
STATUTORY INSTRUMENTS

2010 No. 2999

The Scottish Parliament (Elections etc.) Order 2010

PART 5

MISCELLANEOUS AND SUPPLEMENTAL

Vacancies: constituency seats

85. Where the seat of a constituency member is vacant and the date of the poll at an election to fill that vacancy is fixed by the Presiding Officer of the Scottish Parliament under section 9 of the 1998 Act (constituency vacancies), the Presiding Officer shall forthwith send a notice to the CRO for that constituency stating—

- (a) that the vacancy exists; and
- (b) the date fixed for the poll at the election to fill that vacancy.

Vacancies: regional member seats

86.—(1) Where it comes to the notice of the Presiding Officer of the Scottish Parliament that the seat of a regional member who was returned from a registered party's regional list is vacant, the Presiding Officer shall forthwith send a notice in accordance with paragraph (2) to the RRO for that region.

(2) A notice under paragraph (1) shall—

- (a) state that a vacancy exists; and
- (b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose regional list that person's name is included.

(3) On receipt of a notice under paragraph (1), the RRO shall ascertain the name of the person, if any, who is to fill the vacancy in accordance with section 10 of the 1998 Act (regional vacancies) as modified by article 87.

Modification of section 10 of the 1998 Act

87. Section 10 of the 1998 Act⁽¹⁾ is modified by substituting, for subsections (4) and (5), the following:—

“(4) The regional returning officer shall ascertain from that party's regional list the name and address of the person whose name appears highest on that list (“the first choice”) and shall take such steps as appear to him to be reasonable to contact the first choice to ask whether he will—

- (a) state in writing that he is willing and able to serve as a regional member for that region; and

(1) Section 10 was previously modified by [S.I. 2007/937](#), but that instrument is revoked by this Order.

- (b) deliver a certificate signed by or on behalf of the nominating officer of the registered party which submitted that regional list stating that the first choice may be returned as a regional member from that list.
- (4A) Where—
- (a) within such period as the regional returning officer considers reasonable—
 - (i) he decides that the steps he has taken to contact the first choice have been unsuccessful; or
 - (ii) he has not received from that person the statement and certificate referred to in subsection (4); or
 - (b) the first choice has—
 - (i) stated in writing that he is not willing to serve as a regional member for that region; or
 - (ii) failed to deliver the certificate referred to in subsection (4)(b),

the regional returning officer shall repeat the procedure required by subsection (4) in respect of the person (if any) whose name appears next in that list (“the second choice”) or, where paragraph (a) or (b) of this subsection applies in respect of that person, in respect of the person (if any) whose name appears next highest after the second choice in that list; and the regional returning officer shall continue to repeat the procedure until the regional returning officer has notified the Presiding Officer of the name of the person who is to fill the vacancy or the names in the list are exhausted.

(5) Where a person whose name appears on that list provides the statement and certificate referred to in subsection (4), the regional returning officer shall notify to the Presiding Officer the name of that person.

- (5A) Where—
- (a) under subsection (4A), the regional returning officer has asked the second choice or a subsequent choice the questions referred to in subsection (4); and
 - (b) the person who was asked those questions on an earlier occasion then provides the statement and certificate referred to in that subsection,

that statement and certificate shall have no effect unless and until the circumstances described in paragraph (a) or (b) of subsection (4A) apply in respect of the second choice or, as the case may be, of the subsequent choice.”.

Dissolution of Parliament: minimum period

88. The “minimum period” for the purpose of section 2(3) of the 1998 Act (ordinary general elections) is a period of 28 days, computed in accordance with rule 2 of the Scottish Parliamentary Election Rules (computation of time).

Advertisements

89. The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984(2) shall have effect in relation to the display on any site in Scotland of an advertisement relating specifically to a Scottish parliamentary election as they have effect in relation to the display of an advertisement relating specifically to a parliamentary election.

Forms and documents: variations and translations

90.—(1) The forms set out in the Appendix may be used with such variations as the circumstances may require.

(2) Paragraphs (3) and (4) apply to any document which under or by virtue of this Order is required or authorised to be given to voters or displayed in any place.

(3) The person who is required or authorised to give or display the document must, as that person thinks appropriate, give or display or otherwise make available in such form as that person thinks appropriate—

- (a) the document in Braille;
- (b) the document in languages other than English;
- (c) graphical representations of the information contained in the document;
- (d) other means of making the information contained in the document accessible to persons who might not otherwise have reasonable access to the information.

