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Local Government (Scotland) Act 1973

1973 CHAPTER 65

PART III

GENERAL PROVISIONS AS TO MEMBERS OF LOCAL AUTHORITIES AND PROCEEDINGS

Qualifications and disqualifications

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

- (1) 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 has attained the age of 21 years, is a British subject or a citizen of the Irish Republic 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 of the authority; or
 - (b) has, during the whole of the twelve months preceding the day on which he is nominated as a candidate, occupied as owner or tenant any land or other premises in the area of the authority; or
 - (c) his principal or only place of work in the twelve months preceding the day on which he is nominated as a candidate has been in the area of the authority; or
 - (d) 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.
- (2) In subsection (1) above, “owner” includes heir of entail in possession, liferenter and beneficiary entitled under any trust to the rents and profits of land or other premises, and does not include fiar of land or other premises subject to a liferent, or tutor, curator, judicial factor or commissioners.

Modifications etc. (not altering text)

- C1** S. 29 modified (8.11.1994) by 1994 c. 39, s. 7(1), **Sch. 2 para. 3** (with s. 7(2)); S.I. 1994/2850, art. 2, **Sch. 2**

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S. 29 applied (*temp*) by S.I. 1994/3255, art. 3, **Sch. 1 para. 1**

30 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.

Modifications etc. (not altering text)

C2 S. 30 applied (with modifications) (*temp.* from 6.4.1995 until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 3**

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

- (1) Subject to subsections (2) and (3) below, 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 employment (other than the office of chairman [^{F1}or vice-chairman]) or other place of profit in the gift or disposal—
 - (i) of the authority; or
 - (ii) of any joint committee . . . ^{F2} the expenses of which are defrayed in part by the authority; or
 - (b) he is a person whose estate has been sequestrated by a court in Scotland or who has been adjudged bankrupt elsewhere than in Scotland; or
 - (c) he has, within five years before the day of nomination, or election or since his election, as the case may be, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
 - (d) he is disqualified for being elected or for being a member of that authority under Part III of the [^{F3}Representation of the ^{M1}People Act 1983].
- [^{F4}(1A) A person is disqualified for being a member of a joint board if he or a partner of his holds any paid office or employment (other than the office of chairman or vice-chairman of the board) or other place of profit in the gift or disposal of the board.]
- (2) Where a person is disqualified under subsection (1) above by reason of his estate having been sequestrated, the disqualification shall cease if and when—
- (a) the sequestration of his estate is recalled or reduced; or
 - [^{F5}(b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.]
- (3) Where a person is disqualified under subsection (1) above by reason of having been adjudged bankrupt, then—
- (a) if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification shall cease on the date of the annulment;

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- (b) if he is discharged with a certificate that the bankruptcy was caused by misfortune without any misconduct on his part, the disqualification shall cease on the date of his discharge; and
 - (c) if he is discharged without such a certificate, his disqualification shall cease on the expiration of five years from the date of his discharge.
- (4) A person who is for the time being a member, officer or servant of, or an officer or servant of a subsidiary (within the meaning of the ^{M2}Transport Act 1962) of, the Passenger Transport Executive for an area which falls within a region shall be disqualified for being elected or being a member of the council of that region.

Textual Amendments

- F1** Words inserted by [Local Government and Planning \(Scotland\) Act 1982 \(c. 43\)](#), **Sch. 3 para. 13**
- F2** Words repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\)](#), ss. 1(4)(a), 194(4), **Sch. 12 Pt. II**
- F3** Words substituted by [Representation of the People Act 1983 \(c. 2\)](#), s. 206, **Sch. 8 para. 15(b)**
- F4** [S. 31\(1A\)](#) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\)](#), **s. 1(4)(b)**
- F5** [S. 31\(2\)\(b\)](#) substituted by [Bankruptcy \(Scotland\) Act 1985 \(c. 66, SIF 66\)](#), s. 75(1), **Sch. 7 para. 12**

Modifications etc. (not altering text)

- C3** [S. 31\(1\)\(2\)\(3\)](#) applied (*temp.*) by [S.I. 1994/3255](#), art. 3, **Sch. I para. 1**

Marginal Citations

- M1** 1983 c. 2.
- M2** 1962 c. 46.

VALID FROM 20/01/2005

^{F6}31A Disqualification of officers, employees etc. from remaining members of local authority

- (1) A person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority is disqualified from remaining a member of the authority after the relevant day unless the person complies with subsection (2) below.
- (2) A person complies with this subsection by resigning, not later than the relevant day, from that office, employment or, as the case may be, other place of profit.
- (3) A resignation effected in pursuance of subsection (2) above terminates the holding of the office, employment or other place of profit with immediate effect notwithstanding any contrary provision in the terms and conditions under which the office, employment or place of profit is held.
- (4) In this section the relevant day is the day first occurring after that on which the person elected a member of the local authority was, under the local elections rules, declared to be so elected (no account being taken of a day which is a Saturday or Sunday or Christmas Eve, Easter Monday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80) or a day appointed for public thanksgiving or mourning in Scotland).

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- (5) In subsection (4) above, the “local elections rules” means an order made under section 3(1) of the Local Governance (Scotland) Act 2004 (asp 9).
- (6) This section does not affect section 1 (disqualification and political restriction of certain local government officers and staff) of the Local Government and Housing Act 1989 (c. 42).]

Textual Amendments

F6 S. 31A inserted (20.1.2005) by [Local Governance \(Scotland\) Act 2004 \(asp 9\)](#), **ss. 7(2), 17(2)**; [S.S.I. 2004/558](#), **art. 2**

32 Proceedings for disqualification.

- (1) Subject to subsection (3) below, proceedings against any person on the ground that he is disqualified (within the meaning of this section) for being nominated as a candidate for election as a member of a local authority may be instituted before the sheriff principal by any opposing candidate at the election.
- (2) Subject to subsection (3) below, proceedings against any person on the ground that he acted, or claims to be entitled to act, as a member of a local authority while disqualified for so acting within the meaning of this section may be instituted before the sheriff principal by the local authority concerned or by any four or more local government electors for the area concerned.
- (3) Proceedings under this section may not be instituted after the alleged disqualification has ceased to exist, but proceedings pending at the time of such cessation may continue.
- (4) Where in proceedings under this section it is proved that a person has acted as a member of a local authority while disqualified for so acting, the sheriff principal may—
- (a) make a declaration to that effect and declare that the office in which the person has acted is vacant;
 - (b) grant interdict against the person so acting;
 - (c) order the person to pay to the authority such sum not exceeding £100 as the sheriff principal thinks fit.
- (5) Where in proceedings under this section it is proved that the person concerned claims to act as a member of a local authority and is disqualified for so acting, the sheriff principal may make a declaration to that effect and declare that the office in which the person claims to be entitled to act is vacant and grant interdict against the person so acting.
- (6) The sheriff principal 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 if he is not qualified to be, or is disqualified for being, a member of the authority.

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Modifications etc. (not altering text)

C4 S. 32 applied (temp. from 6.4.1995 to 1.4.1996) by S.I. 1994/3255, art. 3, Sch. I para. 1

33 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.

Modifications etc. (not altering text)

C5 S. 33 applied (*temp.*) by S.I. 1994/3255, art. 3, Sch. I para. 1

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