



# Local Government (Scotland) Act 1947

## 1947 CHAPTER 43

### PART I

#### CONSTITUTION AND ELECTIONS.

#### LOCAL GOVERNMENT AREAS.

#### **1 Division into administrative areas.**

- (1) For the purposes of local government, Scotland shall be divided into counties, counties of cities, large burghs and small burghs, and the landward area of every county shall, save as provided in this Part of this Act, be divided into districts comprising one or more electoral divisions in accordance with a district council scheme made by the county council of the county and approved by the Secretary of State under the Local Government (Scotland) Act, 1929, or this Act.
- (2) Subject to the constitution of new authorities or any alteration of boundaries or other alteration which may take effect after the passing of this Act—
  - (a) the counties shall be the counties named in Part I of the First Schedule to this Act;
  - (b) the counties of cities shall be the counties of cities named in Part II of the First Schedule to this Act;
  - (c) the large burghs shall be the burghs named in Part III of the First Schedule to this Act;
  - (d) the small burghs shall be the burghs named in Part IV of the First Schedule to this Act; and
  - (e) the districts shall be the districts existing at the passing of this Act.
- (3) It is hereby declared that Orkney and Zetland are separate counties for all purposes other than the election of a member of Parliament.
- (4) References in this Act to a large burgh shall be deemed to include references to a county of a city except where otherwise provided and except that references to burghs within a county shall not include references to a county of a city.

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## COUNTY COUNCILS.

### *Constitution.*

#### **2 Establishment of county councils.**

- (1) For every county there shall be a county council which shall, subject to the provisions of this Act, be entrusted with the management of the administrative and financial business of the county and have all such functions as are vested in the county council by this Act or otherwise.
- (2) The county council shall be a body corporate by the name of the county council with the addition of the name of the county, shall have perpetual succession and a common seal and may sue or be sued under that name.

#### **3 Constitution of county councils.**

- (1) A county council shall consist of—
  - (a) county councillors representing the landward area of the county who shall be elected by the local government electors for that area in accordance with the provisions of this Act, one for each of the electoral divisions; and
  - (b) county councillors representing the burghs within the county who shall be elected by the town councils of the burghs as provided in this Part of this Act.
- (2) The number of county councillors for each county and the number of councillors representing respectively the landward area and each of the burghs within the county shall, subject to any alteration made under this Part of this Act or Part VI of this Act, remain the same as at the commencement of this Act.

### *County Councillors.*

#### **4 Term of office of county councillors.**

- (1) Subject to the provisions of this section, the term of office of a county councillor shall be three years, and in every third year on the second Tuesday of November the whole number of councillors shall retire from office and their places shall be filled by election,
- (2) Notwithstanding anything on this Act—
  - (a) the county councillors representing the landward area at the commencement of this Act shall retire from office on the second Tuesday of November in the year nineteen hundred and forty-eight, notwithstanding that the last election before the commencement of this Act was held on the first Tuesday of December in the year nineteen hundred and forty-five;
  - (b) a county councillor representing a burgh shall cease to be a county councillor on ceasing to be a town councillor of the burgh, so however that if he ceases to be a town councillor by reason of retirement in ordinary course he shall continue to hold office as a county councillor until the town council have elected a successor in his place;
  - (c) on any electoral division of a county being wholly included within the boundaries of a burgh, the county councillor representing the electoral

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division shall from the date on which the inclusion takes effect cease to hold office, and, except where the Secretary of State otherwise directs, the number of councillors for the county shall be reduced accordingly;

- (d) where a part only of an electoral division of a county is so included, the county councillor for that electoral division shall continue to hold office until the Secretary of State otherwise directs.

*Election of County Councillors representing Landward Area.*

**5 Day of election of county councillors for landward area.**

The election of county councillors representing the landward area of the county shall take place on the second Tuesday of November in the year nineteen hundred and forty-eight, and subsequent elections of such councillors shall take place on the second Tuesday of November in every third year thereafter.

**6 Division of landward area of county into electoral divisions.**

- (1) For the purpose of electing county councillors for the landward area of a county, that area shall be divided into electoral divisions.
- (2) There shall be a separate election for each electoral division.
- (3) The number, contents and boundaries of the electoral divisions in each county shall, subject to any alteration under this Part of this Act or Part VI of this Act, remain the same as at the commencement of this Act.

