
STATUTORY INSTRUMENTS

2003 No. 284

The National Assembly for Wales
(Representation of the People) Order 2003

PART IV

LEGAL PROCEEDINGS

Method of questioning Assembly election

85.—(1) No Assembly election and no return to the Assembly shall be questioned except by a petition complaining of an undue election or undue return (“an Assembly election petition”) presented in accordance with this Part; and “Assembly election petition” includes a petition complaining of an undue return under section 9 of the 1998 Act.

(2) A petition complaining of no return shall be deemed to be an Assembly election petition and the High Court—

- (a) may make such order on the petition as they think expedient for compelling a return to be made, or
- (b) may allow the petition to be heard by an election court as provided with respect to ordinary Assembly election petitions.

(3) The expression “return” as the context requires refers to a return following an Assembly election or to a return under section 9 of the 1998 Act.

Presentation and service of Assembly election petition

86.—(1) An Assembly election petition may be presented by one or more of the following persons—

- (a) a person who voted as an elector at the election or who had a right so to vote,
- (b) a person claiming to have had a right to be elected or returned at the election,
- (c) a person alleging himself to have been a candidate at the election, or
- (d) a person claiming to have had a right to be returned under section 9 of the 1998 Act.

(2) Any Assembly member whose election or return is complained of is hereinafter referred to as a respondent but if the petition complains of the conduct of a constituency or a regional returning officer, the returning officer shall for the purposes of this Part be deemed to be a respondent.

(3) Paragraph (2) also applies if the petition complains of the conduct of a constituency returning officer in the exercise of his functions in relation to a regional election.

(4) The petition shall be in the prescribed form, state the prescribed matters and be signed by the petitioner, or all the petitioners if more than one, and shall be presented to the High Court.

(5) The petition shall be presented by delivering it to the prescribed officer or otherwise dealing with it in the prescribed manner; and the prescribed officer shall send a copy of it to the returning

officer of the Assembly constituency or electoral region to which the petition relates, who shall forthwith publish it in that Assembly constituency or electoral region.

(6) The petition shall be served in such manner as may be prescribed.

Time for presentation or amendment of Assembly election petition

87.—(1) Subject to the provisions of this article, an Assembly election petition shall be presented within 21 days after the day on which the name of any member to whose election or return the petition relates has been returned in accordance with Schedule 5 to this Order or section 9(6) of the 1998 Act.

(2) If the petition questions the election or return upon an allegation of corrupt practices and specifically alleges a payment of money or other reward to have been made by such member or on his account or with his privity since the time of that return in pursuance or in furtherance of the alleged corrupt practice, it may be presented within 28 days after the date of the payment.

(3) A petition questioning the election or return upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented—

- (a) within 21 days after the day specified in paragraph (4), or
- (b) if specifically alleging a payment of money or some other act to have been made or done since the day so specified by such member to whose election or return the petition relates or an agent of his, or with the privity of that member or the election agent, in pursuance or in furtherance of the alleged illegal practice, within 28 days after the date of the payment or other act.

(4) The day referred to in paragraph (3) is the tenth day after the end of the time allowed for delivering returns as to election expenses at the election or, if later—

- (a) where that member was an individual candidate, that day on which the appropriate returning officer receives the return and declarations as to election expenses by that member and his election agent,
- (b) where that member was a party list candidate, that day on which the Assembly receives—
 - (i) the return and declaration as to election expenses by the registered political party's registered nominating officer, and
 - (ii) the declaration as to election expenses by that member,
- (c) where the return and declarations are received on different days, the last of those days, or
- (d) where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse.

(5) An Assembly election petition presented within the time limited by paragraph (1) or (2) may, for the purpose of questioning the election or return upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition questioning the election upon the allegation of that illegal practice could be presented under paragraph (3).

(6) Paragraphs (3), (4) and (5) apply—

- (a) notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice, and
- (b) to a corrupt practice under article 44, as if it were an illegal practice.

(7) For the purposes of this article, an allegation that an election is avoided under article 115 shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.

Constitution of election court and place of trial

88.—(1) An Assembly election petition shall be tried by two judges on the rota for the trial of parliamentary election petitions, and the judges for the time being on that rota shall, unless they otherwise agree, try the election petitions standing for trial according to their seniority, and the judges presiding at the trial of an Assembly election are hereinafter referred to as the election court.

(2) The election court has, subject to the provisions of this Order, the same powers, jurisdiction and authority as a judge of the High Court and shall be a court of record.

(3) The place of trial shall be within the Assembly constituency or electoral region for which the election was held (or, where article 86(1)(d) applies, within the Assembly electoral region for which a person claims to have had a right to be returned under section 9 of the 1998 Act), but the High Court may on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.

(4) The election court may adjourn the trial from one place to another within the Assembly constituency or electoral region.

Judges' expenses and reception

89. In relation to the trial of an Assembly election petition, the travelling and other expenses of the judges and all expenses properly incurred in providing them with necessary accommodation and with a proper court shall be defrayed by the Secretary of State out of money provided by Parliament.

Attendance of shorthand writer

90.—(1) The Assembly shall require a shorthand writer to attend the trial of an Assembly election petition and that person shall be sworn by one of the judges of the election court faithfully and truly to take down the evidence given at the trial and from time to time as occasion requires to transcribe that evidence or cause it to be transcribed.

(2) The shorthand writer shall take down the evidence and from time to time transcribe it or cause it to be transcribed and a copy of the evidence shall accompany the certificate given by the election court to the presiding officer of the Assembly.

