
STATUTORY INSTRUMENTS

2010 No. 2999

The Scottish Parliament (Elections etc.) Order 2010

PART 1

GENERAL

Citation, commencement, transitional and saving provisions

1.—(1) This Order may be cited as the Scottish Parliament (Elections etc.) Order 2010 and shall come into force on the fourteenth day after the day on which it is made.

(2) This Order has no effect for the purposes of any election for which the date of poll is on or before 4th April 2011.

(3) Article 36 (control of donations to candidates) has no effect in relation to any money or other property provided as mentioned in paragraph (1)(a) and (b) of that article before 5th January 2011.

Interpretation

2.—(1) In this Order, except where the context otherwise requires—

“the 1983 Act” means the Representation of the People Act 1983(1);

“the 1998 Act” means the Scotland Act 1998(2);

“the 2000 Act” means the Representation of the People Act 2000(3);

“the 2000 Political Parties Act” means the Political Parties, Elections and Referendums Act 2000(4);

“the 2001 Regulations” means the Representation of the People (Scotland) Regulations 2001(5);

“the 2006 Act” means the Electoral Administration Act 2006(6);

“absent voter” means an elector who is entitled to vote by proxy or an elector or proxy who is entitled to vote by post;

“anonymous entry”, in relation to the register of electors, shall be construed in accordance with section 9B of the 1983 Act(7) (anonymous registration);

“appropriate returning officer” means—

(a) in relation to a candidate for return as a constituency member (or to an election agent or sub-agent for such a candidate), the CRO for that constituency; and

(1) 1983 c.2.

(2) 1998 c.46.

(3) 2000 c.2.

(4) 2000 c.41.

(5) S.I. 2001/497; relevant amending enactments are the Counter-Terrorism Act 2008 (c.28) and S.I. 2002/1872, 2006/594, 2007/925, 2008/305, 1901, and 2010/980.

(6) 2006 c.22.

(7) Section 9B was added by the Electoral Administration Act 2006 (c.22) (“the 2006 Act”).

(b) in relation to an individual candidate for return as a regional member or to a registered party submitting a regional list for a particular region (or to an election agent or sub-agent for such a candidate or such a registered party), the RRO for that region;

“ballot paper”, in relation to a general election for membership of the Scottish Parliament, shall be construed as a reference to both the constituency ballot paper and the regional ballot paper;

“Citizen of the Union” shall be construed in accordance with article 9 of the Treaty on European Union(8), and “relevant citizen of the Union” means such a citizen who is not a commonwealth citizen or a citizen of the Republic of Ireland;

“CRO” means the officer who, in accordance with article 14, is the constituency returning officer for a Scottish parliamentary election in a constituency;

“disability”, in relation to doing a thing, includes a short term inability to do it;

“entitlement as an elector to an absent vote” shall be construed in accordance with article 7(8);

“ERO” means an electoral registration officer within the meaning of the 1983 Act(9);

“European Parliamentary Election” has the same meaning as in section 27(1) of the Representation of the People Act 1985(10);

“list of proxies” means the list of persons kept in pursuance of article 9(5)(b);

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(11);

“nominating officer” means the person registered under Part 2 of the 2000 Political Parties Act as the officer with responsibility for the matters referred to in section 24(3) of that Act in respect of a registered party;

“of voting age” means 18 years of age or over;

“ordinary local government election” means an ordinary election of councillors for local government areas in Scotland;

“polling register” means—

(a) the document provided by an ERO under paragraph 1(3) of Schedule 1 including any notices issued under sections 13B(3B) or (3D) or 13BB(4) or (5) of the 1983 Act(12) (alteration of registers) after that document was produced; or,

(b) where no such document has been provided, the register of electors, including copies of any notices issued under sections 13A(2) 13B(3), (3B) or (3D) or 13BB(4) or (5) of the 1983 Act(13) (alteration of registers) in respect of alterations to the register; and, where a notice has been so issued, any reference to an entry, name or number stated in the polling register is to be taken to be a reference to the entry, name or number stated in that notice.

“postal ballot box” means the ballot box referred to in paragraph 16(1)(b) of Schedule 4;

“the postal voters list” means the list of persons kept in pursuance of article 9(5)(a), showing persons whose applications to vote by post have been granted;

“the proxy postal voters list” means the list of persons kept in pursuance of article 11(7);

(8) Article 9 was substituted as Article 8 by Article 1.12, and renumbered as Article 9 by Article 5.1, of the Treaty of Lisbon amending the Treaty on European Union and the Treaty Establishing the European Community (2007/C 306/1).

(9) Electoral registration officers are appointed under section 8 of the 1983 Act. In terms of section 8(1) they are referred to as “registration officers” in the 1983 Act.

(10) 1985 c.50; section 27(1) was amended by the European Communities (Amendment) Act 1986 (c.58), sections 3(1) and (3).

(11) 1994 c.39.

(12) Section 13B was substituted by the Representation of the People Act 2000 (c.2) (“the 2000 Act”), Schedule 1, paragraph 6 and section 13BB was added by the Political Parties and Elections Act 2009 (c.12), section 23(1).

(13) Section 13A was substituted by the 2000 Act, Schedule 1, paragraph 6.

“record of anonymous entries” means the record prepared in pursuance of regulations made by virtue of paragraph 8A of Schedule 2 to the 1983 Act(14);

“RRO” means a regional returning officer for the purposes of the 1998 Act(15);

“register of electors” means the register of local government electors;

“registered emblem” means an emblem registered by a political party under Part 2 of the 2000 Political Parties Act;

“registered party” means a party registered under Part 2 of the 2000 Political Parties Act;

“service voter” means a person who has made a service declaration in accordance with section 15 of the 1983 Act(16) and is registered or entitled to be registered in pursuance of it;

“Scottish parliamentary election” means an election for membership of the Scottish Parliament and “Scottish parliamentary general election” shall be construed accordingly;

“Scottish Parliamentary Election Rules” means the rules set out in Schedule 2; and

“universal postal service provider” means a universal service provider within the meaning of section 4(3) of the Postal Services Act 2000(17) (provision of universal postal service: meaning).

(2) For the purposes of this Order, a person shall be deemed not to have attained a given age until commencement of the relevant anniversary of the day of his or her birth.

PART 2

THE FRANCHISE AND ITS EXERCISE

Registers of electors etc

3.—(1) Subject to article 4(5) and section 13B of the 1983 Act(18) (alteration of registers: pending elections), an alteration in a published version of the register of electors under section 13A or 56 of the 1983 Act(19) (alteration of registers and registration appeals) which is to take effect after the fifth day before the date of the poll for an election shall not have effect for the purposes of that election.

(2) Schedule 1 (which makes provision in connection with electors’ registers) has effect.

Registration appeals

4.—(1) An appeal lies to the sheriff from any decision under this Order of the ERO disallowing a person’s application to vote—

(a) by proxy or by post as elector; or

(b) by post as proxy,

in any case where the application is not made for a particular Scottish parliamentary election only.

(14) Paragraph 8A was inserted by the 2006 Act, Schedule 1, paragraph 15(6).

(15) See section 12(6) of the 1998 Act.

(16) Section 15 was amended by the 2000 Act, Schedule 1, paragraph 8(2) and (4) and Schedule 7, paragraph 1; the 2006 Act, sections 12(7) and 13(1) and S.I. 1995/1948, Schedule 2, paragraph 4(b).

(17) 2000 c.26.

(18) Section 13B was substituted by the 2000 Act, Schedule 1, paragraph 6 and amended by the 2006 Act, section 11(2).

(19) Section 13A was substituted by the 2000 Act, Schedule 1, paragraph 6. Section 56 is applied to Scotland, with modifications, by the 1983 Act, section 57. It was amended by the 2006 Act, sections 11 and 12.

(2) An appeal lies on any point of law from any decision of the sheriff under this article to the court of three judges constituted under section 57(2) of the 1983 Act (Registration Appeal Court) (“the registration appeal court”).

(3) An appeal made by virtue of this article or section 56 of the 1983 Act (registration appeals) which is pending when notice of an election is given shall not prejudice the operation as respects that election of the decision appealed against, and anything done in pursuance of the decision shall be as good as if no such appeal had been brought and shall not be affected by the decision of the appeal.

(4) The sheriff clerk (or clerk to the registration appeal court) shall send to the ERO, by recorded delivery, notice of the decision of the sheriff (or of the registration appeal court) on any appeal by virtue of this article, and the ERO must make such alterations in the—

- (a) record kept under article 8(4) (absent voters); or
- (b) record kept under article 11(5) (proxy voters),

as may be required to give effect to the decision.

(5) Where, as a result of the decision on an appeal under this article or section 56 of the 1983 Act, an alteration in the register of electors is made which takes effect under this article or under section 13(5), 13A(2), 13B(3) or (3B) or 13BB(4) or (5) of the 1983 Act⁽²⁰⁾ (effective dates of register published following conclusion of canvass and notices of alteration of register) on or before the date of the poll for an election, paragraph (3) does not apply to that appeal as respects that election.

(6) On an appeal brought under this article, the ERO is deemed to be a party to the proceedings, and the registration expenses payable to an ERO under section 54 of the 1983 Act⁽²¹⁾ shall include any expenses properly incurred by the ERO by virtue of this paragraph.

Polling districts and places at elections

5.—(1) Every constituency shall be divided into polling districts and, subject to the provisions of this article, there shall be a polling place designated for each polling district.

(2) The polling districts and polling places designated under this article shall be the same as those used or designated for parliamentary elections under sections 18A and 18B of the 1983 Act⁽²²⁾ (polling districts and polling places), except where it appears to the local authority (or local authorities) for the area of that polling district or location of that polling place that special circumstances make it desirable for some other polling district or polling place to be designated for the purpose of a Scottish parliamentary election.

(3) An election shall not be questioned by reason of—

- (a) any non compliance with the provisions of this article; or
- (b) any informality relating to polling districts or polling places.

Rules for Scottish parliamentary elections

6.—(1) The proceedings at Scottish parliamentary elections (including the return of members) shall be conducted in accordance with the Scottish Parliamentary Election Rules.

(2) It is the general duty of every CRO and RRO at a Scottish parliamentary election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by those Rules.

⁽²⁰⁾ Sections 13, 13A and 13B were substituted by the 2000 Act, Schedule 1, paragraph 6. Section 13(5) was amended by the Political Parties and Elections Act 2009 (c.12) (“the 2009 Act”), Schedule 6, paragraph 2. Section 13B(3B) was inserted by the 2006 Act, section 11(4). Section 13BB was inserted by the 2009 Act, section 23(1).

⁽²¹⁾ Section 54 was amended by the Representation of the People Act 1985 (c.50), section 24 and Schedule 4, paragraph 14.

⁽²²⁾ Sections 18A and 18B were substituted by the 2006 Act, section 16.

(3) No Scottish parliamentary election shall be declared invalid by reason of any act or omission by a CRO, RRO or any other person in breach of that person's official duty in connection with the election or otherwise of those Rules if it appears to the tribunal having cognisance of the question that—

- (a) the election was so conducted as to be substantially in accordance with the law as to Scottish parliamentary elections; and
- (b) the act or omission did not affect the result.

(4) Schedule 2 (Scottish Parliamentary Election Rules) has effect.

(5) Schedule 8 (access to marked registers and other documents open to public inspection after an election) has effect.

Manner of voting at Scottish parliamentary elections

7.—(1) This article applies to determine the manner of voting of a person (“P”) entitled to vote as an elector at a Scottish parliamentary election.

(2) P may vote in person at the polling station allotted to P under this Order, unless P is entitled as an elector to an absent vote at the election.

(3) P may vote by post if P is entitled as an elector to vote by post at the election.

(4) If P is entitled to vote by proxy at the election, P may so vote unless, before a ballot paper has been issued for P to vote by proxy, P applies at the polling station allotted to P under this Order for a ballot paper for the purposes of voting in person, in which case P may vote in person there.

(5) If—

- (a) P is not entitled as an elector to an absent vote at the election, but
- (b) P cannot reasonably be expected to go in person to the polling station allotted to P under this Order by reason of the particular circumstances of P's employment, either as a constable or by a CRO or RRO, on the date of the poll for a purpose connected with the election,

P may vote in person at any polling station in the constituency.

(6) Nothing in the preceding provisions of this article applies to—

- (a) a person (“Q”) to whom section 7 of the 1983 Act⁽²³⁾ (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether Q is registered by virtue of that provision or not, and Q may vote—

- (i) in person (where Q is granted permission to be absent from the hospital and voting in person does not breach any condition attached to that permission), or

- (ii) by post or by proxy (where Q is entitled as an elector to vote by post or, as the case may be, by proxy at the election); or

- (b) a person (“R”) to whom section 7A of that Act⁽²⁴⁾ (persons remanded in custody etc) applies, whether R is registered by virtue of that provision or not, and R may only vote by post or by proxy (where R is entitled as an elector to vote by post or, as the case may be, by proxy at the election).

⁽²³⁾ Section 7 was substituted by the 2000 Act, section 4. It was amended by the 2006 Act, section 12, and [S.I. 2005/2078](#), Schedule 1, paragraph 1(3)

⁽²⁴⁾ Section 7A was inserted by the 2000 Act, section 5. It was amended by the 2006 Act, section 12(2), [S.I. 2005/2078](#), Schedule 1, paragraph 1(4) and [S.S.I. 2005/465](#), Schedule 1, paragraph 12(4).

(7) Paragraph (2) does not prevent a person, at the polling station allotted to that person, marking a tendered ballot paper in pursuance of rule 49(5) of the Scottish Parliamentary Election Rules (entitlement to mark a tendered ballot paper).

(8) For the purposes of this Order, a person entitled to vote as an elector at a Scottish parliamentary election is entitled as an elector to vote by post or entitled to vote by proxy at the election if that person is shown in the postal voters list or the list of proxies for the election as so entitled; and references in this Order to entitlement as an elector to an absent vote at an election are references to an entitlement as an elector to vote by post or entitlement to vote by proxy at the election.

Absent vote at Scottish parliamentary elections for an indefinite or a particular period

8.—(1) Where a person applies to the ERO to vote by post at Scottish parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in the application) the ERO shall grant the application if—

- (a) the ERO is satisfied that the applicant is or will be registered in the register of electors, and
- (b) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections).

(2) Where a person applies to the ERO to vote by proxy at Scottish Parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in the person's application), the ERO shall grant the application if—

- (a) the ERO is satisfied that the applicant is eligible to vote by proxy at elections to which the application relates,
- (b) the ERO is satisfied that the applicant is or will be registered in the register of electors, and
- (c) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3.

(3) For the purposes of this article, a person ("P") is eligible to vote by proxy at Scottish parliamentary elections if P—

- (a) is or will be registered as a service voter;
- (b) has an anonymous entry in the register of electors;
- (c) cannot reasonably be expected—
 - (i) to go in person to the polling station allotted or likely to be allotted to P under this Order; or
 - (ii) to vote unaided there,
 by reason of blindness or other disability;
- (d) cannot reasonably be expected to go in person to that polling station by reason of the general nature of P's occupation, service or employment or that of P's spouse or civil partner or by reason of P's attendance on a course provided by an educational institution or that of P's spouse or civil partner; or
- (e) cannot go in person from P's qualifying address to that polling station without making a journey by air or sea.

