SCOTTISH STATUTORY INSTRUMENTS

2015 No. 425

The Scottish Parliament (Elections etc.) Order 2015

PART 2

THE FRANCHISE AND ITS EXERCISE

Supply of electoral registers

3. Schedule 1 (which makes provision in connection with supply of electoral registers) has effect.

Commencement Information
I1 Art. 3 in force at 16.12.2015 in accordance with art. 1(1)

Absent voting appeals

4.—(1) An appeal lies to the sheriff from any decision under this Order of the ERO disallowing a person's application to vote—

(a) by proxy or by post as elector; or

(b) by post as proxy,

in any case where the application is not made for a particular Scottish parliamentary election only.

(2) An appeal lies on any point of law from any decision of the sheriff under this article to the court of three judges constituted under section 57(2) of the 1983 Act (Registration Appeal Court) ("the registration appeal court").

(3) An appeal made by virtue of this article which is pending when notice of an election is given shall not prejudice the operation as respects that election of the decision appealed against, and anything done in pursuance of the decision shall be as good as if no such appeal had been brought and shall not be affected by the decision of the appeal.

(4) The sheriff clerk (or clerk to the registration appeal court) shall send to the ERO, by recorded delivery, notice of the decision of the sheriff (or of the registration appeal court) on any appeal by virtue of this article, and the ERO must make such alterations in the—

(a) record kept under article 8(4) (absent voters); or

(b) record kept under article 11(5) (proxy voters),

as may be required to give effect to the decision.

(5) Where, as a result of the decision on an appeal under this article, an alteration in the register of electors is made which takes effect under this article on or before the date of the poll for an election, paragraph (3) does not apply to that appeal as respects that election.

Commencement Information
I2 Art. 4 in force at 16.12.2015 in accordance with art. 1(1)

Polling districts and places at elections

5.—(1) Every constituency shall be divided into polling districts and, subject to the provisions of this article, there shall be a polling place designated for each polling district.

(2) The polling districts and polling places designated under this article shall be the same as those used or designated for parliamentary elections under sections 18A and 18B of the 1983 Act(**1**) (polling districts and polling places), except where it appears to the local authority (or local authorities) for the area of that polling district or location of that polling place that special circumstances make it desirable for some other polling district or polling place to be designated for the purpose of a Scottish parliamentary election.

(3) An election shall not be questioned by reason of—

(a) any non-compliance with the provisions of this article; or

(b) any informality relating to polling districts or polling places.

Commencement Information
I3 Art. 5 in force at 16.12.2015 in accordance with art. 1(1)

Rules for Scottish parliamentary elections

6.—(1) The proceedings at Scottish parliamentary elections (including the return of members) shall be conducted in accordance with the Scottish Parliamentary Election Rules.

(2) It is the general duty of every CRO and RRO at a Scottish parliamentary election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by those Rules.

(3) No Scottish parliamentary election shall be declared invalid by reason of any act or omission by a CRO, RRO or any other person in breach of that person's official duty in connection with the election or otherwise of those Rules if it appears to the tribunal having cognisance of the question that—

(a) the election was so conducted as to be substantially in accordance with the law as to Scottish parliamentary elections; and

(b) the act or omission did not affect the result.

(4) Schedule 2 (Scottish Parliamentary Election Rules) has effect.

(5) Schedule 8 (access to marked registers and other documents open to public inspection after an election) has effect.

Commencement Information
I4 Art. 6 in force at 16.12.2015 in accordance with art. 1(1)

(**1**) Sections 18A and 18B were substituted by the 2006 Act, section 16.

Manner of voting at Scottish parliamentary elections

7.—(1) This article applies to determine the manner of voting of a person ("P") entitled to vote as an elector at a Scottish parliamentary election.

(2) P may vote in person at the polling station allotted to P under this Order, unless P is entitled as an elector to an absent vote at the election.

(3) P may vote by post if P is entitled as an elector to vote by post at the election.

(4) If P is entitled to vote by proxy at the election, P may so vote unless, before a ballot paper has been issued for P to vote by proxy, P applies at the polling station allotted to P under this Order for a ballot paper for the purposes of voting in person, in which case P may vote in person there.

(5) P may vote in person at any polling station in the constituency if—

(a) P is not entitled as an elector to an absent vote at the election; but

(b) P cannot reasonably be expected to go in person to the polling station allotted to P under this Order by reason of the particular circumstances of P's employment, either as a constable or by a CRO or RRO, on the date of the poll for a purpose connected with the election.

(6) Nothing in the preceding provisions of this article applies to—

(a) a person ("Q") to whom section 7 of the 1983 Act(**2**) (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether Q is registered by virtue of that provision or not, and Q may vote—

(i) in person (where Q is granted permission to be absent from the hospital and voting in person does not breach any condition attached to that permission); or

(ii) by post or by proxy (where Q is entitled as an elector to vote by post or, as the case may be, by proxy at the election); or

(b) a person ("R") to whom section 7A of that Act(**3**) (persons remanded in custody etc.) applies, whether R is registered by virtue of that provision or not, and R may only vote by post or by proxy (where R is entitled as an elector to vote by post or, as the case may be, by proxy at the election).