**7 Electors.**

- (1) The electors at an election of a county councillor for any electoral division shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.
- (2) No person shall vote at an election of county councillors for the landward area of a county in more than one electoral division in the county or give more than one vote in any such election.

**8 Polling districts.**

The county council may divide an electoral division in the county into polling districts, and may alter any polling district, and may abolish polling districts in an electoral division.

**9 Appointment of returning officer, etc..**

- (1) The county council shall appoint a person to be the returning officer for the purposes of each election of county councillors for the landward area, and if the person so appointed dies, resigns or for any other reason is unable to act, the Secretary of State may appoint another person to be the returning officer at that election.
- (2) The returning officer may by writing under his hand appoint one or more fit persons to be his depute or deputies for all or any of the purposes of the election, and anything required or authorised to be done by, to or before the returning officer in relation to

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the election may, so far as the depute is authorised to act, be done by, to or before any depute so appointed, and any reference in this Act to a returning officer shall, where a depute returning officer is acting for the returning officer under this subsection, include a reference to the depute returning officer.

**10 Conduct of election of county councillors for landward area.**

- (1) Subject to the provisions of this Act, an election of a county councillor for an electoral division shall be conducted in accordance with the provisions of the Second Schedule to this Act.
- (2) References in the Second Schedule to this Act to county councillors shall be construed as references to county councillors for the landward area of a county.

**11 Expenses of election of county councillors for landward area.**

- (1) All expenses properly incurred by the returning officer or the county clerk in relation to the holding of an election of county councillors for the landward area (including expenses properly incurred by the returning officer or the county clerk in any legal proceedings arising out of the election), not exceeding such scale as the county council may fix and as may be applicable, shall be paid (so far as not otherwise provided by law) by the county council and defrayed as part of the general expenses of the council relating exclusively to the landward area of the county.
- (2) Before a poll is taken at any such election, the county council shall at the request of the returning officer advance to him such sum not exceeding ten pounds for every thousand electors at the election as he may require.

*Election of County Councillors representing Burghs.*

**12 Election of county councillors representing burghs.**

Subject to the provisions of this Act relating to fishing burghs, county councillors representing a burgh within the county shall be elected by the town council of the burgh from among their own number at a meeting of the town council to be held in the month of November (after the annual election of town councillors in that month) in the year in which the election of county councillors representing the landward area is appointed to take place.

*Alteration of Number of County Councillors and of Electoral Divisions.*

**13 Alteration of number of county councillors and of electoral divisions.**

Subject to the provisions of this Act relating to the publication of orders under this Part of this Act, the Secretary of State may, on the representation of a county council or the town council of a burgh within the county or a majority of the county councillors representing the landward area, and shall, so far as necessary for the purpose of giving effect to a direction under paragraph (d) of subsection (2) of section four of this Act, by order alter—

- (a) the number of county councillors; or

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- (b) the assignment of county councillors to the landward area and to each of the burghs within the county; or
- (c) the number or contents and boundaries of the electoral divisions in the county; and in making any such alteration the Secretary of State shall have regard to the population, the distribution and pursuits of the population, the area, and any other circumstances of the landward area and the burghs respectively which appear to him to affect the matter.

