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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 425**

**The Scottish Parliament (Elections etc.) Order 2015**

**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 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 an 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 and 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<sup>(1)</sup> (control of donations to candidates), and regulations made under paragraph 10(2) of that Schedule<sup>(2)</sup> (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) Any modification made to paragraph 3 of that Schedule (sponsorship) by order of the Secretary of State under paragraph 3(4) of that Schedule must be ignored.

(6) 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.

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

(8) In paragraph 8(10)(a), for "section 67(1) or (1A) of this Act" substitute "article 32 of the Scottish Parliament (Elections etc.) Order 2015 (appointment of election agent)"

(9) In paragraph 10(1)<sup>(3)</sup> for "section 81 of this Act" substitute "article 47 of the Scottish Parliament (Elections etc.) Order 2015 (return as to election expenses: constituency and individual regional candidates)".

(10) 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.

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

(2) 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).

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

### **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,

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<sup>(4)</sup> (independent television and radio services) or Part 1 or 2 of the Broadcasting Act 1996<sup>(5)</sup> (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 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 it thinks 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)<sup>(6)</sup> (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

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(4) 1990 c.42.

(5) 1996 c.55.

(6) Section 173 is applied by article 82 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).

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 anything which is used or takes place after that date.

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

(14) Rules 68 and 70(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, £8,700 together with an additional 9p for every entry in the register of electors;
- (b) for a candidate for return as a constituency member for a burgh constituency, £8,700 together with an additional 6p 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” means a constituency designated as such in Schedule 1 to the Scottish Parliament (Constituencies and Regions) Order 2014<sup>(7)</sup> or a constituency described in paragraph (10); and

“burgh constituency” means a constituency designated as such in that Schedule.

(10) For the purposes of this article the constituency of the Orkney Islands and the constituency of the Shetland Islands are county constituencies.

### **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 “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<sup>(8)</sup>;

(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 that 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, £21,500 plus 6.3p for every entry in the register of electors;

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(7) [S.I. 2014/501](#).

(8) In relation to the ordinary general election that would otherwise have been held on 7th May 2015, section 2(2) is modified by section 4(2) of the Fixed-term Parliaments Act 2011 (c.14) so that it has effect as if providing for the poll to be held on 5th May 2016.

- (b) for a candidate for return as a constituency member for a burgh constituency, £21,500 plus 4.2p 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) and (10) 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; and
- (b) the candidate shall not 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<sup>(9)</sup> 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, 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 C 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 C 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 C 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.

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(9) 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.

### **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 D 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 Part as “the date of the allowance of an authorised 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 delivering to the 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 article 59(1) 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 article 59(2).

(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<sup>(10)</sup> (independent television and radio services) or Part 1 or 2 of the Broadcasting Act 1996<sup>(11)</sup> (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 64(4) and 65(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;

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<sup>(10)</sup> 1990 c.42.

<sup>(11)</sup> 1996 c.55.

- (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
- (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, subject to such reasonable terms and conditions as the universal postal service provider concerned may specify, 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 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 paragraphs (1) and (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<sup>(12)</sup> (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 Scottish Consolidated Fund.

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

### **Imitation poll cards and notifications**

**63.**—(1) A person is guilty of an offence if that person issues, for the purpose of promoting or procuring a particular result at a Scottish parliamentary election, 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) apply to an offence under this article.

(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)<sup>(13)</sup> (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.

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<sup>(12)</sup> 2000 c.26. Section 89 is amended by the Postal Services Act 2011 (c.5), Schedule 12, paragraph 23.

<sup>(13)</sup> Section 173 is applied by article 82 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).

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

64.—(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(14) (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 by—

- (a) the Scottish Ministers or any other part of the Scottish Administration; or
- (b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the 1998 Act).

(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 and article 65 (except those of paragraph (4)(b) of each article) 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.

(7) 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 65 and the arrangements to be made for their exercise.

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(14) 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).

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

**65.**—(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,

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 by—

- (a) the Scottish Ministers or any other part of the Scottish Administration; or
- (b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the 1998 Act).

(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.

### **Disturbances at Scottish parliamentary election meetings**

**66.**—(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 is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### **Officials not to act for candidates**

67.—(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) a business partner or clerk of any person described in sub-paragraph (a) or (b),

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**

68.—(1) No member of the Police Service of Scotland 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.

(2) A person acting in contravention of paragraph (1) is guilty of an offence and 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 the Police Service of Scotland 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**

69.—(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 finds and reports 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**

**70.** 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**

**71.—(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**

**72.—(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<sup>(15)</sup> (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

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<sup>(15)</sup> Section 143 was amended by the 2000 Act, section 66(2).

- (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.
- (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 Scottish Ministers may, after consulting the Electoral Commission, by regulations 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 (including by electronic 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) Regulations under paragraph (7) shall be subject to the negative procedure.

### **Prohibition of paid canvassers**

**73.** 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**

- 74.** 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)<sup>(16)</sup> (application for relief) to be an exception, that person shall be guilty of an illegal payment.

### **Bribery**

- 75.**—(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—

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<sup>(16)</sup> Section 167 is applied by article 82 of and Schedule 6 to this Order. Section 167(1A) was inserted by the Representation of the People Act 1985 (c.50), Schedule 4, paragraph 56.

- (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;
- (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**

**76.—**(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**

77.—(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**

78. 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**

79.—(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**

- 80.**—(1) 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 the 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” (except in article 75) and “pecuniary or other reward” shall 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; and
- “personal expenses” as used with respect to the expenditure of any candidate in relation to any Scottish parliamentary election—
- (a) includes the expenses described in paragraph (2), but only where reasonably incurred by the candidate for the purposes of and in relation to the election;
  - (b) to the extent that the expenditure falls within paragraph (2)(c), is to be ignored for the purpose of calculating the personal expenditure limits in article 39(1), but is to be included in the statement of the amount of personal expenses required by article 39(3) and in the declaration as to election expenses required by article 49(1).
- (2) Matters included as personal expenses are—
- (a) travelling expenses;
  - (b) expenses of living at hotels or elsewhere;
  - (c) expenses that are reasonably attributable to the candidate having a physical or mental impairment that has a substantial and long-term adverse effect on the candidate’s ability to carry out normal day-to-day activities.

### **Computation of time for purposes of Part 3**

- 81.**—(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

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(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<sup>(17)</sup>, or a day appointed for public thanksgiving or mourning.

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<sup>(17)</sup> 1971 c.80.