(4) The ERO shall keep a record of those whose applications under this article have been granted showing—

- (a) whether their applications were to vote by post or proxy for an indefinite or a particular period (specifying that period);

- (b) in the case of those who may vote by post, the addresses provided by them in their application as the addresses to which their ballot papers are to be sent; and
 - (c) in the case of those who may vote by proxy, the names and addresses of those appointed as their proxies.
- (5) The ERO shall remove a person (“Q”) from the record kept under paragraph (4)—
- (a) if Q applies to the ERO to be removed;
 - (b) in the case of a person who is eligible to vote by proxy by virtue of having an anonymous entry, if Q ceases to have an anonymous entry;
 - (c) in the case of any registered person, if Q ceases to be registered or registered at the same qualifying address or ceases to be, or becomes, registered in pursuance of—
 - (i) a service declaration, or
 - (ii) a declaration of local connection;
 - (d) in the case of any person shown in the record as voting by proxy, if the ERO gives notice that the ERO has reason to believe there has been a material change of circumstances; or
 - (e) in the case of a person who applied to vote by post or proxy for a particular period, once that period has expired.
- (6) Where a person (whether an elector or a proxy) is, under paragraph (5), removed from the record kept under paragraph (4), the ERO must notify that person in accordance with paragraph 10(6) of Schedule 3 (notification where person removed from absent voting record).
- (7) A person shown in the record kept under paragraph (4) as voting by post or voting by proxy (in either case, whether for an indefinite period or for a particular period) may make a further application under paragraph (1) or (2) to change the method of voting or period of time stated in that record.
- (8) The ERO may dispense with the requirement under paragraph (1)(b) or (2)(c) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—
- (a) to provide a signature because of any disability the applicant has,
 - (b) to provide a signature because the applicant is unable to read or write, or
 - (c) to sign in a consistent and distinctive way because of any such disability or inability.
- (9) The ERO must also keep a record in relation to those whose applications under this article have been granted showing—
- (a) their dates of birth, and
 - (b) except in cases where the ERO in pursuance of paragraph (8) has dispensed with the requirement to provide a signature, their signatures.
- (10) The record kept under paragraph (9) must be retained by the ERO for the period prescribed in paragraph 22 of Schedule 3 (the personal identifies record).
- (11) In this article “qualifying address” means, in relation to a person registered in a register of electors, the address in respect of which that person is entitled to be so registered.

Absent vote at a particular Scottish parliamentary election and special lists

- 9.—(1) Where a person applies to the ERO to vote by post at a particular Scottish parliamentary election, the ERO shall grant the application (subject to paragraph (4)) if—
- (a) the ERO is satisfied that the applicant is or will be registered in the register of electors; and
 - (b) the application contains the applicant’s signature and date of birth and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting).

(2) Where a person applies to the ERO to vote by proxy at a particular Scottish parliamentary election, the ERO shall grant the application (subject to paragraph (4)) if—

- (a) the ERO is satisfied that the applicant's circumstances on the date of the poll will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under this Order;
- (b) the ERO is satisfied that the applicant is or will be registered in the register of electors; and
- (c) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3.

(3) Where a person who has an anonymous entry in the register of electors applies to the ERO to vote by proxy at a particular Scottish parliamentary election, the ERO shall grant the application if it meets the requirements set out in Schedule 3.

(4) Paragraphs (1) and (2) do not apply to a person who is included in the record kept under article 8; but such a person may, in respect of a particular Scottish parliamentary election, apply to the ERO—

- (a) for that person's ballot papers to be sent to a different address; or
- (b) to vote by proxy,

if that person is shown in the record so kept as voting by post and the ERO shall grant the application if it meets the requirements set out in Schedule 3.

(5) The ERO shall, in respect of each Scottish parliamentary election, keep two special lists—

- (a) a list ("the postal voters list") of—
 - (i) those who are for the time being shown in the record kept under article 8 as voting by post (excluding those so shown whose applications under paragraph (4) to vote by proxy at the election have been granted), together with the addresses provided by them in their applications under article 8 or, as the case may be, paragraph (4) as the addresses to which their ballot papers are to be sent; and
 - (ii) those whose applications under paragraph (1) to vote by post at the election have been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent; and
- (b) a list ("the list of proxies") of those who are for the time being shown in the record kept under article 8 as voting by proxy or whose applications under this article to vote by proxy at the election have been granted, together with the names and addresses of those appointed as their proxies.

(6) In the case of a person who has an anonymous entry in the register of electors any entry in the special lists referred to in paragraph (5) must show in relation to the person only the person's electoral number.

(7) The ERO may dispense with the requirement under paragraph (1)(b) or (2)(c) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

- (a) to provide a signature because of any disability the applicant has,
- (b) to provide a signature because the applicant is unable to read or write, or
- (c) to sign in a consistent and distinctive way because of any such disability or inability.

(8) The ERO must also keep a record in relation to those whose applications under this article have been granted showing—

- (a) their dates of birth, and
- (b) except in cases where the ERO in pursuance of paragraph (7) has dispensed with the requirement to provide a signature, their signatures.

(9) The record kept under paragraph (8) must be retained by the ERO for the period prescribed in paragraph 22 of Schedule 3 (the personal identifiers record).

(10) As soon as reasonably practicable after completion of the compilation of each of the postal voters list and the list of proxies, the ERO shall supply a copy of that list to the CRO.

Proxies at Scottish parliamentary elections

10.—(1) Subject to the provisions of this article, any person is capable of being appointed proxy to vote for another (in this article and article 11 referred to as “the elector”) at any Scottish parliamentary election and may vote in pursuance of the appointment.

(2) The elector cannot have more than one person at a time appointed as proxy to vote for the elector at a Scottish parliamentary election.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at a Scottish parliamentary election if that person—

- (a) is subject to any legal incapacity (age apart) to vote at that election as an elector; or
- (b) is neither a Commonwealth citizen nor a citizen of the Republic of Ireland nor a relevant Citizen of the Union.

(4) A person is not capable of voting as proxy at a Scottish parliamentary election unless on the date of the poll that person has attained the age of eighteen.

(5) A person is not entitled to vote as proxy in any constituency at the same Scottish parliamentary election on behalf of more than two electors of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

(6) Where the elector applies to the ERO for the appointment of a proxy to vote for the elector at Scottish parliamentary elections (whether for an indefinite period or for a particular period specified in the elector’s application), the ERO shall make the appointment if the application is signed by the applicant and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting) and the ERO is satisfied that the elector is or will be—

- (a) registered in the register of electors;
- (b) shown in the record kept under article 8 (absent vote at Scottish parliamentary elections for an indefinite or a particular period) as voting by proxy at such elections,

and that the proxy is capable of being, and willing to be, appointed to vote as proxy at such elections.

(7) Where the elector applies to the ERO for the appointment of a proxy to vote for the elector at a particular Scottish parliamentary election, the ERO shall make the appointment if the application is signed by the applicant and meets the requirements set out in Schedule 3 and the ERO is satisfied that the elector is or will be—

- (a) registered in the register of electors for that election; and
- (b) entitled to vote by proxy at that election by virtue of an application under article 9 (absent vote at a particular Scottish parliamentary election),

and that the proxy is capable of being, and willing to be, appointed.

(8) The appointment of a proxy under this article is to be made by means of a proxy paper issued by the ERO.

(9) The appointment may be cancelled by the elector by giving notice to the ERO and shall also cease to be in force, where the appointment related to a Scottish parliamentary election or Scottish parliamentary elections, on the issue of a proxy paper appointing a different person to vote for the elector at a Scottish parliamentary election or Scottish parliamentary elections (whether in the same Scottish parliamentary constituency or elsewhere); and where the appointment was for a particular period, the appointment shall cease to be in force once that period expires.

- (10) Subject to paragraph (9), the appointment shall remain in force—
- (a) in the case of an appointment for a particular election, for that election; and
 - (b) in any other case, while the elector is shown as voting by proxy in the record kept under article 8 in pursuance of the same application under that article.

(11) Paragraph 12 of Schedule 3 (cancellation of proxy appointment) provides for the steps to be taken where a proxy's appointment is cancelled or ceases to be in force under paragraph (9) or is no longer in force under paragraph (10)(b).

(12) The ERO may dispense with the requirement under paragraph (6) or (7) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

- (a) to provide a signature because of any disability the applicant has,
- (b) to provide a signature because the applicant is unable to read or write, or
- (c) to sign in a consistent and distinctive way because of any such disability or inability.

Voting as proxy

11.—(1) A person entitled to vote as proxy at a Scottish parliamentary election may do so in person at the polling station allotted to the elector under this Order unless that person is entitled to vote by post as proxy for the elector at the election, in which case that person may vote by post.

(2) Where a person is entitled to vote by post as proxy for the elector at any election, the elector may not apply for a ballot paper for the purpose of voting in person at the election.

(3) For the purposes of this Order, a person entitled to vote as proxy for another at a Scottish parliamentary election is entitled so to vote by post if that person is included in the proxy postal voters list kept under paragraph (7) in respect of the election.

(4) Where a person applies to the ERO to vote by post as proxy at Scottish parliamentary elections (whether for an indefinite period, for a particular period specified in the person's application or at a particular election), the ERO shall grant the application if—

- (a) the ERO is satisfied that the elector is or will be registered in the register of electors;
- (b) there is in force an appointment of the applicant as the elector's proxy to vote for the elector; and
- (c) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting).

(5) The ERO shall keep a record of those whose applications under paragraph (4) have been granted showing—

- (a) whether their applications were to vote by post as proxy for an indefinite or a particular period (specifying that period); and
- (b) the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(6) Where, in the case of a particular election, a person included in the record kept under paragraph (5) applies to the ERO for the person's ballot papers to be sent to a different address, the ERO shall grant the application if it meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections).

(7) The ERO shall, in respect of each Scottish parliamentary election, keep a special list ("the proxy postal voters list") of—

- (a) those who are for the time being included in the record kept under paragraph (5), together with the addresses provided by them in their applications under paragraph (4) or, as the case may be, paragraph (6) as the addresses to which their ballot papers are to be sent; and

- (b) those whose applications under paragraph (4) have been granted in respect of the election concerned, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent,

and shall supply to the CRO a copy of that list as soon as reasonably practicable on completion of the compilation of it.

(8) In the case of a person who has an anonymous entry in a register of electors the special list mentioned in paragraph (7) must contain only the person's electoral number.

(9) The ERO shall remove a person from the record kept under paragraph (5)—

- (a) if that person applies to the ERO to be removed;
- (b) in the case of a person who applied to vote by post as proxy for a particular period, once that period expires;
- (c) if the elector ceases to be registered in the register of electors; or
- (d) if the appointment of the person concerned as the elector's proxy ceases to be in force (whether or not that person is re-appointed).

(10) Paragraph (2) does not prevent a person, at the polling station allotted to that person, marking a tendered ballot paper in pursuance of rule 49(5) of the Scottish Parliamentary Election Rules.

(11) The ERO may dispense with the requirement under paragraph (4)(c) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

- (a) to provide a signature because of any disability the applicant has,
- (b) to provide a signature because the applicant is unable to read or write, or
- (c) to sign in a consistent and distinctive way because of any such disability or inability.

(12) The ERO must also keep a record in relation to those whose applications under paragraph (4) have been granted showing—

- (a) their dates of birth, and
- (b) except in cases where the ERO in pursuance of paragraph (11) has dispensed with the requirement to provide a signature, their signatures.

(13) The record kept under paragraph (12) must be retained by the ERO for the period prescribed in paragraph 22 of Schedule 3 (the personal identifiers record).

Absent voting at elections: miscellaneous

12.—(1) Section 59 of the 1983 Act⁽²⁵⁾ (supplemental provisions as to members of forces and service voters) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications:—

- (a) in subsection (3) (right to register and vote in person, by post or by proxy), “this Act” shall be construed as including a reference to this Order in connection with the rights conferred by this Order on a person having a service qualification by virtue of section 14(1)(a) or (b) of that Act (service qualification as a member of the forces or being employed in the service of the Crown in a post outside the UK of a prescribed class or description) in relation to the making and cancellation of appointments of a proxy and in relation to voting by post; and
- (b) in subsection (3A) (right of members of forces and service voters to information about their right to vote), “this Act and any regulations made under it” shall be similarly construed.

(2) Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections) has effect.

⁽²⁵⁾ Section 59 was amended by the Representation of the People Act 1993 (c.29), section 1; the 2000 Act, Schedule 1, paragraph 16 and the 2006 Act, section 13.

(3) Schedule 4 (which makes provision in connection with the issue and receipt of postal ballot papers) has effect.

Combination of polls

13.—(1) Where the polls at a Scottish parliamentary general election and an ordinary local government election are to be taken on the same date, they shall be taken together.

(2) Where the polls at a Scottish parliamentary election and a local government election for related areas are to be taken on the same date but are not required by paragraph (1) to be taken together, they may nevertheless be so taken if the returning officer for each election thinks fit.

(3) For the purposes of paragraph (2) two areas are related if one is coterminous with, or situated wholly or partly within, the other.

(4) Where the polls at a Scottish parliamentary election and a local government election are combined under this article the cost of taking the combined polls (excluding any cost solely attributable to one election) and any cost attributable to their combination shall be apportioned in such proportions as the Secretary of State may determine.

(5) Schedule 5 (which makes provision about the combination of polls) has effect.

Constituency returning officers

14. The constituency returning officer for a Scottish parliamentary election shall be—

- (a) in the case of a constituency wholly situated in one local government area, the person who under section 41 of the 1983 Act (returning officers: local elections in Scotland) is the returning officer at elections of councillors for the local authority for that area;
- (b) in the case of a constituency situated in more than one local government area, such person mentioned above as the Secretary of State may by order direct.

Officers of councils to be placed at disposal of returning officers

15.—(1) Every local authority in Scotland shall place at the disposal of the CRO for a constituency wholly or partly situated in their area, for the purpose of assisting the CRO in the discharge of any functions conferred on the CRO in relation to a Scottish parliamentary election, the services of officers employed by the authority.

(2) Every local authority in Scotland shall place at the disposal of the RRO for a region wholly or partly situated in their area, for the purpose of assisting the RRO in the discharge of any function conferred on the RRO in relation to a Scottish parliamentary election, the services of officers employed by the authority.

Returning officers: discharge of functions

16.—(1) A CRO or RRO at a Scottish parliamentary election may, in writing, appoint one or more persons to discharge all or any of the functions of that CRO or RRO.

(2) Except in the case of an election to fill a vacancy in the seat of a constituency member, it shall be the duty of each RRO and each CRO for a Scottish parliamentary constituency within each RRO's region to co-operate with each other in the discharge of their functions.

(3) The duty imposed by paragraph (2) applies as between CROs in any region as well as between such officers and the RRO for that region.

Returning officers: general

17.—(1) A Scottish parliamentary election is not liable to be questioned by reason of a defect in the title, or want of title, of the person presiding at or conducting the election, if that person was then in actual possession of, or acting in, the office giving the right to preside at or conduct the election.

(2) A person is not subject to any incapacity to vote at a Scottish parliamentary election by reason of being or acting as a CRO or a RRO at that election.

Payment by and to returning officers

18. Section 29 of the 1983 Act(26) (payments by and to returning officers) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications—

- (a) any reference to a parliamentary election shall be construed as a reference to a Scottish parliamentary election;
- (b) any reference to a returning officer shall be construed as a reference to a CRO and a RRO;
- (c) subsections (1) and (2) (expenses in connection with the writ for a parliamentary election) shall be disregarded;
- (d) the reference in subsection (5) to “section 30 below” (taxation of returning officer’s account) shall be construed as a reference to article 19;
- (e) in subsection (8) (form and submission of returning officer’s accounts), for “Regulations may” substitute “The Secretary of State may by regulations”;
- (f) after subsection (8) insert—

“(8A) Any order made under subsection (3) and any regulations made under subsection (8) may make different provision in relation to different cases or in relation to different classes of case.”.

Taxation of returning officer’s account

19.—(1) An application for the account of a CRO or a RRO (“the claimant”) to be taxed shall be made to the Auditor of the Court of Session.

(2) On any such application the Auditor has jurisdiction to tax the account in such manner and at such time and place as the Auditor thinks fit, and finally to determine the amount payable to the claimant.

(3) On any such application the claimant may apply to the Auditor to examine any claim made by any person against the claimant in respect of matters charged in the account; and the Auditor, after notice given to the claimant and after giving the claimant an opportunity to be heard and to tender any evidence, may allow or disallow or reduce the claim objected to with or without costs; and the determination of the Auditor shall be final for all purposes and against all persons.

Loan of equipment for Scottish parliamentary elections

20.—(1) Any ballot boxes, fittings and compartments provided for parliamentary elections out of money provided by Parliament, may, on request, be lent to a CRO at a Scottish parliamentary election on such terms and conditions as the Secretary of State may determine.

