



# Local Government (Scotland) Act 1947

## 1947 CHAPTER 43

### PART II

#### GENERAL PROVISIONS AS TO MEMBERS OF LOCAL AUTHORITIES AND ELECTIONS.

##### *Qualifications for Office.*

**50** **Qualifications for nomination, election and holding office as member of local authority.**

A person shall, unless disqualified by virtue of this Act or any other enactment, be qualified to be nominated as a candidate for election as, or to be elected, or to be, a member of a local authority if he is of full age and a British subject and not subject to any legal incapacity and—

- (a) is, on the day on which he is nominated as a candidate, a local government elector for the area or any part of the area of the authority; or
- (b) has during the whole of the twelve months preceding the day on which he is nominated as a candidate resided in the area of the authority.

For the purposes of this section, the area of a county council shall include any burgh within the county.

**51** **Re-election.**

A person ceasing to hold office to which he is elected under this Act shall, unless he is not qualified or is disqualified, be eligible for re-election.

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*Disqualifications for Office.*

**52 Disqualifications for nomination, election and holding office as member of local authority.**

- (1) A person shall be disqualified for being nominated as a candidate for election as, or for being elected, or for being, a member of a local authority if—
- (a) he or a partner of his holds any paid office or other place of profit in the gift or disposal—
    - (i) of the authority or of any committee or subcommittee of the authority; or
    - (ii) of any joint committee or joint board the expenses of which are defrayed in part by the authority; or
  - (b) he is a person whose estate has been sequestrated by a competent court in Scotland or who has been adjudged bankrupt elsewhere than in Scotland; or
  - (c) he is disqualified for being elected or for "being a member of a local authority under any enactment relating to corrupt or illegal practices:

Provided that—

- (i) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when—
    - (a) the sequestration of his estate is recalled or reduced; or
    - (b) he obtains his discharge from a competent court;
  - (ii) the disqualification attaching to a person by reason of his having been adjudged bankrupt shall cease if and when—
    - (a) the bankruptcy is annulled; or
    - (b) he is discharged.
- (2) For the purposes of this section a committee: all the members of which, other than any ex-officio members, are appointed by a local authority shall, where the expenses of the committee are defrayed wholly or partly by the authority, be deemed to be a committee of the authority, notwithstanding that the committee may exercise functions which are not vested in the authority.

**53 Procedure in case of disqualification.**

- (1) Where a person is at the time of his election disqualified within the meaning of this section for acting as a member of a local authority or where a member of a local authority becomes so disqualified for acting as a member of the authority (such person or member being in this section referred to as "the person in question"), his office shall nevertheless not be vacated and he shall not be prevented from voting or acting as a member of the authority until—
- (a) he resigns; or
  - (b) a declaration has been made by the sheriff in proceedings under subsection (2) of this section that the office of the person in question is vacant; or
  - (c) a resolution declaring the office vacant has been passed by the authority at a meeting of the authority of which notice specifying the consideration of the matter as an item of business has been given to the person in question and to every other member of the authority:

Provided that—

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- (i) the person in question may within fourteen days of the date on which any such resolution is passed by the authority appeal against the resolution to the sheriff who, after making such inquiry, if any, as is deemed necessary and hearing parties, shall make such order as to the sheriff seems proper; and
  - (ii) the person in question shall not be entitled to vote and act as a member of the authority pending the determination of the appeal.
- (2) Proceedings to have it declared that an office is vacant for the purposes of paragraph (b) of the preceding subsection may be instituted before the sheriff by the local authority or by any four or more local government electors for the area of the authority (including in the case of a county council any burgh within the county) or in the case of a disqualification alleged to exist at the time of nomination or election by any opposing candidate at the election, on the ground in the case of any person acting as a member of the authority of his being disqualified within the meaning of this section for so acting, and on the like ground in the case of any person claiming to be entitled so to act:

Provided that proceedings under this subsection on the ground of a person acting as aforesaid may not be instituted after the alleged disqualification has ceased to exist, but nothing in this subsection shall be deemed to prevent proceedings under this section being dealt with and disposed of although the person has ceased to act as aforesaid.

The procedure in any such proceedings shall, so far as practicable, be that applicable in the case of an election petition under the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890.
- (3) Where in any proceedings under subsection (2) of this section it is proved that the person in question has acted as a member of a local authority while disqualified for so acting, the sheriff shall have power—
  - (a) to make a declaration to that effect and to declare that the office in which the person in question has acted is vacant;
  - (b) to grant interdict against the person in question so acting;
  - (c) to order that the person in question shall pay such sum as the sheriff thinks fit not exceeding one hundred pounds, which sum shall be paid to the authority and applied in such manner as the authority may direct.
- (4) Where in any such proceedings it is proved that the person in question claims to act as a member of a local authority and is disqualified from so acting, the sheriff shall have power to make a declaration to that effect and to declare that the office in which the person in question claims to be entitled to act is vacant and to grant interdict against the person in question so acting.
- (5) For the purposes of this section, the sheriff means the sheriff (other than a sheriff substitute) of the county in which the area of the local authority is situated.
- (6) The sheriff shall have the same powers and privileges as a judge on the trial of a parliamentary election petition.
- (7) For the purposes of this section, a person shall be deemed to be disqualified for acting as a member of a local authority and a disqualification shall be deemed to exist in his case if he is not qualified to be or is disqualified for being a member of the authority.

