
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 399

The Scottish Local Government Elections Order 2011

Citation, commencement and extent

1.—(1) This Order may be cited as the Scottish Local Government Elections Order 2011 and comes into force on 10th November 2011 except for the purposes of any election to be held on or before 2nd May 2012.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order, unless the context otherwise requires—

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

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

“anonymous elector” means an elector with an anonymous entry in the register of electors;

“anonymous entry” in relation to the register of electors shall be construed in accordance with section 9B of the 1983 Act and “the record of anonymous entries” means the record prepared in pursuance of regulations made by virtue of paragraph 8A of Schedule 2 to the 1983 Act;

“ballot paper account” has the meaning given in rule 40(3);

“by-election” means an election to fill a casual vacancy in the office of a councillor in accordance with section 37 of the Local Government (Scotland) Act 1973(2);

“companion” has the meaning given in rule 35(1);

“completed corresponding number list” has the meaning given in rule 40(1)(e);

“continuing candidate” means any candidate not deemed to be elected as a councillor and not excluded from the list of candidates under rule 51;

“corresponding number list” means the list prepared in accordance with rule 15;

“council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994(3);

“count” means all the operations involved in counting and crediting votes, including the ascertainment of the quota, the transfer of ballot papers and the exclusion of candidates;

“election” means an election under the Local Governance (Scotland) Act 2004 and, for the purposes of articles 1(1) and 6(2), an election under the Local Government etc. (Scotland) Act 1994;

“election court” means the court constituted under the 1983 Act for the trial of a petition questioning an election;

(1) 1983 c.2. Section 9B was inserted by section 10(1) of the Electoral Administration Act 2006 (c.22). Paragraph 8A of Schedule 2 was inserted by paragraph 15(6) of Schedule 1 to that Act.
(2) 1973 c.65; section 37 has been amended but these amendments are not relevant for the purposes of this Order.
(3) 1994 c.39.

“election petition” means a petition presented in pursuance of Part III of the 1983 Act as that Act is applied by this Order;

“elector” means a person who is registered in the register (or, in the case of a person who has an anonymous entry in the register, in the record of anonymous entries) to be used at the election as a local government elector for the local government area in which the election is held and includes a person shown in the register as below voting age if (but only if) it appears from the register that such person will be of voting age on the day fixed for the poll;

“electoral registration officer” has the same meaning as in the 1983 Act;

“electronic counting system” means such computer hardware and software, other equipment, data and services as may be necessary in order to—

- (a) maintain a list of the areas in relation to which an election is being held by reference to ward barcodes on ballot papers issued to voters in relation to that area;
- (b) read electronically the votes marked and the unique identifying number on each ballot paper returned;
- (c) calculate the number of votes cast for each candidate at the election otherwise than on any spoilt, tendered or rejected ballot paper; and
- (d) ensure the retention of a record of the votes given for each candidate, without identifying the elector by whom, or on whose behalf, the votes were cast;

“list of proxies” has the meaning given by paragraph 5(3) of Schedule 4 to the Representation of the People Act 2000(4);

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

“local government area” is to be construed in accordance with section 1 of the Local Government etc. (Scotland) Act 1994;

“next available preference” means a preference which is the second or, as the case may be, subsequent preference in consecutive order for a continuing candidate (any preferences for any candidate who is deemed to be elected or is excluded from the list of candidates under rule 51 being ignored);

“non-transferable paper” means a ballot paper on which there is no next available preference;

“postal voters list” means the list of persons kept in pursuance of paragraph 5(2) (persons whose applications to vote by post have been granted) of Schedule 4 to the Representation of the People Act 2000(5);

“presiding officer” has the meaning given in rule 23(1) and (2);

“proper officer” has the same meaning as in section 235(3) of the Local Government (Scotland) Act 1973(6);

“proxy postal voters list” means the list of persons kept in pursuance of paragraph 7(8) (persons whose applications to vote by post as proxy have been granted) of Schedule 4 to the Representation of the People Act 2000;

“qualifying address” in relation to a person registered in the register of electors, is the address in respect of which that person is entitled to be so registered;

“quota” has the meaning given in rule 47;

“register of electors” means the register of local government electors maintained under section 9(1)(b) of the 1983 Act;

(4) 2000 c.2.