Security for costs

91.—(1) At the time of presenting an Assembly election petition or within three days afterwards the petitioner shall give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.

(2) The security shall be such amount not exceeding £5,000 as the High Court, or a judge of the High Court, directs on an application made by the petitioner, and shall be given in the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other.

(3) Within the prescribed time after giving the security the petitioner shall serve on the respondent in the prescribed manner—

- (a) a notice of the presentation of the petition and of the amount and nature of the security, and
- (b) a copy of the petition.

(4) Within a further prescribed time, the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the recognisance.

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

(6) If the objection is allowed, the petitioner may within a further prescribed time remove it by deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7) If no security is given as required by this article or any objection is allowed and not removed as mentioned above, no further proceedings shall be had on the petition.

Petition at issue

92.—(1) The Assembly election petition shall be at issue as from the relevant time, as defined by paragraph (2).

(2) In this article “the relevant time” means—

- (a) where the petitioner gives the security for costs required by article 91 by a deposit of money equal to the amount of the security required, the time when the security is given; and
- (b) in any other case, the time when—
 - (i) the time prescribed for the making of objections under article 91(4) expires, or
 - (ii) if such an objection is made, that objection is disallowed or removed,whichever happens later.

List of petitions

93.—(1) The prescribed officer shall—

- (a) as soon as may be, make out a list of all Assembly election petitions at issue presented to the court of which he is officer, placing them in the order in which they were presented, and
- (b) keep at his office a copy of the list, open to inspection in the prescribed manner.

(2) The petitions shall, so far as convenient, be tried in the order in which they stand in the list.

(3) Where more petitions than one are presented relating to the same Assembly election (or return under section 9 of the 1998 Act), all those petitions shall be bracketed together in the election list and shall be dealt with as one petition, standing, unless the High Court otherwise direct, in the election list in the place where the last of them would have stood if it had been the only petition presented.

Trial of petition

94.—(1) An Assembly election petition shall be tried in open court, without a jury, and notice of the time and place of trial shall be given in the prescribed manner not less than fourteen days before the day of trial.

(2) The election court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.

(3) The trial of an Assembly election petition shall be proceeded with notwithstanding a respondent having resigned his seat or if he becomes disqualified from being an Assembly member so that his seat is vacant.

(4) On the trial of an Assembly election petition, unless the court otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation to it received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice.

(5) On the trial of an Assembly election petition complaining of an undue election or return and claiming a seat for some person, a respondent may give evidence to prove that that person was not duly elected or was incapable of being duly returned in the same manner as if he had presented a petition against the election or return of that person.

- (6) This paragraph applies if, in relation to an Assembly election petition, it appears that—
- (a) there is an equality of votes between any candidates at a constituency election, or
 - (b) two or more individual candidates or registered political parties at a regional election have the same electoral region figure (within the meaning of section 6(3) of the 1998 Act),
- and that the addition of a vote would entitle any of those individual candidates or any party list candidate of those parties to be declared elected.
- (7) Where paragraph (6) applies—
- (a) any decision under the provisions in—
 - (i) paragraph 55 of Schedule 5, in the case of a constituency election, or
 - (ii) section 7(9) of the 1998 Act and paragraph 58(8) of Schedule 5, in the case of a regional election,shall, in so far as it determines the question as to who is elected, be effective also for the purposes of the petition, and
 - (b) in so far as that question is not determined by such a decision, the court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

Witnesses

95.—(1) At the trial of an Assembly election petition witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in an action tried in the High Court.

(2) On the trial a member of the election court may, by order signed by him, require any person who appears to him to have been concerned in the Assembly election or return under section 9 of the 1998 Act to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3) The election court may examine any person so required to attend or who is in court although he is not called and examined by any party to the Assembly election petition.

(4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and a respondent, or either of them.

(5) The Director of Public Prosecutions shall without any direction from the court cause any person appearing to him to be able to give material evidence as to the subject of the trial to attend the trial and shall, with the leave of the court, examine him as a witness.

Duty to answer relevant questions

96.—(1) A person called as a witness respecting an Assembly election or return under section 9 of the 1998 Act before any election court shall not be excused from answering any question relating to any offence at or connected with the election or return—

- (a) on the ground that the answer to it may incriminate or tend to incriminate that person or that person's husband or wife, or
- (b) on the ground of privilege.

(2) An answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be in any proceeding, civil or criminal, admissible in evidence against that person or that person's husband or wife.

Expenses of witnesses

97.—(1) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an Assembly election petition, according to the scale allowed to witnesses on the trial of civil actions, may be allowed to him by a certificate of the election court or of the prescribed officer.

(2) If the witness was called and examined by virtue of article 95(2), the expenses referred to in paragraph (1) shall be deemed part of the expenses of providing a court, but otherwise they shall be deemed costs of the petition.

Conclusion of trial of Assembly election petition

98.—(1) Subject to paragraph (2), at the conclusion of the trial of an Assembly election petition, the election court shall determine whether—

- (a) any Assembly member whose election or return is complained of, or any and what other person, was duly elected or returned, or
- (b) if applicable, the election was void,

and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(2) Where the election court determine that at a regional election an Assembly member for an Assembly electoral region was not duly elected or returned, the court in addition shall determine that the regional election was void.

(3) The election court shall forthwith certify in writing the determination to the presiding officer of the Assembly.

