



Local Government (Scotland) Act 1947

1947 CHAPTER 43

PART II

GENERAL PROVISIONS AS TO MEMBERS OF LOCAL AUTHORITIES AND ELECTIONS.

Casual Vacancies.

58 Casual vacancies.

- (1) A casual vacancy in the office of member of a local authority shall arise or be deemed to have arisen in any of the following events; that is to say—
- (a) on the death of a member, in which case the vacancy shall be deemed to have arisen, if the death occurred in the United Kingdom, the Channel Islands or the Isle of Man, on the date of death, and if the death occurred elsewhere on the date on which the clerk of the authority is informed of the death;
 - (b) on the resignation of a member, in which case the vacancy shall be deemed to have arisen on the date on which the notice of resignation takes effect in accordance with the provisions of the last but one preceding section;
 - (c) on a county councillor representing a burgh ceasing to be a county councillor by reason of his ceasing to be a town councillor, in which case the vacancy shall be deemed to have arisen on the date on which he ceases to be a town councillor;
 - (d) in the case of the election of a person who is not qualified to be elected or who is disqualified for being elected a member of a local authority or of a member of a local authority ceasing to be qualified to be a member of the authority or becoming disqualified for being a member of the authority, on the office being declared to be vacant in accordance with the provisions of section fifty-three of this Act, in which case the vacancy shall be deemed to have arisen on the date on which the office has been declared to be vacant by the sheriff or the authority or, where an appeal is taken under that section, on the date on which the appeal is determined;

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- (e) on the full number of members of a local authority not being elected at an election, in which case the vacancy shall be deemed to have arisen on the date of the election;
 - (f) on an election of a member being declared void on an election petition or otherwise, in which case the vacancy shall be deemed to have arisen on the date of the decision of the court;
 - (g) on a vacancy arising from any other cause (not being a vacancy arising by reason of retirement in ordinary course or a vacancy to which the provisions of subsection (2) of this section apply), in which case the vacancy shall be deemed to have arisen on the date on which the authority determine that a vacancy has arisen.
- (2) Where a person is both a county councillor representing a burgh within the county and a county councillor for an electoral division of the county, a casual vacancy shall be deemed to have arisen in the office of county councillor representing the burgh, except where all the town councillors of a burgh are county councillors by virtue of being town councillors, in which case the casual vacancy shall be deemed to have arisen in the office of county councillor for the electoral division, and the vacancy for the purposes of this section shall be deemed to have arisen on the date of election by the town council or the date of election for the electoral division, whichever is the later.

59 Filling of casual vacancies.

- (1) Subject to the provisions of this section, on a casual vacancy occurring in the office of a member of a local authority, the authority shall, as soon as practicable after the date on which the vacancy shall be deemed to have arisen (not being more than six months thereafter in the case of a county council or a district council and not being more than three months thereafter in the case of a town council) determine, at a meeting of the authority the notice of which specifies the consideration of the filling of the casual vacancy as an item of business, whether the authority shall themselves elect a person to fill the vacancy or whether they shall order that an election by the electors be held for the purpose, and if they determine themselves to elect a person to fill the vacancy they shall at the said meeting or at a meeting held as soon as practicable thereafter elect a person.
- (2) A person elected by a town council to fill a casual vacancy shall hold office only until the day of the annual election of town councillors next after the date on which the vacancy is deemed to have arisen, and an election by the electors shall then be held to fill the vacancy:

Provided that where a vacancy is deemed to have arisen within the period of five weeks preceding the day of the annual election then, unless the vacancy arose in the office of a town councillor due to retire at that election, the person elected by the council shall hold office until the day of the next succeeding annual election.

If the councillor whose office was filled by the election by the town council under this section was due to retire in ordinary course at the annual election at which the person so elected is due to retire, that person shall be reckoned as one of the councillors due to retire at that election but, save as aforesaid, he shall not be so reckoned.

- (3) If a local authority order that an election by the electors be held for the purpose of filling the vacancy, the election shall be held as soon as practicable thereafter on a date to be fixed by the authority and shall be conducted in the same manner as an election in ordinary course, and the provisions of this Act with respect to such an election shall

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apply subject to any necessary modifications and to the substitution for the dates set out in Part II of the Second Schedule to this Act of such dates as the returning officer shall fix:

Provided that in the case of a vacancy in the office of an elected district councillor the date of the election shall be fixed by the county council who shall appoint a returning officer for the purposes of the election.

- (4) Where a casual vacancy is deemed to have arisen in the office of a member of a county council or district council within nine months and of a town council within four months before the next election in ordinary course, the local authority may at the meeting at which they consider the filling of the vacancy determine not to take action with respect to filling the vacancy but to direct that the vacancy shall be filled at the next election in ordinary course:

Provided that—

- (a) if, upon a vacancy, or a number of simultaneous vacancies so occurring, the total number of unfilled vacancies in the membership of the authority exceeds one-third of the whole number of members, the foregoing provisions of this subsection shall not apply; and
- (b) subject to the provisions of paragraph (a) hereof, if in the case of a town council the vacancy is deemed to have arisen within the period commencing on the eighth Tuesday and ending on the fifth Tuesday (both days inclusive) preceding the day of the annual election, the vacancy shall not be filled except by election at the time of the next annual election.
- (5) Where more than one casual vacancy in the office of a town councillor is filled at the same election, whether the election is by the town council or by the electors, or where at an annual election two or more vacancies are to be filled, then, as between the members elected, the person elected by the smallest number of votes shall, for the purpose of ascertaining the councillors due to retire, be deemed to have been longest in office, and the person elected by the next smallest number of votes shall be deemed to have been the next longest in office, and so with respect to the others, and if there has not been a contested election, or if there has been an equality of votes between persons elected, or if any doubt arises, the order of retirement shall be determined by lot.
- (6) Where under this section any question is required to be determined by lot, the lots shall as soon as practicable after the question has arisen be drawn at a meeting of the town council.
- (7) At any election to fill a casual vacancy (other than such an election combined with an ordinary election of town councillors) any person may, notwithstanding anything in this Act, vote in any electoral division or ward for which he is registered as a local government elector.
- (8) Save as otherwise provided in this section, a person elected to fill a casual vacancy in the office of town councillor shall, for the purposes of ascertaining the councillors due to retire at an annual election, be treated as holding office from the date of his election under this section.
- (9) Such of the foregoing provisions of this section shall not apply as are inconsistent with the provisions of a local Act.
- (10) The foregoing provisions of this section shall not apply in the case of a casual vacancy in the office of county councillor representing a burgh, and where any such casual

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vacancy occurs the town council of the burgh shall, as soon as practicable (not being more than three months) after the date on which the vacancy shall be deemed to have arisen, appoint a person to fill the vacancy, and such person shall hold office until the time of the next election in ordinary course by the town council of representatives to the county council under section twelve of this Act.