



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.

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.

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) or other place of profit in the gift or disposal—
 - (i) 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 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 Representation of the People Act 1949.
- (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
 - (b) he obtains his discharge from a court in Scotland.
- (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;
 - (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 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.

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.

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.

Resignation and Vacation of Office

34 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 proper officer 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.

35 Vacation of office by failure to attend meetings

- (1) Subject to subsections (2) and (3) below, 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 the failure was due to some reason approved by the authority, cease to be a member of the authority.

- (2) Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority.
- (3) A member of any branch of Her 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 Her Majesty in 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 a failure to attend meetings of the local authority if the failure is due to that employment.

36 Casual vacancies

For the purpose of filling a casual vacancy in any office for which an election is held under this Act, the date on which the vacancy is to be deemed to have occurred shall be—

- (a) in the case of death, on the date of death ;
- (b) in the case of resignation, the date on which the notice of resignation takes effect;
- (c) 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 or becoming disqualified for being a member, the date on which the office has been declared vacant by the sheriff principal or the date of the determination of any appeal;
- (d) in the case of a full number of members of a local authority not being elected at an election, the date of the election;
- (e) in the case of an election being declared void on an election petition, the date of the decision of the election court;
- (f) in the case of a vacancy arising from any other cause, not being a vacancy arising in ordinary course, such date as the local authority may determine.

37 Filling of casual vacancies

- (1) On a casual vacancy occurring in the office of councillor, an election to fill the vacancy shall be held within three months from the date on which the vacancy is deemed to have occurred, and the day of election to fill the vacancy shall be fixed by the returning officer.
- (2) Where a casual vacancy in any such office occurs within six months before the date of the next ordinary election, an election shall not be held under subsection (1) above unless, on the occurrence of the vacancy (or in the case of a number of simultaneous vacancies, the occurrence of the vacancies), the total number of unfilled vacancies in the membership of the council exceeds one third of the whole number of members ; and where an election under subsection (1) above is not held, the vacancy shall be filled at the next ordinary election.

- (3) A person elected to fill a casual vacancy in the office of councillor shall hold office until the day of the next ordinary election.

Restrictions on voting

38 Disability of members of authorities for voting on account of interest in contracts, etc.

- (1) Subject to the provisions of section 60 of this Act, if a member of a local authority has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter, and is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall at the meeting, and as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (2) If any person fails to comply with the provisions of subsection (1) above, he shall for each offence be liable on summary conviction to a fine not exceeding £200 unless he proves that he did not know that the contract, proposed contract or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.
- (3) A local authority may, by standing orders, provide for the exclusion of a member of the authority from a meeting of the authority while any contract, proposed contract or other matter in which he has a pecuniary interest, direct or indirect, is under consideration.
- (4) The following, that is to say—
- (a) the receipt by the chairman of a council of an allowance to meet the expenses of his office or his right to receive, or the possibility of his receiving, such an allowance;
 - (b) the receipt by a member of a local authority of an allowance or other payment under any provision of sections 45 to 48 of this Act or his right to receive, or the possibility of his receiving, any such payment;
- shall not be treated as a pecuniary interest for the purposes of this section.

39 Pecuniary interests for purposes of section 38

- (1) For the purposes of section 38 of this Act, a person shall be treated, subject to the following provisions of this section and to section 41 of this Act, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if—
- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - (b) he is a partner, or is in the employment, of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- (2) Subsection (1) above does not apply to membership of or employment under any public body, and a member of a company or other body shall not by reason only of his membership be treated as having an interest in any contract, proposed contract or other matter if he has no beneficial interest in any securities of that company or other body.

- (3) In the case of married persons living together, the interest of one spouse shall, if known to the other, be deemed for the purpose of section 38 of this Act to be also an interest of the other.

40 General notices and recording of disclosures for purposes of section 38

- (1) A general notice, given in writing to the proper officer of the authority by a member thereof, to the effect that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person, or that he or his spouse is the tenant of any premises owned by the authority, shall, unless and until the notice is withdrawn, be deemed to be a sufficient disclosure of his interest in any contract, proposed contract or other matter relating to that company or other body or to that person or to those premises which may be the subject of consideration after the date of the notice.
- (2) The proper officer of the authority shall record, in a book to be kept for the purpose, particulars of any disclosure made under section 38 of this Act and of any notice given under this section, and the book shall be open at all reasonable hours to the inspection of any local government elector for the area of the local authority.