(4) If the judges constituting the election court—

- (a) subject to paragraph (2), differ as to whether any Assembly member whose election or return is complained of was duly elected or returned, they shall certify that difference and the member shall be deemed to be duly elected or returned, or
- (b) where the petition relates to a constituency election, determine that such member was not duly elected or returned but differ as to the rest of the determination, they shall certify that difference and the election shall be deemed to be void.

(5) Where any charge is made in the petition of any corrupt or illegal practice having been committed at an Assembly election the court shall, in addition to giving a certificate, and at the same time, make a report to the presiding officer of the Assembly as required by articles 107 and 109 and also stating whether corrupt or illegal practices have, or whether there is reason to believe that corrupt or illegal practices have, extensively prevailed at the election.

(6) The election court may at the same time make a special report to the presiding officer of the Assembly as to matters arising in the course of the trial an account of which in the judgement of the court ought to be submitted to the Assembly.

(7) Every report sent to the presiding officer of the Assembly under this article shall be signed by both judges of the election court and if the judges differ as to the subject of the report, they shall certify that difference and make no report on the subject on which they so differ.

(8) The presiding officer of the Assembly shall publish any certificate or report of an election court received by him under this article.

Election court determination in respect of a constituency election etc

99.—(1) Where by virtue of article 98 at a constituency election the election court determine that at a constituency election—

- (a) an Assembly member was not duly elected or returned, or
- (b) that the election was void,

and the return of the member at that election was taken into account for the purposes of deciding which members were to be returned for the Assembly electoral region in which the Assembly constituency is situated—

- (i) the determination by the election court, or
- (ii) the subsequent return of an Assembly member for that constituency,

shall not affect the validity of the return of those members for that electoral region.

(2) Where by virtue of article 98(4)(b) a constituency election is deemed to be void, the election court shall be treated as having determined that election to be void for the purposes of paragraph (1) (b).

Regional election determined to be void by election court

100.—(1) Where by virtue of article 98 the election court determine that a regional election was void, the presiding officer of the Assembly shall (subject to paragraph (3)) forthwith after receipt of the certificate from the election court under article 98(3) —

- (a) fix a date in accordance with paragraph (2) for a poll to be held at another election in the Assembly electoral region for which the regional election is determined to be void, and
- (b) send a notice in accordance with paragraph (4) to the returning officer for the Assembly electoral region in which the election was held.

(2) The date fixed shall not be later than three months after receipt of the certificate from the election court.

(3) But an election shall not be held if it appears to the presiding officer of the Assembly that the latest date which may be fixed for the poll would fall within the period of three months preceding an ordinary election.

(4) A notice under paragraph (1)(b) shall—

- (a) state that the election has been determined to be void,
- (b) require that the election is held again for the purpose of returning the members for that Assembly electoral region, and
- (c) state the date fixed for the poll at the election.

(5) The regional returning officer shall on receipt of notice under paragraph (1)(b) inform each constituency returning officer for an Assembly constituency in the Assembly electoral region as to the contents of that notice.

(6) The results of the constituency elections in the Assembly electoral region for which the election is held at the last ordinary election shall have effect for the purposes of ascertaining the results of the regional election.

Special case for determination of High Court

101.—(1) If, on the application of any party to an Assembly election petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct it to be stated accordingly and the special case shall be heard before the High Court.

(2) The High Court shall certify to the presiding officer of the Assembly its decision on the special case.

(3) If it appears to the election court on the trial of an Assembly election petition that any question of law as to the admissibility of evidence or otherwise requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been

determined by the High Court, and for this purpose may reserve the question by stating a case for the decision of the High Court.

(4) The presiding officer of the Assembly shall publish any certificate received by him under paragraph (2).

Withdrawal of petition

102.—(1) A petitioner shall not withdraw an Assembly election petition without the leave of the election court or High Court on special application, made in the prescribed manner and at the prescribed time and place.

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the Assembly constituency or electoral region to which the petition relates.

(3) Where there is more than one petitioner, the application shall not be made except with the consent of all the petitioners.

(4) If a petition is withdrawn the petitioner shall be liable to pay the costs of a respondent.

Costs of petition

103.—(1) All costs of and incidental to the presentation of an Assembly election petition and the proceedings consequent on it, except such as are by this Order otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the election court or High Court may determine.

(2) In particular—

(a) any costs which in the opinion of the election court or High Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of a petitioner or of a respondent, and

(b) any needless expense incurred or caused on the part of a petitioner or respondent,

may be ordered to be defrayed by the parties by whom it has been incurred or caused whether or not they are on the whole successful.

Neglect or refusal to pay costs

104.—(1) Paragraph (2) applies if, in relation to an Assembly election petition, a petitioner neglects or refuses, for six months after demand, to pay any person summoned as a witness on his behalf or to the respondent any sum certified to be due to that person or the respondent for his costs, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court.

(2) Where paragraph (1) applies, every person who under this Order entered into a recognisance relating to that petition shall be held to be in default of the recognisance, and

(a) the prescribed officer shall thereupon certify the recognisance to be forfeited, and

(b) it shall be dealt with as if forfeited by the Crown Court.

Further provision as to costs

105.—(1) Where upon the trial of an Assembly election petition it appears to the election court—

(a) that a corrupt practice has not been proved to have been committed in relation to an Assembly election by or with the knowledge and consent of a respondent to the petition, and

- (b) that the respondent took all reasonable means to prevent corrupt practices being committed on his behalf,

the court may, subject to the provisions of paragraph (2), make such order with respect to the whole or part of the costs of the petition as is mentioned in that paragraph.