(4) The person required or authorised to give or display the document must also, as that person thinks appropriate, make available the information contained in the document in such audible form as that person thinks appropriate.

(5) Paragraphs (3) and (4) do not apply to—

- (a) the nomination paper;
- (b) a ballot paper.

(6) The CRO must cause to be displayed at every polling station an enlarged sample copy of a ballot paper.

(7) The sample copy mentioned in paragraph (6) may include a translation of any instructions to voters into such other languages as the CRO thinks appropriate.

(8) The CRO must provide at every polling station an enlarged hand held sample copy of a ballot paper for the assistance of voters who are partially sighted, which must be clearly marked as a specimen provided only for the guidance of voters.

Sending of applications, notices etc.

91.—(1) Any application, notice, claim or objection which is required by this Order to be made to an ERO, CRO or RRO shall be made in writing and sent by post or delivered to that officer's office or to the address specified by that officer for the purpose.

(2) Where an ERO, CRO or RRO is required by this Order to notify any person, such notification shall be in writing and may be sent by post—

- (a) in the case of a person other than a service voter, to the address provided by that person for the purpose of such notification or of any record or, if there is no such address, to the last known place of abode of that person;
- (b) in the case of a service voter, to any address provided by that service voter for the purpose of such notification or of any record or to the address provided for the purpose by the appropriate government department (as defined by section 59(3B) of the 1983 Act⁽³⁾ (meaning of “the appropriate government department”) or, as the case may be, the British Council.

(3) Section 59(3B) was inserted by the 2006 Act, section 13.

Interference with notices etc.

92. If any person without lawful authority destroys, mutilates, defaces or removes any notice published by an ERO, CRO or RRO in connection with that officer's duties or any copies of a document which have been made available for inspection in pursuance of those duties, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Premises used for election purposes

93. Section 98 of the 1983 Act⁽⁴⁾ (premises not affected for rates) shall have effect as if the reference to public meetings in furtherance of a person's candidature at an election included a reference to public meetings promoting a particular result at a Scottish parliamentary election.

Correction of procedural errors

94.—(1) A CRO or RRO may take such steps as that officer thinks appropriate to remedy any act or omission on that officer's part, or on the part of a relevant person, which—

- (a) arises in connection with any function that officer or relevant person has in relation to the Scottish parliamentary election, and
- (b) is not in accordance with the rules or any other requirements applicable to the election.

(2) But a CRO or RRO may not under paragraph (1) re-count the votes given at a Scottish parliamentary election—

- (a) for return of a constituency member after the result of the poll for the return of a constituency member has been declared, or
- (b) for the return of regional members, after the publication of the statement required by rule 61 of the Scottish Parliamentary Election Rules.

(3) These are the relevant persons—

- (a) an ERO;
- (b) a presiding officer;
- (c) a person providing goods or services to a CRO or RRO;
- (d) a depute of any person mentioned in sub-paragraphs (a) to (c) or a person appointed to assist, or in the course of that person's employment assisting, such a person in connection with any function that person has in relation to the Scottish parliamentary election.

(4) Where a CRO or RRO is guilty of an act or omission in breach of that officer's official duty, but remedies that act or omission in full by taking steps under paragraph (1), that officer shall not be guilty of any offence under article 28(1), but this paragraph shall not affect any conviction which takes place, or any penalty which is imposed, before the date on which the act or omission is remedied in full.

Effect of demise of the Crown

95. A proclamation dissolving the Parliament as mentioned in section 2(5) of the 1998 Act shall not be affected by the demise of the Crown.

(4) Section 98 was repealed for England and Wales by the Local Government Finance Act 1988 (c.41), section 149 and Schedule 13, Part 1, but that repeal does not extend to Scotland.

Consequential amendment

96. In the definition of “election petition” in rule 69.1 of the Rules of the Court of Session 1994⁽⁵⁾ (interpretation of Chapter 69: election petitions), for “article 83 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 2007” substitute “article 84 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 2010”.

Revocations

97. The Orders specified in Schedule 9 (revocations) are revoked.

(5) The Rules of the Court of Session 1994 are set out in Schedule 2 to [S.I. 1994/1443](#). The definition of “election petition” was amended by [S.I. 1999/787](#), [2002/2779](#) and [2007/937](#). The definition of “Scottish parliamentary election” was added by [S.I. 1999/787](#).