(7) Paragraph (2) does not prevent a person, at the polling station allotted to that person, marking a tendered ballot paper in pursuance of rule 49(5) of the Scottish Parliamentary Election Rules (entitlement to mark a tendered ballot paper).

(8) For the purposes of this Order, a person entitled to vote as an elector at a Scottish parliamentary election is entitled as an elector to vote by post or entitled to vote by proxy at the election if that person is shown in the postal voters list or the list of proxies for the election as so entitled; and references in this Order to entitlement as an elector to an absent vote at an election are references to an entitlement as an elector to vote by post or entitlement to vote by proxy at the election.

Commencement Information

I5 Art. 7 in force at 16.12.2015 in accordance with art. 1(1)

(**2**) Section 7 was substituted by the 2000 Act, section 4. It was amended by the 2006 Act, section 12(1), the Electoral Registration and Administration Act 2013, Schedule 4, paragraph 2 and S.I. 2005/2078, Schedule 1, paragraph 1(3).

(**3**) Section 7A was inserted by the 2000 Act, section 5. It was amended by the 2006 Act, section 12(2), the Electoral Registration and Administration Act 2013, Schedule 4, paragraph 3, S.I. 2005/2078, Schedule 1, paragraph 1(4) and S.S.I. 2005/465, Schedule 1, paragraph 12(4).

Absent vote at Scottish parliamentary elections for an indefinite or a particular period

8.—(1) Where a person applies to the ERO to vote by post at Scottish parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in the application) the ERO shall grant the application if—

(a) the ERO is satisfied that the applicant is or will be registered in the register of electors; and

(b) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections).

(2) Where a person applies to the ERO to vote by proxy at Scottish parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in the person's application), the ERO shall grant the application if—

(a) the ERO is satisfied that the applicant is eligible to vote by proxy at elections to which the application relates;

(b) the ERO is satisfied that the applicant is or will be registered in the register of electors; and

(c) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3.

(3) For the purposes of this article, a person ("P") is eligible to vote by proxy at Scottish parliamentary elections if P—

(a) is or will be registered as a service voter;

(b) has an anonymous entry in the register of electors;

(c) cannot reasonably be expected—

(i) to go in person to the polling station allotted or likely to be allotted to P under this Order; or

(ii) to vote unaided there,

by reason of blindness or other disability;

(d) cannot reasonably be expected to go in person to that polling station by reason of the general nature of P's occupation, service or employment or that of P's spouse or civil partner or by reason of P's attendance on a course provided by an educational institution or that of P's spouse or civil partner; or

(e) cannot go in person from P's qualifying address to that polling station without making a journey by air or sea.

(4) The ERO shall keep a record of those whose applications under this article have been granted showing—

(a) whether their applications were to vote by post or proxy for an indefinite or a particular period (specifying that period);

(b) in the case of those who may vote by post, the addresses provided by them in their application as the addresses to which their ballot papers are to be sent; and

(c) in the case of those who may vote by proxy, the names and addresses of those appointed as their proxies.

(5) The ERO shall remove a person ("Q") from the record kept under paragraph (4)—

(a) if Q applies to the ERO to be removed;

(b) in the case of a person who is eligible to vote by proxy by virtue of having an anonymous entry, if Q ceases to have an anonymous entry;

(c) in the case of any registered person, if Q ceases to be registered or registered at the same qualifying address or ceases to be, or becomes, registered in pursuance of—

(i) a service declaration; or

(ii) a declaration of local connection;

(d) in the case of any person shown in the record as voting by proxy, if the ERO gives notice that the ERO has reason to believe there has been a material change of circumstances; or

(e) in the case of a person who applied to vote by post or proxy for a particular period, once that period has expired.

(6) Where a person (whether an elector or a proxy) is, under paragraph (5), removed from the record kept under paragraph (4), the ERO must notify that person in accordance with paragraph 10(6) of Schedule 3 (notification where person removed from absent voting record).

(7) A person shown in the record kept under paragraph (4) as voting by post or voting by proxy (in either case, whether for an indefinite period or for a particular period) may make a further application under paragraph (1) or (2) to change the method of voting or period of time stated in that record.

(8) The ERO may dispense with the requirement under paragraph (1)(b) or (2)(c) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

(a) to provide a signature because of any disability the applicant has;

(b) to provide a signature because the applicant is unable to read or write; or

(c) to sign in a consistent and distinctive way because of any such disability or inability.

(9) The ERO must also keep a record in relation to those whose applications under this article have been granted showing—

(a) their dates of birth; and

(b) except in cases where the ERO in pursuance of paragraph (8) has dispensed with the requirement to provide a signature, their signatures.

(10) The record kept under paragraph (9) must be retained by the ERO for the period prescribed in paragraph 22 of Schedule 3 (the personal identifiers record).