(2) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in relation to the Assembly election, the court may, after giving that person or those persons an opportunity of being heard by counsel or solicitor and examining and cross examining witnesses to show cause why the order should not be made—

- (a) order the whole or part of the costs to be paid by that person, or those persons or any of them, and
- (b) order that if the costs cannot be recovered from one or more of those persons they shall be paid by some other of those persons or by either of the parties to the petition.

(3) Where any person appears to the court to have been guilty of a corrupt or illegal practice, the court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to that offence or to that person to be paid by that person to such person or persons as the court may direct.

Appeals and jurisdiction

106.—(1) No appeal lies without the special leave of the High Court from the decision of the High Court on any question of law, whether on appeal or otherwise, under the foregoing provisions of this Part, and if leave to appeal is granted the decision of the Court of Appeal in the case shall be final and conclusive.

(2) Subject to the provisions of this Order, the principles, practice and rules on which committees of the House of Commons used to act in dealing with parliamentary election petitions shall be observed, so far as may be, by the High Court and election court in the case of Assembly election petitions.

(3) The High Court has, subject to the provisions of this Order, the same powers, jurisdiction and authority with respect to an Assembly election petition and the proceedings on it as if the petition were an ordinary action within its jurisdiction.

(4) The duties to be performed in relation to Assembly elections by the prescribed officer under this Part shall be performed by such one or more of the masters of the Supreme Court (Queen's Bench Division) as the Lord Chief Justice may determine.

Report as to candidate guilty of a corrupt or illegal practice

107.—(1) Other than where the petition relates to a return under section 9 of the 1998 Act, the report of an election court under article 98 shall state whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the Assembly election, and the nature of the corrupt or illegal practice.

(2) For the purposes of articles 108 and 109—

- (a) if it is reported that a corrupt practice other than treating or undue influence was committed with the knowledge and consent of a candidate, he shall be treated as having been reported personally guilty of that corrupt practice, and
- (b) if it is reported that an illegal practice was committed with the knowledge and consent of a candidate at an Assembly election, he shall be treated as having been reported personally guilty of that illegal practice.

(3) The report shall also state whether any of the candidates has at that Assembly election been guilty by his agents of any corrupt or illegal practice in relation to the election; but if a candidate is reported guilty by his agents of treating, undue influence or any illegal practice, and the court further reports that the candidate has proved to the court—

- (a) that no corrupt or illegal practice was committed at the election by the candidate or his election agent and the offences mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent,
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election,
- (c) that the offences mentioned in the report were of a trivial, unimportant and limited character, and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents,

then the candidate shall not be treated for the purposes of article 108 as having been reported guilty by his agents of the offences mentioned in the report.

Candidate reported guilty of corrupt or illegal practice

108. If a candidate who has been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.

Persons reported personally guilty of corrupt or illegal practices

109.—(1) Other than where the petition relates to a return under section 9 of the 1998 Act, the report of the election court under article 98 shall state the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt or illegal practice but in the case of someone—

- (a) who is not a party to the petition, or
- (b) who is not a candidate on behalf of whom the seat is claimed by the petition,

the election court shall first cause notice to be given to him, and if he appears in pursuance of the notice shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

(2) The report shall be laid before the Director of Public Prosecutions.

(3) Subject to the provisions of paragraph (4) and article 125, a candidate or other person reported by an election court personally guilty of a corrupt practice shall for five years from the date of the report be incapable—

- (a) of being registered as an elector or voting at any—
 - (i) Assembly election,
 - (ii) election to the House of Commons,
 - (iii) election to the European Parliament,
 - (iv) election to the Scottish Parliament,
 - (v) election to the Northern Ireland Assembly, or
 - (vi) election in Great Britain to any public office,
- (b) of being elected to and sitting in the Assembly, the House of Commons, the European Parliament, the Scottish Parliament or the Northern Ireland Assembly, and
- (c) of holding any public or judicial office,

and, if already elected to the Assembly or such other body mentioned in sub-paragraph (b), or holding such office, shall from that date vacate the seat or office.

(4) The incapacities imposed by sub-paragraph (3)(a) apply only to a candidate or other person reported personally guilty of a corrupt practice under article 28.

(5) Subject to the provisions of paragraph (6) and article 125, a candidate or other person reported by an election court personally guilty of an illegal practice shall for three years from the date of the report be incapable of being registered as an elector or voting at any Assembly election, any parliamentary election, any European Parliamentary election or at any election to a public office held—

- (a) if the offence was committed in relation to a constituency election, for or in—
 - (i) the Assembly constituency for which the election was held,
 - (ii) any other Assembly constituency in the Assembly electoral region in which the first mentioned constituency is situated,
 - (iii) the Assembly electoral region in which the first mentioned constituency is situated, or
 - (iv) any Assembly constituency or electoral region which includes the whole or any part of the first mentioned constituency as constituted for the purposes of the election (or any other Assembly constituency within that Assembly electoral region), or
- (b) if the offence was committed in relation to a regional election, for or in—
 - (i) the Assembly electoral region for which the election was held,
 - (ii) any Assembly constituency situated in that electoral region, or
 - (iii) any Assembly constituency or electoral region which includes the whole or part of the first mentioned electoral region as constituted for the purposes of the election (or any other Assembly constituency in that second mentioned Assembly electoral region).

(6) The incapacities imposed by paragraph (5)(a) or, as the case may be, paragraph (5)(b) apply only to a candidate or other person reported personally guilty of an illegal practice under article 29.