41 Removal or exclusion of disability, etc.

- (1) The Secretary of State, as respects a member of any local authority, may, subject to such conditions as he may think fit to impose, remove any disability imposed by section 38 of this Act in any case in which the number of members of a local authority disabled by that section at any one time would be so great a proportion of the whole as to impede the transaction of business, or in any other case in which it appears to the Secretary of State in the interests of the inhabitants of the area that the disability should be removed.
- (2) The power of the Secretary of State under subsection (1) above includes power to remove, either indefinitely or for any period, any such disability which would otherwise attach to any member, or any class or description of member, by reason of such interests, and in respect of such matters, as may be specified by the Secretary of State.
- (3) Nothing in section 38 of this Act precludes any person from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the powers conferred by subsections (1) and (2) above.
- (4) Section 38 of this Act does not apply to an interest in a contract, proposed contract or other matter which a member of a local authority has as a ratepayer or inhabitant of the area, or as an ordinary consumer of water or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.
- (5) For the purposes of section 38 of this Act, a member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of an interest of his or of any company, body or person with which he is connected, as mentioned in section 39 of this Act, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of, or in voting on, any question with respect to that contract or matter.

- (6) Where a member of a local authority has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £1,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, sections 38 and 39 of this Act shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice, however, to his duty to disclose his interest.

42 Interpretation of sections 39 and 41

- (1) In sections 39 and 41 of this Act, " securities " and " shares " have the same meaning respectively as in the Prevention of Fraud (Investments) Act 1958.
- (2) In section 39 of this Act, " public body " includes any body established for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, the governing body of any university, or college, school or hall of a university, college of education or central institution or of any institution established under section 81(2) of the Education (Scotland) Act 1962, and the National Trust for Scotland for Places of Historic Interest or Natural Beauty incorporated by the Order confirmed by the National Trust for Scotland Order Confirmation Act 1935.

In this subsection, " college of education " and " central institution " have the meanings assigned to them by section 145 of the said Act of 1962.

Meetings and proceedings

43 Meetings and proceedings of local authorities

The provisions of Schedule 7 to this Act shall have effect with respect to the meetings and proceedings of local authorities and their committees.

44 Admission of public and press to local authority meetings

- (1) For the purpose of securing the admission, so far as practicable, of the public (including the press) to all meetings of committees of local authorities as well as to meetings of local authorities themselves, the Public Bodies (Admission to Meetings) Act 1960 (in this section referred to as " the 1960 Act ") shall have effect subject to the following provisions of this section.
- (2) Without prejudice to section 2(1) of the 1960 Act (application of section 1 of that Act to any committee of a body whose membership consists of or includes all members of that body) section 1 of the 1960 Act shall apply to any committee constituted under an enactment specified in section 56(9) of this Act and to any committee appointed by one or more local authorities under section 57 of this Act, not being a committee falling within section 2(1) of the 1960 Act.
- (3) Where section 1 of the 1960 Act applies to a committee by virtue of subsection (2) above, then, for the purposes of subsection (4)(c) of that section, premises belonging

to the local authority or one or more of the local authorities which appointed the committee shall be treated as belonging to the committee.

Allowances to members of local authorities and other bodies

45 Attendance allowance and financial loss allowance

- (1) Any member of a local authority who is a councillor shall be entitled to receive a payment by way of attendance allowance, that is to say, a payment for the performance of any approved duty, being a payment of such reasonable amount, not exceeding the prescribed amount, as the local authority may determine.
- (2) The amount prescribed under subsection (1) above may be prescribed by reference to any period of twenty-four hours.
- (3) The amount of any allowance determined by a local authority under subsection (1) above may vary according to the time of day and the duration of the duty, but shall be the same for all members of the authority entitled to the allowance in respect of a duty of any description at the same time of day and of the same duration.
- (4) Any member of a body to which this section applies who is not entitled under subsection (1) above to receive attendance allowance for the performance of an approved duty shall be entitled to receive a payment by way of financial loss allowance that is to say, a payment not exceeding the prescribed amount in respect of any loss of earnings necessarily suffered, or any additional expenses (other than expenses on account of travelling or subsistence) necessarily suffered or incurred by him for the purpose of enabling him to perform that duty.

46 Travelling allowance and subsistence allowance

- (1) Subject to subsection (2) below a member of a body to which this section applies shall be entitled to receive payments by way of travelling allowance or subsistence allowance where expenditure on travelling (whether inside or outside the United Kingdom) or, as the case may be, on subsistence is necessarily incurred by him for the purpose of enabling him to perform any approved duty as a member of that body, being payments at rates determined by that body, but not exceeding, in the case of travel for the purpose of an approved duty within the United Kingdom, such rates as may be specified by the Secretary of State.
- (2) A member of a body shall not be entitled to a payment under this section by way of subsistence allowance in respect of the performance of an approved duty except in respect of a duty performed at a distance of more than three miles from his usual place of residence.

47 Allowances for attending conferences and meetings

- (1) The following bodies, that is to say—
 - (a) any local authority ;
 - (b) any other body to which this section applies and which has power by virtue of any enactment to send representatives to any conference or meeting to which this section applies;
 may pay any member of the authority or other body attending any such conference or meeting such allowances in the nature of those payable under sections 45 and

46 of this Act as they think fit, being payments of such reasonable amounts as they may determine in any particular case or class of case and not exceeding the amounts prescribed under section 45 of this Act and, except in the case of a conference or meeting held outside the United Kingdom, specified under section 46 of this Act for the corresponding allowances under those sections.