(2) Any ballot boxes, fittings and compartments provided by or belonging to a local authority shall, on request, and if not required for immediate use by that authority, be lent to a CRO at a Scottish parliamentary election on such terms and conditions as may be agreed.

(26) Section 29 was amended by the Representation of the People Act 1991 (c.11), section 1; the 2006 Act, section 68 and S.I. 1991/1728, article 3. It will be amended by the 2000 Political Parties Act, Schedule 21, paragraph 6(3) and the 2006 Act, Schedule 1, paragraph 107(2), but these amendments are not yet in force.

Effect of registers

21.—(1) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, shall for any purpose of this Part relating to that person as elector be conclusive that until the date given in the entry that person is not of voting age nor entitled to be treated as an elector except for the purposes of a Scottish parliamentary election at which the date fixed for the poll is that or a later date.

(2) A person registered as a local government elector, or entered in the list of proxies, shall not be excluded from voting at a Scottish parliamentary election on any of the grounds set out in paragraph (3); but this shall not prevent the rejection of the vote on a scrutiny, or affect that person's liability to any penalty for voting.

(3) The grounds referred to in paragraph (2) are that the person—

- (a) is not of voting age;
- (b) is not, or, on the relevant date or the date of the person's appointment (as the case may be), was not—
 - (i) a Commonwealth citizen;
 - (ii) a citizen of the Republic of Ireland;
 - (iii) a relevant Citizen of the Union;
- (c) is, or, on the relevant date or the date of the person's appointment (as the case may be), was, otherwise subject to any other legal incapacity to vote.

(4) In paragraph (3), the "relevant date" means—

- (a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act⁽²⁷⁾ (requirement to publish the revised register following annual canvas by 1 December), the 15th October immediately preceding the date of publication of the register;
- (b) in relation to any other person registered in the register, the relevant date for the purposes of section 4 of the 1983 Act⁽²⁸⁾ (entitlement to be registered as parliamentary or local government elector).

Effect of misdescription

22. No misnomer or inaccurate description of any person or place named—

- (a) in the register of electors; or
- (b) in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Order,

affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Discharge of registration duties

23.—(1) An ERO shall comply with any general or specific directions which may be given by the Secretary of State, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the 2000 Political Parties Act (directions as to discharge of registration duties), with respect to the arrangements to be made by the ERO in carrying out the ERO's functions under this Order.

⁽²⁷⁾ Section 13 was substituted by the 2000 Act, Schedule 1, paragraph 6.

⁽²⁸⁾ Section 4 was substituted by the 2000 Act, section 1(2) and amended by the 2006 Act, Schedule 1, paragraph 3.

(2) Any of the duties and powers of an ERO under this Order may be performed and exercised by any depute for the time being approved by the local authority which appointed the ERO, and the provisions of this Order apply to any such depute so far as respects any duties or powers to be performed or exercised by that depute as they apply to the ERO.

(3) It shall be the duty of each local authority to assign such officers to assist the ERO appointed by that authority as may be required for carrying out the ERO's functions under this Order.

Payment of expenses of registration

24.—(1) Any expenses properly incurred by an ERO in the performance of the ERO's functions under this Order (in this Order referred to as "registration expenses") shall be paid by the local authority by whom the ERO was appointed.

(2) Any fees paid to the ERO under this Order shall be accounted for by the ERO and paid to the local authority by whom the ERO was appointed.

(3) On the request of an ERO for an advance on account of registration expenses, the local authority by whom the ERO was appointed may, if they think fit, make such an advance to the ERO of such an amount and subject to such conditions as they may approve.

Personation

25.—(1) A person shall be guilty of a corrupt practice if that person commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person ("P") shall be deemed to be guilty of personation at a Scottish parliamentary election if P—

- (a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or
- (b) votes in person or by post as proxy—
 - (i) for a person whom P knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or
 - (ii) when P knows or has reasonable grounds for supposing that P's appointment as proxy is no longer in force.

(3) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.

Other voting offences

26.—(1) A person ("P") shall be guilty of an offence if—

- (a) P votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector at a Scottish parliamentary election, or at Scottish parliamentary elections, knowing that P is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind;
- (b) P applies for the appointment of a proxy to vote for P at any Scottish parliamentary election or at Scottish parliamentary elections knowing that P or the person to be appointed is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
- (c) P votes, whether in person or by post, as proxy for some other person at a Scottish parliamentary election, knowing that that person is subject to a legal incapacity to vote.

(2) For the purposes of paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before polling day at the election or first election at or for which they are done, include the person being below voting age if the person will be of voting age on that day.

(3) A person (“Q”) shall be guilty of an offence if—

(a) Q votes as elector—

- (i) more than once in any constituency at a poll for the return of a constituency member;
- (ii) more than once in any constituency at a poll for the return of regional members; or
- (iii) in more than one constituency at a Scottish parliamentary general election;

(b) Q votes as elector in person at a Scottish parliamentary election at which Q is entitled to vote by post;

(c) Q votes as elector in person at a Scottish parliamentary election, knowing that a person appointed to vote as Q’s proxy at the election either has already voted in person at the election or is entitled to vote by post at the election; or

(d) Q applies for a person to be appointed as Q’s proxy to vote for Q at Scottish parliamentary elections in any constituency without applying for the cancellation of a previous appointment of a third person then in force in respect of that or another constituency or without withdrawing a pending application for such an appointment in respect of that or another constituency.

(4) A person (“R”) shall be guilty of an offence if—

(a) R votes as proxy for the same elector either—

- (i) more than once in the same constituency at any Scottish parliamentary election; or
- (ii) in more than one constituency at a Scottish parliamentary general election;

(b) R votes in person as proxy for an elector at a Scottish parliamentary election at which R is entitled to vote by post as proxy for that elector; or

(c) R votes in person as proxy for an elector at a Scottish parliamentary election knowing that the elector has already voted in person at the election.

(5) A person (“S”) shall be guilty of an offence if S votes at a Scottish parliamentary election in any constituency as proxy for more than two persons of whom S is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

(6) A person shall be guilty of an offence if that person knowingly induces or procures some other person to do an act which is, or but for that other person’s want of knowledge would be, an offence by that other person under the foregoing paragraphs of this article.

(7) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted; but for the purpose of determining whether an application for a ballot paper constitutes an offence under paragraph (4), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper shall, if that right is not exercised, be disregarded.

(8) A person is not guilty of an offence under paragraph (3)(b) or (4)(b) only by reason of that person having marked a tendered ballot paper in pursuance of rule 49(5) (entitlement to mark a tendered ballot paper) of the Scottish Parliamentary Election Rules.

(9) An offence under this article shall be an illegal practice, but—

(a) the court before whom a person is convicted of any such offence may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed

by virtue of section 173 of the 1983 Act (as applied by this Order)(29) (incapacities on conviction of corrupt or illegal practices); and

- (b) a candidate shall not be liable, nor shall a candidate's election be avoided, for an illegal practice under this article of any agent of that candidate other than an offence under paragraph (6).

(10) Where a person is entitled to give two votes in an election (whether in person as elector or proxy, or by post as elector or proxy) and so exercises that right that person shall, for the purposes of this article, be treated as voting once in relation to each poll for which the person's votes are given.

Offences relating to applications for postal and proxy votes

27.—(1) A person ("P") commits an offence if P—

- (a) engages in an act specified in paragraph (2), and
- (b) intends, by doing so, to deprive another of an opportunity to vote or to make for P or another a gain of a vote to which P or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts—

- (a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);
- (b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in connection with such an application;
- (c) inducing the ERO or CRO to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote;
- (d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.

(3) In paragraph (1)(b), property includes any description of property.

(4) In paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).

(5) A person who commits an offence under paragraph (1) or who aids, abets, counsels or procures the commission of such an offence is guilty of a corrupt practice.

Breach of official duty

28.—(1) If a person to whom this article applies is, without reasonable cause, guilty of any act or omission in breach of that person's official duty, that person shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale.

(2) No person to whom this article applies shall be liable for breach of that person's official duty to any penalty at common law, and no action for damages shall lie in respect of the breach by such a person of that person's official duty.

(3) The persons to whom this article applies are—

- (a) any ERO, CRO, RRO or presiding officer;
- (b) a CORE keeper (within the meaning of Part 1 of the 2006 Act); and

(29) Section 173 is applied by article 84 of and Schedule 6 to this Order. Section 173 was substituted by the 2000 Political Parties Act, section 136 and was amended by S.I. 2007/931, article 2(4).

- (c) any depute of a person mentioned in sub-paragraph (a) or (b) or any person appointed to assist or in the course of that person's employment assisting a person so mentioned in connection with the official duties of the person so mentioned,

and "official duty" shall for the purpose of this article be construed accordingly, but shall not include duties imposed otherwise than by the law relating to Scottish parliamentary elections or the registration of local government electors.

Tampering with nomination papers, ballot papers etc.

29.—(1) A person shall be guilty of an offence if, at a Scottish parliamentary election, that person—

- (a) fraudulently defaces or fraudulently destroys any nomination paper;
- (b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post;
- (c) without due authority supplies any ballot paper to any person;
- (d) fraudulently puts into any ballot box any paper other than the ballot paper which that person is authorised by law to put in;
- (e) fraudulently takes out of the polling station any ballot paper;
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(2) A person shall be guilty of an offence if that person—

- (a) at a Scottish parliamentary election, forges any nomination paper, delivers to a CRO or RRO any nomination paper knowing it to be forged, or forges or counterfeits any ballot paper or the official mark on any ballot paper;
- (b) signs any nomination paper as candidate or as nominating officer for any registered party (or as a person authorised by such officer), or in any other capacity certifies the truth of any statement contained in it, knowing such statement to be false; or
- (c) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(3) If a CRO, RRO, presiding officer or clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers, is guilty of an offence under this article, that person shall be liable—

- (a) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both;
- (b) on summary conviction, to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding three months, or to both.

(4) If any other person is guilty of an offence under this article that person shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale, or to imprisonment for a term not exceeding three months, or to both.

(5) In this article "nomination paper" includes a regional list of a registered party.

False statements in nomination papers etc.

30.—(1) A person (“P”) is guilty of a corrupt practice if, at a Scottish parliamentary election, P causes or permits to be included in a document delivered or otherwise furnished to a CRO or a RRO for use in connection with the election—

- (a) a statement of the name or home address of a candidate at the election which P knows to be false in any particular;
- (b) anything which purports to be the signature of a person who subscribes a nomination paper but which P knows—
 - (i) was not written by the person by whom it purports to have been written; or
 - (ii) if written by that person, was not written by that person for the purpose of subscribing that nomination paper;
- (c) a certificate under rule 6(2) of the Scottish Parliamentary Election Rules authorising the use by a registered party of a name or description if P knows that a candidate on that party’s list of candidates is also, in relation to a poll which is to be held on the same day as the election to which the certificate relates—
 - (i) included in any other such list for the region or another region;
 - (ii) an individual candidate to be a regional member for the region or another region;
 - (iii) a candidate to be a constituency member for a constituency not included in the region; or
 - (iv) a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party; or
- (d) a certificate under rule 7(1) of the Scottish Parliamentary Election Rules authorising the use by a constituency candidate of a description if P knows that the candidate is a candidate in another Scottish parliamentary constituency election in which the poll is to be held on the same day as the election to which the certificate relates.

(2) A person (“Q”) is guilty of a corrupt practice if, in the case of a constituency election, Q makes in any document in which Q consents to nomination as a candidate—

- (a) a statement of Q’s date of birth;
- (b) a statement as to Q’s qualification for membership of the Scottish parliament; or
- (c) a statement that Q is not a candidate at an election for any other constituency the poll for which is to be held on the same day as the poll at the election to which the consent relates,

which Q knows to be false in any particular.

(3) A person (“R”) is guilty of a corrupt practice if, in the case of an individual candidate at a regional election, R makes in any document in which R consents to nomination as a candidate—

- (a) a statement of R’s date of birth;
- (b) a statement as to R’s qualification for membership of the Scottish parliament; or
- (c) a statement that R is not a party list candidate at that regional election nor a candidate in another Scottish parliamentary election the poll for which is to be held on the same day as the poll at the election to which the consent relates,

which R knows to be false in any particular.

(4) A person (“S”) is guilty of a corrupt practice if, in the case of a party list candidate at a regional election, S makes in any document in which S consents to nomination as a candidate—

- (a) a statement of S’s date of birth;
- (b) a statement as to S’s qualification for membership of the Scottish parliament; or

- (c) a statement that S is not an individual candidate or a candidate on the list submitted by another registered party at that regional election or a candidate at another Scottish parliamentary election in which the poll is to be held on the same day as the poll at the election to which the consent relates,

which S knows to be false in any particular.

(5) For the purposes of paragraphs (2), (3) and (4) a statement as to a candidate's qualification is a statement—

- (a) that the candidate is qualified for being elected;
- (b) that the candidate will be qualified for being elected; or
- (c) that to the best of the candidate's knowledge and belief the candidate is not disqualified for being elected.

Requirement of secrecy

31.—(1) The following persons attending at a polling station, namely—

- (a) a CRO, RRO or a member of staff of a CRO or RRO;
- (b) a presiding officer or clerk;
- (c) a candidate (including a candidate on a party's regional list);
- (d) a nominating officer of a registered party which has submitted a regional list;
- (e) an election agent;
- (f) a polling agent;
- (g) a person attending by virtue of sections 6A to 6D of the 2000 Political Parties Act⁽³⁰⁾(representatives of the Electoral Commission and accredited observers),

shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person before the poll is closed the information described in paragraph (2).

(2) The information referred to in paragraph (1) is any information as to—

- (a) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;
- (b) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or
- (c) the official mark being used in accordance with rule 30 of the Scottish Parliamentary Election Rules (the official mark).

(3) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not—

- (a) ascertain or attempt to ascertain at the counting of the votes the number or other unique identifying mark on the back of any ballot paper;
- (b) communicate any information obtained at the counting of the votes as to the candidate for whom or, as the case may be, registered party for which, any vote is given on any particular ballot paper.

(4) No person shall—

- (a) interfere with or attempt to interfere with a voter when the voter is recording the voter's vote;

⁽³⁰⁾ Sections 6A to 6D were inserted by the 2006 Act, section 29.

- (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom or the registered party for which a voter in that station is about to vote or has voted;
 - (c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom or the registered party for which a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark on the back of a ballot paper given to a voter at that station; or
 - (d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person the name of the candidate for whom or the registered party for which the voter has or has not voted.
- (5) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of voting and shall not—
- (a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark;
 - (b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of any ballot paper sent to any person;
 - (c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark on the back of any ballot paper; or
 - (d) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the name of the candidate for whom or the registered party for which, any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.
- (6) No person having undertaken to assist a voter with disabilities to vote shall communicate at any time to any person any information as to the name of the candidate for whom or, as the case may be, the registered party for which, that voter intends to vote or has voted, or as to the number or other unique identifying mark on the back of a ballot paper given for the use of that voter.
- (7) If a person acts in contravention of this article that person shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale or to imprisonment for a term not exceeding three months.
- (8) In this article a voter with disabilities is a voter who has made a declaration under rule 48 of the Scottish Parliamentary Election Rules that the voter is so incapacitated by blindness or other disability or by inability to read, as to be unable to vote without assistance.

PART 3

THE ELECTION CAMPAIGN

Appointment of election agent

- 32.**—(1) Not later than the latest time for delivery of nomination papers for candidature for a Scottish parliamentary election, a person shall be named by, or on behalf of—
- (a) each candidate for return as a constituency member;
 - (b) each individual candidate for return as a regional member; and
 - (c) each registered party submitting a regional list,

as the election agent for that candidate or, as the case may be, registered party in relation to that list and that person's name and address shall be declared in writing by or on behalf of such a candidate or, in the case of a registered party, by the candidate who is highest in that party's regional list, to the appropriate returning officer.