(7) The provisions of this article as to the consequences of the report that a candidate was guilty by his agents of a corrupt or illegal practice have effect subject to the express provisions of this Order relating to particular acts which are declared to be corrupt or illegal practices.

Persons reported personally guilty of corrupt or illegal practices at parliamentary elections or local government elections

110.—(1) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of a corrupt practice under that Act, in addition to being subject to the incapacities set out in section 160(4) of that Act, he shall for five years from the date of that report be incapable of being elected to and sitting in the Assembly, and if already elected to the Assembly, he shall from that date vacate the seat.

(2) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of an illegal practice under that Act, in addition to being subject to the incapacities set out in section 160(5) of that Act, he shall for three years from the date of the report be incapable of being registered as an elector or voting at any Assembly election held—

- (a) if the offence was committed in relation to a parliamentary election,
 - (i) in the Assembly constituency which is coterminous with the parliamentary constituency,

- (ii) in any other Assembly constituency in the Assembly electoral region in which the parliamentary constituency is situated,
 - (iii) in the Assembly electoral region in which the parliamentary constituency is situated, or
 - (iv) in any Assembly constituency or electoral region which includes the whole or any part of the parliamentary constituency as constituted for the purposes of the election (or any other Assembly constituency in that Assembly electoral region), or
- (b) if the offence was committed in relation to an election under the Local Government Act 1972(1),
- (i) in the Assembly constituency or electoral region which includes the whole or any part of the local government area for which the election was held (or any other Assembly constituency in that Assembly electoral region), or
 - (ii) in any Assembly constituency or electoral region which includes the whole or any part of the local government area for which the election was held as constituted for the purposes of the election (or any other Assembly constituency within that Assembly electoral region).
- (3) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

Persons reported personally guilty of corrupt or illegal practices at European Parliamentary elections

111.—(1) References in this article to the 1983 Act are to that Act as applied by the European Parliamentary Elections Regulations 1986(2).

(2) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of a corrupt practice under the 1983 Act in addition to being subject to the incapacities set out in section 160(4) of that Act he shall for five years from the date of that report be incapable of being elected to and sitting in the Assembly and, if already elected to the Assembly, he shall from that date vacate the seat.

(3) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of an illegal practice in addition to being subject to the incapacities set out in section 160(5) of that Act he shall for three years from the date of the report be incapable of being registered as an elector or voting at any Assembly election.

(4) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

Justice of the peace

112. Where a justice of the peace is reported by an election court to have been guilty of any corrupt practice in relation to an Assembly election the court shall report the case to the Lord Chancellor with such evidence as may have been given of the corrupt practice.

Members of legal and certain other professions

113. Where a barrister, advocate, solicitor or any person who belongs to any profession the admission to which is regulated by law is reported by an election court to have been guilty of any corrupt practice in relation to an Assembly election—

(1) 1972 c. 70.

(2) S.I.1986/2209.

- (a) the court shall bring the matter before the Inn of Court, High Court or tribunal having power to take cognisance of any misconduct of the person in his profession, and
- (b) the Inn of Court, High Court or tribunal may deal with him as if the corrupt practice were misconduct by him in his profession.

Holder of licence or certificate under Licensing Acts

114.—(1) If it appears to an election court that a person holding a licence or certificate under the Licensing Acts has knowingly permitted any bribery or treating in relation to any Assembly election to take place upon his licensed premises—

- (a) the court shall, after affording him such rights as are conferred on those about to be reported under article 109(1), report the fact, and
- (b) the court shall bring the report before the licensing authority from whom, or on whose certificate, that person obtained his licence, and the licensing authority shall cause the report to be entered in the proper register of licences.

(2) The entry of the report in that register shall be taken into consideration by the licensing authority in determining whether they will or will not grant a renewal of the licence or certificate of the person reported and may be a ground, if the authority think fit, for refusing renewal.

Avoidance of election for general corruption etc

115.—(1) Where on an Assembly election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in relation to an Assembly election for the purpose of promoting or procuring the election of any person at the election have so extensively prevailed that they may be reasonably supposed to have affected the result—

- (a) his election, if he has been elected, shall be void, and
- (b) he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.

(2) Where on an Assembly election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed have prevailed in relation to a regional election for the purpose of promoting or procuring the giving of votes for a registered political party at the election, such acts, for the purposes of paragraph (1), shall be treated as having prevailed for the purpose of promoting or procuring the election of each candidate on that party's list.

(3) An election shall not be liable to be avoided otherwise than under this article by reason of general corruption, bribery, treating or intimidation.

Avoidance of election for employing corrupt agent

116.—(1) Subject to paragraph (2), if—

- (a) for an Assembly election any individual candidate or his election agent personally engages, or
- (b) for a regional election any or all of a group of party list candidates or their election agent personally engage,

as a canvasser or agent for the conduct or management of the election any person whom he knows or has (or they know or have) reasonable grounds for supposing to be subject to an incapacity to vote at the election by reason—

- (i) of his having been convicted or reported of any corrupt or illegal practice within the meaning of this Order, the 1983 Act, or of the law relating to elections to the European Parliament, the Northern Ireland Assembly or the Scottish Parliament, or

(ii) of his having been convicted more than once of an offence under the Public Bodies Corrupt Practices Act 1889(3),

the candidate or candidates shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election is held.