*Convener and Vice-Convener of County.*

**14 Convener and vice-convener of county.**

- (1) The chairman of a county council, who shall be called the convener of the county, shall be elected by the county council from among the county councillors.
- (2) The term of office of the convener of the county shall be from the day of his election as provided in the next succeeding subsection until the second Tuesday of November in the third year after the day of his election.
- (3) The election of the convener of the county shall be the first business transacted at the first meeting of the county council held after the election of county councillors, and at that meeting until the convener is elected the returning officer at the election and failing him such councillor as may be selected by the meeting shall preside.
- (4) The convener of the county shall, by virtue of his office unless disqualified by any Act, be a justice of the peace for the county, 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, unless he is at the date on which he is elected convener a justice of the peace for the county and has taken such oaths or unless the provisions of the Ex-officio Justices of the Peace (Scotland) Act, 1898, apply in his case.
- (5) Every county council shall at the first meeting of the council held after the election of county councillors elect a county councillor to be vice-convener of the county who shall hold office until the expiration of the term of office of the convener and, subject to any standing orders made from time to time by the council, anything authorised or required to be done by, to or before the convener may, in the absence of the convener or in the event of his being unable to act for any reason or of a vacancy in the office of convener, be done by, to or before the vice-convener, except that he shall not, by virtue of being vice-convener, act as a justice of the peace.
- (6) A person holding the office of convener or vice-convener may at any time resign that office by a notice in writing signed by him and delivered to the county 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.
- (7) A person holding the office of convener or vice-convener shall cease to hold that office upon ceasing to be a county councillor.
- (8) A casual vacancy in the office of convener or vice-convener of the county, whether caused by death or resignation from the office or by the holder of the office ceasing to be a county councillor, shall be filled as soon as practicable by the county council at a meeting of the council the notice of which specifies the filling of the vacancy as an item of business, and the person appointed to fill the vacancy shall hold office only so

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long as the convener or vice-convener in whose place he was appointed would have held office.

## TOWN COUNCILS.

### *Constitution.*

#### **15 Establishment of town councils.**

- (1) For every burgh there shall be a town council: which shall to the extent provided by this Act or otherwise be entrusted with the management of the administrative and financial business of the burgh and have all such functions as are vested in the town council by this Act or otherwise.
- (2) The town council of a burgh shall be a body corporate—
  - (a) by the name of the town council with the addition of the name of the burgh; or
  - (b) in the case of a burgh in which the provost is entitled to the designation of lord provost, by the name of the lord provost, magistrates and councillors with the addition of the name of the burgh, and in the case of any other burgh by the name of the provost, magistrates and councillors with the addition of the name of the burgh; or
  - (c) by such other name as may be provided in a local Act.
- (3) The town council shall have perpetual succession and a common seal and may sue and be sued under any of the said corporate names.

#### **16 Constitution of town councils.**

- (1) A town council shall consist of councillors for the burgh elected by the local government electors of the burgh in accordance with the provisions of this Act.
- (2) The number of councillors and magistrates to be elected in each burgh shall, subject to any alteration made under this Part of this Act or Part VI of this Act, remain the same as at the commencement of this Act.
- (3) In any small burgh formed after the commencement of this Act the number of councillors and magistrates to be elected shall be determined by the sheriff in his deliverance under Part VI of this Act.
- (4) Subject to the provisions of this Act relating to the publication of orders under this Part of this Act, the Secretary of State, on the representation of the town council of a burgh, which representation may be combined with a representation for the alteration of wards under this Part of this Act, may by order—
  - (a) alter the number of councillors or magistrates of the burgh; and
  - (b) determine the manner in which and the date on which the increase or decrease in the number of councillors or magistrates is to be effected in the burgh and in the different wards thereof, and the order in which and the dates on which the councillors or magistrates as increased or decreased in number are to vacate office;

and in any such order the Secretary of State may determine or make provision for the determination of any question arising in connection with the increase or decrease:

Provided that any such order shall secure that there shall be three or a multiple of three councillors for the burgh and for each ward.

*Town Councillors.*

**17 Term of office of town councillors.**

- (1) The term of office of a town councillor shall be three years or such other period until the date of his retirement in accordance with the provisions of this Act.
- (2) On the first Tuesday of November in every year one-third of the whole number of town councillors in the case of a burgh not divided into wards, and one-third of the town councillors for each ward in the case of a burgh divided into wards, shall retire from office, and their places shall be filled by election, the number to retire consisting of those who have been longest in office since their last election:

Provided that where the number of councillors for any burgh or ward is not divisible by three, the number to retire in a year shall, until the number of councillors or the number of the wards in the burgh is altered under this Act, be regulated by the practice existing immediately before the commencement of this Act.

- (3) Where it is necessary in order to make up the number to retire in accordance with the foregoing provisions that one or more councillors should retire out of the number of those that have been in office for an equal period, then the councillor or councillors to retire shall be those who had the smallest number of votes at their last election, and if there was no contest or an equality of votes at the said election, the town council shall at a meeting determine by lot the order of retiral.

