



# Local Government (Scotland) Act 1947

## 1947 CHAPTER 43

### PART I

#### CONSTITUTION AND ELECTIONS.

##### TOWN COUNCILS.

*Provost, Magistrates, Honorary Treasurer and Judges of Police.*

#### **28 Election and term of office of provost.**

- (1) The provost of a burgh shall be elected by the town council of the burgh from among the town councillors.

Any reference in this Act to a provost in the case of a burgh in which the provost is entitled to the designation of lord provost shall, unless the context otherwise requires, be construed as a reference to the lord provost.

- (2) Subject to the provisions of this Act relating to filling casual vacancies in the office of provost, the term of office of the provost shall be from the day of his election to that office as hereinafter provided until the first Tuesday of November in the third year after the day of his election, and during that period, notwithstanding anything in this Act, he shall not, so long as he continues to hold the office of provost, be due to retire as a town councillor.

- (3) The lord provost of a county of a city shall, by virtue of his office unless disqualified by any Act, be a justice of the peace for the county of the city, and the provost of any other burgh shall, by virtue of his office unless disqualified by any Act, be a justice of the peace for the county in which the burgh is situated, but before acting as such justice he shall take the oaths required by law to be taken by a justice of the peace for the county of the city or for the county, as the case may be, unless he is, at the date on which he is elected to act as lord provost or provost, a justice of the peace for the county of the city or for the county, as the case may be, and has taken such oaths or unless the provisions of the Ex-officio Justices of the Peace (Scotland) Act, 1898, apply in his case.

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**29 Election and term of office of other magistrates.**

- (1) The magistrates of a burgh other than the provost shall be called bailies and shall be elected by the town council from among the town councillors.
- (2) Subject to the provisions of this Act relating to filling casual vacancies in the office of bailie, the term of office of a bailie shall be from the day of his election to that office as hereinafter provided until the day on which he falls in ordinary course to retire as a town councillor:

Provided that the town council may, when electing to the office of bailie a councillor who has previously held that office, fix a shorter term of office in his case.

**30 Honorary treasurer.**

- (1) The town council of every burgh shall elect a town councillor to the office of honorary treasurer of the burgh, and the person so elected shall, subject to the directions of the council, exercise general superintendence over the finances of the council and shall be convener of the finance committee appointed by the council under this Act.
- (2) Subject to the provisions of this Act relating to filling casual vacancies in the office of honorary treasurer, the term of office of the honorary treasurer shall be from the day of his election to that office until the first Tuesday of November in the third year after the day of his election, and during that period, notwithstanding anything in this Act, he shall not, so long as he continues to hold the office of honorary treasurer, be due to retire as a town councillor.
- (3) The town council of every burgh in which there is not at the commencement of this Act an honorary treasurer shall elect a town councillor to be honorary treasurer of the burgh at the first meeting of the council held after the day of the annual election of town councillors in the year nineteen hundred and forty seven or at any adjournment of that meeting.
- (4) A person shall not at any one time hold the offices of magistrate of a burgh and honorary treasurer of the burgh, and where a person holding the office of magistrate is elected to the office of honorary treasurer, he shall be deemed to have resigned from the office of magistrate, or where a person holding the office of honorary treasurer is elected to the office of magistrate, he shall be deemed to have resigned from the office of honorary treasurer.
- (5) A person holding the offices of magistrate of a burgh and honorary treasurer of the burgh at the commencement of this Act, shall, unless he intimates to the town clerk in writing before the expiration of fourteen days thereafter that he desires to remain a magistrate and to resign from the office of honorary treasurer, be deemed to have resigned from the office of magistrate at the expiration of the said period.

**31 Meeting for election of provost, bailies and honorary treasurer.**

- (1) At the meeting of the town council to be held on the first Friday after the day of the annual election of the town councillors or at any adjournment thereof the council shall fill up by election all vacancies that may then exist in the offices of provost, bailie and honorary treasurer, and where more than one bailie is elected at the same time shall determine the order of seniority among the bailies so elected.