(2) In relation to party list candidates at a regional election, the incapacity imposed by paragraph (1) shall apply—

- (a) where their election agent engages such a person, to each candidate on the list, or
- (b) where their election agent does not engage such a person, only to that candidate who engages, or those candidates who engage, that person.

(3) A vote given—

- (a) at a constituency or regional election for a person who, at the time of the election, was by virtue of this article incapable of being elected, or
- (b) at a regional election for a registered political party where, at the time of the election, each candidate included on the party's list was by virtue of this article incapable of being elected,

shall not, by reason of that incapacity, be deemed to be thrown away so as to entitle another candidate to be declared elected, unless given at a poll consequent on the decision of an election court that he was so incapable.

Votes to be struck off for corrupt or illegal practices

117.—(1) Where, on an Assembly election petition claiming the seat for any person, a candidate is proved to have been guilty by himself, or by any person on his behalf, of bribery, treating or undue influence in respect of any person who voted at an Assembly election there shall, on a scrutiny, be struck off from the number of votes appearing to have been given—

- (a) where he is an individual candidate, to the candidate, or
- (b) where he is a party list candidate, to the registered political party for which he is such a candidate,

one vote for every person who voted at the election and is proved to have been so bribed, treated or unduly influenced.

(2) If any person who is guilty of a corrupt or illegal practice or of illegal payment, employment or hiring at an Assembly election votes at the election, his vote shall be void.

(3) If any person who is subject under any enactment relating to corrupt or illegal practices to an incapacity to vote at—

- (a) an Assembly election,
- (b) a parliamentary election,
- (c) a European Parliamentary election,
- (d) an election to the Scottish Parliament,
- (e) an election to the Northern Ireland Assembly, or
- (f) an election to any public office,

votes at that Assembly election, his vote shall be void.

Application for relief

118.—(1) An application for relief under this article may be made to the High Court or an election court or else, if in respect of a payment made in contravention of article 47(1), (2) or (3), to a county court.

(2) Where a person makes an application under this article he shall notify the Director of Public Prosecutions of the application and the Director or his assistant or representative may attend the hearing of the application and make representations at the hearing in respect of it.

(3) If it is shown to the court by such evidence as to the court seems sufficient—

- (a) that any act or omission of any person would apart from this article by reason of being in contravention of this Order be an illegal practice, payment, employment or hiring,
- (b) that the act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith, and
- (c) that such notice of the application has been given in the Assembly constituency or electoral region for which the election was held, as to the court seems fit,

and under the circumstances it seems to the court to be just that either that or any other person should not be subject to any of the consequences under this Order of the act or omission, the court may make an order allowing the act or omission to be an exception from the provisions of this Order making it an illegal practice, payment, employment or hiring and upon the making of the order no person shall be subject to any of the consequences under this Order of that act or omission.

(4) The jurisdiction vested by this article in a county court may be exercised otherwise than in open court.

(5) An appeal lies to the High Court from any order of a county court made under this article.

Prosecutions for corrupt practices

119.—(1) A person who is guilty of a corrupt practice under this Order shall be liable—

- (a) on conviction on indictment—
 - (i) in the case of a corrupt practice under article 28, to imprisonment for a term not exceeding two years, or to a fine, or to both,
 - (ii) in any other case, to imprisonment for a term not exceeding one year, or to a fine, or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

(2) If it appears to the court by which any person holding a licence or certificate under the Licensing Acts is convicted of the offence of bribery or treating that the offence was committed on his licensed premises—

- (a) the court shall direct the conviction to be entered in the proper register of licences, and
- (b) the entry shall be taken into consideration by the licensing authority in determining whether they will or will not grant a renewal of the licence or certificate, and may be a ground, if the authority think fit, for refusing its renewal.

Prosecutions for illegal practices

120. A person guilty of an illegal practice shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale; and on a prosecution for an illegal practice it shall be sufficient to allege that the person charged was guilty of an illegal practice.

Conviction of illegal practice on charge of corrupt practice etc

121. A person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence), and a person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Incapacities on conviction of corrupt or illegal practice

122.—(1) Subject to the provisions of article 125, but in addition to any punishment as provided by the above provisions —

- (a) a person convicted of a corrupt practice shall be subject to the incapacities imposed by article 109(3) as if at the date of the conviction he had been reported personally guilty of that corrupt practice, and
- (b) a person convicted of an illegal practice —
 - (i) in relation to a constituency election shall be subject to the incapacities imposed by article 109(5)(a), or
 - (ii) in relation to a regional election shall be subject to the incapacities imposed by article 109(5)(b),

as if at the date of the conviction he had been reported personally guilty of that illegal practice.

(2) A person convicted of a corrupt or illegal practice who has already been elected to a seat in the Assembly shall (subject to paragraph (3)) vacate the seat at the appropriate time for the purposes of this article, namely —

- (a) the end of the period which is the period prescribed by law within which notice of appeal may be given, or an application for leave to appeal may be made, by him in respect of the conviction, or
- (b) if (at any time within that period) that period is extended —
 - (i) the end of the period as so extended, or
 - (ii) the end of the period of three months beginning with the date of the conviction, whichever is the earlier.

(3) If (before the appropriate time mentioned in paragraph (2)) notice of appeal is given, or an application for leave is made, by such a person in respect of such a conviction, he shall vacate the seat at the end of the period of three months beginning with the date of the conviction unless —

- (a) such an appeal is dismissed or abandoned at any earlier time (in which case he shall vacate the seat at that time), or
- (b) at any time within that period of three months the court determines on such an appeal that the conviction should not be upheld (in which case the seat shall not be vacated by him).

