



# Representation of the People Act 1983

## 1983 CHAPTER 2

### PART III

#### LEGAL PROCEEDINGS

##### *Questioning of a local election*

#### **127 Method of questioning local election**

An election under the local government Act may be questioned on the ground that the person whose election is questioned—

- (a) was at the time of the election disqualified, or
- (b) was not duly elected,

or on the ground that the election was avoided by corrupt or illegal practices or on the grounds provided by section 164 or section 165 below, and shall not be questioned on any of those grounds except by an election petition.

#### **128 Presentation of petition questioning local election**

- (1) A petition questioning an election under the local government Act may be presented either by four or more persons who voted as electors at the election or had a right so to vote, or by a person alleging himself to have been a candidate at the election.
- (2) A person whose election is questioned by the petition, and any returning officer of whose conduct the petition complains, may be made a respondent to the petition.
- (3) The petition shall be in the prescribed form signed by the petitioner and shall be presented in the prescribed manner—
  - (a) in England and Wales, to the High Court;
  - (b) in Scotland, to the sheriff principal of the sheriffdom in which the election took place or, where the election was in respect of a local authority whose area is situated within more than one sheriffdom, to the sheriffs principal of the sheriffdoms in which the area of tide authority is situated.

- (4) In England and Wales the prescribed officer shall send a copy of the petition to the proper officer of the authority for which the election was held, who shall forthwith publish it in the area of that authority.

### **129 Time for presentation or amendment of petition questioning local election**

- (1) Subject to the provisions of this section, a petition questioning an election under the local government Act shall be presented within 21 days after the day on which the election was held.
- (2) If the petition complains of the election—
- (a) on the ground of a corrupt practice, and
  - (b) specifically alleges that a payment of money or other reward has been made or promised since the election by a candidate elected at the election, or on his account or with his privity, in pursuance or furtherance of that corrupt practice,
- it may be presented at any time within 28 days after the date of the alleged payment or promise, whether or not any other petition against that person has been previously presented or tried.
- (3) If the petition complains of the election—
- (a) on the ground of an illegal practice, and
  - (b) specifically alleges a payment of money or other act made or done since the election by the candidate elected at the election, or by an agent of the candidate or with the privity of the candidate or his election agent, in pursuance or in furtherance of that illegal practice,
- it may be presented at any time within 28 days after the date of that payment or act, whether or not any other petition against that person has been previously presented or tried.
- (4) If the petition complains of an election where election expenses are allowed on the ground of an illegal practice, it may be presented at any time within 14 days after the day specified in subsection (5) below.
- (5) The day referred to in subsection (4) above is—
- (a) that on which the appropriate officer receives the return and declarations as to election expenses by that candidate and his election agent; or
  - (b) where the return and declarations are received on different days, the last of those days ; or
  - (c) where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them and the excuse was allowed at different times, the date of the allowance of the last excuse.
- (6) An election petition presented within the time limited by subsection (1) or subsection (2) above may for the purpose of complaining of the election upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition complaining of the election on the ground of that illegal practice could, under this section, be presented.

In the application of this subsection to an election of councillors in Scotland, the reference in this subsection to subsection (2) above shall be omitted and for the

reference to the High Court there shall be substituted a reference to the election court or the sheriff.

- (7) Subsections (3), (4), (5) and (6) above apply—
- (a) notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice; and
  - (b) to a corrupt practice under section 75 above as if it were an illegal practice.
- (8) For the purposes of this section, an allegation that an election is avoided under section 164 below shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.
- (9) In relation to an election where candidates are not required to have election agents there shall be omitted—
- (a) the references in subsection (3) and paragraph (a) of subsection (5) above to an election agent; and
  - (b) paragraphs (b) and (c) of subsection (5).

### **130 Election court for local election in England and Wales, and place of trial**

- (1) A petition questioning an election in England and Wales under the local government Act shall be tried by an election court consisting of a barrister qualified and appointed as provided by this section.
- (2) A barrister shall not be qualified to constitute an election court—
- (a) if he is of less than 15 years standing, or
  - (b) if the court is for the trial of an election petition relating to any local government area—
    - (i) in which he resides; or
    - (ii) which is included in a circuit on which he practises as a barrister.
- (3) The judges for the time being on the rota for the trial of parliamentary election petitions, or any two of those judges—
- (a) may annually appoint as many barristers, not exceeding five, as they may think necessary as commissioners for the trial of petitions questioning elections in England and Wales under the local government Act; and
  - (b) shall from time to time assign the petitions to be tried by each commissioner.
- (4) If the commissioner to whom the trial of a petition is assigned dies, or declines to act or becomes incapable of acting, those judges or two of them may assign the trial to be conducted or continued by any other of the commissioners appointed under this section.
- (5) The election court has for the purposes of the trial the same powers and privileges as a judge on the trial of a parliamentary election petition.
- (6) The place of trial shall be within the area of the authority for which the election was held, except that the High Court may, on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.
- (7) The election court may in its discretion adjourn the trial from one place to another within the local government area or place where it is held.