*Election of Town Councillors.*

**18 Day of annual election of town councillors.**

The ordinary day of election of town councillors of a burgh shall be the first Tuesday of November in each year.

**19 Burgh and ward elections.**

- (1) Where a burgh is not divided into wards, there shall be one election of town councillors for the whole burgh.
- (2) Where a burgh is divided into wards, there shall be a separate election of town councillors for each ward.

**20 Division of burgh into wards.**

The number, contents and boundaries of wards into which a burgh is divided shall, subject to any alteration made under this art of this Act or Part VI of this Act, remain the same as at the commencement of this Act.

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## 21 Alteration of wards in burgh.

(1) Subject to the provisions of this Act relating to the publication of orders under this Part of this Act, the Secretary of State, on the representation of the town council of a burgh, which representation may be combined with a representation for the alteration of number of councillors under this Part of this Act, may by order—

- (a) divide the burgh into wards and define the contents and boundaries of the wards; or
- (b) alter the number or contents and boundaries of wards; or
- (c) abolish the division of the burgh into wards;

and for the purpose of giving effect thereto may determine or alter the number of councillors to be elected for each ward or apportion the existing councillors among the wards, and in any such order the Secretary of State may determine or provide for the determination of any question arising in connection therewith :

Provided that any such order shall secure that there shall be three or a multiple of three councillors for the burgh and for each ward.

- (2) In dividing a burgh into wards or in altering the number or contents and boundaries of wards, the Secretary of State shall have regard to the number of local government electors in each ward and any other circumstances which appear to him to affect the matter.
- (3) Where a burgh is being divided into wards under this section or in the case of any other alteration under this section where the Secretary of State considers it proper and so directs in the order, all the members of the town council, including the provost and the honorary treasurer, shall, notwithstanding anything in this Act, retire at the first election held after the division is completed, or in accordance with the order, and a new council shall be elected.
- (4) Any division of a burgh into wards or any alteration of the number or contents and boundaries of wards in a burgh or any abolition of the division of a burgh into wards under this section shall have effect for parliamentary as well as municipal purposes, but shall not affect the limits of any division of the burgh for the purpose of returning a member to serve for the division in Parliament.
- (5) Any alteration of the number or contents and boundaries of wards in a burgh made under this section shall not affect the operation of the provisions of the Temperance (Scotland) Act, 1913, as respects any area to which there applies a resolution under that Act passed before the alteration under this section takes effect.

## 22 Electors.

- (1) The electors at an election of town councillors of a burgh shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.
- (2) Every elector may give one vote and no more for any one candidate:

Provided that—

- (a) where a burgh is not divided into wards, the total number of votes which any person may give shall not exceed the number of councillors to be elected; and
- (b) where a burgh is divided into wards, no person shall be entitled to vote at an election in the burgh in more than one ward, and the total number of votes



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which any person may give at the election in the burgh shall be determined by the number of councillors to be elected for the ward in which he votes.

### **23 Polling districts.**

The town council of a burgh may divide the burgh or any ward thereof into polling districts, and may alter any polling district, and may abolish polling districts in the burgh or any ward.

### **24 Returning officer.**

- (1) At an election of town councillors of a burgh, the provost shall be the returning officer, but if the office of provost is at the time vacant or if the provost is one of the councillors falling to retire at the election or his term of office expires or he resigns office as at the date of the election or he is incapacitated from acting by illness, absence or other cause or he declines or fails to act, the acting chief magistrate as hereinafter defined shall be the returning officer, and if the provost and all the bailies fall to retire at the election or are prevented from acting or fail to act as returning officer for any of the reasons aforesaid, the town clerk or any fit person appointed by him shall act as returning officer.
- (2) The returning officer may by writing under his hand appoint one or more fit persons to be his depute or deputies for all or any of the purposes of the election and anything required or authorised to be done by, to or before the returning officer in relation to the election may, so far as the depute is authorised to act, be done by, to or before any depute so appointed, and any reference in this Act to a returning officer shall, where a depute returning officer is acting for the returning officer under this subsection, include a reference to the depute returning officer.