(4) Where such a person vacates a seat in accordance with paragraph (2) or (3), no subsequent determination of a court that his conviction should not be upheld shall entitle him to resume the seat.

(5) A person convicted of a corrupt or illegal practice who has already been elected to a seat in the Assembly shall (in addition to being subject to the incapacities mentioned in paragraph (1)) be suspended from performing any of his functions as a member of the Assembly during the period of suspension specified in paragraph (6).

(6) For the purposes of paragraph (5) the period of suspension is the period beginning with the date of the conviction and ending with —

- (a) the date on which the seat is vacated in accordance with paragraph (2) or (3), or

(b) where sub-paragraph (3)(b) applies, the date on which the court determines that the conviction should not be upheld.

(7) Any incapacities or other requirement applying to a person by virtue of paragraph (1) or (5) applies in addition to any punishment imposed under article 119 or 120 but each of those paragraphs has effect subject to section 174 of the 1983 Act.

Incapacities on conviction of corrupt or illegal practice at parliamentary or local government elections

123.—(1) Subject to the provisions of section 174 of the 1983 Act, but in addition to any punishment as provided by the preceding provisions of that Act—

- (a) a person convicted of a corrupt practice under the 1983 Act shall be subject to the incapacities imposed by article 110(1) as if at the date of the conviction he had been reported personally guilty of that corrupt practice, and
- (b) a person convicted of an illegal practice under the 1983 Act—
 - (i) in relation to a parliamentary election, shall be subject to the incapacities imposed by article 110(2)(a), and
 - (ii) in relation to an election under the Local Government Act 1972(4), shall be subject to the incapacities imposed by article 110(2)(b),as if at the date of the conviction he had been reported personally guilty of that illegal practice.

(2) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

Incapacities on conviction of corrupt or illegal practice at European Parliamentary elections

124.—(1) References in this article to the 1983 Act are to that Act as applied by the European Parliamentary Elections Regulations 1986(5).

(2) Subject to the provisions of section 174 of the 1983 Act, but in addition to any punishment as provided by the preceding provisions of that Act—

- (a) a person convicted of a corrupt practice under the 1983 Act shall be subject to the incapacities imposed by article 111(2), and
- (b) a person convicted of an illegal practice under the 1983 Act shall be subject to the incapacities imposed by article 111(3),

as if at the date of the conviction he had been reported personally guilty of that corrupt or illegal practice.

(3) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

Mitigation and remission etc

125.—(1) Where—

- (a) any person is subject to any incapacity by virtue of the report of an election court, and
- (b) he or some other person in respect of whose acts the incapacity was imposed is on a prosecution acquitted of any of the matters in respect of which the incapacity was imposed,

(4) 1972 c. 70.

(5) S.I. 1986/2209.

the court may order that the incapacity shall thenceforth cease so far as it is imposed in respect of those matters.

(2) Where any person who is subject to any incapacity as mentioned above is on a prosecution convicted of any such matters as are mentioned above, no further incapacity shall be taken to be imposed by reason of the conviction, and the court shall have the like power (if any) to mitigate or remit for the future the incapacity so far as it is imposed by article 109 in respect of the matters of which he is convicted, as if the incapacity had been imposed by reason of the conviction.

(3) A court exercising any of the powers conferred by paragraphs (1) and (2) shall make an order declaring how far, if at all, the incapacities imposed by virtue of the relevant report remain unaffected by the exercise of that power, and that order shall be conclusive for all purposes.

(4) Where a person convicted of a corrupt or illegal practice is subsequently reported to have been guilty of that practice by an election court, no further incapacity shall be imposed on him under article 109 by reason of the report.

(5) Where any person is subject to any incapacity by virtue of a conviction or of the report of an election court, and any witness who gave evidence against that person upon the proceeding for the conviction or report is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the court, if satisfied that the conviction or report so far as respects that person was based upon perjury, may order that the incapacity shall thenceforth cease.

Illegal payments etc

126.—(1) A person guilty of an offence of illegal payment or employment shall, on summary conviction, be liable to a fine not exceeding level 5 on the standard scale; and on a prosecution for such an offence it shall be sufficient to allege that the person charged was guilty of an illegal payment or employment as the case may be.

(2) A candidate or election agent who is personally guilty of an offence of illegal payment or employment shall be guilty of an illegal practice.

(3) Any person charged with an offence of illegal payment or employment may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

Time limit for prosecutions

127.—(1) A proceeding against a person in respect of any offence under any provision contained in this Order shall be commenced within one year after the offence was committed, and the time so limited by this article shall, in the case of any proceedings under the Magistrates' Courts Act 1980⁽⁶⁾ (or, in Northern Ireland, the Magistrates' Courts (Northern Ireland) Order 1981)⁽⁷⁾ for any such offence, be substituted for any limitation of time contained in that Act or Order.

(2) For the purposes of this article—

(a) in England and Wales, the laying of an information,

(b) in Scotland, the granting of a warrant to apprehend or cite the accused (if, in relation to an offence alleged to have been committed within the United Kingdom, such warrant is executed without delay), and

(c) in Northern Ireland, the making of a complaint,

shall be deemed to be the commencement of a proceeding.

⁽⁶⁾ 1980 c. 43.

⁽⁷⁾ S.I. 1981/1675 (N.I.26).