(5) 2000 c.2. Paragraph 7(8) was amended by paragraph 137(7) of Schedule 1 to the Electoral Administration Act 2006 (c.22).

(6) 1973 c.65. Section 235(8) was amended by S.I. 1995/789.

“registered political party” means a party registered under Part II of the Political Parties, Elections and Referendums Act 2000(7);

“returning officer” means, in relation to an election, the returning officer appointed for the election under section 41(1) (duty of local authority to appoint returning officer for each local authority election) of the 1983 Act;

“spoilt ballot paper” has the meaning given in rule 37;

“stage of the count” means—

- (a) the determination of the number of votes for each candidate as first preference;
- (b) the transfer of transferable papers from a candidate deemed to be elected who has a surplus; or
- (c) the exclusion of a candidate at any given time;

“surplus” means the number of votes, if any, by which the total number of votes credited to a candidate deemed to be elected as a councillor exceeds the quota;

“tendered ballot paper” has the meaning given in rule 36(5);

“tendered votes list” has the meaning given in rule 36(7);

“transfer value” means the value of a vote on a ballot paper calculated in accordance with rule 49;

“transferable paper” means a ballot paper on which a next available preference is given;

“unique identifying mark” means the mark (for example, a bar code, letter, number or numerical sequence) on a ballot paper which is unique to that ballot paper and which identifies that ballot paper as a ballot paper to be issued by the returning officer; and

“voter” means a person voting at an election and includes a person voting as proxy and “vote” (whether noun or verb) shall be construed accordingly and any reference to an elector voting or an elector’s vote shall include a reference to an elector voting by proxy or an elector’s vote given by proxy.

(2) References in this Order to “rules” are references to the rules set out in Schedule 1 to this Order.

(3) Any reference in this Order to a numbered article, rule or Schedule is a reference to the article, rule or Schedule, as the case may be, bearing that number in this Order and a reference to a numbered paragraph or sub-paragraph is a reference to the paragraph or sub-paragraph having that number in the article, rule or paragraph in which the reference appears.

(4) A reference to a numbered Form is a reference to the form bearing that number as set out in Part VII of Schedule 1 or, as the case may be, a form substituted for any such form in accordance with article 3(2) and Schedules 2, 3 and 4.

(5) Where the timetable in rule 1(1) is modified in accordance with paragraphs (2) or (3) of rule 1 or a direction made under section 45 of the 1983(8) Act, references to the “timetable in rule 1” are references to that timetable as so modified.

Local government elections rules

3.—(1) Subject to paragraph (2), elections of councillors for local government areas shall be conducted in accordance with the local government elections rules set out in Schedule 1.

(7) 2000 c.41. Part 11 was amended by S.I. 2004/366 and by sections 48 to 51 of the Electoral Administration Act 2006 (c.22).

(8) Section 45 was amended by S.S.I. 2007/42.

(2) In the application of the local government elections rules set out in Schedule 1 to any election where the poll is taken together with the poll at another election under section 15(1) or (2) of the Representation of the People Act 1985⁽⁹⁾ the modifications set out in Schedules 2, 3 and 4 apply.

(3) It is the returning officer's general duty to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by these rules.

(4) It is the duty of any returning officer to whom a direction is given under section 5 of the Local Electoral Administration (Scotland) Act 2011⁽¹⁰⁾ to discharge his or her functions in accordance with that direction.

Application of Part III of the Representation of the People Act 1983

4. Part III⁽¹¹⁾ of the 1983 Act applies to elections of councillors for local government areas with exception of the following provisions—

- (a) sections 120 to 126;
- (b) section 128(3)(a) and (4);
- (c) sections 130 to 133;
- (d) sections 135 and 135A;
- (e) section 144; and
- (f) section 145A.

Amendments

5.—(1) In regulation 15C of the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007⁽¹²⁾ (provision of information on removal of absent vote entitlement) for “Rule 21 of Schedule 1 to the Scottish Local Government Elections Order 2007” substitute “rule 22 of Schedule 1 to the Scottish Local Government Elections Order 2011”.

