
STATUTORY INSTRUMENTS

1999 No. 787

The Scottish Parliament (Elections etc.) Order 1999

PART III

THE ELECTION CAMPAIGN

Prohibition of expenses not authorised by election agent etc.: registered parties

40.—(1) No expenses shall, with a view to promoting or procuring the election of any candidate or candidates be incurred by any person other than in accordance with paragraph (2) below or article 39.

(2) Expenses required by paragraph (1) above to be incurred in accordance with this paragraph shall be incurred by—

- (a) any candidate on a registered party's regional list;
- (b) the nominating officer of a registered party;
- (c) the election agent of a registered party and any person authorised in writing by that election agent; or
- (d) by any other person in accordance with arrangements for which the nominating officer is responsible,

on account—

- (i) of holding public meetings or organising any public display;
- (ii) of issuing advertisements, circulars or publications; or
- (iii) of otherwise presenting to the electors any candidate appearing on that list or the views of any such candidate or the extent to which any such candidate backs or disparages an individual candidate for return as a regional member or any other registered party which has submitted a regional list or any candidate included on the regional list of such other registered party,

but sub-paragraph (iii) of this paragraph shall not—

- (ia) restrict the publication of any matter relating to the election in a newspaper or any other periodical or in a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990, or Part I or II of the Broadcasting Act 1996; or
- (ib) apply to any expenses not exceeding in the aggregate the sum of £1000 which may be incurred by an individual and are not incurred in pursuance of a plan suggested or conserted with others or to expenses incurred by any person in travelling or living away from home or similar personal expenses.

(3) Where a person incurs any expense required by this article to be authorised by the election agent for a registered party—

- (a) that person shall within 21 days after the day on which the result of the election is declared deliver to the Secretary of State a return of the amount of those expenses; 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 the registered party or its election agent or any candidate included in the party's regional list.

(4) The return and declaration under the foregoing provisions of this article shall be in the form C and D 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.

(5) A copy of the return and declaration made under paragraph (2) above in relation to an election shall be sent to the Secretary of State within 21 days after the day on which the result of the election is declared by the person making the return or declaration.

(6) 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 (3) above falsely,

he shall be guilty of a corrupt practice, and if a person fails to deliver or send any declaration or return or a copy of it as required by this article he shall be guilty of an illegal practice, but—

- (i) the court before whom a person is convicted under this article may, if they think it is just in 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); and
- (ii) a candidate shall not be liable, nor shall his election be avoided, for a corrupt or illegal practice under this article committed by an agent without his consent or connivance.

(7) 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 who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves—

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