(2) Candidates for return as a constituency members and individual candidates for return as regional members may name themselves as their own election agents.

(3) A candidate included on a registered party's regional list may be named as election agent for that party in relation to that regional list.

(4) Where a candidate has been named (whether by the candidate or by another person) as an election agent the candidate shall, so far as circumstances admit, be subject to the provisions of this Order both as a candidate and as an election agent, and, except where the context otherwise requires, any reference in this Order to an election agent shall be construed to refer to the candidate acting in the capacity as election agent.

(5) One election agent only shall be appointed for—

- (a) each candidate for return as a constituency member;
- (b) each individual candidate for return as a regional member;
- (c) each registered party in relation to each regional list submitted by that party,

but the appointment, whether the election agent appointed be a candidate or not, may be revoked.

(6) If, whether before, during or after the election the appointment (or deemed appointment) of an election agent is revoked or an election agent dies, another election agent shall be appointed forthwith and the new election agent's name and address declared in writing to the appropriate returning officer.

(7) The declaration as an election agent of—

- (a) a candidate of a person other than that candidate; or
- (b) a registered party submitting a regional list, of a person other than a candidate on that list,

shall be of no effect under this article unless it is made and signed by that person or is accompanied by a written declaration of acceptance signed by that person.

(8) Upon the name and address of an election agent being declared to the appropriate returning officer the appropriate returning officer shall forthwith give public notice of that name and address.

Appointment of sub-agent

33.—(1) An election agent of a candidate for return as a constituency member may appoint to act in any part of the constituency one, but not more than one, deputy election agent.

(2) An election agent of an individual candidate for return as a regional member or registered party which has submitted a regional list may appoint to act in any part of the region one, but not more than one, deputy election agent.

(3) In this Order, any deputy election agent appointed under paragraph (1) or (2) is referred to as a sub-agent.

(4) As regards matters in a part of the constituency or, as the case may be, region, for which there is a sub-agent the election agent may act by the sub-agent and—

- (a) anything done for the purposes of this Order by or to the sub-agent in the sub-agent's part of the constituency or, as the case may be, region shall be deemed to be done by or to the election agent;
- (b) any act or default of a sub-agent which, if the sub-agent were the election agent, would be an illegal practice or other offence against this Order shall be an illegal practice and

offence against this Order committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly; and

- (c) the candidate or, as the case may be, each candidate on the registered party's regional list shall suffer the like incapacity as if that act or default had been the election agent's act or default.

(5) Not later than the second day before the day of the poll the election agent shall declare in writing the name and address of every sub-agent to the appropriate returning officer, and the appropriate returning officer shall forthwith give public notice of the name and address of every sub-agent so declared.

(6) The appointment of a sub-agent—

- (a) shall not be vacated by the election agent who appointed the sub-agent ceasing to be election agent; but
- (b) may be revoked by whoever is for the time being the election agent,

and in the event of the revocation of the appointment or of the death of a sub-agent another sub-agent may be appointed, and the new sub-agent's name and address shall be forthwith declared in writing by the election agent to the appropriate returning officer, who shall forthwith give public notice of the name and address so declared.

(7) The declaration to be made to the appropriate returning officer, and the notice to be given, under paragraph (5) or (6) shall specify the part of the constituency or, as the case may be, region within which any sub-agent is appointed to act.

Office of election agent

34.—(1) Every election agent and every sub-agent shall have an office to which all claims, notices, writs, summonses and documents may be sent, and the address of the office shall be—

- (a) declared to the appropriate returning officer at the same time as the appointment of the agent is declared under article 32 or, as the case may be, appointment of the sub-agent is declared under article 33; and
- (b) stated in the public notice of the name of the agent or, as the case may be, sub-agent.

(2) Any claim, notice, writ, summons or document delivered at the office of the election agent or sub-agent and addressed to that agent or sub-agent, shall be deemed to have been served on that agent or sub-agent and every election agent or sub-agent may, in respect of any matter connected with the election in which that agent or sub-agent is acting, be sued in any court having jurisdiction at the place where that agent's or that sub-agent's office is situated.

Effect of default in election agent's appointment

35.—(1) If no person's name and address is declared as required by article 32 (appointment of election agent) as the election agent of a candidate for return as a constituency member or a individual candidate for return as a regional member who remains validly nominated, at the latest time for delivery of notices of withdrawal of candidature the candidate shall be deemed at that time to have been appointed as election agent to have revoked any appointment of another person as the candidate's election agent.

(2) If no person's name and address is declared as required by article 32 as the election agent of a registered party submitting a regional list, at the latest time for delivery of notices of withdrawal of candidature the candidate who is highest in that party's regional list shall be deemed at that time to have been appointed as election agent and to have revoked any appointment of another person as that party's election agent.

(3) This paragraph applies if—

- (a) the person whose name and address have been so given as those of an election agent for a candidate (not being the candidate) or of a registered party dies; and
 - (b) a new appointment is not made on the day of the death or on the following day.
- (4) Where paragraph (3) applies—
- (a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, the candidate shall be deemed to have been appointed as from the time of death; and
 - (b) in the case of the death of an election agent for a registered party—
 - (i) the candidate who is highest in that party’s regional list shall be deemed to have been appointed from the time of the death; or
 - (ii) where paragraph (3) applies through the death of such a candidate, the candidate whose name is next highest in that registered party’s regional list shall be deemed to have been appointed from the time of the death.
- (5) If the appointment of an election agent is revoked without a new appointment being made—
- (a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, the candidate shall be deemed to have been appointed (or re-appointed) election agent; and
 - (b) in the case of a registered party, the candidate who is highest in that party’s regional list shall be deemed to have been appointed (or re-appointed) election agent.
- (6) The deemed appointment of an election agent may be revoked as if it were an actual appointment.
- (7) Where a candidate is by virtue of this article to be treated as an election agent, for the purposes of article 34 (office of election agent) the election agent’s office shall be deemed to be at the address given for the candidate-
- (a) in the case of a candidate for return as a constituency member, in the constituency nomination paper under rule 4 of the Scottish Parliamentary Election Rules;
 - (b) in the case of an individual candidate for return as a regional member, in the individual nomination paper under rule 5 of those rules;
 - (c) in the case of a candidate on a party’s regional list, in the regional list under rule 6 of those rules.
- (8) The appropriate returning officer, on being satisfied that a person is by virtue of this article to be treated as an election agent, shall forthwith proceed to give such like notice as if the name and address of the person and the address of that person’s office had been duly given to the returning officer under articles 32 and 34.

Control of donations to candidates

36.—(1) In the case of a candidate for return as a constituency member or an individual candidate for return as a regional member at a Scottish parliamentary election, any money or other property provided (whether as gift or loan)—

- (a) by any person other than the candidate or the candidate’s election agent, and
 - (b) for the purpose of meeting election expenses incurred by or on behalf of the candidate,
- must be provided to the candidate or the candidate’s election agent.

(2) Paragraph (1) does not apply to any money or other property so provided for the purpose of meeting any such expenses which may be lawfully paid by a person other than the candidate, the candidate’s election agent or any sub-agent.

(3) A person who provides any money or other property in contravention of paragraph (1) shall be guilty of an illegal practice.

(4) The provisions of Schedule 2A to the 1983 Act⁽³¹⁾ (control of donations to candidates), and regulations made under paragraph 10(2) of that Schedule⁽³²⁾ (statement of relevant donations) apply for the purposes of Scottish parliamentary elections as they do for the purposes of parliamentary elections, subject to the following modifications.

(5) References to a candidate are to be construed as references to a candidate for return as a constituency member or an individual candidate for return as a regional member.

(6) References to election expenses are to be construed as references to election expenses within the meaning of article 58 (meaning of election expenses).

(7) In paragraph 6(8)(a) for “the statutory maximum” substitute “level 5 on the standard scale” and for “12 months”⁽³³⁾ substitute “3 months”.

(8) In the provisions specified in paragraph (9), for “statutory maximum” substitute “Level 5” and for “12 months” substitute “3 months”.

(9) Those provisions are the entries in Schedule 20 to the 2000 Political Parties Act relating to—

(a) section 56(3) or (4) (failure to retain documents) as applied by paragraph 7 of Schedule 2A to the 1983 Act; and

(b) section 61(1) (facilitating the making of donations by impermissible donors), section 61(2) (a) (knowingly giving treasurer false information about donations) and section 61(2)(b) (withholding information about donations from treasurer with intent to deceive) as applied by paragraph 9 of Schedule 2A to the 1983 Act.

(10) In paragraph 8(10)(a), for “section 67(1) or (1A) of this Act” substitute “article 32 of the Scottish Parliament (Elections etc.) Order 2010 (appointment of election agent)”

(11) In paragraph 10(1)⁽³⁴⁾ for “section 81 of this Act” substitute “article 47 of the Scottish Parliament (Elections etc.) Order 2010 (return as to election expenses: constituency and individual regional candidates)”.

(12) In this article and Schedule 2A to the 1983 Act (as applied by this article) “property” includes any description of property, and references to the provision of property accordingly include the supply of goods.

Expenses of constituency candidate

37. For the purposes of this Part, sums paid and expenses incurred by a candidate for return as a constituency member in respect of whom the CRO has received a certificate issued by a nominating officer of a registered party under rule 7 of the Scottish Parliamentary Election Rules (authorisation to use a registered party’s name and description) are not to be regarded as having been paid or incurred by that party.

Payment of expenses through election agent: constituency and individual regional candidates

38.—(1) No payment (of whatever nature) shall be made by—

(a) a candidate for return as a constituency member or an individual candidate for return as a regional member; or

(b) any other person,

⁽³¹⁾ Schedule 2A was inserted by the 2000 Political Parties Act, section 130 and Schedule 16.

⁽³²⁾ Paragraph 10(2) was inserted by the 2006 Act, Schedule 1, paragraph 16. See regulation 45G of the 2001 Regulations (added by S.I. 2007/925).

⁽³³⁾ See the Criminal Proceedings Reform (Scotland) Act 2007 (asp 6), section 45.

⁽³⁴⁾ Paragraph 10(1) was numbered as such by the 2006 Act, Schedule 1, paragraph 16.

in respect of election expenses incurred by or on behalf of the candidate for return as a constituency member or an individual candidate for return as a regional member unless it is made by or through the candidate's election agent.

(2) Every payment made by an election agent in respect of any election expenses shall, except where less than £20, be vouched for by a bill stating the particulars or by a receipt.

(3) The references in the foregoing provisions of this article to an election agent include the election agent acting by a sub-agent.

(4) This article does not apply to—

- (a) any expenses which are, in accordance with article 39(1) or (2), 44(6) or 45(2), paid by the candidate;
- (b) any expenses which are paid in accordance with article 39(4) by a person authorised as mentioned in that provision; or
- (c) any expenses which are to be regarded as incurred by or on behalf of the candidate by virtue of article 58(5) (expenses incurred before the date the person becomes a candidate at the election).

(5) A person who makes any payment (of whatever nature) in contravention of paragraph (1) shall be guilty of an illegal practice.

Expenses which may be paid otherwise than by election agent

39.—(1) A candidate (including a candidate on a registered party's regional list) may pay any personal expenses incurred by that candidate on account of or in connection with or incidental to the election, but the amount which a candidate may pay shall not exceed—

- (a) £600 in the case of a candidate for return as a constituency member who is not also a candidate for return as a regional member; and
- (b) £900 in the case of a candidate for return as a regional member (whether or not the candidate is also a candidate for return as a constituency member),

and any further personal expenses incurred by the candidate shall be paid by the election agent.

(2) A candidate at an election may also pay any election expenses (other than expenses falling within paragraph (1)) which were incurred by the candidate or on the candidate's behalf and in respect of which payment falls to be made before the date on which the candidate appoints (or is deemed to have appointed) an election agent.

(3) A candidate shall send to the election agent within the time permitted by article 44 for sending in claims, a written statement of the amount of personal expenses paid as mentioned in paragraph (1) or (2) by the candidate; and, when that candidate is standing for return as a constituency member and for return as a regional member the candidate shall send the statement to the election agent acting on the candidate's behalf in relation to the candidacy for return as a constituency member.

(4) Any person may, if so authorised in writing by an election agent, pay any necessary expenses of stationery, postage, facsimile communication (or any other similar means of communication) and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(5) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent who authorised them within the time limited by article 44 for sending in claims, and shall be vouched for by a bill containing that person's receipt.

(6) Articles 44 and 45 do not apply to expenses which, in accordance with any provision of this article, are paid otherwise than by the candidate's election agent.

Expenses incurred otherwise than for election purposes

- 40.**—(1) Neither article 38 nor articles 44 and 45 shall apply to election expenses—
- (a) which are incurred by or on behalf of a candidate otherwise than for the purposes of the candidate’s election, but
 - (b) which by virtue of article 58(1) (meaning of election expenses) fall to be regarded as election expenses by reason of the property, goods, services or facilities in respect of which they were incurred being used for the purposes of the candidate’s election.
- (2) The candidate’s election agent shall make a declaration of the amount (determined in accordance with articles 58 and 59) of any election expenses falling within paragraph (1).
- (3) In this article “for the purposes of the candidate’s election” has the same meaning as in article 58 (meaning of election expenses).

Prohibition of expenses not authorised by election agent: constituency and individual regional candidates

- 41.**—(1) No expenses, with a view to promoting or procuring the election of a candidate for return as a constituency member or an individual candidate for return as a regional member at a Scottish parliamentary election, shall be incurred after the candidate becomes a candidate at such an election by any person other than the candidate or the candidate’s election agent and persons authorised in writing by the election agent on account—
- (a) of holding public meetings or organising any public display;
 - (b) of issuing advertisements, circulars or publications;
 - (c) in the case of a constituency election, of otherwise presenting to the electors the candidate, or the views of the candidate or the extent or nature of that candidate’s backing or disparaging of another candidate; or
 - (d) in the case of a regional election, of otherwise presenting to the electors the candidate, or the views of the candidate or the extent or nature of that candidate’s backing or disparaging of another individual candidate or of a registered party or of any or all of its party list candidates,
- (2) Neither sub-paragraph (c) nor sub-paragraph (d) of paragraph (1) restricts the publication of any matter relating to the election in—
- (a) a newspaper or other periodical;
 - (b) a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru; or
 - (c) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990⁽³⁵⁾ (independent television and radio services) or Part 1 or 2 of the Broadcasting Act 1996⁽³⁶⁾ (digital terrestrial television and sound broadcasting).
- (3) Paragraph (1) does not apply to any expenses incurred by any person—
- (a) which do not exceed in the aggregate £500 (and are not incurred by that person as part of a concerted plan of action), or
 - (b) in travelling or in living away from home or similar personal expenses.
- (4) For the purposes of paragraph (3)(a), expenses shall be regarded as incurred by a person “as part of a concerted plan of action” if they are incurred by that person in pursuance of any plan or other arrangement whereby that person and one or more other persons are to incur, with a

⁽³⁵⁾ 1990 c.42.

⁽³⁶⁾ 1996 c.55.

view to promoting or procuring the election of the same candidate, expenses which (disregarding paragraph (3)(a)) fall within paragraph (1).

(5) Where a person incurs any expense required by this article to be authorised by the election agent—

- (a) that person shall within 21 days after the day on which the result of the election is declared deliver to the appropriate returning officer a return of the amount of those expenses stating the election at which and the candidate in whose support they were incurred; and
- (b) the return shall be accompanied by a declaration made by that person (or in the case of an association or body of persons by a director, general manager, secretary or other similar officer of the association or body) verifying the return and giving particulars of the matters for which the expenses were incurred;

but this paragraph does not apply to any person engaged or employed for payment or promise of payment by a candidate or a candidate's election agent.

(6) The return and declaration under the foregoing provisions of this article shall be respectively in the forms A and B set out in the Appendix and the authority received from the election agent shall be annexed to and deemed to be part of the return.

(7) If a person—

- (a) incurs, or aids, abets, counsels or procures any other person to incur, any expenses in contravention of this article; or
- (b) knowingly makes the declaration required by paragraph (5) falsely,

that person shall be guilty of a corrupt practice.