### **25 Conduct of election of town councillors.**

Subject to the provisions of this Act, an election of town councillors of a burgh shall be conducted in accordance with the provisions of the Second Schedule to this Act.

### **26 Expenses of election of town councillors.**

All expenses properly incurred by the returning officer or the town clerk in relation to the holding of an election of town councillors of a burgh (including expenses properly incurred by the returning officer or the town clerk in any legal proceedings arising out of the election) shall be paid by the town council and shall be defrayed out of the common "good of the burgh or as part of the general expenses of the council, or partly in the one way and partly in the other, as the council determine.

### **27 Provisions as to date of election in fishing burghs.**

Where in any burgh many local government electors are engaged in the fishing industry and often absent from home in pursuance of their occupation at the time when the annual election of town councillors is due to take place under this Act (which burgh is in this Act referred to as a "fishing burgh"), the Secretary of State, on the representation of the town council of the fishing burgh and after such inquiry, if any, as he shall deem proper, may, subject to the provisions of this Act relating to the publication of orders under this Part of this Act, make an order appointing

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the annual retirement and election of town councillors to take place on a day other than the first Tuesday of November to be specified in the order, not being earlier than the first Tuesday of November or later than the first Tuesday of February, and making such consequential alterations in the dates or months mentioned in this Act or the dates mentioned in any other enactment or any statutory order as appear to him to be dependent on the date of the annual election (including the date for the election of county councillors representing the fishing burgh), and thereupon the date of retirement and election and other dates as aforesaid shall be altered accordingly.

*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.

## **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.

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### **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.
- (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

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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.
- (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—

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- (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.

DISTRICT COUNCILS.

*District Council Schemes and Constitution of District Councils.*

**38 District council schemes.**

- (1) Save as in this section provided, every county council shall have a scheme made by the county council and approved by the Secretary of State (in this Act called "a district council scheme") dividing the landward area of the county into districts for the purposes of district councils in such manner that each district shall comprise one or more electoral divisions.
- (2) The district council scheme made and approved under section twenty-five of the Local Government (Scotland) Act, 1929, and in force in a county at the commencement of this of shall, until it is revoked or altered under this Part of this Act or Part VI of this Act, be the district council scheme for the county.

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- (3) A district council scheme for a county may be revoked or altered by a district council scheme prepared and submitted to the Secretary of State for his approval by the county council, and the council shall, so far as necessary for the purpose of giving effect to a direction by the Secretary of State under proviso (iii) to subsection (2) of the next but one succeeding section, prepare and submit to the Secretary of State forthwith a scheme amending the district council scheme.

The Secretary of State may approve the scheme either as submitted or with such modifications and amendments as he thinks proper and on approval the scheme shall have effect, and any such scheme may make provision for doing anything which may be required or be expedient for the proper carrying into effect of the scheme, including without prejudice to the said generality provision for financial adjustments in the case of a scheme altering the boundaries of a district.

- (4) In the case of each of the counties of Kinross and Nairn, the provisions of this section and of so much of section one of this Act as refers to the division of the landward area of every county into districts shall not apply unless the county council of the county so determine, and until the council so determine, references in this Act or any other enactment or any statutory order to a district council and to the district of a district council shall be construed as references to the county council and to the county respectively:

Provided that if the county council of either of the said counties at any time determine that the county shall be divided into districts, the county council shall make a district council scheme and submit the same to the Secretary of State for his approval, and the provisions of the immediately preceding subsection shall, subject to any necessary modifications, apply to any such scheme as they apply to a scheme altering the boundaries of a district.

- (5) A district council scheme under this section shall not be made by a county council except at a meeting of the council the notice of which specifies the making of the scheme as an item of business.
- (6) The county council shall cause to be published in a newspaper circulating in the district to which a scheme will apply a notice that the scheme is being submitted to the Secretary of State for his approval, and the Secretary of State shall consider any objections and representations made to him with respect to the scheme.

