
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 425

The Scottish Parliament (Elections etc.) Order 2015

PART 2

THE FRANCHISE AND ITS EXERCISE

Other voting offences

26.—(1) A person (“P”) shall be guilty of an offence if—

- (a) P votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector at a Scottish parliamentary election, or at Scottish parliamentary elections, knowing that P is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind;
- (b) P applies for the appointment of a proxy to vote for P at any Scottish parliamentary election or at Scottish parliamentary elections knowing that P or the person to be appointed is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
- (c) P votes, whether in person or by post, as proxy for some other person at a Scottish parliamentary election, knowing that that person is subject to a legal incapacity to vote.

(2) For the purposes of paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before polling day at the election or first election at or for which they are done, include the person being below voting age if the person will be of voting age on that day.

(3) A person (“Q”) shall be guilty of an offence if—

- (a) Q votes as elector—
 - (i) more than once in any constituency at a poll for the return of a constituency member;
 - (ii) more than once in any constituency at a poll for the return of regional members; or
 - (iii) in more than one constituency at a Scottish parliamentary general election;
- (b) Q votes as elector in person at a Scottish parliamentary election at which Q is entitled to vote by post;
- (c) Q votes as elector in person at a Scottish parliamentary election, knowing that a person appointed to vote as Q’s proxy at the election either has already voted in person at the election or is entitled to vote by post at the election; or
- (d) Q applies for a person to be appointed as Q’s proxy to vote for Q at Scottish parliamentary elections in any constituency without applying for the cancellation of a previous appointment of a third person then in force in respect of that or another constituency or without withdrawing a pending application for such an appointment in respect of that or another constituency.

(4) A person (“R”) shall be guilty of an offence if—

- (a) R votes as proxy for the same elector either—

- (i) more than once in the same constituency at any Scottish parliamentary election; or
 - (ii) in more than one constituency at a Scottish parliamentary general election;
 - (b) R votes in person as proxy for an elector at a Scottish parliamentary election at which R is entitled to vote by post as proxy for that elector; or
 - (c) R votes in person as proxy for an elector at a Scottish parliamentary election knowing that the elector has already voted in person at the election.
- (5) A person (“S”) shall be guilty of an offence if S votes at a Scottish parliamentary election in any constituency as proxy for more than two persons of whom S is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
- (6) A person shall be guilty of an offence if that person knowingly induces or procures some other person to do an act which is, or but for that other person’s want of knowledge would be, an offence by that other person under the foregoing paragraphs of this article.
- (7) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted; but for the purpose of determining whether an application for a ballot paper constitutes an offence under paragraph (4), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper shall, if that right is not exercised, be disregarded.
- (8) A person is not guilty of an offence under paragraph (3)(b) or (4)(b) only by reason of that person having marked a tendered ballot paper in pursuance of rule 49(5) (entitlement to mark a tendered ballot paper) of the Scottish Parliamentary Election Rules.
- (9) An offence under this article shall be an illegal practice, but—
- (a) the court before whom a person is convicted of any such offence 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)(1) (incapacities on conviction of corrupt or illegal practices); and
 - (b) a candidate shall not be liable, nor shall a candidate’s election be avoided, for an illegal practice under this article of any agent of that candidate other than an offence under paragraph (6).
- (10) Where a person is entitled to give two votes in an election (whether in person as elector or proxy, or by post as elector or proxy) and so exercises that right that person shall, for the purposes of this article, be treated as voting once in relation to each poll for which the person’s votes are given.

(1) 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).