(2) The Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007⁽¹³⁾ are amended as follows—

- (a) in regulation 3(2) (interpretation), for “Scottish Local Government Elections Order 2007” substitute “Scottish Local Government Elections Order 2011”;
- (b) in regulation 12(1) (postal voting envelopes), for “rule 20” substitute “rule 21”;
- (c) in regulation 14(1)(c) (delivery of postal ballot papers), for “rule 22(1)” substitute “Rule 23(1)”;
- (d) in regulation 16(1) (lost postal ballot papers), for “third” substitute “fourth”;
- (e) in regulation 17 (alternative means of returning postal ballot papers etc.)—
 - (i) in paragraph (1), for “rule 42(1)(c)” substitute “rule 43(1)(c)”;

(9) 1985 c.50.

(10) 2011 asp 10.

(11) Part III was amended by the Representation of the People Act 2000 (c.2), Schedule 1, paragraph 20, the Political Parties, Elections and Referendums Act 2000 (c.41), section 136 and Schedule 1, paragraphs 122 and 123, Schedule 17, paragraphs 2, 3, 7, 8, 9 and 10, Schedule 18, paragraphs 1, 6, 18 and 19, Schedule 21, paragraph 6 and Schedule 22, paragraph 1, the Licensing Act 2003 (c.17), Schedule 6, paragraph 8, the Civil Partnership Act 2004 (c.33), Schedule 27, paragraph 84, the Local Governance (Scotland) Act 2004, section 5, and Constitutional Reform Act 2005 (c.4), Schedule 4, paragraph 149 and Schedule 11, paragraph 28, the Electoral Administration Act 2006 (c.22), section 70, Schedule 1, paragraphs 11, 12, 120, 121, 122 and 123, the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14), sections 20 and 34 and Schedule 2, paragraphs 10, 11 and 12, the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 10, paragraph 14, S.I. 1996/675, 2001/1149 and 2007/931 and S.S.I. 2009/248.

(12) S.S.I. 2007/170; paragraph 15C was added by S.S.I. 2009/35.

(13) S.S.I. 2007/263; there are amendments but none are relevant.

- (ii) in paragraph (2), for “rule 39(1)” substitute “rule 40(1)”;
- (f) in regulation 21(3) (opening of postal voters box), for “rule 42” substitute “rule 43”;
- (g) in regulation 26(2)(f) (retrieval of cancelled postal ballot papers), for “rule 42 of the elections rules” substitute “rule 43”;
- (h) in regulation 28(3) (checking of lists), for “rule 39(1)” substitute “rule 40(1)”;
- (i) in regulation 31 (forwarding of documents)—
 - (i) in paragraph (1), for “rule 57” substitute “rule 58”; and
 - (ii) in paragraph (3), for “Rules 58 and 59” substitute “Rules 59 and 60”.

(3) Regulation 2 of the Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007(**14**) (interpretation) is amended as follows—

- (a) in paragraph (1), for “Scottish Local Government Elections Order 2007” substitute “Scottish Local Government Elections Order 2011”; and
- (b) in paragraph (3), for “rule 57(b) and (c)” substitute “rule 58(b) and (c)”.

(4) In regulation 15(2)(a) of the Absent Voting at Scottish Local Government Elections (Provision of Personal Identifiers) Regulations 2009(**15**), for “rule 21 of Schedule 1 to the Scottish Local Government Elections Order 2007” substitute “rule 22 of Schedule 1 to the Scottish Local Government Elections Order 2011”.

Revocations and saving provision

6.—(1) Subject to paragraph (2), the Scottish Local Government Elections Order 2007(**16**), the Scottish Local Government Elections Amendment Order 2007(**17**) and the Scottish Local Government Elections Amendment Order 2009(**18**) are revoked.

(2) The instruments referred to in paragraph (1) shall continue to have effect on and after 10th November 2011 as they had effect immediately before that date, for the purposes of any election to be held on or before 2nd May 2012.

St Andrew’s House,
Edinburgh
10th November 2011

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

(14) S.S.I. 2007/264.
(15) S.S.I. 2009/35.
(16) S.S.I. 2007/42 as amended by S.S.I. 2007/379 and 2009/36.
(17) S.S.I. 2007/379.
(18) S.S.I. 2009/36.