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**54 Validity of acts done by unqualified persons.**

The acts and proceedings of any person elected to an office under this Act and acting in that office shall, notwithstanding any question as to the validity of his election or his disqualification or want of qualification, be as valid and effectual as if he had been duly elected and qualified.

*Declaration by member elected by Local Authority.*

**55 Declaration by member elected by local authority.**

A person who is elected by a local authority as a member of the authority shall, before attending a meeting or otherwise acting as a member of the authority, sign a declaration that:—

- (a) none of the disqualifications for office set out in section fifty-two of this Act apply in his case;
- (b) he is otherwise qualified for election in terms of section fifty of this Act;
- (c) he accepts office as a member of the authority; and
- (d) he will faithfully perform the duties of the office;

and any person attending a meeting or otherwise acting as a member of the authority before signing such a declaration, or signing such a declaration knowing any statement therein to be false, shall be liable on summary conviction to a fine not exceeding fifty pounds.

*Resignation and Vacation of Office.*

**56 Resignation.**

A member of a local authority may at any time resign his office as member by a notice in writing signed by him and delivered to the clerk of the authority, and his 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.

**57 Vacation of office by failure to attend meetings.**

- (1) If a member of a local authority fails throughout a period of six consecutive months to attend any meeting of the authority, he shall, unless he has been granted leave of absence by the authority as in this section provided or unless the failure to attend was due to some reason approved by the authority, be deemed to have become disqualified for acting as a member of the authority and the provisions of section fifty-three of this Act shall apply in his case:

Provided that—

- (a) attendance as a member at a meeting of any committee or sub-committee of the authority or at a meeting of any joint committee or joint board to which any function of the authority has been delegated shall be deemed for the purposes of this subsection to be attendance at a meeting of the authority;
- (b) a member of any branch of His Majesty's naval, military or air forces, when employed during war or any emergency on any naval, military or air force service, and a person whose employment in the service of His Majesty in

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connection with war or any emergency is such as in the opinion of the Secretary of State to entitle him to relief from disqualification on account of absence, shall not cease to be a member of a local authority by reason only of failure to attend meetings of the authority if the failure is due to that employment;

- (c) in calculating in relation to a member of a county council, the said period of six consecutive months, no account shall be taken of any period before the date of the commencement of this Act.
- (2) A local authority may grant leave of absence to a member of the authority, on his application and on reasonable cause shown, for any period not exceeding at any one time twelve months.
- (3) The provisions of this section shall not apply to a person who is ex-officio a district councillor in respect of his membership of a county council.

#### *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;
  - (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

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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 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

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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 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.

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*Miscellaneous Provisions as to Elections.*

**60 Right of candidate to use of schoolroom, and &c. at election.**

- (1) A candidate at an election of a county councillor for any electoral division of a county or of town councillors of a burgh or of an elected district councillor shall be entitled for the purpose of holding public meetings in furtherance of his candidature to use free of charge, after reasonable notice and at all reasonable times during the period commencing on the day on which the notice of election is given and ending on the day preceding the day of election, any suitable room in a grant-aided school situated in the electoral area in which he is a candidate (or if there is no such school in the area, in such a school in an adjacent electoral area), or any suitable room the expense of maintaining which is payable by a district council:

Provided that—

- (a) nothing in this section shall authorise the use of a room used as part of a private dwelling-house or authorise any interference with the use of a school for educational purposes; and
  - (b) any expenses reasonably incurred by the authority or person having control over the room or any damage done to the room or its contents or to the school in consequence of the room being so, used shall be defrayed by the person by whom or on whose behalf the meeting was convened.
- (2) Any question as to what is reasonable or suitable under this section shall be determined where the question arises in relation to a room in a school by the authority or person having control of the school, and in the case of a room maintained by a district council by that council.

**61 Election not invalidated by non-compliance in certain cases.**

- (1) An election held under this Act shall not be invalidated—
- (a) by non-compliance with the provisions of the Second Schedule to this Act or by mistake in the use of any of the forms therein mentioned, if it appears to the court having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act and that the noncompliance or mistake did not affect the result of the election; or
  - (b) 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) Any misnomer or inaccurate description of any person or place named in any register of electors, nomination paper, ballot paper or notice shall not affect the full operation of that 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.
- (3) The election of a member of a local authority shall not be affected by reason only of any nullity or irregularity in the election of any other member of the authority.

**62 Election valid unless questioned by election petition.**

An election held under this Act or under any enactment repealed by this Act, unless questioned by election petition within the period fixed by law for those proceedings, shall be deemed to have been to all intents a good and valid election.