Prosecution of offences committed outside the United Kingdom

128. Proceedings in respect of an offence under this Order alleged to have been committed outside the United Kingdom by a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

Offences by associations

129. Where—

- (a) any corrupt or illegal practice or any illegal payment, employment or hiring, or
- (b) any offence under article 75,

is committed by any association or body of persons, corporate or unincorporate, the members of the association or body who have taken part in the commission of the offence shall be liable to any fine or punishment imposed for that offence by this Order.

Evidence by certificate of holding of Assembly elections

130. On—

- (a) any prosecution for a corrupt or illegal practice or for any illegal payment, employment or hiring, and
- (b) any proceedings for a penalty under article 55,

the certificate of the appropriate returning officer at an Assembly election—

- (i) that the election mentioned in the certificate was duly held, and
- (ii) that the person named in the certificate was a candidate at the election,

shall be sufficient evidence of the facts stated in it.

Evidence by certificate of electoral registration

131. The certificate of a registration officer that any person is or is not, or was or was not at any particular time, duly registered in his register of local government electors in respect of any address shall be sufficient evidence of the facts stated in it; and a document purporting to be such a certificate shall be received in evidence and presumed to be such a certificate unless the contrary is proved.

Director of Public Prosecutions

132.—(1) Where information is given to the Director of Public Prosecutions that any offence under this Order has been committed it is his duty to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

(2) The Director by himself or by his assistant or by his representative appointed under paragraph (3) may and, if the election court so requests him, shall attend the trial of every Assembly election petition.

(3) The Director may nominate a barrister or solicitor to be his representative for the purposes of this Part.

(4) There shall be allowed to the Director and his assistant or representative for the purposes of this Part (other than his general duties under paragraph (1)) such allowances for expenses as the Treasury may approve.

(5) The costs incurred in defraying the expenses of the Director incurred for those purposes (including the remuneration of his representative) shall, in the first instance, be paid by the Treasury,

and shall be deemed to be expenses of the election court; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of those costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.

Rules of procedure

133.—(1) The authority having for the time being power to make rules of court for the Supreme Court may make rules for the purposes of Part III of this Order and this Part.

(2) In relation to the power conferred under paragraph (1) to make rules—

- (a) that power shall be exercisable by statutory instrument, and be treated for the purposes of the Statutory Instruments Act 1946⁽⁸⁾ as if conferred on a Minister of the Crown, and
- (b) a statutory instrument containing rules under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The Election Petition Rules 1960⁽⁹⁾ shall have effect (subject to the modifications set out in Schedule 9) in relation to an Assembly election petition as if made in the exercise of the power conferred by paragraph (1).

Costs

134.—(1) The rules of the Supreme Court with respect to costs to be allowed in actions, causes and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part III of this Order or this Part and the taxing officer shall not allow any costs higher than would be allowed in any action, cause or matter in the High Court on a common fund basis.

(2) Where any costs or other sums are, under the order of an election court or otherwise under this Part, to be paid by any person, those costs or sums shall be due from that person to the person or persons to whom they are to be paid and, if payable to the Treasury, shall be a debt due to Her Majesty and in either case may be recovered accordingly.

Service of notices

135.—(1) Any notice, legal process or other document required to be served on any person with reference to any proceeding for the purpose of causing him to appear before the High Court, a county court, or any election court, or otherwise or of giving him an opportunity of making a statement, or showing cause, or being heard by himself before any court for any purpose of this Part may be served—

- (a) by delivering it to that person, or by leaving it at, or sending it by post by a registered letter or by the recorded delivery service, to his last known place of abode in the Assembly constituency or electoral region for which the election was held, or
- (b) if the proceeding is before any court in such other manner as the court may direct.

(2) In proving service by post under this article it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered or recorded with the postal operator (within the meaning of the Postal Services Act 2000⁽¹⁰⁾) concerned.

Interpretation of Part IV

136.—(1) In this Part, unless the context otherwise requires—

⁽⁸⁾ 1946 c. 6.
⁽⁹⁾ S.I. 1960/543.
⁽¹⁰⁾ 2000 c. 26.

“candidate” has the same meaning as in Part III of this Order and the saving in article 82(1) applies in relation to this Part as in relation to Part III,

“costs” include charges and expenses,

“date of the allowance of an authorised excuse” has the meaning assigned to it by article 56(9),

“declaration as to election expenses” means a declaration made under article 51,

“judicial office” includes the office of justice of the peace,

“Licensing Acts” means the Licensing Act 1964⁽¹¹⁾ and the Acts amending that Act, or the corresponding enactments forming part of the law of Scotland or Northern Ireland,

“money” and “pecuniary 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,

“prescribed” means prescribed by rules of court,

“public office” means any office—

- (a) under the Crown, or
- (b) under the charter of a city or borough, or
- (c) under the Acts relating to local government or public health or public education, whether the office is that—
 - (i) of mayor, provost, chief magistrate, chairman, alderman, councillor, member of a board, commission or other local authority in any local government or other area, or
 - (ii) of proper officer or other officer under a council, board, commission or other authority, or
 - (iii) of any other office to which a person is elected or appointed under any such charter or enactment as is mentioned above, including any other municipal or parochial office, and

“return as to election expenses” means a return made under article 50.

(2) For the purposes of section 119 of the 1998 Act anything required by this Part to be published by the presiding officer of the Assembly shall be treated as being required to be published by the Assembly.

Computation of time for purposes of Part IV

137. Article 84 applies in computing any period of time for the purposes of this Part as it applies for the purposes of Part III of this Order.