(11) In this article "qualifying address" means, in relation to a person registered in a register of electors, the address in respect of which that person is entitled to be so registered.

Commencement Information

I6 Art. 8 in force at 16.12.2015 in accordance with art. 1(1)

Absent vote at a particular Scottish parliamentary election and special lists

9.—(1) Where a person applies to the ERO to vote by post at a particular Scottish parliamentary election, the ERO shall grant the application (subject to paragraph (4)) if—

(a) the ERO is satisfied that the applicant is or will be registered in the register of electors; and

(b) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting).

(2) Where a person applies to the ERO to vote by proxy at a particular Scottish parliamentary election, the ERO shall grant the application (subject to paragraph (4)) if—

(a) the ERO is satisfied that the applicant's circumstances on the date of the poll will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under this Order;

(b) the ERO is satisfied that the applicant is or will be registered in the register of electors; and

(c) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3.

(3) Where a person who has an anonymous entry in the register of electors applies to the ERO to vote by proxy at a particular Scottish parliamentary election, the ERO shall grant the application if it meets the requirements set out in Schedule 3.

(4) Paragraphs (1) and (2) do not apply to a person who is included in the record kept under article 8; but such a person may, in respect of a particular Scottish parliamentary election, apply to the ERO—

(a) for that person's ballot papers to be sent to a different address; or

(b) to vote by proxy,

if that person is shown in the record so kept as voting by post and the ERO shall grant the application if it meets the requirements set out in Schedule 3.

(5) The ERO shall, in respect of each Scottish parliamentary election, keep two special lists—

(a) a list ("the postal voters list") of—

(i) those who are for the time being shown in the record kept under article 8 as voting by post (excluding those so shown whose applications under paragraph (4) to vote by proxy at the election have been granted), together with the addresses provided by them in their applications under article 8 or, as the case may be, paragraph (4) as the addresses to which their ballot papers are to be sent; and

(ii) those whose applications under paragraph (1) to vote by post at the election have been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent; and

(b) a list ("the list of proxies") of those who are for the time being shown in the record kept under article 8 as voting by proxy or whose applications under this article to vote by proxy at the election have been granted, together with the names and addresses of those appointed as their proxies.

(6) In the case of a person who has an anonymous entry in the register of electors any entry in the special lists referred to in paragraph (5) must show in relation to the person only the person's electoral number.

(7) The ERO may dispense with the requirement under paragraph (1)(b) or (2)(c) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

(a) to provide a signature because of any disability the applicant has;

(b) to provide a signature because the applicant is unable to read or write; or

(c) to sign in a consistent and distinctive way because of any such disability or inability.

(8) The ERO must also keep a record in relation to those whose applications under this article have been granted showing—

(a) their dates of birth; and

(b) except in cases where the ERO in pursuance of paragraph (7) has dispensed with the requirement to provide a signature, their signatures.

(9) The record kept under paragraph (8) must be retained by the ERO for the period prescribed in paragraph 22 of Schedule 3 (the personal identifiers record).

(10) As soon as reasonably practicable after completion of the compilation of each of the postal voters list and the list of proxies, the ERO shall supply a copy of that list to the CRO.

Commencement Information

I7 Art. 9 in force at 16.12.2015 in accordance with art. 1(1)

Proxies at Scottish parliamentary elections

10.—(1) Subject to the provisions of this article, any person is capable of being appointed proxy to vote for another (in this article and article 11 referred to as "the elector") at any Scottish parliamentary election and may vote in pursuance of the appointment.

(2) The elector cannot have more than one person at a time appointed as proxy to vote for the elector at a Scottish parliamentary election.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at a Scottish parliamentary election—

(a) unless the ERO is satisfied that the person is or will be registered in the register of electors, or

(b) if that person is subject to any legal incapacity (age apart) to vote at that election as an elector.

(4) A person is not capable of voting as proxy at a Scottish parliamentary election unless on the date of the poll that person has attained the age of 16.

(5) A person is not entitled to vote as proxy in any constituency at the same Scottish parliamentary election on behalf of more than two electors of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

(6) Where the elector applies to the ERO for the appointment of a proxy to vote for the elector at Scottish parliamentary elections (whether for an indefinite period or for a particular period specified in the elector's application), the ERO shall make the appointment if the application is signed by the applicant and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting) and the ERO is satisfied that the elector is or will be—

(a) registered in the register of electors; and

(b) shown in the record kept under article 8 (absent vote at Scottish parliamentary elections for an indefinite or a particular period) as voting by proxy at such elections,

and that the proxy is capable of being, and willing to be, appointed to vote as proxy at such elections.

(7) Where the elector applies to the ERO for the appointment of a proxy to vote for the elector at a particular Scottish parliamentary election, the ERO shall make the appointment if the application is signed by the applicant and meets the requirements set out in Schedule 3 and the ERO is satisfied that the elector is or will be—

(a) registered in the register of electors for that election; and

(b) entitled to vote by proxy at that election by virtue of an application under article 9 (absent vote at a particular Scottish parliamentary election),

and that the proxy is capable of being, and willing to be, appointed.