(8) If a person fails to deliver or send any declaration or return or a copy of it as required by this article that person shall be guilty of an illegal practice.

(9) The court before whom a person is convicted under this article may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act (as applied by this Order)⁽³⁷⁾ (incapacities on conviction of corrupt or illegal practice).

(10) A candidate shall not be liable, nor shall the candidate's election be avoided, for a corrupt or illegal practice under this article committed by an agent without the candidate's consent or connivance.

(11) Where any act or omission of an association or body of persons, corporate or unincorporate, is an offence declared to be a corrupt or illegal practice by this article, any person ("P") who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless P proves—

- (a) that the act or omission took place without P's consent or connivance; and
- (b) that P exercised all such diligence to prevent the commission of the offence as P ought to have exercised having regard to the nature of P's functions in that capacity and to all the other circumstances.

(12) For the purposes of paragraph (1), expenditure incurred before the date when a person becomes a candidate at the election is to be treated as having been incurred after that date if it is incurred in connection with any thing which is used or takes place after that date.

(13) The appropriate returning officer shall retain every document delivered in pursuance of paragraph (5).

⁽³⁷⁾ Section 173 is applied by article 84 of, and Schedule 6 to, this Order. Section 173 was substituted by the 2000 Political Parties Act, section 136 and was amended by S.I. 2007/931, article 2(4).

(14) Rules 69 and 71(1) of the Scottish Parliamentary Election Rules apply to any document retained under this paragraph by a RRO as if the reference to a CRO is a reference to that RRO.

Limitation of election expenses: constituency and individual regional candidates

42.—(1) The election expenses incurred by or on behalf of—

- (a) a candidate for return as a constituency member; or
- (b) an individual candidate for return as a regional member,

at an election must not in the aggregate exceed the maximum amount specified in this article.

(2) The maximum amount is (in a case other than that to which paragraph (3) applies)—

- (a) for a candidate for return as a constituency member for a county constituency⁽³⁸⁾, £7,150 together with an additional 7p for every entry in the register of electors;
- (b) for a candidate for return as a constituency member for a burgh constituency, £7,150 together with an additional 5p for every entry in the register of electors; and
- (c) for an individual candidate for return as a regional member, a sum calculated by adding together the maximum amounts (calculated in accordance with sub-paragraphs (a) and (b)) for a single candidate for return as a constituency member in each constituency included in the region.

(3) The maximum amount for a candidate at an election under section 9 of the 1998 Act (constituency vacancies) is £100,000.

(4) Where any election expenses are incurred in excess of the maximum amount specified in paragraph (2) or, as the case may be, paragraph (3), any candidate or election agent who—

- (a) incurred, or authorised the incurring of, the election expenses, and
- (b) knew or ought reasonably to have known that the expenses would be incurred in excess of that maximum amount,

shall be guilty of an illegal practice.

(5) In paragraph (2) “the register of electors” means the register of local government electors, for the area in question as it has effect on the last day for publication of notice of the election.

(6) The candidate’s personal expenses do not count towards the maximum amount.

(7) Where a poll for the return of a constituency member is countermanded or abandoned by reason of a candidate’s death, the maximum amount of election expenses shall, for any of the other candidates who then remain validly nominated, be twice, or if there has been a previous increase under this paragraph, three times what it would have been but for any increase under this paragraph.

(8) The maximum amount specified in paragraph (2) or (3) for a candidate shall not be affected by a change in the timing of a Scottish parliamentary election or of any step in the proceedings at such an election.

(9) In this article “county constituency” includes the constituency of the Orkney Islands and the constituency of the Shetland Islands.

(10) Paragraph (11) has effect until an Order in Council under paragraph 6 of Schedule 1 to the 1998 Act⁽³⁹⁾ (orders in council giving effect to recommendations contained in reports from the Boundary Commission for Scotland) comes into force.

(11) In this article—

⁽³⁸⁾ Constituencies (other than those of the Orkney Islands and the Shetland Islands) may be specified as being “county” or “burgh” constituencies in an Order in Council made under paragraph 6 of Schedule 1 to the 1998 Act as substituted by section 1(1) of the Scottish Parliament (Constituencies) Act 2004 (c.13).

⁽³⁹⁾ Schedule 1 was substituted by the Scottish Parliament (Constituencies) Act 2004 (c.13), section 1(1).

“county constituency” means, subject to paragraph (9), a constituency which is coterminous with a parliamentary constituency specified as being a county constituency in the Parliamentary Constituencies (Scotland) Order 1995(40) as at 11 April 1995 (the day it was made); and

“burgh constituency” means a constituency which is coterminous with a parliamentary constituency specified as being a burgh constituency in that Order as at that date.

Limitation of pre-candidacy election expenses: constituency and individual regional candidates at Scottish Parliament general elections

43.—(1) This article applies where election expenses are incurred by or on behalf of a candidate for return as a constituency member or an individual candidate for return as a regional member at an election under—

- (a) section 2 of the 1998 Act (ordinary general elections); or
- (b) section 3 of that Act (extraordinary general elections),

and the expenses are incurred in respect of a matter which is used during the period beginning with the appropriate date and ending with the date on which the person becomes a candidate at that election.

(2) For the purposes of this article, article 58(1) (meaning of election expenses) has effect with the omission of the words “after the date when the candidate becomes a candidate at the election”.

(3) In paragraph (1) “the appropriate date” for an election under section 2 of the 1998 Act means the date which falls four months before the date of the poll where—

- (a) the date of the poll is that determined by section 2(2) of the 1998 Act;
- (b) no less than five months before the day on which the poll would have taken place under section 2(2) of that Act, the date of the poll is brought forward under section 2(5) of that Act; or
- (c) no less than four months before the day on which the poll would have taken place under section 2(2) of that Act, the date of the poll is postponed under section 2(5) of that Act;

but where the date of the poll is brought forward or postponed otherwise than as mentioned in subparagraph (b) or (c) “the appropriate date” means the date which falls four months before the date when the poll would have taken place under section 2(2) of the Act.

(4) In paragraph (1) “the appropriate date” for an election under section 3 of the 1998 Act means the date on which the Presiding Officer proposes a day for the poll for the election under section 3(1) of that Act.

(5) Election expenses incurred as mentioned in paragraph (1) must not in the aggregate exceed the permitted amount, which is—

- (a) for a candidate for return as a constituency member for a county constituency, £17,500 plus 4.9p for every entry in the register of electors;
- (b) for a candidate for return as a constituency member for a burgh constituency, £17,500 plus 3.5p for every entry in the register of electors; and
- (c) for an individual candidate for return as a regional member, a sum calculated by adding together the maximum amounts (calculated in accordance with sub-paragraphs (a) and (b)) for a single candidate for return as a constituency member in each constituency included in the region.

(6) In paragraph (5) “the register of electors” means the register of local government electors for the area in question as it has effect on the last day for publication of the notice of the election.

(7) Where election expenses are incurred as mentioned in paragraph (1) in excess of the permitted amount, any candidate or election agent who—

- (a) incurred, or authorised the incurring of, the election expenses, and
- (b) knew or ought reasonably to have known that the election expenses would be incurred in excess of that amount,

shall be guilty of an illegal practice.

(8) The candidate's personal expenses do not count towards the permitted amount.

(9) Paragraphs (9) to (11) of article 42 apply to this article as they do to that article.

Time for sending in and paying claims

44.—(1) Every claim against—

- (a) a candidate for return as a constituency member or the candidate's election agent; or
- (b) an individual candidate for return as a regional member or the candidate's election agent,

in respect of election expenses which is not sent in to the election agent not later than 21 days after the day on which the result of the election is declared shall be barred and not paid.

(2) All election expenses shall be paid not later than 28 days after that day.

(3) Subject to paragraph (4) and (5), a person who pays a claim in contravention of paragraph (1) or makes a payment in contravention of paragraph (2) shall be guilty of an illegal practice.

(4) Where the election court reports that it has been proved to the court that any payment made was by an election agent without the sanction or connivance of a candidate—

- (a) the candidate's election shall not be void; nor
- (b) shall the candidate be subject to any incapacity under this Order by reason only of that payment having been made in contravention of this article.

(5) The following person or persons, namely—

- (a) a claimant;
- (b) a candidate for return as a constituency member or such a candidate's election agent; or
- (c) an individual candidate for return as a regional member or such a candidate's election agent,

may apply to the Court of Session or to the sheriff for leave to pay a claim for any election expenses although sent in after the period of 21 days or although sent in to a candidate and not the election agent, and the court on cause shown to their satisfaction may by order grant leave.

(6) Any sum specified in the order of leave may be paid, in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, by such candidate or the candidate's election agent, and the amount paid in pursuance of the order shall not be deemed to be in contravention of paragraph (2).

(7) The jurisdiction vested by paragraph (5) in the sheriff may be exercised otherwise than in open court.

(8) An appeal lies to the Court of Session from any order of the sheriff made by virtue of paragraph (5).

Disputed claims

45.—(1) If an election agent disputes any claim sent to the election agent within the period of 21 days mentioned in article 44 or refuses or fails to pay the claim within the period of 28 days so mentioned, the claim shall be deemed to be a disputed claim.

(2) The claimant may, if the claimant thinks fit, bring an action for a disputed claim in any competent court and any sum paid by a candidate or the candidate's election agent in pursuance of the judgement or order of the court shall not be deemed to be in contravention of article 44(2).

(3) If the defender in the action admits liability but disputes the amount of the claim, that amount shall, unless the court on the pursuer's application otherwise directs, be forthwith referred for taxation to the auditor of the Court of Session or, as the case may be, the sheriff court and the amount found due on the taxation shall be the amount to be recovered in the action in respect of the claim.

(4) Paragraphs (5) to (8) of article 44 apply in relation to a disputed claim as they apply in relation to a claim for election expenses sent in after the period of 21 days.

Election agent's claim

46. So far as circumstances admit, this Order applies to an election agent's claim for remuneration and to its payment in like manner as if the election agent were any other creditor, and if any difference arises about the amount of the claim, the claim shall be a disputed claim within the meaning of this Part and shall be dealt with accordingly.

Return as to election expenses: constituency and individual regional candidates

47.—(1) Within 35 days after the day on which the result of a Scottish parliamentary election is declared the election agent of each candidate for return as a constituency member, and of each individual candidate for return as a regional member, at the election shall deliver to the appropriate returning officer a true return containing as respects that candidate—

- (a) a statement of all election expenses incurred by or on behalf of the candidate;
- (b) a statement of all expenses to which article 43 (pre-candidacy election expenses) applies;
- (c) a statement of all payments made by the election agent together with all bills or receipts relating to the payments.

(2) A return under this article must—

- (a) specify the poll by virtue of which the return is required;
- (b) specify the name of the candidate to whom the return relates and of the candidate's election agent; and
- (c) deal under a separate heading with any expenses in respect of which a return is required by virtue of article 41(5).

(3) The return shall also contain as respects that candidate—

- (a) a statement relating to such other expenses in connection with which provision is made by this Part as the Electoral Commission provide in regulations;
- (b) a statement relating to such claims (whether paid, unpaid or disputed) in connection with such election expenses or such other expenses mentioned in sub-paragraph (a) as the Electoral Commission so provide;
- (c) a statement of relevant donations as required by paragraph 10 of Schedule 2A to the 1983 Act(41) as applied by article 36.

(4) Where after the date at which the return as to election expenses is delivered leave is given by the court under article 44(5) for any claims to be paid, the candidate or the candidate's election agent shall, within seven days after its payment, deliver to the appropriate returning officer a return of the sums paid in pursuance of the leave, accompanied by a copy of the order of the court giving the leave,

(41) Schedule 2A was inserted by the 2000 Political Parties Act, section 130 and Schedule 16. Paragraph 10 was amended by the 2006 Act, Schedule 1, paragraph 16.

and in default the election agent shall be deemed to have failed to comply with the requirements of this article without such authorised excuse as is mentioned in article 53.

(5) If any payments made by the election agent were in respect of two or more candidates, the return shall deal under a separate heading or subsection with all such payments, and the expenses to which they relate, in respect of those candidates.

(6) The statements which the return is required to contain by virtue of paragraph (3) in respect of the matters there mentioned shall be a separate statement as respects each of the candidates in question.

(7) If and to the extent that any such matter is referable to two or more candidates together, the return shall contain a separate statement of that matter as respects those candidates.

(8) The Electoral Commission may, by regulations, prescribe a form of return which may be used for the purposes of making any (or any description of) return required by this article.

Declarations as to election expenses: constituency and individual regional candidates

48.—(1) Each return delivered under article 47 shall be accompanied by a declaration made by the election agent in the form D set out in the Appendix.

(2) At the same time as the election agent delivers that return, or within seven days thereafter—

- (a) each candidate for return as a constituency member; and
- (b) each individual candidate for return as a regional member,

shall deliver to the appropriate returning officer a declaration made by that candidate in the form D set out in the Appendix.

(3) Where a candidate is out of the United Kingdom when the return is so delivered—

- (a) the declaration required by paragraph (2) may be made by the candidate within 14 days after the candidate's return to the United Kingdom; and
- (b) in that case, the declaration shall be forthwith delivered to the appropriate returning officer,

but the delay authorised by this provision in making the declaration shall not exonerate the election agent from complying with the provisions of this Order relating to the return and declaration as to election expenses.

(4) Where—

- (a) a candidate for return as a constituency member is that candidate's own election agent; or
- (b) an individual candidate for return as a regional member is that candidate's own election agent,

the declaration by the election agent as to the election expenses need not be made and the declaration by the candidate as to election expenses shall be modified as specified in the form D set out in the Appendix.

(5) A candidate or election agent who knowingly makes the declaration required by this article falsely shall be guilty of a corrupt practice.

Declarations as to election expenses: candidates on a registered party's regional list

49.—(1) Within 35 days after the day on which the result of a Scottish parliamentary election is declared, each candidate on a registered party's regional list shall deliver to the appropriate returning officer a declaration in the form E set out in the Appendix.

(2) Where a candidate is out of the United Kingdom when the declaration is due to be so delivered—

- (a) the declaration required by paragraph (1) may be made by that candidate within 14 days after the candidate's return to the United Kingdom; and
 - (b) in that case, the declaration shall forthwith be delivered to the appropriate returning officer.
- (3) A person who knowingly makes the declaration required by this article falsely shall be guilty of a corrupt practice.

Where no return and declaration is needed

50. Notwithstanding anything in articles 47 and 48, no return or declaration as to election expenses shall be required in the case of a person—

- (a) who is a candidate, but is so only because that person has been declared by others to be a candidate; and
- (b) who has not consented to the declaration or taken any part as a candidate at the election.

Penalty for failure as respects return of declarations

51. Subject to the provisions of article 53, any candidate or election agent who fails to comply with the requirements of articles 47, 48 or 49 shall be guilty of an illegal practice.

Penalty for sitting or voting where no return and declaration is transmitted

52.—(1) If, in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, the return and declarations as to election expenses are not delivered before the expiry of the time limited for the purpose, that candidate shall not, after the expiry of the time, sit or vote in the Parliament as a member for the constituency or region until—

- (a) that return and those declarations have been delivered; or
- (b) the date of the allowance of an authorised excuse for the failure to deliver the return and declaration.

(2) If, in the case of a candidate included on a registered party's regional list, the candidate's declaration as to elections expenses is not delivered before the expiry of the time limited for the purpose, that candidate shall not, after the expiry of the time, sit or vote in the Parliament as a member for region until—

- (a) that declaration has been delivered; or
- (b) the date of the allowance of an authorised excuse for the failure to deliver the declaration.

(3) If the candidate sits or votes in contravention of this article the candidate shall forfeit £100 for every day on which the candidate so sits or votes.

Authorised excuses for failure as to return and declarations

53.—(1) A candidate or an election agent may apply for relief under this article to—

- (a) the Court of Session;
- (b) an election court; or
- (c) the sheriff.

