

Status: Point in time view as at 01/01/2006.

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SCHEDULES

EIGHTH SCHEDULE

Sections 72(5), 130.

ELECTION COURTS

Powers of election courts

- 1 (1) A parliamentary election court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority as a judge of the High Court, and shall be a court of record.
- (2) A local election court shall have the same powers, jurisdiction and authority as a parliamentary election court.

Place of trial

- 2 (1) The place of trial—
 - (a) of a parliamentary election petition relating to an election for a borough constituency shall be within the county borough or borough containing all or part of the constituency.
 - (b) of a parliamentary election petition relating to an election for a county constituency shall be within ^[F1] a county in which the constituency is wholly or partly situate]
Para.(c) rep. by 1968 c.20 (NI)
 - (d) of a local election petition shall be within the area of the local authority for which the election was held;
but the High Court may, on being satisfied that special circumstances exist rendering it desirable that any petition should be tried elsewhere, appoint some other convenient place for the trial.
- (2) An election court may adjourn the trial from any one place to any other place within the county borough, borough, county or area where it is held.

F1 1968 c.20 (NI)

Reception of and attendance on election judges, etc.

- 3 *Sub-para.(1) rep. by 1978 c.23*
 - (2) The travelling and other expenses of the judges and all expenses properly incurred by the sheriff or other person in receiving the judges and providing them with necessary accommodation and with a proper court shall be defrayed by the Ministry out of moneys provided by ^[F2] the Parliament of the United Kingdom].
Sub-para.(3) rep. by 1978 c.23

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F2 SI 1973/2163

Local election courts

- 4 (1) The clerk of the local authority for which the election was held shall provide proper accommodation for holding the local election court and any expenses incurred by him for the purposes of this paragraph shall be paid by that authority.
- (2) All officers and persons having functions in relation to a parliamentary election court shall in so far as the circumstances admit perform the like functions in relation to a local election court.
- (3) A local election court may employ such officers and clerks as may be prescribed.

Shorthand writers

- 5 (1) A shorthand writer shall attend the trial of an election petition and shall be sworn faithfully and truly to take down at length the evidence given at the trial and from time to time as occasion requires to transcribe that evidence or cause it to be transcribed.
- (2) The shorthand writer shall take down the evidence and from time to time transcribe it or cause it to be transcribed.
- (3) In the case of a parliamentary election petition—
- (a) the shorthand writer shall be a shorthand writer appointed by the Clerk of the Parliaments and shall be sworn by one of the judges of the election court;
 - (b) a copy of the evidence shall accompany the certificate given by the election court to the Speaker;
 - (c) the expenses of the shorthand writer shall be deemed to be part of the expenses incurred in providing the court.
- (4) In the case of a local election petition—
- (a) the shorthand writer shall be sworn by the election court;
 - (b) a copy of the evidence shall, if the election court so directs, accompany the certificate of that court.

Expenses of local election courts

- 6 (1) The remuneration and allowances to be paid to the barrister constituting a local election court and to any officers, clerks or shorthand writers employed under this Schedule in relation to the trial shall be in accordance with a scale fixed by rules of court.

The remuneration and allowances shall be paid in the first instance by the Ministry of Finance^{F3} and shall be repaid to that Ministry on its certificate by the authority for which the election was held ...^{F4}.

- (2) A local election court may, in its discretion, order that the said remuneration and allowances or the expenses incurred by the ...^{F4} clerk of the local authority for providing the election court shall be repaid, wholly or in part, to the Ministry of Finance^{F3} or the ...^{F4} clerk of the authority, as the case may be, in the cases, by the persons following (namely)—

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- (a) where, in the opinion of the election court, the petition is frivolous and vexatious, by the petitioner;
 - (b) where, in the opinion of the election court, the respondent has been personally guilty of corrupt practices at the election, by that respondent.
- (3) The order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs, but a deposit made or a security given under this Schedule shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

F3	Now Treasury, SI 1973/2163
F4	1972 NI 13

Provisions as to security for costs

- 7 (1) At the time of presenting an election petition or within three days afterwards the petitioner shall give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.
- (2) The security shall be—
- (a) in the case of a parliamentary election petition, an amount of one thousand pounds; and
 - (b) in the case of a local election petition, such amount not exceeding^[F5] £2,500] as the High Court, or a judge thereof, on summons, directs;
- and shall be given in the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other.
- (3) Within the prescribed time, not exceeding five days after the presentation of the petition, the petitioner shall serve on the respondent a notice of the presentation of the petition, and of the nature of the proposed security, and a copy of the petition.^[F5] In respect of a petition relating to a local election the following provisions shall have effect in substitution for the foregoing provisions of this sub#paragraph:
- “Within the prescribed time after giving the security the petitioner shall serve on the respondent in the prescribed manner—
 - (a) a notice of the presentation of the petition and of the amount and nature of the security, and
 - (b) a copy of the petition.”.]
- (4) Within a further prescribed time, not exceeding five days after service of the notice, the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the recognisance.^[F5] In respect of a petition relating to a local election this sub#paragraph shall have effect as if the words, not exceeding five days after service of the notice, were omitted.]

Subs. (5) rep. by SI 1987/168

- (6) An objection to a recognisance shall be decided in the prescribed manner.

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- (7) If the objection is allowed, the petitioner may within a further prescribed time not exceeding five days, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.^{F5} In respect of a petition relating to a local election this sub#paragraph shall have effect as if the words not exceeding five days were omitted.]
- (8) If no security is given as required by this paragraph or any objection is allowed and not removed as aforesaid, no further proceedings shall be had on the petition.