(8) The appointment of a proxy under this article is to be made by means of a proxy paper issued by the ERO.

(9) The appointment may be cancelled by the elector by giving notice to the ERO, and shall also cease to be in force, where the appointment related to a Scottish parliamentary election or Scottish parliamentary elections, on the issue of a proxy paper appointing a different person to vote for the elector at a Scottish parliamentary election or Scottish parliamentary elections (whether in the same

Scottish parliamentary constituency or elsewhere); and where the appointment was for a particular period, the appointment shall cease to be in force once that period expires.

(10) Subject to paragraph (9), the appointment shall remain in force—

(a) in the case of an appointment for a particular election, for that election; and

(b) in any other case, while the elector is shown as voting by proxy in the record kept under article 8 in pursuance of the same application under that article.

(11) Paragraph 12 of Schedule 3 (cancellation of proxy appointment) provides for the steps to be taken where a proxy's appointment is cancelled or ceases to be in force under paragraph (9) or is no longer in force under paragraph (10)(b).

(12) The ERO may dispense with the requirement under paragraph (6) or (7) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

(a) to provide a signature because of any disability the applicant has;

(b) to provide a signature because the applicant is unable to read or write; or

(c) to sign in a consistent and distinctive way because of any such disability or inability.

Commencement Information

I8 Art. 10 in force at 16.12.2015 in accordance with art. 1(1)

Voting as proxy

11.—(1) A person entitled to vote as proxy at a Scottish parliamentary election may do so in person at the polling station allotted to the elector under this Order unless that person is entitled to vote by post as proxy for the elector at the election, in which case that person may vote by post.

(2) Where a person is entitled to vote by post as proxy for the elector at any election, the elector may not apply for a ballot paper for the purpose of voting in person at the election.

(3) For the purposes of this Order, a person entitled to vote as proxy for another at a Scottish parliamentary election is entitled so to vote by post if that person is included in the proxy postal voters list kept under paragraph (7) in respect of the election.

(4) Where a person applies to the ERO to vote by post as proxy at Scottish parliamentary elections (whether for an indefinite period, for a particular period specified in the person's application or at a particular election), the ERO shall grant the application if—

(a) the ERO is satisfied that the elector is or will be registered in the register of electors;

(b) there is in force an appointment of the applicant as the elector's proxy to vote for the elector; and

(c) the application contains the applicant's signature and date of birth and meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting).

(5) The ERO shall keep a record of those whose applications under paragraph (4) have been granted showing—

(a) whether their applications were to vote by post as proxy for an indefinite or a particular period (specifying that period); and

(b) the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(6) Where, in the case of a particular election, a person included in the record kept under paragraph (5) applies to the ERO for the person's ballot papers to be sent to a different address, the

ERO shall grant the application if it meets the requirements set out in Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections).

(7) The ERO shall, in respect of each Scottish parliamentary election, keep a special list ("the proxy postal voters list") of—

(a) those who are for the time being included in the record kept under paragraph (5), together with the addresses provided by them in their applications under paragraph (4) or, as the case may be, paragraph (6) as the addresses to which their ballot papers are to be sent; and

(b) those whose applications under paragraph (4) have been granted in respect of the election concerned, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent,

and shall supply to the CRO a copy of that list as soon as reasonably practicable on completion of the compilation of it.

(8) In the case of a person who has an anonymous entry in a register of electors the special list mentioned in paragraph (7) must contain only the person's electoral number.

(9) The ERO shall remove a person from the record kept under paragraph (5)—

(a) if that person applies to the ERO to be removed;

(b) in the case of a person who applied to vote by post as proxy for a particular period, once that period expires;

(c) if the elector ceases to be registered in the register of electors; or

(d) if the appointment of the person concerned as the elector's proxy ceases to be in force (whether or not that person is re-appointed).

(10) Paragraph (2) does not prevent a person, at the polling station allotted to that person, marking a tendered ballot paper in pursuance of rule 49(5) of the Scottish Parliamentary Election Rules.

(11) The ERO may dispense with the requirement under paragraph (4)(c) for the applicant to provide a signature if the ERO is satisfied that the applicant is unable—

(a) to provide a signature because of any disability the applicant has;

(b) to provide a signature because the applicant is unable to read or write; or

(c) to sign in a consistent and distinctive way because of any such disability or inability.

(12) The ERO must also keep a record in relation to those whose applications under paragraph (4) have been granted showing—

(a) their dates of birth; and

(b) except in cases where the ERO in pursuance of paragraph (11) has dispensed with the requirement to provide a signature, their signatures.

(13) The record kept under paragraph (12) must be retained by the ERO for the period prescribed in paragraph 22 of Schedule 3 (the personal identifiers record).

