwith publish it in his constituency; and

- (c) publish notice thereof in at least one newspaper circulating in the constituency to which the petition relates.

Each such notice shall contain a statement to the effect of the next following paragraph.

(2) Within twenty-eight days after the publication of any notice referred to in sub-paragraph (c) of the last foregoing paragraph any person who might have been a petitioner in respect of the election may apply by motion to the election court or a Divisional Court, at such time and place as the court may appoint, to be substituted as a petitioner.

15. A respondent who does not intend to oppose the petition shall, not less than seven days before the day fixed for the trial, serve notice to that effect on the petitioner and the Director of Public Prosecutions.

16.—(1) On the happening of any event mentioned in section 134 (1) of the Act, the respondent concerned shall—

- (a) lodge notice thereof in the election petitions office ;
- (b) serve notice thereof on the returning officer who shall forthwith publish it in his constituency ; and
- (c) publish notice thereof in at least one newspaper circulating in the constituency to which the petition relates.

Each such notice shall contain a statement to the effect of paragraph (3) of this Rule.

(2) The duties imposed by the last foregoing paragraph on the respondent concerned shall, in the case of the death of a respondent, be performed by the solicitor acting for him in the proceedings at the date of his death or, if he had no such solicitor, by any petitioner learning of his death.

(3) Within fourteen days after the publication of any notice referred to in sub-paragraph (c) of paragraph (1) of this Rule any person who might have been a petitioner in respect of the election may apply by motion to a member of the election court or to a Divisional Court to be admitted as a respondent to oppose the petition.

17. A party giving particulars in pursuance of an order or otherwise shall file a copy within twenty-four hours after delivering the particulars to the party requiring them.

18.—(1) The shorthand writer who is to attend the trial of a local election petition shall be appointed by the commissioner to whom the trial is assigned and shall be entitled to be paid expenses on the same scale as a shorthand writer attending the trial of an action in the Queen's Bench Division at assizes.

(2) The commissioner may also appoint a proper person to act as his clerk for the purposes of the trial.

19.—(1) Any period of time prescribed by Rule 7 shall be computed in accordance with section 106 of the Act and shall not be enlarged by order or otherwise, but save as aforesaid the provisions of Order LXIV of the Rules of the Supreme Court shall apply to any period of time prescribed by these Rules as if it were prescribed by the Rules of the Supreme Court.

(2) Where any period of time limited by the Act for presenting a petition or filing any document expires on a day (not being a day mentioned in section 106 (2) of the Act) on which the election petitions office is closed,

the petition or document shall be deemed to be duly presented or filed if it is placed in the letter box provided for the purpose at that office and an affidavit stating the time at which this was done is filed on the next day on which the office is open.

20. Where by any provision of these Rules a petition or notice is required to be published by the returning officer, the cost of publication shall be paid in the first instance by the petitioner or, as the case may be, by the person by whom the notice was given, without prejudice to the manner in which such cost shall ultimately be borne by one or more of the parties to the petition.

21.—(1) A solicitor appointed to act for a respondent in proceedings on a petition shall forthwith give notice of his appointment to the petitioner and lodge a copy of the notice in the election petitions office.

(2) Any notice required to be served on a respondent to a petition may be served—

- (a) by delivering it or sending it by post to any solicitor who has given notice under the last foregoing paragraph that he is acting for the respondent ; or
- (b) if no such notice has been given, in the manner provided by section 162 of the Act.

(3) Any notice required to be served on the returning officer or the Director of Public Prosecutions in proceedings under these Rules may be served by delivering it or sending it by post to him.

22. The Parliamentary Election Petitions Rules dated the 21st day of November, 1868, the 19th day of December, 1868, the 25th day of March, 1869, and the 27th day of January, 1875, and the Municipal Election Petitions Rules dated the 17th day of April, 1883(a), are hereby revoked.

23. These Rules shall come into operation on the first day of April, 1960, but shall not affect any petition presented before that date.

Dated the 21st day of March, 1960.

Kilmuir, C.

Parker of Waddington, C.J.

Evershed, M.R.

Merriman, P.

B. Ormerod, L.J.

Harold Danckwerts, J.

Colin H. Pearson, J.

Reginald W. Goff.

John F. Donaldson.

Charles Norton.

SCHEDULE

Rule 4 (1)

Election Petition

In the High Court of Justice,
Queen's Bench Division

In the Matter of the Representation of the People Act, 1949

And in the Matter of a Parliamentary [or Local Government] Election for
[state place]
held on the day of , 19]
The Petition of A.B. of [and C.D. of]
shows:—

1. That the Petitioner A.B. is a person who voted [or had a right to vote] at the above election [or was a candidate at the above election] [or in the case of a parliamentary election claims to have had a right to be elected or returned at the above election] and the Petitioner C.D. [state similarly the capacity in which he presents the petition].

2. That the election was held on the day of , 19 , when E.F., G.H. and J.K. were candidates, and on the day of , 19 , the Returning Officer returned E.F. and G.H. to the Clerk of the Crown as being duly elected [or in the case of a local Government election and E.F. and G.H. were declared to be duly elected].

3. That [state the facts on which the Petitioner[s] rely].

4. That [in the case of a petition mentioned in section 109 (2) or (3) or section 114 (2), (3) or (4) of the above Act state the event on which the time for the presentation of the petition depends and its date].

The Petitioner[s] therefore pray[s]:—

(1) That it may be determined that the said E.F. was not duly elected [or returned] and that the election was void [or that the said J.K. was duly elected and ought to have been returned] [or as the case may be].

(2) That the Petitioner[s] may have such further or other relief as may be just.

Dated this day of , 19 .

(Signed)

PETITIONER[S]

This petition was presented by whose address for service is [and who is agent for of] [solicitor for the said Petitioner].

It is proposed to serve a copy of this petition on of [and of] and on the Director of Public Prosecutions.

EXPLANATORY NOTE

(This Note is not part of the Rules, but is intended to indicate their general purport.)

These Rules replace in modern form (with a few minor and consequential changes in procedure) the Rules relating to parliamentary and local government election petitions. Some of the existing provisions have been omitted in reliance on the general practice and procedure of the High Court, which will apply notwithstanding any different practice followed by committees of the House of Commons in dealing with election petitions before 1868. It will thus be possible for the election court to make orders for the discovery and inspection of documents and the delivery of interrogatories although such orders were not made by committees of the House of Commons.