(2) Where an application is made under this article the person making the application shall notify the Lord Advocate of the application; and the Lord Advocate may attend or be represented at the hearing of the application and make representations at the hearing in respect of it.

(3) Relief under this article may be granted—

- (a) to a candidate for return as a constituency member, and to an individual candidate for return as a regional member, in respect of any failure to deliver the return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them;
 - (b) to a candidate on a registered party's regional list, in respect of any failure to deliver the declaration as to election expenses, or any part of it, or in respect of any error or false statement in it; or
 - (c) to an election agent, in respect of any failure to deliver the return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them.
- (4) The application for relief may be made on the ground that the failure, error or false statement arose—
- (a) by reason of the applicant's illness;
 - (b) where the applicant is a candidate, by reason of the absence, death, illness or misconduct—
 - (i) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, of the candidate's election agent or sub-agent (or any clerk or officer of such agent); or
 - (ii) in the case of a candidate included in a registered party's regional list, of any person;
 - (c) where the applicant is an election agent, by reason of the death or illness—
 - (i) of any prior election agent;
 - (ii) where the applicant is an election agent for a candidate, of the candidate; or
 - (iii) where the applicant is an election agent for a registered party submitting a regional list, of any candidate included in that list;
 - (d) where the applicant is an election agent, by reason of the absence, death, illness or misconduct of any sub-agent, clerk or officer of any election agent; or
 - (e) by reason of inadvertence or any reasonable cause of a like nature,

and not by reason of any want of good faith on the applicant's part.

- (5) The court may—
- (a) after such notice of the application in the constituency or region in relation to which the election was held, as it considers fit; and
 - (b) on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as it considers fit,

make such order for allowing an authorised excuse for the failure, error or false statement as it considers just.

- (6) Where it is proved to the court by a candidate—
- (a) that any act or omission of the election agent of that candidate in relation to the return or declarations was without the sanction or connivance of the candidate; and
 - (b) that the candidate took all reasonable means for preventing the act or omission,

the court shall relieve the candidate from the consequences of the act or omission of the election agent.

(7) An order under paragraph (5) may make the allowance conditional on the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seem best calculated for carrying into effect the objects of this Part.

(8) An order under paragraph (5) shall relieve the applicant for the order from any liability or consequences under this Order in respect of the matter excused by the order.

(9) The date of the order, or if conditions are to be complied with, the date at which the applicant fully complies with them, is referred to in this Order as the date of the allowance of the excuse.

(10) The jurisdiction vested by this article in the sheriff may be exercised other than in open court.

(11) An appeal lies to the Court of Session from any order of the sheriff made by virtue of this article.

Court's power to require information from election agent or sub-agent

54.—(1) Where on an application under article 53 it appears to the court that any person who is or has been an election agent or sub-agent has refused or failed to make such return, or to supply such particulars, as will enable a person to comply with the provisions of this Order as to the return or declaration as to election expenses, the court, before making an order under that article, shall order that person to attend before the court.

(2) The court shall on the attendance of that person, unless that person shows cause to the contrary, order the person—

(a) to make the return and declaration; or

(b) to deliver a statement of the particulars required to be contained in the return,

as the court considers just, within such time, to such person and in such manner as it may direct, or may order the person to be examined with respect to the particulars.

(3) If a person fails to comply with any order of the court under this article, the court may order that person to pay a fine not exceeding the amount specified as level 5 on the standard scale.

Duty of appropriate returning officer to forward returns and declarations to Electoral Commission

55. Where the appropriate returning officer receives any return or declaration under article 47, 48 or 49 in respect of a Scottish parliamentary election, that returning officer shall as soon as reasonably practicable after receiving the return or declaration deliver a copy of it to the Electoral Commission and, if so requested by the Commission, shall also deliver to them a copy of any accompanying documents.

Publication of time and place of inspection of returns and declarations

56.—(1) At a Scottish parliamentary election, the CRO shall, within 10 days after the end of the time allowed for delivery to CRO returns as to election expenses, publish in not less than two newspapers circulating in the constituency for which the election was held, and shall send to each of the election agents, a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(2) At a Scottish parliamentary election, the RRO shall, within 10 days after the end of the time allowed for delivering to the RRO returns as to election expenses, publish in not less than three newspapers circulating in the region, and shall send to the election agents for each individual candidate for return as a regional member and for each registered party submitting a regional list in relation to that region, a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(3) But if any return or declaration has not been received by the appropriate returning officer before the notice is dispatched for publication, the notice shall so state and the like notice about that return and declaration, if afterwards received, shall within 10 days after the receipt be published in like manner and sent to each of the election agents (other than an agent who is in fault or is agent for the candidate in fault).

Inspection of returns and declarations: candidates

57.—(1) Where the appropriate returning officer receives any return or declaration under article 41, 47, 48 or 49 that returning officer shall—

- (a) as soon as reasonably practicable after receiving the return or declaration make a copy of it, and any accompanying documents, available for inspection at the returning officer’s office, or some other convenient place chosen by the returning officer, for a period of two years beginning with the date when the return is received by the returning officer;
- (b) if requested to do so by any person, and on payment of the fee set out in paragraph (3) supply that person with a copy of the return or declaration and any accompanying documents.

(2) If any such return contains a statement of donations in accordance with article 47(3)(c) the appropriate returning officer shall secure that the copy of the statement made available for public inspection under paragraph (1)(a) or (as the case may be) supplied under paragraph (1)(b) does not include, in the case of any donation by an individual, the donor’s address.

(3) The fee payable for a copy of any such return or declaration or any accompanying document, shall be at the rate of 20p for each side of each page.

(4) After the expiry of the period of two years mentioned in paragraph (1) the appropriate returning officer—

- (a) may cause those returns and declarations (including any accompanying documents) to be destroyed; or
- (b) if the candidate or the candidate’s election agent so requires, shall return them to the candidate.

(5) Any returns or declarations delivered under article 41 shall be returned not to a candidate (if the candidate or the candidate’s election agents require) but to the person delivering them, if that person so requires.

Meaning of “election expenses”

58.—(1) In this Part “election expenses” in relation to a candidate at an election means (subject to paragraph (2) and article 60) any expenses incurred at any time in respect of any matter specified in paragraph (1) of article 59 which is used for the purposes of the candidate’s election after the date when the candidate becomes a candidate at the election.

(2) No election expenses are to be regarded as incurred by virtue of paragraph (1) or article 59 in respect of any matter specified in paragraph (2) of article 59 .

(3) In this article “for the purposes of the candidate’s election” means with a view to, or otherwise in connection with, promoting or procuring the candidate’s election at the election.

(4) For the purposes of this Order, election expenses are incurred by or on behalf of a candidate at an election if they are incurred—

- (a) by the candidate or the candidate’s election agent, or
- (b) by any person authorised by the candidate or the candidate’s election agent to incur expenses.

(5) A reference in this part to a candidate at an election, in relation to election expenses, includes (where the context allows) a reference to a person who becomes a candidate at the election after the expenses are incurred.

(6) In this Order any reference (in whatever terms) to promoting or procuring a candidate’s election at an election includes doing so by prejudicing the electoral prospects of another candidate at the election.

Election expenses — list of matters and general exclusions

59.—(1) Matters specified as election expenses are—

- (a) advertising of any nature (whatever the medium used), including agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it;
- (b) unsolicited material addressed to electors (whether addressed to them by name or intended for delivery to households within any particular area), including design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage);
- (c) transport (by any means) of persons to any place, including the costs of hiring a means of transport for a particular period;
- (d) public meetings (of any kind), including costs incurred in connection with the attendance of persons at such meetings, the hire of premises for the purposes of such meetings or the provision of goods, services or facilities at them;
- (e) the services of an election agent or any other person whose services are engaged in connection with the candidate's election; and
- (f) accommodation and administrative costs.

(2) Matters excluded from the definition of election expenses are—

- (a) the payment of any deposit required by rule 10 of the Scottish Parliamentary Election Rules;
- (b) the publication of any matter, other than an advertisement, relating to the election in—
 - (i) a newspaper or periodical;
 - (ii) a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru; or
 - (iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990⁽⁴²⁾ (independent television and radio services) or Part 1 or 2 of the Broadcasting Act 1996⁽⁴³⁾ (digital terrestrial television and sound broadcasting);
- (c) the provision of any facilities provided in pursuance of any right conferred on candidates at an election by this Order other than facilities in respect of which expenses fall to be defrayed by virtue of articles 66(4) and 67(4) (use of school rooms or meeting rooms in premises funded from public funds);
- (d) the provision by an individual of that individual's own services which the individual provides voluntarily in the individual's own time and free of charge;
- (e) accommodation which is the candidate's sole or main residence;
- (f) the provision by any other individual of accommodation which is that individual's sole or main residence if the provision is made free of charge;
- (g) transport by a means of transport which was acquired by the candidate principally for the candidate's own personal use;
- (h) transport provided free of charge by any other individual if the means of transport was acquired by that individual principally for the individual's own personal use;
- (i) computing or printing equipment which was acquired by the candidate principally for the candidate's own personal use; and

⁽⁴²⁾ 1990 c.42.

⁽⁴³⁾ 1996 c.55.

- (j) the provision by any other individual of computing or printing equipment which was acquired by the individual principally for the individual's own personal use if the provision is made free of charge.

Property, goods, services etc provided free of charge or at a discount

60.—(1) This article applies where, in the case of a candidate at an election—

(a) either—

- (i) property or goods is or are transferred to the candidate or the candidate's election agent free of charge or at a discount of more than 10 per cent of the market value of the property or goods; or
- (ii) property, goods, services or facilities is or are provided for the use or benefit of the candidate free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the goods, services or facilities; and

(b) the property, goods, services or facilities is or are made use of by or on behalf of the candidate in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the candidate in respect of that use, they would be (or are) election expenses incurred by or on behalf of the candidate.

(2) Where this article applies, and subject to article 58(2)—

(a) an amount of election expenses determined in accordance with this article (“the appropriate amount”) shall be treated, for the purposes of this article, as incurred by the candidate, and

(b) the candidate's election agent shall make a declaration of that amount,

unless that amount is not more than £50.

(3) Where paragraph (1)(a)(i) applies, the appropriate amount is such proportion of either—

- (a) the market value of the property or goods (where the property or goods is or are transferred free of charge); or
- (b) the difference between the market value of the property or goods and the amount of expenses actually incurred by or on behalf of the candidate in respect of the property or goods (where the property or goods is or are transferred at a discount),

as is reasonably attributable to the use made of the property or goods as mentioned in paragraph (1)(b).

(4) Where paragraph (1)(a)(ii) applies, the appropriate amount is such proportion of either—

- (a) the commercial rate for the use of the property or the provision of the goods, services or facilities (where the property, goods, services or facilities is or are provided free of charge); or
- (b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the candidate in respect of the use of the property or the provision of the goods, services or facilities (where the property, goods, services or facilities is or are provided at a discount),

as is reasonably attributable to the use made of the property, goods, services or facilities as mentioned in paragraph (1)(b).

(5) Where the services of an employee are made available by the employee's employer for the use or benefit of a candidate, then for the purposes of this article the commercial rate for the provision of those services shall be the amount of the remuneration and allowances payable to the employee by the employer in respect of the period for which the employee's services are so made available

(but shall not include any amount in respect of any contributions or other payments for which the employer is liable in respect of the employee).

(6) In this article, “market value”, in relation to any property or goods, means the price which might reasonably be expected to be paid for the property or goods on a sale in the open market.

(7) In this article, any reference to anything being transferred or provided to a candidate or the candidate’s election agent includes a reference to its being given or transferred either directly or indirectly through any third person.

Right to send election address post free

61.—(1) At a Scottish parliamentary election—

- (a) each candidate for return as a constituency member;
- (b) each individual candidate for return as a regional member; and
- (c) the nominating officer of each registered party which has submitted a regional list,

is entitled to send, free of any charge for postage which would otherwise be made by a universal postal service provider, a postal communication containing only matter relating to the election and not exceeding 60 grams in weight.

(2) One postal communication as described in paragraph (1) may be addressed to each elector—

- (a) in the constituency; or
- (b) where the sender is a person described in paragraph (1)(b) or (c), in the region,

or alternatively one unaddressed such communication may be sent to each place which, in accordance with such reasonable terms and conditions as the universal postal service provider may specify, constitutes a delivery point for the purposes of this article.

(3) Any such candidate or, as the case may be, party’s nominating officer is also, subject as mentioned in paragraph (2), entitled to send free of any such charge for postage as mentioned above to each person entered in the list of proxies for the election one such communication as mentioned in paragraph (1) for each appointment in respect of which that person is so entered.

(4) Any such candidate or, as the case may be, party’s nominating officer, may also require the appropriate returning officer to make arrangements with the universal postal service provider for addressed communications under paragraph (2) to be sent to persons who have anonymous entries in the register of electors, which arrangements shall be such as to ensure that it is not disclosed to any other person that the addressee of such a communication has an anonymous entry.

(5) In relation to a candidate for return as a constituency member or to an individual candidate for return as a regional member, such a person shall not be deemed for the purposes of this article to be a candidate unless that person is shown as standing nominated in the statement of persons nominated; but, until publication of that statement, any person who declares himself or herself to be such a candidate shall be entitled to exercise the right of free postage conferred by this article if the person gives such security as may be required by the universal postal service provider concerned for the payment of postage should the person not be shown as standing nominated as mentioned above.

(6) A registered party shall not be deemed to have submitted a regional list for the purposes of this article unless that party is shown as standing nominated in the statement published under rule 19 of the Scottish Parliamentary Election Rules (publication of statement of persons and parties nominated for return as regional members) but until the publication of that statement the nominating officer of a party which has submitted a regional list shall be entitled to exercise the right of free postage conferred by this article if the nominating officer gives such security as may be required by the universal postal service provider should the party not be shown as standing nominated as mentioned above.

(7) For the purposes of this article, “elector”—

- (a) means a person who is registered in the register of electors for the constituency or region on the last day for publication of notice of the election; and
- (b) includes a person then shown in that register (or, in the case of a person who has an anonymous entry in the register, in the record of anonymous entries) as below voting age if (but only if) it appears from the register that that person will be of voting age on the day fixed for the poll.

Remuneration for free postal services provided

62.—(1) This article applies where any postal services are provided without charge by a universal postal service provider in pursuance of this Order.

(2) The universal postal service provider shall be entitled to be remunerated for having provided the services at the rate fixed in relation to them by virtue of a scheme under section 89 of the Postal Services Act 2000(44) (schemes as to terms and conditions for provision of a universal postal service).

(3) A sum which a universal postal service provider is entitled to receive by virtue of this article shall be charged on, and issued out of, the Consolidated Fund.

(4) In this article “postal services” has the meaning given in section 125 of the Postal Services Act 2000 (interpretation).

Broadcasting from outside United Kingdom

63.—(1) No person shall, with intent to influence persons to give or refrain from giving their votes at a Scottish parliamentary election, include, or aid, abet, counsel or procure the inclusion of, any matter relating to the election in any programme service (within the meaning given in section 201 of the Broadcasting Act 1990(45) (programme services)) provided from a place outside the United Kingdom otherwise than in pursuance of arrangements made with—

- (a) the British Broadcasting Corporation;
- (b) Sianel Pedwar Cymru; or
- (c) the holder of any licence granted by the Office of Communications,

for the reception and re-transmission of that matter by that body or the holder of that licence.

(2) An offence under this article shall be an illegal practice, but the court before whom a person is convicted of an offence under this article may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act (as applied by this Order)(46) (incapacities on conviction of corrupt or illegal practice).

(3) Where any act or omission of an association or body of persons, corporate or unincorporate, is an illegal practice under this article, any person (“P”) who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, or was purporting to act in any such capacity, shall be deemed to be guilty of the illegal practice, unless P proves—

- (a) that the act or omission took place without P’s consent or connivance; and
- (b) that P exercised all such diligence to prevent the commission of the illegal practice as P ought to have exercised having regard to the nature of P’s functions in that capacity and to all the circumstances.

(44) 2000 c.26.