Commencement Information

I9 Art. 11 in force at 16.12.2015 in accordance with art. 1(1)

Absent voting at elections: miscellaneous

12.—(1) Section 59 of the 1983 Act(**4**) (supplemental provisions as to members of forces and service voters) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications:—

(a) in subsection (3) (right to register and vote in person, by post or by proxy), "this Act" shall be construed as including a reference to this Order in connection with the rights conferred by this Order on a person having a service qualification by virtue of section 14(1)(a) or (b) of that Act (service qualification as a member of the forces or being employed in the service of the Crown in a post outside the UK of a prescribed class or description) in relation to the making and cancellation of appointments of a proxy and in relation to voting by post; and

(b) in subsection (3A) (right of members of forces and service voters to information about their right to vote), "this Act and any regulations made under it" shall be similarly construed.

(2) Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections) has effect.

(3) Schedule 4 (which makes provision in connection with the issue and receipt of postal ballot papers) has effect.

Commencement Information

I10 Art. 12 in force at 16.12.2015 in accordance with art. 1(1)

Combination of polls

13.—(1) Where the polls at a Scottish parliamentary general election and an ordinary local government election are to be taken on the same date, they shall be taken together.

(2) Where the polls at a Scottish parliamentary election and a local government election for related areas are to be taken on the same date but are not required by paragraph (1) to be taken together, they may nevertheless be so taken if the returning officer for each election thinks fit.

(3) For the purposes of paragraph (2) two areas are related if one is coterminous with, or situated wholly or partly within, the other.

(4) Where the polls at a Scottish parliamentary election and a local government election are combined under this article the cost of taking the combined polls (excluding any cost solely attributable to one election) and any cost attributable to their combination shall be apportioned in such proportions as the Scottish Ministers may determine.

(5) Schedule 5 (which makes provision about the combination of polls) has effect.

Commencement Information

I11 Art. 13 in force at 16.12.2015 in accordance with art. 1(1)

Constituency returning officers

14. The constituency returning officer for a Scottish parliamentary election shall be—

(**4**) Section 59 was amended by the Representation of the People Act 1993 (c.29), section 1; the 2000 Act, Schedule 1, paragraph 16 and the 2006 Act, section 13.

(a) in the case of a constituency wholly situated in one local government area, the person who under section 41 of the 1983 Act (returning officers: local elections in Scotland) is the returning officer at elections of councillors for the local authority for that area;

(b) in the case of a constituency situated in more than one local government area, such person mentioned above as the Scottish Ministers may by order direct (and an order made under this article may vary, amend or revoke any previous such order).

Commencement Information

I12 Art. 14 in force at 16.12.2015 in accordance with art. 1(1)

Officers of local authorities to be placed at disposal of returning officers

15.—(1) Every local authority shall place at the disposal of the CRO for a constituency wholly or partly situated in their area, for the purpose of assisting the CRO in the discharge of any functions conferred on the CRO in relation to a Scottish parliamentary election, the services of officers employed by the authority.

(2) Every local authority shall place at the disposal of the RRO for a region wholly or partly situated in their area, for the purpose of assisting the RRO in the discharge of any function conferred on the RRO in relation to a Scottish parliamentary election, the services of officers employed by the authority.

Commencement Information

I13 Art. 15 in force at 16.12.2015 in accordance with art. 1(1)

Returning officers: discharge of functions

16.—(1) A CRO or RRO at a Scottish parliamentary election may, in writing, appoint one or more persons to discharge all or any of the functions of that CRO or RRO under this Order.

(2) Except in the case of an election to fill a vacancy in the seat of a constituency member, it shall be the duty of each RRO and each CRO for a Scottish parliamentary constituency within each RRO's region to co-operate with each other in the discharge of their functions under this Order.

(3) The duty imposed by paragraph (2) applies as between CROs in any region as well as between such officers and the RRO for that region.

Commencement Information

I14 Art. 16 in force at 16.12.2015 in accordance with art. 1(1)

Returning officers: general

17.—(1) A Scottish parliamentary election is not liable to be questioned by reason of a defect in the title, or want of title, of the person presiding at or conducting the election, if that person was then in actual possession of, or acting in, the office giving the right to preside at or conduct the election.

(2) A person is not subject to any incapacity to vote at a Scottish parliamentary election by reason of being or acting as a CRO or a RRO at that election.

Commencement Information
I15 Art. 17 in force at 16.12.2015 in accordance with art. 1(1)

Payments by and to returning officers

18.—(1) A CRO and RRO are each entitled to recover their charges for services rendered and expenses incurred for and in connection with a Scottish parliamentary election, provided those services and expenses were necessary for the efficient and effective conduct of the election.

(2) The Scottish Ministers may, by regulations—

(a) specify a total amount that such charges may not exceed;

(b) provide a method for calculating the total amount that those charges may not exceed;

(c) specify, or provide a method for calculating, total amounts for services or expenses of particular types;

(d) make provision as to the time when, and the manner and form in which, accounts are to be submitted to the Scottish Ministers for payment of such charges.