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- (2) If the town council fail to meet on the day mentioned or to fill any of the said vacancies at the said meeting or at any adjournment thereof, the council may fill the vacancy at any subsequent meeting of the council, but if the council fail to fill any such vacancy within the month of November the sheriff shall, on the application of any four local government electors for the burgh, appoint a councillor to fill the vacancy or, if none of the councillors is willing to accept the office, appoint a person to the office from among the local government electors for the burgh, and the person so appointed shall be a councillor of the burgh for all purposes, so however that his term of office shall expire at the next annual election of town councillors and he shall not be reckoned as part of the number of councillors falling to retire at that election, nor shall his appointment interfere in any way with the ordinary rotation of retirement of the other councillors.
- (3) The returning officer at the annual election of town councillors or in the case of his absence the senior bailie present at the meeting or failing any bailie such one of the town councillors as may be selected by the meeting shall preside at the meeting mentioned in subsection (1) of this section:

Provided that the said person presiding shall preside—

- (i) in the event of a vacancy in the office of provost, only until the provost is elected;
  - (ii) if there is no such vacancy and the provost is absent or if there is such a vacancy and the person elected is absent, only until all the vacancies existing in the offices of bailie and honorary treasurer have been filled.
- (4) In the case of a burgh formed after the commencement of this Act, the town council first elected shall hold their first meeting at twelve noon on the first Friday after the day of the first election of town councillors, and at that meeting the provost, bailies and honorary treasurer shall be elected. A person appointed by the sheriff shall preside at the meeting until the election of the provost.
  - (5) The election of a magistrate shall not be affected by reason only of any nullity or irregularity in the election of any other magistrate.

## **32 Acting chief magistrate in absence of provost.**

If the provost of a burgh is unable for any reason or fails to discharge any of the functions of his office, the senior bailie, or, if the senior bailie is unable or fails to do so, the next senior bailie, and so on throughout the whole number of bailies, may, subject to any standing orders of the council, discharge any function which the provost, as such, might discharge under this Act or any other enactment or any statutory order except that he shall not by virtue of this section act as a justice of the peace, and anything that requires to be done by, to or before the provost under any enactment or statutory order may be done by, to or before the person acting in his place as aforesaid. Such person is in this Act referred to as the "acting chief magistrate".

## **33 Resignation of magistrate or honorary treasurer.**

- (1) A person holding the office of provost, bailie, or honorary treasurer may at any time resign that office by a notice in writing signed by him, and delivered to the town clerk, and the resignation shall take effect upon the expiration of three weeks after the date of delivery of the notice or upon such earlier date, if any, as may be stated in the notice as the date on which the resignation is to take effect.

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- (2) Where a person resigns from the office of provost or honorary treasurer at any time after the day on which he would have been due to retire as a town councillor had he not been elected to that office, his resignation as a provost or honorary treasurer shall be deemed to involve his resignation as a town councillor.

**34 Filling of casual vacancies in case of provost, bailie, or honorary treasurer.**

- (1) A casual vacancy in the office of provost or bailie or honorary treasurer of a burgh, whether caused by death or resignation from the office or by the holder of the office ceasing to be a town councillor or otherwise shall be filled as soon as practicable by the town council at a meeting of the council of which notice specifying that the filling of the vacancy is to be considered has been given to each town councillor not less than five days before the date of the meeting:

Provided that—

- (a) if a casual vacancy in any of the said offices arises in consequence of the holder of the office being appointed to another office, the council may fill the vacancy in the office vacated at the meeting at which the holder is appointed to the other office;
  - (b) if a casual vacancy in the office of bailie arises at any time within the four months preceding the day of the next annual election of town councillors, the town council may determine not to fill the vacancy until after that election.
- (2) A person elected to fill a casual vacancy under this section shall hold office only until the day of the next annual election of town councillors except where the casual vacancy is filled at the meeting of the council held on the first Friday after the day of the annual election of town councillors or at any adjournment thereof.

**35 Magistrates exempted from serving on juries.**

The provost and other magistrates of a burgh shall, while holding office as such, be freed and exempted from being returned and from serving upon juries.

**36 Appointment of town councillor to act as judge of police.**

The town council of a burgh may appoint any town councillor of the burgh who has held the office of magistrate of any burgh having a police court to be a judge of the police court and to sit as magistrate in the police courts of the burgh until he is due to retire as a town councillor or for such shorter period as the council may determine, and any person while acting as a judge of the police court and sitting may exercise any jurisdiction, power or authority competent to or exercisable by any magistrate of the burgh sitting in the police court. Such councillor is in this Act referred to as a "judge of police".

**37 Provost, and &c. to go out of office on ceasing to be town councillor.**

A person holding the office of provost, bailie, honorary treasurer, or judge of police of a burgh shall cease to hold that office upon ceasing to be a town councillor.