### **39 Establishment and constitution of district councils.**

- (1) For every district there shall be a district council which shall have all such functions as are vested in the district council by this Act or otherwise.
- (2) The district council shall be a body corporate by the name of the district council with the addition of the name of the district shall have perpetual succession and may have a common seal and may sue and be sued under that name.
- (3) The district council shall consist of—
- (a) the county councillors representing the electoral divisions within the district who shall be ex officio members of the district council; and
  - (b) the district councillors who shall be elected for the electoral divisions within the district or for the wards forming part thereof (in this Act referred to as the elected district councillors).

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- (4) The number of district councillors for the district and the apportionment of the elected district councillors among the electoral divisions or wards within the district shall be such as are specified in the district council scheme for the time being in force.

*District Councillors.*

**40 Term of office of district councillors.**

- (1) An ex officio member of a district council shall hold office as a member of the council only so long as he is a county councillor representing an electoral division within the district.
- (2) The term of office of an elected district councillor shall be three years, and in every third year on the second Tuesday of November the whole number of elected district councillors shall retire from office and their place shall be filled by election :

Provided that—

- (i) the elected district councillors at the commencement of this Act shall go out of office on the second Tuesday of November in the year nineteen hundred and forty-eight, notwithstanding that the last election before the commencement of this Act was held on the first Tuesday of December in the year nineteen hundred and forty-five;
- (ii) on any electoral division or ward of an electoral division within a district being wholly included within the boundaries of a burgh, the elected district councillors representing the electoral division or ward shall from the date on which the inclusion takes effect cease to hold office, and the number of elected district councillors for the district shall be reduced accordingly;
- (iii) where a part only of an electoral division or ward of an electoral division is so included, the elected district councillors for that electoral division or ward shall continue to hold office until the Secretary of State otherwise directs.

*Election of Elected District Councillors.*

**41 Day of election of elected district councillors.**

The election of elected district councillors shall take place on the second Tuesday of November in the year nineteen hundred and forty-eight, and subsequent elections of such councillors shall take place on the second Tuesday of November in every third year thereafter.

**42 District council elections.**

- (1) There shall be a separate election of elected district councillors for each electoral division within a district or, where an electoral division is divided into wards, for each ward thereof.
- (2) Where a district comprises only one electoral division and that division is not divided into wards, there shall be one election of elected district councillors for the whole district.

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#### **43 Division of electoral division into wards.**

(1) The number, contents and boundaries of wards into which an electoral division within a district is divided shall, subject to any alteration made by a district council scheme or otherwise under this Part of this Act or Part VI of this Act, remain the same as at the commencement of this Act.

(2) A district council scheme may—

- (a) divide an electoral division into wards and define the contents and boundaries of the wards; or
- (b) alter the number or contents and boundaries of wards in an electoral division; or
- (c) abolish the division of an electoral division into wards;

and for the purpose of giving effect thereto may determine or alter the number of elected district councillors to be elected for each ward or apportion the existing elected district councillors for an electoral division among the wards thereof, and such a scheme may provide for the determination of any question arising in connection therewith or for doing anything that is considered necessary or proper for giving full effect to the scheme so far as referring to the matters aforesaid:

Provided that a county council shall before preparing a district council scheme making any provision under this subsection consult with the district council of the district concerned.

(3) In dividing an electoral division into wards or altering the number or contents and boundaries of wards in an electoral division or determining or altering the number of district councillors to be elected for each ward or apportioning the existing elected district councillors for an electoral division among the wards under this section, regard shall be had to the number of local government electors and any other circumstances which appear to affect the matter.

#### **44 Electors.**

(1) The electors at an election of elected district councillors shall be the persons entitled, by virtue of the provisions of the Representation of the People Acts, to vote at that election.

(2) Every elector may give one vote and no more for any one candidate:

Provided that—

- (a) the total number of votes which any person may give shall not exceed the number of elected district councillors to be elected for the electoral division or ward in which he votes; and
- (b) a person shall not vote at an election in more than one electoral division within a district or in more than one ward in any electoral division divided into wards.

#### **45 Conduct of election of elected district councillors.**

(1) Subject to the provisions of this Act, an election of elected district councillors shall be conducted in accordance with the provisions of the Second Schedule to this Act, and the county council of the county shall make due provision for the election of elected district councillors, and, subject to the provisions of the immediately succeeding section, shall pay the expenses incurred in relation thereto.