(3) A CRO or RRO may not recover more than any total amount set by regulations under paragraph (2), unless the Scottish Ministers are satisfied that it was reasonable for the CRO or RRO to render the services or incur the expenses, and that the charges are reasonable.

(4) Regulations under paragraph (2) may—

(a) make different provision for different cases, circumstances or areas;

(b) vary, amend or revoke any previous such regulations;

(c) contain such incidental, supplemental, saving or transitional provisions as the Scottish Ministers think fit.

(5) The amount of any charges recoverable in accordance with this article shall be charged on and paid out of the Scottish Consolidated Fund on an account being submitted to the Scottish Ministers, but the Scottish Ministers may if they think fit, before payment, apply for the account to be taxed under the provisions of article 19.

(6) Where a local authority requires to pay superannuation contributions in respect of any person that are increased by a fee paid under this article as part of the charges of a CRO or RRO at a Scottish parliamentary election, then on an account being submitted to the Scottish Ministers a sum equal to the increase shall be charged on and paid out of the Scottish Consolidated Fund to the local authority.

(7) On a request by a CRO or RRO for an advance on account of their charges, the Scottish Ministers may make such an advance, on such terms as they think fit.

Commencement Information
I16 Art. 18 in force at 16.12.2015 in accordance with art. 1(1)

Taxation of returning officer's account

19.—(1) An application for the account of a CRO or a RRO ("the claimant") to be taxed shall be made to the Auditor of the Court of Session.

(2) On any such application the Auditor has jurisdiction to tax the account in such manner and at such time and place as the Auditor thinks fit, and finally to determine the amount payable to the claimant.

(3) On any such application the claimant may apply to the Auditor to examine any claim made by any person against the claimant in respect of matters charged in the account; and the Auditor, after notice given to the claimant and after giving the claimant an opportunity to be heard and to tender any evidence, may allow or disallow or reduce the claim objected to with or without costs; and the determination of the Auditor shall be final for all purposes and against all persons.

Commencement Information
I17 Art. 19 in force at 16.12.2015 in accordance with art. 1(1)

Loan of equipment for Scottish parliamentary elections

20. Any ballot boxes, fittings and compartments provided by or belonging to a local authority shall, on request, and if not required for immediate use by that authority, be lent to a CRO at a Scottish parliamentary election on such terms and conditions as may be agreed.

Commencement Information
I18 Art. 20 in force at 16.12.2015 in accordance with art. 1(1)

Effect of registers

21.—(1) A person entered in the list of proxies must not be excluded from voting at a Scottish parliamentary election on any of the grounds set out in paragraph (2); but this shall not prevent the rejection of the vote on a scrutiny, or affect that person's liability to any penalty for voting.

(2) The grounds referred to in paragraph (1) are that the person—

(a) is not of voting age;

(b) is not, or, on the relevant date or the date of the person's appointment (as the case may be), was not—

(i) a Commonwealth citizen;

(ii) a citizen of the Republic of Ireland;

(iii) a relevant citizen of the Union;

(c) is, or, on the relevant date or the date of the person's appointment (as the case may be), was, otherwise subject to any other legal incapacity to vote.

(3) In paragraph (2), the "relevant date" means—

(a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act(**5**) (requirement to publish the revised register following annual canvas by 1st December), the 15th October immediately preceding the date of publication of the register;

(b) in relation to any other person registered in the register, the relevant date for the purposes of section 4 of the 1983 Act(**6**) (entitlement to be registered as parliamentary or local government elector).

(**5**) Section 13 was substituted by the 2000 Act, Schedule 1, paragraph 6.
(**6**) Section 4 was substituted by the 2000 Act, section 1(2) and amended by the 2006 Act, Schedule 1, paragraph 3.

Commencement Information
I19 Art. 21 in force at 16.12.2015 in accordance with art. 1(1)

Effect of misdescription

22. No misnomer or inaccurate description of any person or place named in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Order affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Commencement Information
I20 Art. 22 in force at 16.12.2015 in accordance with art. 1(1)

Discharge of registration duties

23.—(1) Any of the duties and powers of an ERO under this Order may be performed and exercised by any depute for the time being approved by the local authority which appointed the ERO, and the provisions of this Order apply to any such depute so far as respects any duties or powers to be performed or exercised by that depute as they apply to the ERO.

(2) It shall be the duty of each local authority to assign such officers to assist the ERO appointed by that authority as may be required for carrying out the ERO's functions under this Order.

Commencement Information
I21 Art. 23 in force at 16.12.2015 in accordance with art. 1(1)

Payment of expenses of registration duties

24.—(1) Any expenses properly incurred by an ERO in the performance of the ERO's functions under this Order shall be paid by the local authority by which the ERO was appointed.

(2) Any fees paid to the ERO under this Order shall be accounted for by the ERO and paid to the local authority by which the ERO was appointed.

(3) On the request of an ERO for an advance on account of the expenses referred to in paragraph (1), the local authority by which the ERO was appointed may, if it thinks fit, make such an advance to the ERO of such an amount and subject to such conditions as it may approve.