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**63 Election where poll countermanded on account of death of candidate.**

If at an election of members of a local authority the poll is countermanded in accordance with the provisions of the Second Schedule to this Act by reason of the death of a candidate before the commencement of the poll or in accordance with any enactment repealed by this Act, the returning officer shall order an election to be held as soon as practicable thereafter on a date to be fixed by him, and the provisions of this Act with respect to the holding of elections shall apply with the substitution of such dates as the returning officer may fix for the dates set forth in Part II of the Second Schedule to this Act and subject to any other necessary modifications and adaptations, so however that no fresh nomination shall be necessary in the case of a candidate who remained validly nominated for the election which was not held.

**64 Provision in case of non-election of local authority, and &c.**

- (1) If for any reason a local authority or members of a local authority are not elected in accordance with the provisions of this Act and the case is not otherwise provided for in this Act, or if there is for any reason no legally constituted local authority for any area or the number of members of a local authority then in office is less than the quorum ascertained in accordance with the provisions of the Third Schedule to this Act, the Secretary of State may by order direct the holding of an election for filling such vacancies as exist, and (except where the election relates to county councillors representing a burgh) the election shall be held as soon as practicable thereafter on a date to be fixed by the Secretary of State, and the provisions of this Act with respect to the holding of elections shall apply with the substitution of such dates as the Secretary of State may fix for the dates set forth in Part II of the Second Schedule to this Act and subject to such other modifications and adaptations as may be specified in the order.
- (2) The Secretary of State may by order make such provision as seems to him expedient for authorising any person to act in place of a local authority pending the election of members of the authority under the preceding subsection.

**65 Provisions as to ballot boxes.**

- (1) Any ballot boxes, fittings and compartments provided for parliamentary elections out of moneys provided by Parliament may on request be lent to the returning officer at an election under this Act upon such terms and conditions as the Treasury may determine.
- (2) 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 the returning officer at an election held under this Act on such terms and conditions as may be agreed.

**66 Saving for Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890.**

Save as otherwise expressly provided, nothing in this Act shall affect the provisions of the Elections (Scotland) (Corrupt and Illegal Practices) Act, 1890.

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### *Offences.*

#### **67 Failure of returning officer, and &c. to conduct elections.**

- (1) If a person whose duty it is to act as returning officer at or to take part in the conduct of an election under this Act neglects or refuses to conduct the election or to declare the result of or to take part in the conduct of the election as required by this Act, he shall for every such offence be liable on summary conviction to a fine not exceeding one hundred pounds.
- (2) If any returning officer or officer appointed by the returning officer under the Second Schedule to this Act or the partner or clerk of any such officer shall act as a polling or counting agent under the said Schedule in contravention of the provisions of paragraph 48 of Part III of that Schedule, he shall be liable on summary conviction to a fine not exceeding fifty pounds.
- (3) If any person acts in contravention of, or fails to comply with, any of the provisions of paragraph 53 of Part III of the Second Schedule to this Act, he shall in respect of each contravention or failure be liable on summary conviction to imprisonment for a term not exceeding six months.

#### **68 Offences in relation to nomination papers, ballot papers and ballot boxes.**

If any person—

- (a) forges or fraudulently defaces or fraudulently destroys any nomination paper or delivers to the returning officer or the town clerk, as the case may be, any nomination paper knowing it to be forged; or
- (b) signs any nomination paper as candidate or proposer or as a solicitor on behalf of a candidate, knowing any of the statements contained therein to be false; or
- (c) forges or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or
- (d) without due authority supplies a ballot paper to any person; or
- (e) fraudulently puts into a ballot box any paper other than the ballot paper which he is authorised by law to put in; or
- (f) fraudulently takes out of the polling station any ballot paper; or
- (g) 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 an election; or
- (h) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts;

he shall—

- (i) if he is a returning officer or an officer appointed to assist in taking the poll or counting the votes, be liable on conviction on indictment to imprisonment for a term not exceeding two years; and
- (ii) in any other case be liable on conviction on indictment or on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

#### **69 Offence of personation.**

If any person—

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- (a) applies for a ballot paper in the name of some other person, whether that name be the name of a person living or dead or of a fictitious person; or
- (b) having voted once at an election applies at the same election for a ballot paper in his own name;

he shall be guilty of the crime of personation and shall be liable—

- (i) on conviction on indictment to imprisonment for a period not exceeding two years; or
- (ii) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding fifty pounds or to both such imprisonment and fine.

**70 Penalty for voting in more than one electoral division or ward.**

If any person, at an election held under this Act—

- (a) of county councillors of a county, votes in more than one electoral division in the county; or
- (b) of town councillors of a burgh, votes in more than one ward of the burgh; or
- (c) of elected district councillors of a district, votes in more than one electoral division or ward in the district; or
- (d) asks for a ballot paper for the purpose of so voting;

he shall (except in the case to which subsection (7) of section fifty-nine of this Act applies) be liable on summary conviction to a fine not exceeding fifty pounds:

Provided that the fact that any person has asked for a ballot paper in any of the said electoral areas in circumstances which entitled him only to mark a tendered ballot paper in pursuance of paragraph 23 of Part III of the Second Schedule to this Act, shall not, if he does not exercise that right, prevent his voting or asking for a ballot paper in another electoral area.