**131 Accommodation of and attendance on court**

- (1) The proper officer of the authority for which the election was held shall provide suitable accommodation for holding the election court constituted under section 130 above and any expenses incurred by him for the purposes of this section and section 132 below shall be paid by that authority.
- (2) The election court so constituted may employ officers and clerks as prescribed, and all constables and bailiffs shall give their assistance to the court in the execution of its duties.
- (3) A shorthand writer (whose expenses, according to a prescribed scale, shall be treated as part of the expenses incurred in receiving the election court) shall attend the trial before that court, and—
  - (a) shall be sworn by the court faithfully and truly to take down the evidence given at the trial, and
  - (b) shall take down such evidence at length,and a transcript of the notes of the evidence taken down by him shall, if the election court so directs, accompany the court's certificate.

**132 Remuneration and allowances**

- (1) The remuneration and allowances to be paid to the commissioner for his services in respect of that trial and to any officers, clerks or shorthand writers employed under section 131 above in relation to that trial shall be fixed by a scale made and varied by the judges on the rota for the trial of parliamentary election petitions, with the Treasury's approval.
- (2) The remuneration and allowances shall be paid in the first instance by the Treasury and shall be repaid to the Treasury on their certificate by the authority for which the election was held.

**133 Repayments under ss. 131 and 132**

- (1) The election court constituted under section 130 above may in its discretion order that—
  - (a) the expenses referred to in section 131 above, incurred by the proper officer of the authority for receiving the court, or
  - (b) the remuneration and allowances referred to in section 132 above,shall be repaid, wholly or in part, to the proper officer of the authority or to the Treasury, as the case may be—
  - (i) when, in the opinion of the election court, the petition is frivolous and vexatious, by the petitioner ;
  - (ii) when, in the opinion of the election court, the respondent has been personally guilty of corrupt practices at the election, by that respondent.
- (2) The order so made for the repayment of any sum by a petitioner or respondent may be enforced as an order for payment of costs, but a deposit made or a security given under this Part of this Act shall not be applied for any such repayment until all costs and expenses payable by the petitioner or respondent to any party to the petition have been satisfied.

### **134 Election court for local election in Scotland, and place of trial**

- (1) An election petition questioning an election of councillors in Scotland, and all proceedings incidental to, and consequent on it, except as otherwise provided, shall be tried—
  - (a) by the sheriff principal of the sheriffdom within which the challenged election took place ; or
  - (b) where the election was in respect of a local authority whose area is situated within more than one sheriffdom, by the sheriffs principal of the sheriffdoms in which the area of the authority is situated; and where in such a case the sheriffs principal are unable to reach a unanimous decision, they shall state a case for the Court of Session and the Court may pronounce any deliverance which it would have been competent for the sheriffs principal to make.
- (2) The election court has for the purposes of the trial the same powers and privileges as a judge on the trial of a parliamentary election petition, except that any fine or order of committal unless imposed or made by the Court of Session in consequence of a case stated under subsection (1) above may, on summary application by the person aggrieved, be discharged or varied by the Court of Session, or in vacation by the judge acting as vacation judge on such terms, if any, as the Court of Session or judge may think fit.
- (3) The place of trial shall be such place within the sheriffdom or sheriffdoms in which the area of the local authority is situated as the election court may determine.
- (4) The election court may in its discretion adjourn the trial from one place to another within that sheriffdom or those sheriffdoms.
- (5) The travelling and other expenses of the sheriff principal incurred by him in the execution of his duties under this Part of this Act shall be paid by the authority for which the election was held, but the election court may order repayment of those expenses to that authority by the parties to the petition or any of them, in such proportion as shall to the court seem proper.
- (6) A shorthand writer shall attend at the trial of the petition, and shall be sworn by the election court faithfully and truly to take down the evidence given at the trial, and he shall take down the evidence at length.

### **135 Consequences of local election declared void**

- (1) Where on a petition questioning an election under the local government Act—
  - (a) the election of any person has been declared void, and
  - (b) no other person has been declared elected in his place,a new election shall be held to fill the vacancy in the same manner as on a casual vacancy.
- (2) For the purposes of that election any duties to be performed by any officer shall, if he has been declared not elected, be performed by a deputy or other person who might have acted for him if he had been incapacitated by illness.
- (3) This section does not apply to Scotland