- (2) Where a body mentioned in subsection (1)(b) above has power under any enactment other than this Act or any instrument under such an enactment to pay expenses incurred in attending a conference or meeting to which this section applies, the amount payable under that enactment or instrument shall not exceed the amount which would be payable in respect of the attendance under that subsection.
- (3) In relation to a local authority, this section applies to a conference or meeting held inside or outside the United Kingdom and convened by any person or body (other than a person or body convening it in the course of a trade or business or a body the objects of which are wholly or partly political) for the purpose of discussing matters which in their opinion relate to the interests of their area or any part of it or the interests of the inhabitants of their area or any part of it.
- (4) In relation to any other body to which this section applies, other than a water development board within the meaning of the Water (Scotland) Act 1967, this section applies to a conference or meeting convened by one or more such bodies or by an association of such bodies.
- (5) In relation to any water development board as aforesaid, this section applies to a conference or meeting held inside or outside the United Kingdom and convened by any other person or body (other than a person or body convening it in the course of a trade or business or a body the objects of which are wholly or partly political) for the purpose of discussing matters which in the opinion of the board relate to their functions.

48 Payment of expenses of official and courtesy visits, etc.

- (1) Subject to subsection (2) below, a local authority may—
 - (a) defray any travelling or other expenses reasonably incurred by or on behalf of any members in making official and courtesy visits, whether inside or outside the United Kingdom, on behalf of the authority;
 - (b) defray any expenses incurred in the reception and entertainment by way of official courtesy of distinguished persons visiting the area of the authority and persons representative of or connected with local government or other public services whether inside or outside the United Kingdom and in the supply of information to any such persons.
- (2) In the case of a visit within the United Kingdom, the amount defrayed under this section by a local authority in respect of the expenses of any member of the authority in making a visit within the United Kingdom shall not exceed the payments which he would have been entitled to receive by way of travelling allowance or subsistence allowance under section 46 of this Act if the making of the visit had been an approved duty of that member.

49 Provisions supplementary to sections 45 to 48

- (1) Sections 45 to 47 of this Act shall apply to the following bodies—
 - (a) all local authorities;

Status: This is the original version (as it was originally enacted).

- (b) Valuation Appeal Committees established under the Valuation and Rating (Scotland) Act 1956;
 - (c) any joint committee of two or more local authorities, whether appointed or established under this Act or any other enactment;
 - (d) any board, joint board, joint authority or other combined body, all the members of which are representatives of local authorities;
 - (e) any body prescribed for the purposes of those sections and on which any such body as is mentioned in any of the foregoing paragraphs is represented; and
 - (f) the Commission for Local Authority Accounts in Scotland.
- (2) In sections 45, 46 and 48 of this Act, the expression " approved duty ", in relation to a member of a body, means any of the following duties, that is to say—
- (a) attendance at a meeting of the body, or of any of its committees or sub-committees;
 - (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of, or in connection with, the discharge of the functions of the body, or of any of its committees or sub-committees ;
 - (c) where, in pursuance of a duty imposed on or a power granted to the body by any enactment or instrument (including a Royal Charter), he has been appointed by or on the nomination of the body to be a member of some other body prescribed for the purposes of this paragraph (whether or not also prescribed for the purposes of sections 45 to 47 of this Act), the doing of anything as a member of that other body for the purpose of, or in connection with, the discharge of the functions of that other body.
- (3) For the purposes of sections 45 to 48 of this Act a member of a committee or sub-committee of a local authority or other body mentioned in subsection (1) above shall be deemed to be a member of that body.
- (4) Section 38(4) of this Act shall apply in relation to a member of any body mentioned in subsection (1) above to whom it would not otherwise apply as it applies in relation to a member of a local authority ; and no other enactment or instrument shall prevent a member of any such body from taking part in the consideration or determination of any allowance or other payment under any of the provisions of sections 45 to 48 of this Act.

50 Regulations as to allowances

- (1) The Secretary of State may make regulations as to the manner in which sections 45 to 48 of this Act are to be administered, and in particular, and without prejudice to the generality of the foregoing provision, may make regulations—
- (a) providing for the avoidance of duplication in payments under those sections, or between payments under any of those sections and any other Act, and for the determination of the body or bodies by whom any payments under those sections are to be made, and, where such payments are to be made by more than one body, for the apportionment between those bodies of the sums payable;
 - (b) specifying the forms to be used and the particulars to be provided for the purpose of claiming payments under those sections;
 - (c) providing for the publication by a body to which sections 45 to 47 of this Act apply, in the minutes of that body or otherwise, of details of such payments.

- (2) A statutory instrument containing regulations under section 45 or 49 of this Act or this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.