F5 SI 1987/168

[^{F6}Petition at issue

F6 SI 2001/417

- 8 (1) The petition shall be at issue as from the relevant time, as defined by sub-paragraph (2).
- (2) In this paragraph the relevant time means—
- (a) where the petitioner gives the security for costs required by paragraph 7 by a deposit of money equal to the amount of the security so required, the time when the security is so given; and
 - (b) in any other case, the time when—
 - (i) the time prescribed for the making of objections under paragraph 7(4) expires, or
 - (ii) if such an objection is made, that objection is disallowed or removed, whichever happens later.]

Lists and trial of election petitions

- 9 (1) The prescribed officer shall as soon as may be make out—
- (a) a list of all parliamentary election petitions;
 - (b) a list of all local election petitions;
- at issue presented to the High Court under Part IX, placing the petitions in the respective lists in the order in which they were presented, and shall keep at his office a copy of each list open to inspection in the prescribed manner.
- (2) All petitions shall, so far as conveniently may be, be tried in the order in which they stand in the respective lists.
- (3) Two or more candidates may be made respondents to any one petition questioning an election ...^{F7} to any one local election petition and their cases may be tried at the same time, but for the purposes of Part IX and this Schedule such a petition shall be deemed to be a separate petition against each respondent.
- (4) Where more petitions than one are presented relating to the same election or to local elections held at the same time for more than one ...^{F8} ward in the same local government electoral area ...^{F8}, all those petitions shall be bracketed together in the list and shall be dealt with as one petition, standing, unless the High Court otherwise

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direct, in the list in the place where the last of them would have stood if it had been the only petition presented.

F7 1968 c.20 (NI)
F8 1972 NI 13

Preliminary and incidental applications

- 10 Applications for leave to amend petitions and other applications relating to preliminary or incidental matters may, subject to rules of court, be made to a judge of the High Court.

Trial of petitions

- 11 (1) An election petition shall be tried in open court, without a jury, and notice of the time and place of trial shall be given in the prescribed manner, not less than, in the case of a parliamentary election petition, fourteen days and in any other case, seven days, before the day of the trial.
- (2) The election court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.
- (3) The trial of a parliamentary election petition shall be proceeded with notwithstanding the acceptance by the respondent of an office which disqualifies him for membership of the House of Commons and notwithstanding, prorogation of Parliament; and the trial of a local election petition shall be proceeded with notwithstanding that the respondent has ceased to hold the office his election to which is questioned by the petition.
- (4) On the trial of a petition, unless the court otherwise directs, any charge of a corrupt or illegal practice may be gone into, and evidence in relation thereto received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt or illegal practice.
- (5) On the trial of a petition complaining of an undue election and claiming the seat or office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.
- (6) If on the trial of an election petition it appears to the court that there is an equality of votes between any candidates at the election, and that the addition of a vote would entitle any of those candidates to be declared elected, then—
- (a) any decision under the provisions as to equality of votes in the Parliamentary or Local Elections Rules, ...^{F9}, as the case may be, shall, in so far as it determines the question between those candidates, be effective also for the purposes of the petition; and
- (b) in so far as that question is not determined by such a decision, the court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

F9 1968 c.20 (NI)

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Witnesses

- 12 (1) Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in an action tried [^{F10} in the High Court].
- (2) On the trial a member of the election court may, by order under his hand, require any person who appears to him to have been concerned in the election to attend as a witness and any person refusing to obey the order shall be guilty of contempt of court.
- (3) The election court may examine any person so required to attend or who is in court although he is not called and examined by any party to the petition.
- (4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent, or either of them.
- (5) [^{F11}Except in respect of the trial of a local election petition,]^{F12} [^{F13} The Director of Public Prosecutions for Northern Ireland] shall obey any direction given him by the election court with respect to the summoning of any witness to give evidence at the trial and his examination.
- (6) [^{F13} The Director of Public Prosecutions for Northern Ireland] shall without any direction from the court cause any person appearing to him to be able to give material evidence as to the subject of the trial to attend the trial and shall, with the leave of the court, examine him (or cause him to be examined) as a witness.
- (7) Subject to sub-paragraph (9) a person called as a witness respecting an election before any election court shall not be excused from answering any question relating to any offence at or connected with the election, on the ground that the answer thereto may criminate or tend to criminate [^{F14} that person or the husband or wife of that person] or on the ground of privilege:

Provided that—

- (a) a witness who answers truly all questions which he is required by the election court to answer [^{F11}, other than a witness at a trial of a local election petition,] shall be entitled to receive a certificate of indemnity under the hand of a member of the court stating that the witness has so answered; and
- (b) an answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be in any proceeding, civil or criminal, admissible in evidence against [^{F14} that person or the husband or wife of that person].
- (8) The giving or refusal to give a certificate of indemnity to a witness by an election court trying a local election petition shall be final and conclusive.
- (9) A person who has voted at the election shall not, in any legal proceedings to question the election or return, be required to state for whom he voted.
- (10) Where a person has received a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any corrupt or illegal practice committed by him previously to the date of the certificate at or in relation to the election, or any illegal payment, employment or hiring or offence under section eighty-six or under paragraph 28 or paragraph 32 of the Ninth Schedule so committed, the court having cognisance of the case shall on production of the certificate stay the proceeding, and may in their discretion award to the said person such costs as he may have been put to in the proceeding.

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- (11) Nothing in this paragraph shall be deemed to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceedings to enforce that incapacity (other than a criminal prosecution).
- (12) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions in the High Court, may be allowed to him by a certificate of the election court or of the prescribed officer, and if the witness was called and examined by virtue of sub-paragraph (2), shall be deemed part of the expenses of providing a court, but otherwise shall be deemed costs of the petition.

<p>F10 1978 c.23 F11 SI 1987/168 F12 continue to am. 2002 c. 26 F13 1972 NI 1 F14 1971 c.36 (NI)</p>

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