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- (2) References in Part IV of the Second Schedule to this Act to district councillors shall be construed as references to elected district councillors.
- (3) A county council may refer to the Secretary of State any question that may arise as to the performance of their duty under Part IV of the Second Schedule to this Act, and the determination of the Secretary of State shall be final.

#### **46 Expenses of election of elected district councillors.**

The expenses incurred in relation to the election of elected district councillors by a county council, as ascertained and apportioned by agreement between the county council and the district council concerned or failing agreement by the Secretary of State, shall be repaid to the county council by the district council and be defrayed by the district council as part of their general expenses.

*Chairman and Vice-Chairman of District Council.*

#### **47 Chairman and Vice-Chairman of district council.**

- (1) The chairman of a district council shall be elected by the district council from among the district councillors.
- (2) The term of office of the chairman of the district council shall be from the day of his election to that office as provided in the next succeeding subsection until the second Tuesday of November in the third year after the day of his election.
- (3) The election of the chairman of the district council shall be the first business transacted at the first meeting of the council held after the election of district councillors, and at that meeting, until the chairman is elected, such district councillor as may be selected by the meeting shall preside.
- (4) The chairman of a district council shall, by virtue of his office unless disqualified by any Act, be a justice of the peace for the county within which the district 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, unless he is at the date on which he is elected chairman a justice of the peace for the county and has taken such oaths or unless the provisions of the Ex-officio Justices of the Peace (Scotland) Act, 1898, apply in his case.
- (5) Every district council shall at the first meeting of the council held after the election of district councillors elect a district councillor to be vice-chairman of the district council, who shall hold office until the expiration of the term of office of the chairman, and subject to any standing orders made from time to time by the council anything authorised to be done by, to or before the chairman may, in the absence of the chairman or in the event of his being unable to act for any reason, or of a vacancy in the office of chairman, be done by, to or before the vice-chairman except that he shall not by virtue of being vice-chairman act as a justice of the peace.
- (6) A person holding the office of chairman or vice-chairman of a district council may at any time resign that office by a notice in writing signed by him and delivered to the clerk of the council 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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- (7) A person holding the office of chairman or vice-chairman of a district council shall cease to hold that office upon ceasing to be a district councillor.
- (8) A casual vacancy in the office of chairman or vice-chairman of a district council, whether caused by death or resignation from the office or by the holder of the office ceasing to be a district councillor, shall be filled as soon as practicable by the district 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 councillor not less than seven days before the date of the meeting, and the person appointed to fill the vacancy shall hold office only so long as the chairman or vice-chairman in whose place he is appointed would have held office.

*General.*

**48 Determination by lot in case of equality of votes in certain matters.**

Where at a meeting of a local authority or a joint committee or joint board or any committee or sub-committee thereof held under this Act or held under any other enactment or any statutory order which does not contain any provision on the subject an equal number of votes is given for two or more persons—

- (a) in the election of a member of the authority, joint committee, joint board, committee or sub-committee to any office or of a person to be a member of any committee or sub-committee; or
- (b) in the selection of a member of the authority, joint committee, joint board, committee or sub-committee to preside in the absence of the chairman (by whatever name he may be known); or
- (c) in the election by a local authority of a person to fill a casual vacancy on the authority,

the meeting shall determine by lot which of the persons, for whom an equal number of votes is given, shall be elected or selected, as the case may be.

**49 Publication of orders by Secretary of State under Part I.**

- (1) The Secretary of State before making an order under this Part of this Act shall cause a draft of the proposed order or a notice setting forth the place at which and the period during which a copy of the draft may be inspected free of charge to be published in such manner as he shall determine in order to make the same known to all persons interested and shall consider any objections and representations respecting the proposed order and may if he sees fit to do so cause a local inquiry to be held.
- (2) Any order made by the Secretary of State under this Part of this Act or a notice setting forth the place at which and the period during which a copy of the order may be inspected free of charge shall as soon as may be be published by the clerk of the local authority to whom the order applies in the Edinburgh Gazette and in a newspaper circulating in the area to which the order relates.