(45) 1990 c.42. Section 201 was amended by the Communications Act 2003 (c.21), section 360 and Schedule 19, paragraph 1.

(46) Section 173 is applied by article 84 of and Schedule 6 to this Order. Section 173 was substituted by the 2000 Political Parties Act, section 136 and was amended by S.I. 2007/931, article 2(4).

Broadcasting of local items during election period

64.—(1) Each broadcasting authority shall adopt a code of practice with respect to the participation of candidates at a Scottish parliamentary election in items about the constituency or electoral areas in question which are included in relevant services during the election period.

(2) The code for the time being adopted by a broadcasting authority under this article shall be either—

- (a) a code drawn up by that authority, whether on their own or jointly with one or more other broadcasting authorities; or
- (b) a code drawn up by one or more other such authorities,

and a broadcasting authority shall from time to time consider whether the code for the time being so adopted by them should be replaced by a further code falling within sub-paragraph (a) or (b).

(3) Before drawing up a code under this article a broadcasting authority shall have regard to any views expressed by the Electoral Commission and any such code may make different provision for different cases.

(4) The Office of Communications shall do all that it can to secure that the code for the time being adopted by them under this article is observed in the provision of relevant services; and the British Broadcasting Corporation and Sianel Pedwar Cymru shall each observe in the provision of relevant services the code so adopted by them.

(5) For the purposes of paragraph (1) “the election period”, in relation to an election, means the period beginning—

- (a) (if an ordinary general election) with the date of the dissolution of the Scottish Parliament;
- (b) (if an extraordinary general election) with the date of Her Majesty’s proclamation dissolving the Scottish Parliament; or
- (c) (if an election to fill a constituency vacancy) with the date of the occurrence of the vacancy in the constituency,

and ending with the close of the poll.

(6) In this article—

“broadcasting authority” means the British Broadcasting Corporation, the Office of Communications or Sianel Pedwar Cymru;

“candidate”, in relation to an election, means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it;

“relevant services”—

- (a) in relation to the British Broadcasting Corporation or Sianel Pedwar Cymru, means services broadcast by that body; and
- (b) in relation to the Office of Communications, means services licensed under Part 1 or 3 of the Broadcasting Act 1990 (independent television and radio services) or Part 1 or 2 of the Broadcasting Act 1996 (digital terrestrial television and sound broadcasting).

Imitation poll cards and notifications

65. No person shall for the purpose of promoting or procuring a particular result at a Scottish parliamentary election issue any poll card or notification or other document so closely resembling an official poll card or notification as to be calculated to deceive, and paragraphs (2) and (3) of article 63 apply as if an offence under this article were an offence under that article.

Schools and rooms for Scottish parliamentary election meetings: candidates for return as constituency members

66.—(1) Subject to the provisions of this article, a candidate for return as a constituency member at a Scottish parliamentary election is entitled for the purpose of holding public meetings in furtherance of the candidate’s candidature to the use free of charge at reasonable times between the last day on which notice of the election may be published in accordance with the Scottish Parliamentary Election Rules and the day preceding the date of the poll of—

- (a) a suitable room in the premises of a school to which this article applies;
- (b) any meeting room to which this article applies.

(2) This article applies to any school of which the premises are situated in the constituency or an adjoining constituency, not being an independent school within the meaning given in section 135 of the Education (Scotland) Act 1980⁽⁴⁷⁾ (interpretation), but a candidate is not entitled under this article to the use of a room in school premises outside the constituency if there is a suitable room in other premises in the constituency which are reasonably accessible from the same parts of the constituency as those outside and are premises of a school to which this article applies.

(3) This article applies to meeting rooms situated in the constituency, the expense of maintaining which is payable wholly or mainly out of public funds or by a body whose expenses are so payable.

(4) Where a room is used for a meeting in pursuance of the rights conferred by this article, the person by whom or on whose behalf the meeting is convened—

- (a) shall defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting; and
- (b) shall defray any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A candidate is not entitled to exercise the rights conferred by this article except on reasonable notice; and this article does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) For the purposes of this article (except those of paragraph (4)(b)) the premises of a school shall not be taken to include any private dwellinghouse, and in this article—

- (a) the expression “meeting room” means any room which it is the practice to let for public meetings; and
- (b) the expression “room” includes a hall, gallery or gymnasium.

Schools and rooms for Scottish parliamentary election meetings: candidates for return as regional members

67.—(1) Subject to the provisions of this article—

- (a) an individual candidate for return as a regional member at a Scottish parliamentary election is entitled for the purpose of holding public meetings in furtherance of the candidate’s candidature; and
- (b) a registered party submitting a regional list is entitled for the purpose of holding public meetings for the purpose of promoting or procuring the giving of votes for that registered party,

⁽⁴⁷⁾ 1980 c.44. The definition of “independent school” in section 135 was amended by the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12), section 3 and the Standards in Scotland’s Schools etc. Act 2000 (asp 6), schedule 2, paragraph 3(9).

to the use of the rooms described in paragraphs (2) and (3), free of charge, at reasonable times between the last day on which notice of the election may be published in accordance with the Scottish Parliamentary Election Rules and the day preceding the date of the poll.

(2) This article applies to a suitable room in any school of which the premises are situated in the region, not being an independent school within the meaning given in section 135 of the Education (Scotland) Act 1980.

(3) This article applies to any meeting room situated in the region, the expense of maintaining which is payable wholly or mainly out of public funds or by a body whose expenses are so payable.

(4) Where a room is used for a meeting in pursuance of the rights conferred by this article, the candidate or, as the case may be, registered party by whom or on whose behalf the meeting is convened—

- (a) shall defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting; and
- (b) shall defray any damage done to the room or to the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A person is not entitled to exercise the rights conferred by this article except on reasonable notice; and this article does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) The provisions of Schedule 7 (use of school rooms and meeting rooms for election meetings) have effect with respect to the rights conferred by this article and article 66 and the arrangements to be made for their exercise.

(7) For the purposes of this article (except those of paragraph (4)(b)), the premises of a school shall not be taken to include any private dwellinghouse, and in this article—

- (a) the expression “meeting room” means any room which it is the practice to let for public meetings; and
- (b) the expression “room” includes a hall, gallery or gymnasium.

Disturbances at Scottish parliamentary election meetings

68.—(1) A person who at a lawful public meeting to which this article applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an illegal practice.

(2) This article applies to a political meeting held—

- (a) in relation to an election for return of a constituency member, in that constituency; and
- (b) in relation to an election for return of regional members, in that region,

during the period beginning with the last day on which notice of election may be published in accordance with the Scottish Parliamentary Election Rules and ending with the day of election.

(3) If a constable reasonably suspects any person (“P”) of committing an offence under paragraph (1), the constable may if requested so to do by the person chairing the meeting require that P immediately declares to the constable P’s name and address and, if P refuses or fails to do so, or gives a false name and address, P shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Officials not to act for candidates

69.—(1) This article applies to any person who is—

- (a) a CRO or RRO;
- (b) an officer, clerk or member of staff of a CRO or RRO appointed under the Scottish Parliamentary Election Rules; or
- (c) any partner or clerk of any such person,

unless that person is a candidate.

(2) Any person to whom this article applies who acts as an agent for a candidate or a registered party in the conduct or management of the election, shall be guilty of an offence.

(3) A person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Illegal canvassing by police officers

70.—(1) No member of a police force shall, at a Scottish parliamentary election, by word, message, writing or in any other manner, endeavour to persuade any person to give, or dissuade any person from giving, that person's vote, whether as an elector or as proxy, for the return of any constituency or regional member where the constituency or region falls wholly or partly within the police area for which that police force is maintained.

(2) A person acting in contravention of paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; but nothing in that paragraph shall subject a member of a police force to any penalty for anything done in the discharge of that person's duty as a member of the force.

False statements as to candidates

71.—(1) A person who, or any director of any body or association corporate which—

- (a) before or during a Scottish parliamentary election;
- (b) for the purpose of affecting the candidate for whom, or registered party for which, a vote is given at the election,

makes or publishes any false statement of fact in relation to the personal character or conduct of any candidate (including any candidate included in a registered party's regional list) shall be guilty of an illegal practice, unless that person or director can show that that person or, as the case may be, director had reasonable grounds for believing, and did believe, the statement to be true.

(2) Except in a case to which paragraph (3) applies, a candidate shall not be liable, nor shall the candidate's election be avoided, for any illegal practice under paragraph (1) committed—

- (a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, by the candidate's agent other than the candidate's election agent;
- (b) in the case of a candidate included in a registered party's regional list, by the agent of that party other than its election agent.

(3) This paragraph applies where—

- (a) it can be shown that the candidate or the candidate's election agent or in the case of a candidate on a registered party's regional list, that registered party's election agent in relation to that list, has authorised or consented to the committing of the illegal practice by the other agent or has paid for the circulation of the false statement constituting the illegal practice; or

(b) an election court find and report that the election of the candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

(4) A person making or publishing any false statement of fact as mentioned above may be restrained by interdict or interim interdict of the Court of Session or the sheriff from any repetition of that false statement or of a false statement of a similar character in relation to the candidate.

(5) Any person who, before or during a Scottish parliamentary election, knowingly publishes a false statement of a withdrawal of candidature at the election for the purpose of promoting or procuring a particular result at that election shall be guilty of an illegal practice.

(6) A candidate shall not be liable, nor shall the candidate's election be avoided, for any illegal practice under paragraph (5) committed by the candidate's agent (or in the case of a candidate included in a party's regional list, the agent of that party) other than the election agent for that candidate, or as the case may be, party.

Corrupt withdrawal from candidature

72. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a Scottish parliamentary election, in consideration of any payment or promise of payment, and any person withdrawing in pursuance of the inducement or procurement, shall be guilty of an illegal payment.

Payments for exhibition of election notices

73.—(1) No payment or contract for payment for the purpose of promoting or procuring a particular result at a Scottish parliamentary election shall be made to an elector or an elector's proxy on account of the exhibition of, or the use of any house, land, building or premises for the exhibition of, any address, bill or notice, unless—

- (a) it is the ordinary business of the elector or proxy as an advertising agent to exhibit for payment bills and advertisements; and
- (b) the payment or contract is made in the ordinary course of that business.

(2) If any payment or contract for payment is knowingly made in contravention of this article either before, during or after an election—

- (a) the person making the payment or contract; and
- (b) if the person knew it to be in contravention of this Order, any person receiving the payment or being a party to the contract,

shall be guilty of an illegal practice.

Details to appear on election publications

74.—(1) This article applies to any material which can reasonably be regarded as intended to promote or procure the election of a candidate at an election (whether or not it can be so regarded as intended to achieve any other purpose as well) other than material to which section 143 of the 2000 Political Parties Act(48) (details to appear on election material) applies.

(2) No material to which this article applies shall be published unless—

- (a) in the case of material which is, or is contained in, such a document as is mentioned in paragraph (4), (5) or (6), the requirements of that paragraph are complied with; or
- (b) in the case of any other material, any requirements falling to be complied with in relation to the material by virtue of regulations under paragraph (7) are complied with.

(48) Section 143 was amended by the 2000 Act, section 66(2).

(3) For the purposes of paragraphs (4) to (6), the following details are “the relevant details” in the case of any material falling within paragraph (2)(a), namely—

- (a) the name and address of the printer of the document;
- (b) the name and address of the promoter of the material; and
- (c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(4) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.

(5) Where the material is a printed document other than one to which paragraph (4) applies, the relevant details must appear either on the first or the last page of the document.

(6) Where the material is an advertisement contained in a newspaper or periodical—

- (a) the name and address of the printer of the newspaper or periodical must appear either on its first or last page; and
- (b) the relevant details specified in paragraph (3)(b) and (c) must be included in the advertisement.

(7) The Secretary of State may, after consulting the Electoral Commission, by regulations made by statutory instrument make provision for and in connection with the imposition of requirements as to the inclusion in material falling within paragraph (2)(b) of the following details, namely—

- (a) the name and address of the promoter of the material; and
- (b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

(8) Regulations under paragraph (7) may in particular specify—

- (a) the manner and form in which such details must be included in any such material for the purpose of complying with any such requirement;
- (b) circumstances in which—
 - (i) any such requirement does not have to be complied with by a person of any description specified in the regulations, or
 - (ii) a breach of any such requirement by a person of any description so specified is not to result in the commission of an offence under this article by that person or by a person of any other such description;
- (c) circumstances in which material is, or is not, to be taken for the purposes of the regulations to be published or (as the case may be) published by a person of any description so specified.

(9) Where any material falling within paragraph (2)(a) is published in contravention of paragraph (2), then (subject to paragraphs (11) and (12))—

- (a) the promoter of the material,
- (b) any other person by whom the material is so published, and
- (c) the printer of the document,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Where any material falling within paragraph (2)(b) is published in contravention of paragraph (2), then (subject to regulations made by virtue of paragraph (8)(b) and to paragraph (11) and (12))—

- (a) the promoter of the material, and

(b) any other person by whom the material is so published,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(11) It shall be a defence for a person charged with an offence under this article to prove—

- (a) that the contravention of paragraph (2) arose from circumstances beyond that person's control; and
- (b) that that person took all reasonable steps, and exercised all due diligence, to ensure that that contravention would not arise.

(12) Any candidate or election agent who would (apart from this paragraph) be guilty of an offence under paragraph (9) or (10), shall instead be guilty of an illegal practice.

(13) In this article—

- “print” means print by whatever means, and “printer” shall be construed accordingly;
- “the promoter”, in relation to any material to which this article applies, means the person causing the material to be published;
- “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means.

(14) For the purpose of determining whether any material is material such as is mentioned in paragraph (1), it is immaterial that it does not expressly mention the name of any candidate.

(15) A statutory instrument containing regulations under paragraph (7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Prohibition of paid canvassers

75. If a person (“P”) is, either before, during or after a Scottish parliamentary election, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting or procuring a particular result at the election both P and the person so engaging or employing P shall be guilty of illegal employment.

Providing money for illegal purposes

76. Where a person knowingly provides money—

- (a) for any payment which is contrary to the provisions of this Order;
- (b) for any expenses incurred in excess of the maximum amount allowed by this Order; or
- (c) for replacing any money expended in any such payment or expenses,

except where the payment or the incurring of the expenses may have been previously allowed in pursuance of section 167 of the 1983 Act (as applied by this Order)⁽⁴⁹⁾ (application for relief) to be an exception, that person shall be guilty of an illegal payment.

Bribery

77.—(1) A person shall be guilty of a corrupt practice if that person is guilty of bribery.

(2) A person (“P”) shall be guilty of bribery if P, directly or indirectly—

- (a) gives any money or procures any office to or for any voter, or to or for any other person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting;

⁽⁴⁹⁾ Section 167 is applied by article 84 of and Schedule 6 to this Order. Section 167(1A) was inserted by the Representation of the People Act 1985 (c.50), section 24 and amended by the 2000 Political Parties Act, Schedule 18, paragraph 18(5).

- (b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting; or
- (c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, a particular result at a Scottish parliamentary election or the vote of any voter,

or if upon or in consequence of any such gift or procurement as mentioned above P procures or engages, promises or endeavours to procure a particular result at a Scottish parliamentary election or the vote of any voter.

(3) For the purposes of paragraph (2)—

- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure, any money or valuable consideration; and
- (b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure, any office, place or employment.

(4) A person shall be guilty of bribery if that person advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money or any part of it shall be expended in bribery at a Scottish parliamentary election or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election.

(5) The foregoing provisions of this article shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning a Scottish parliamentary election.

(6) A voter shall be guilty of bribery if before or during a Scottish parliamentary election the voter directly or indirectly receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for that voter or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(7) A person shall be guilty of bribery if after a Scottish parliamentary election that person directly or indirectly receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

(8) In paragraphs (2), (6) and (7) a reference to a thing being done by a person includes a reference to a thing being done on behalf of that person.

(9) In this article the expression “voter” includes any person who has or claims to have a right to vote.

Treating

78.—(1) A person shall be guilty of a corrupt practice if that person is guilty of treating.