Commencement Information
I22 Art. 24 in force at 16.12.2015 in accordance with art. 1(1)

Personation

25.—(1) A person shall be guilty of a corrupt practice if that person commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person ("P") shall be deemed to be guilty of personation at a Scottish parliamentary election if P—

(a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or

(b) votes in person or by post as proxy—

(i) for a person whom P knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or

(ii) when P knows or has reasonable grounds for supposing that P's appointment as proxy is no longer in force.

(3) 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.

Commencement Information

I23 Art. 25 in force at 16.12.2015 in accordance with art. 1(1)

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)(**7**) (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.

Commencement Information

I24 Art. 26 in force at 16.12.2015 in accordance with art. 1(1)

Offences relating to applications for postal and proxy votes

27.—(1) A person ("P") commits an offence if P—

(a) engages in an act specified in paragraph (2), and

(**7**) 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).

(b) intends, by doing so, to deprive another of an opportunity to vote or to make for P or another a gain of a vote to which P or the other is not otherwise entitled or a gain of money or property.

(2) These are the acts—

(a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person);

(b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in connection with such an application;

(c) inducing the ERO or CRO to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote;

(d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.

(3) In paragraph (1)(b), property includes any description of property.

(4) In paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).

(5) A person who commits an offence under paragraph (1) or who aids, abets, counsels or procures the commission of such an offence is guilty of a corrupt practice.

Commencement Information

I25 Art. 27 in force at 16.12.2015 in accordance with art. 1(1)

Breach of official duty

28.—(1) If a person to whom this article applies is, without reasonable cause, guilty of any act or omission in breach of that person's official duty, that person shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale.

(2) No person to whom this article applies shall be liable for breach of that person's official duty to any penalty at common law, and no action for damages shall lie in respect of the breach by such a person of that person's official duty.

(3) The persons to whom this article applies are—

(a) any ERO, CRO, RRO or presiding officer;

(b) any depute of such a person; and

(c) any person appointed to assist or in the course of that person's employment assisting a person mentioned in sub-paragraphs (a) or (b) in connection with the official duties of the person so mentioned.

(4) "Official duty" shall not, for the purpose of this article, include duties imposed otherwise than by this Order.

Commencement Information

I26 Art. 28 in force at 16.12.2015 in accordance with art. 1(1)

Tampering with nomination papers, ballot papers etc.

29.—(1) A person shall be guilty of an offence if, at a Scottish parliamentary election, that person—

(a) fraudulently defaces or fraudulently destroys any nomination paper;

(b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post;

(c) without due authority supplies any ballot paper to any person;

(d) fraudulently puts into any ballot box any paper other than the ballot paper which that person is authorised by law to put in;

(e) fraudulently takes out of the polling station any ballot paper;

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(2) A person shall be guilty of an offence if that person—

(a) at a Scottish parliamentary election, forges any nomination paper, delivers to a CRO or RRO any nomination paper knowing it to be forged, or forges or counterfeits any ballot paper or the official mark on any ballot paper;

(b) signs any nomination paper as candidate or as nominating officer for any registered party (or as a person authorised by such officer), or in any other capacity certifies the truth of any statement contained in it, knowing such statement to be false; or

(c) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(3) Paragraph (4) applies to—

(a) a CRO;

(b) a RRO;

(c) a presiding officer; and

(d) a clerk appointed to assist in—

(i) taking the poll;

(ii) counting the votes; or

(iii) proceedings in connection with the issue or receipt of postal ballot papers.

(4) If a person to whom this paragraph applies is guilty of an offence under this article, that person shall be liable—

(a) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding six months, or to both.

(5) If any other person is guilty of an offence under this article that person shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale, or to imprisonment for a term not exceeding six months, or to both.

(6) In this article "nomination paper" includes a regional list of a registered party.

Commencement Information
I27 Art. 29 in force at 16.12.2015 in accordance with art. 1(1)

False statements in nomination papers etc.

30.—(1) A person ("P") is guilty of a corrupt practice if, at a Scottish parliamentary election, P causes or permits to be included in a document delivered or otherwise furnished to a CRO or a RRO for use in connection with the election—

(a) a statement of the name or home address of a candidate at the election which P knows to be false in any particular;

(b) anything which purports to be the signature of a person who subscribes a nomination paper but which P knows—

(i) was not written by the person by whom it purports to have been written; or

(ii) if written by that person, was not written by that person for the purpose of subscribing that nomination paper;

(c) a certificate under rule 6(2) of the Scottish Parliamentary Election Rules authorising the use by a registered party of a name or description if P knows that a candidate on that party's list of candidates is also, in relation to a poll which is to be held on the same day as the election to which the certificate relates—

(i) included in any other such list for the region or another region;

(ii) an individual candidate to be a regional member for the region or another region;

(iii) a candidate to be a constituency member for a constituency not included in the region; or

(iv) a candidate to be a constituency member for a constituency included in the region but is not a candidate of that party; or

(d) a certificate under rule 7(1) of the Scottish Parliamentary Election Rules authorising the use by a constituency candidate of a description if P knows that the candidate is a candidate in another Scottish parliamentary constituency election in which the poll is to be held on the same day as the election to which the certificate relates.