(2) A person shall be guilty of treating if that person corruptly either before, during or after a Scottish parliamentary election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—

- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.

(3) Every elector or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating.

(4) In this article a reference to a thing being done by a person includes a reference to a thing being done on behalf of that person.

Undue influence

79.—(1) A person shall be guilty of a corrupt practice if that person is guilty of undue influence.

(2) A person shall be guilty of undue influence—

- (a) if that person directly or indirectly makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict any physical or mental injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or
- (b) if, by abduction, duress or any fraudulent device or contrivance, that person impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, an elector or proxy for an elector either to vote or to refrain from voting.

(3) In this article a reference to a thing being done by a person includes a reference to a thing being done on behalf of that person.

Rights of creditors

80. The provisions of this Part prohibiting—

- (a) payments and contracts for payments;
- (b) the payment or incurring of election expenses in excess of the maximum amount allowed by this Order; or
- (c) the incurring of expenses not authorised by an election agent,

do not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this Order.

Savings as to Scottish parliamentary elections

81.—(1) Where a person has been declared by others to be a candidate at a Scottish parliamentary election without that person's consent, nothing in this Part shall be construed to impose any liability on that person, unless that person has afterwards given assent to the declaration or has been nominated.

(2) Nothing in this Part makes it illegal for an employer to permit any elector or proxy to take a leave of absence from employment for a reasonable time for the purpose of voting at the poll at a Scottish parliamentary election without having any deduction from their salaries or wage on account of their absence, if the permission—

- (a) is (so far as practicable without injury to the employer's business) given equally to all persons alike who are at the time in the employer's employment;
- (b) is not given with a view to inducing any person to record that person's vote for any particular candidate or, as the case may be, registered party at the election; and
- (c) is not refused to any person for the purpose of preventing that person from recording that person's vote for any particular candidate or, as the case may be, registered party,

but this paragraph shall not be construed as making illegal any act which would not be illegal apart from this paragraph.

Interpretation of Part 3

82. In this Part, unless the context otherwise requires—

a person becomes a “candidate” in relation to a Scottish parliamentary election—

(a) on the date of—

- (i) the dissolution of the Scottish Parliament; or
- (ii) in the case of an election under section 9 of the 1998 Act (constituency vacancies), the occurrence of the vacancy,

in consequence of which the notice of election is issued if on or before that date the person has been declared to be a candidate at the election; and

(b) otherwise, on the day on which the person is so declared or on which the person is nominated as a candidate at the election (whichever is the earlier);

“date of allowance of an authorised excuse” has the meaning given by article 53(9);

“declaration as to election expenses” means a declaration made under article 48 or 49;

“disputed claim” has the meaning given by article 45(1) as extended by article 46;

“money” and “pecuniary reward” shall (except in article 77) be deemed to include—

- (a) any office, place or employment;
- (b) any valuable security or other equivalent of money; and
- (c) any valuable consideration,

and expressions referring to money shall be construed accordingly;

“payment” includes any pecuniary or other reward;

“personal expenses” as used with respect to the expenditure of any candidate in relation to any Scottish parliamentary election includes the reasonable travelling expenses of the candidate, and the reasonable expenses of the candidate’s living at hotels or elsewhere for the purposes of and in relation to the election; and

“return as to election expenses” means a return (including the bills and receipts to be delivered with it) to be made under article 47.

Computation of time for purposes of Part 3

83.—(1) Where the day or last day on which anything is required or permitted to be done by or in pursuance of this Part is any of the days mentioned in paragraph (2)—

- (a) the requirement or permission shall be deemed to relate to the first day thereafter which is not one of those days; and
- (b) in computing any period of not more than seven days for the purposes of this Part any of the days so mentioned shall be disregarded.

(2) The days referred to in paragraph (1) are a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, Easter Monday, a day which is a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971(50), or a day appointed for public thanksgiving or mourning.

PART 4

LEGAL PROCEEDINGS

Application of certain provisions for Scottish parliamentary elections

84.—(1) The provisions of the 1983 Act which are specified in the left hand column of Part 1 of Schedule 6 shall apply—

- (a) as if amended in accordance with the modifications and exceptions specified in relation to those provisions in the right hand column of that Schedule;
- (b) subject to paragraph (3); and
- (c) as if amended in accordance with such modifications as are necessary in consequence of those provisions,

for the purposes of a Scottish parliamentary election but only in relation to the election or return of a constituency member of the Scottish Parliament.

(2) The provisions of the 1983 Act which are specified in the left hand column of Part 2 of Schedule 6 shall apply—

- (a) as if amended in accordance with the modifications and exceptions specified in relation to those provisions in the right hand column of that Schedule;
- (b) subject to paragraph (3); and
- (c) as if amended in accordance with such modifications as are necessary in consequence of those provisions,

for the purposes of a Scottish parliamentary election but only in relation to the election or return of a regional member of the Scottish Parliament.

(3) Unless the context otherwise requires, in the provisions applied by Schedule 6—

- (a) any provision relating to a local government election or local government electors and associated references (including a reference to a petition questioning an election under the Local Governance (Scotland) Act 2004⁽⁵¹⁾) shall be disregarded;
- (b) any reference to a parliamentary election shall be construed as a reference to a Scottish parliamentary election (except the reference in section 160(4) of the 1983 Act⁽⁵²⁾) and any reference to a general election shall accordingly be construed as a reference to a Scottish parliamentary general election;
- (c) any reference to a constituency (or parliamentary constituency) shall be construed—
 - (i) in relation to any election or return of a constituency member, as a reference to a Scottish parliamentary constituency;
 - (ii) in relation to any election or return of a regional member, as a reference to a region;
- (d) any reference to promoting or procuring the election of a candidate shall be construed as a reference to promoting or procuring the giving of a vote for a particular candidate or registered party at the election;
- (e) any reference to a candidate, other than the one referred to in sub-paragraph (d), shall be construed as a reference to either—
 - (i) a candidate on a registered party's regional list; or
 - (ii) an individual candidate,

⁽⁵¹⁾ 2004 asp 9.

⁽⁵²⁾ Section 160(4) was substituted by the 2000 Political Parties Act, Schedule 17, paragraph 8.

- as the case may be;
- (f) any reference to a parliamentary elector shall be construed as a reference to an elector at a Scottish parliamentary election;
 - (g) any reference to a member in the context of a Member of Parliament shall be construed as a reference to a member of the Scottish Parliament;
 - (h) any reference to a parliamentary election petition (except in the context of the rota for the trial of parliamentary election petitions) shall be construed as a reference to a Scottish parliamentary election petition;
 - (i) any reference to the High Court shall be construed as a reference to the Court of Session and any reference to the County Court or a judge of that Court shall be construed as a reference to the sheriff;
 - (j) any reference to the Director of Public Prosecutions or the Attorney General shall be construed as a reference to the Lord Advocate;
 - (k) any reference to a return in the context of a return to the writ of election (and the return to Parliament) shall be construed as a reference to the declaration of the result by the returning officer under rule 62 or, as the case may be, rule 66 of the Scottish Parliamentary Election Rules;
 - (l) any reference to an enactment or instrument made under an enactment shall be construed as a reference to that enactment or instrument as applied by this Part of this Order; and
 - (m) any reference to an offence under the 1983 Act or to a practice, payment, employment or hiring made corrupt or illegal by any provision of that Act shall be construed, subject to any necessary modifications, as a reference to the offence under, or practice, payment, employment or hiring made illegal by, the corresponding provision of this Order.

PART 5

MISCELLANEOUS AND SUPPLEMENTAL

Vacancies: constituency seats

85. Where the seat of a constituency member is vacant and the date of the poll at an election to fill that vacancy is fixed by the Presiding Officer of the Scottish Parliament under section 9 of the 1998 Act (constituency vacancies), the Presiding Officer shall forthwith send a notice to the CRO for that constituency stating—

- (a) that the vacancy exists; and
- (b) the date fixed for the poll at the election to fill that vacancy.

Vacancies: regional member seats

86.—(1) Where it comes to the notice of the Presiding Officer of the Scottish Parliament that the seat of a regional member who was returned from a registered party's regional list is vacant, the Presiding Officer shall forthwith send a notice in accordance with paragraph (2) to the RRO for that region.

- (2) A notice under paragraph (1) shall—
 - (a) state that a vacancy exists; and
 - (b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose regional list that person's name is included.

(3) On receipt of a notice under paragraph (1), the RRO shall ascertain the name of the person, if any, who is to fill the vacancy in accordance with section 10 of the 1998 Act (regional vacancies) as modified by article 87.

Modification of section 10 of the 1998 Act

87. Section 10 of the 1998 Act(53) is modified by substituting, for subsections (4) and (5), the following:—

“(4) The regional returning officer shall ascertain from that party’s regional list the name and address of the person whose name appears highest on that list (“the first choice”) and shall take such steps as appear to him to be reasonable to contact the first choice to ask whether he will—

- (a) state in writing that he is willing and able to serve as a regional member for that region; and
- (b) deliver a certificate signed by or on behalf of the nominating officer of the registered party which submitted that regional list stating that the first choice may be returned as a regional member from that list.

(4A) Where—

- (a) within such period as the regional returning officer considers reasonable—
 - (i) he decides that the steps he has taken to contact the first choice have been unsuccessful; or
 - (ii) he has not received from that person the statement and certificate referred to in subsection (4); or
- (b) the first choice has—
 - (i) stated in writing that he is not willing to serve as a regional member for that region; or
 - (ii) failed to deliver the certificate referred to in subsection (4)(b),

the regional returning officer shall repeat the procedure required by subsection (4) in respect of the person (if any) whose name appears next in that list (“the second choice”) or, where paragraph (a) or (b) of this subsection applies in respect of that person, in respect of the person (if any) whose name appears next highest after the second choice in that list; and the regional returning officer shall continue to repeat the procedure until the regional returning officer has notified the Presiding Officer of the name of the person who is to fill the vacancy or the names in the list are exhausted.

(5) Where a person whose name appears on that list provides the statement and certificate referred to in subsection (4), the regional returning officer shall notify to the Presiding Officer the name of that person.

(5A) Where—

- (a) under subsection (4A), the regional returning officer has asked the second choice or a subsequent choice the questions referred to in subsection (4); and
- (b) the person who was asked those questions on an earlier occasion then provides the statement and certificate referred to in that subsection,

that statement and certificate shall have no effect unless and until the circumstances described in paragraph (a) or (b) of subsection (4A) apply in respect of the second choice or, as the case may be, of the subsequent choice.”.

(53) Section 10 was previously modified by [S.I. 2007/937](#), but that instrument is revoked by this Order.

Dissolution of Parliament: minimum period

88. The “minimum period” for the purpose of section 2(3) of the 1998 Act (ordinary general elections) is a period of 28 days, computed in accordance with rule 2 of the Scottish Parliamentary Election Rules (computation of time).

Advertisements

89. The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984⁽⁵⁴⁾ shall have effect in relation to the display on any site in Scotland of an advertisement relating specifically to a Scottish parliamentary election as they have effect in relation to the display of an advertisement relating specifically to a parliamentary election.

Forms and documents: variations and translations

90.—(1) The forms set out in the Appendix may be used with such variations as the circumstances may require.

(2) Paragraphs (3) and (4) apply to any document which under or by virtue of this Order is required or authorised to be given to voters or displayed in any place.

(3) The person who is required or authorised to give or display the document must, as that person thinks appropriate, give or display or otherwise make available in such form as that person thinks appropriate—

- (a) the document in Braille;
- (b) the document in languages other than English;
- (c) graphical representations of the information contained in the document;
- (d) other means of making the information contained in the document accessible to persons who might not otherwise have reasonable access to the information.

(4) The person required or authorised to give or display the document must also, as that person thinks appropriate, make available the information contained in the document in such audible form as that person thinks appropriate.

(5) Paragraphs (3) and (4) do not apply to—

- (a) the nomination paper;
- (b) a ballot paper.

(6) The CRO must cause to be displayed at every polling station an enlarged sample copy of a ballot paper.

(7) The sample copy mentioned in paragraph (6) may include a translation of any instructions to voters into such other languages as the CRO thinks appropriate.

(8) The CRO must provide at every polling station an enlarged hand held sample copy of a ballot paper for the assistance of voters who are partially sighted, which must be clearly marked as a specimen provided only for the guidance of voters.

Sending of applications, notices etc.

91.—(1) Any application, notice, claim or objection which is required by this Order to be made to an ERO, CRO or RRO shall be made in writing and sent by post or delivered to that officer’s office or to the address specified by that officer for the purpose.

(54) S.I. 1984/467.

(2) Where an ERO, CRO or RRO is required by this Order to notify any person, such notification shall be in writing and may be sent by post—

- (a) in the case of a person other than a service voter, to the address provided by that person for the purpose of such notification or of any record or, if there is no such address, to the last known place of abode of that person;
- (b) in the case of a service voter, to any address provided by that service voter for the purpose of such notification or of any record or to the address provided for the purpose by the appropriate government department (as defined by section 59(3B) of the 1983 Act⁽⁵⁵⁾ (meaning of “the appropriate government department”) or, as the case may be, the British Council.

Interference with notices etc.

92. If any person without lawful authority destroys, mutilates, defaces or removes any notice published by an ERO, CRO or RRO in connection with that officer’s duties or any copies of a document which have been made available for inspection in pursuance of those duties, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Premises used for election purposes

93. Section 98 of the 1983 Act⁽⁵⁶⁾ (premises not affected for rates) shall have effect as if the reference to public meetings in furtherance of a person’s candidature at an election included a reference to public meetings promoting a particular result at a Scottish parliamentary election.

Correction of procedural errors

94.—(1) A CRO or RRO may take such steps as that officer thinks appropriate to remedy any act or omission on that officer’s part, or on the part of a relevant person, which—

- (a) arises in connection with any function that officer or relevant person has in relation to the Scottish parliamentary election, and
- (b) is not in accordance with the rules or any other requirements applicable to the election.

(2) But a CRO or RRO may not under paragraph (1) re-count the votes given at a Scottish parliamentary election—

- (a) for return of a constituency member after the result of the poll for the return of a constituency member has been declared, or
- (b) for the return of regional members, after the publication of the statement required by rule 61 of the Scottish Parliamentary Election Rules.

(3) These are the relevant persons—

- (a) an ERO;
- (b) a presiding officer;
- (c) a person providing goods or services to a CRO or RRO;
- (d) a depute of any person mentioned in sub-paragraphs (a) to (c) or a person appointed to assist, or in the course of that person’s employment assisting, such a person in connection with any function that person has in relation to the Scottish parliamentary election.

⁽⁵⁵⁾ Section 59(3B) was inserted by the 2006 Act, section 13.

⁽⁵⁶⁾ Section 98 was repealed for England and Wales by the Local Government Finance Act 1988 (c.41), section 149 and Schedule 13, Part 1, but that repeal does not extend to Scotland.

(4) Where a CRO or RRO is guilty of an act or omission in breach of that officer's official duty, but remedies that act or omission in full by taking steps under paragraph (1), that officer shall not be guilty of any offence under article 28(1), but this paragraph shall not affect any conviction which takes place, or any penalty which is imposed, before the date on which the act or omission is remedied in full.

Effect of demise of the Crown

95. A proclamation dissolving the Parliament as mentioned in section 2(5) of the 1998 Act shall not be affected by the demise of the Crown.

Consequential amendment

96. In the definition of "election petition" in rule 69.1 of the Rules of the Court of Session 1994(57) (interpretation of Chapter 69: election petitions), for "article 83 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 2007" substitute "article 84 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 2010".

Revocations

97. The Orders specified in Schedule 9 (revocations) are revoked.

Dover House, London
16th December 2010

David Mundell
Parliamentary Under Secretary of State for
Scotland
Scotland Office

(57) The Rules of the Court of Session 1994 are set out in Schedule 2 to [S.I. 1994/1443](#). The definition of "election petition" was amended by [S.I. 1999/787](#), [2002/2779](#) and [2007/937](#). The definition of "Scottish parliamentary election" was added by [S.I. 1999/787](#).