(2) A person ("Q") is guilty of a corrupt practice if, in the case of a constituency election, Q makes in any document in which Q consents to nomination as a candidate—

(a) a statement of Q's date of birth;

(b) a statement as to Q's qualification for membership of the Scottish parliament; or

(c) a statement that Q is not a candidate at an election for any other constituency the poll for which is to be held on the same day as the poll at the election to which the consent relates,

which Q knows to be false in any particular.

(3) A person ("R") is guilty of a corrupt practice if, in the case of an individual candidate at a regional election, R makes in any document in which R consents to nomination as a candidate—

(a) a statement of R's date of birth;

(b) a statement as to R's qualification for membership of the Scottish parliament; or

(c) a statement that R is not a party list candidate at that regional election nor a candidate in another Scottish parliamentary election the poll for which is to be held on the same day as the poll at the election to which the consent relates,

which R knows to be false in any particular.

(4) A person ("S") is guilty of a corrupt practice if, in the case of a party list candidate at a regional election, S makes in any document in which S consents to nomination as a candidate—

(a) a statement of S's date of birth;

(b) a statement as to S's qualification for membership of the Scottish parliament; or

(c) a statement that S is not an individual candidate or a candidate on the list submitted by another registered party at that regional election or a candidate at another Scottish parliamentary election in which the poll is to be held on the same day as the poll at the election to which the consent relates,

which S knows to be false in any particular.

(5) For the purposes of paragraphs (2), (3) and (4) a statement as to a candidate's qualification is a statement—

(a) that the candidate is qualified for being elected;

(b) that the candidate will be qualified for being elected; or

(c) that to the best of the candidate's knowledge and belief the candidate is not disqualified from being elected.

Commencement Information

I28 Art. 30 in force at 16.12.2015 in accordance with art. 1(1)

Requirement of secrecy

31.—(1) The following persons attending at a polling station, namely—

(a) a CRO, RRO or a member of staff of a CRO or RRO;

(b) a presiding officer or clerk;

(c) a candidate (including a candidate on a party's regional list);

(d) a nominating officer of a registered party which has submitted a regional list;

(e) an election agent;

(f) a polling agent;

(g) a person attending by virtue of sections 6A to 6D of the 2000 Political Parties Act(**8**) (representatives of the Electoral Commission and accredited observers),

shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person before the poll is closed the information described in paragraph (2).

(2) The information referred to in paragraph (1) is any information as to—

(a) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;

(b) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or

(c) the official mark being used in accordance with rule 30 of the Scottish Parliamentary Election Rules ("the official mark").

(3) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not—

(**8**) Sections 6A to 6D were inserted by the 2006 Act, section 29.

(a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper;

(b) communicate any information obtained at the counting of the votes as to the candidate for whom or, as the case may be, registered party for which, any vote is given on any particular ballot paper.

(4) No person shall—

(a) interfere with or attempt to interfere with a voter when the voter is recording the voter's vote;

(b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom or the registered party for which a voter in that station is about to vote or has voted;

(c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom or the registered party for which a voter in that station is about to vote or has voted, or as to the unique identifying number on the back of a ballot paper given to a voter at that station; or

(d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person the name of the candidate for whom or the registered party for which the voter has or has not voted.

(5) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of voting and shall not—

(a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark;

(b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person;

(c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper; or

(d) attempt to ascertain at the proceedings in connection with the receipt of ballot papers the name of the candidate for whom or the registered party for which, any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(6) No person having undertaken to assist a voter with disabilities to vote shall communicate at any time to any person any information as to the name of the candidate for whom or, as the case may be, the registered party for which, that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.

(7) No person may publish before the close of the poll—

(a) any statement relating to the way in which voters have voted in the poll where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted; or

(b) any forecast or estimate as to the result of the election which is (or might reasonably be taken to be) based on information so given.

(8) If a person acts in contravention of this article that person shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale or to imprisonment for a term not exceeding six months.

(9) In this article—

(a) a voter with disabilities is a voter who has made a declaration under rule 48 of the Scottish Parliamentary Election Rules that the voter is so incapacitated by blindness or other disability or by inability to read, as to be unable to vote without assistance;

(b) "publish" means make available to the public at large (or any section of the public), in whatever form and by whatever means; and

(c) the reference to the result of the election is a reference to the result of the election either as a whole or so far as any particular candidate, candidates, registered party or parties at the election are concerned.

Commencement Information

I29 Art. 31 in force at 16.12.2015 in accordance with art. 1(1)

Status:
Point in time view as at 16/12/2015.

Changes to legislation:
There are currently no known outstanding effects for the The Scottish Parliament (Elections etc.) Order 2015, PART 2.