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STATUTORY INSTRUMENTS

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**2002 No. 2779**

**The Scottish Parliament (Elections etc.) Order 2002**

**PART II**

**THE FRANCHISE AND ITS EXERCISE**

**Registers of electors etc**

4.—(1) Subject to section 13B of the 1983 Act<sup>(1)</sup> (alteration of registers, pending elections), an alteration made in a register of electors under section 13A or 56 of the 1983 Act<sup>(2)</sup> (alteration of registers and registration appeals) after the last day on which the nomination papers at an election may be delivered to the constituency returning officer shall not have effect for the purposes of that election.

(2) Schedule 1 to this Order (which makes provision in connection with electors registers) has effect.

**Registration appeals**

5.—(1) An appeal lies to the sheriff from any decision under this Order of the registration officer disallowing a person's application to vote—

- (a) by proxy or by post as elector; or
- (b) by post as proxy,

in any case where the application is not made for a particular Scottish parliamentary election only.

(2) An appeal lies on any point of law from any decision of the sheriff under this article to the court of three judges constituted under section 57(2) of the 1983 Act.

(3) An appeal made by virtue of this article or section 56 of the 1983 Act which is pending when notice of an election is given shall not prejudice the operation as respects that election of the decision appealed against, and anything done in pursuance of the decision shall be as good as if no such appeal had been brought and shall not be affected by the decision of the appeal.

(4) Notice shall be sent to the registration officer by recorded delivery post of the decision of the sheriff or of the Court of three judges referred to in paragraph (2) above on any appeal by virtue of this article, and the registration officer shall make such alterations in the—

- (a) record kept under article 9(4); or
- (b) record kept under article 12(5),

as may be required to give effect to the decision.

(5) Subject to section 13B of the 1983 Act, where, as a result of the decision on an appeal under this article or section 56 of the 1983 Act, an alteration in the register is made on or before the last

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(1) Sections 13A and 13B were added by the 2000 Act, Schedule 1, paragraph 6.

(2) Section 56 is applied to Scotland by section 57 of the 1983 Act.

day for the delivery of nomination papers at an election paragraph (3) above does not apply to that appeal as respects that election.

(6) The registration officer shall on an appeal brought under this article be deemed to be a party to the proceedings, and the registration expenses payable to a registration officer shall include any expenses properly incurred by him by virtue of this paragraph.

### **Polling districts and places at elections**

6.—(1) Every constituency shall be divided into polling districts and, subject to the provisions of this article, there shall be a polling place designated for each polling district.

(2) The polling districts and polling places designated under this article shall be the same as those used or designated for parliamentary elections, except where it appears to those responsible for the designation of parliamentary polling districts and polling places under section 18(3) of the 1983 Act<sup>(3)</sup> that special circumstances make it desirable for some other polling district or polling place to be designated for the purpose of a Scottish parliamentary election.

(3) An election shall not be questioned by reason of—

- (a) any non compliance with the provisions of this article; or
- (b) any informality relating to polling districts or polling places.

### **Rules for Scottish parliamentary elections**

7.—(1) The proceedings at Scottish parliamentary elections (including the return of members) shall be conducted in accordance with the Scottish Parliamentary Election Rules set out in Schedule 2 to this Order.

(2) It is the general duty of every returning officer at a Scottish parliamentary election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by those Rules.

(3) No Scottish parliamentary election shall be declared invalid by reason of any act or omission by a returning officer or any other person in breach of his official duty in connection with the election or otherwise of those Rules if it appears to the tribunal having cognisance of the question that—

- (a) the election was so conducted as to be substantially in accordance with the law as to Scottish parliamentary elections; and
- (b) the act or omission did not affect the result.

(4) Schedule 2 to this Order (Scottish Parliamentary Election Rules) has effect.

### **Manner of voting at Scottish parliamentary elections**

8.—(1) This article applies to determine the manner of voting of a person entitled to vote as an elector at a Scottish parliamentary election.

(2) He may vote in person at the polling station allotted to him under this Order, unless he is entitled as an elector to an absent vote at the election.

(3) He may vote by post if he is entitled as an elector to vote by post at the election.

(4) If he is entitled to vote by proxy at the election, he may so vote unless, before a ballot paper has been issued for him to vote by proxy, he applies at the polling station allotted to him under this Order for a ballot paper for the purposes of voting in person, in which case he may vote in person there.

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(3) Section 18(3) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 142 of Schedule 13, paragraph 130.

(5) If he is not entitled as an elector to an absent vote at the election but cannot reasonably be expected to go in person to the polling station allotted to him under this Order by reason of the particular circumstances of his employment, either as a constable or by a returning officer, on the date of the poll for a purpose connected with the election, he may vote in person at any polling station in the constituency.

(6) Nothing in the preceding provisions of this paragraph applies to—

(a) a person to whom section 7 of the 1983 Act<sup>(4)</sup> (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, or

(b) a person to whom section 7A<sup>(5)</sup> of that Act (persons remanded in custody) applies, whether he is registered by virtue of that provision or not; and such a person may only vote by post or by proxy (where he is entitled as an elector to vote by post or, as the case may be, by proxy at the election).

(7) For the purposes of the provisions of this Order a person entitled to vote as an elector at a Scottish parliamentary election is entitled as an elector to vote by post or entitled to vote by proxy at the election if he is shown in the absent voter list for the election as so entitled; and references in those provisions to entitlement as an elector to an absent vote at an election are references to an entitlement as an elector to vote by post or entitlement to vote by proxy at the election.

#### **Absent vote at Scottish parliamentary elections for an indefinite or a particular period**

9.—(1) Where a person applies to the registration officer to vote by post at Scottish parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in his application) the registration officer shall grant the application (subject to paragraph (6) below) if—

- (a) he is satisfied that the applicant is or will be registered in the register of electors; and
- (b) the application meets the requirements set out in Schedule 3 to this Order.

(2) Where a person applies to the registration officer to vote by proxy at Scottish Parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in his application), the registration officer shall grant the application, (subject to paragraph (6) below) if—

- (a) he is satisfied that the applicant is eligible to vote by proxy at elections to which the application relates,
- (b) he is satisfied that the applicant is or will be registered in the register of electors, and
- (c) the application meets the requirements set out in Schedule 3.

(3) For the purposes of this article, a person is eligible to vote by proxy at Scottish parliamentary elections—

- (a) if he is or will be registered as a service voter;
- (b) if he cannot reasonably be expected—
  - (i) to go in person to the polling station allotted or likely to be allotted to him under this Order; or
  - (ii) to vote unaided there,by reason of blindness or other physical incapacity;

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<sup>(4)</sup> Section 7 was substituted by the 2000 Act, section 4.

<sup>(5)</sup> Section 7A was inserted by the 2000 Act, section 5.

- (c) if he cannot reasonably be expected to go in person to that polling station by reason of the general nature of his occupation, service or employment or that of his spouse or by reason of his attendance on a course provided by an educational institution or that of his spouse; or
  - (d) if he cannot go in person from his qualifying address to that polling station without making a journey by air or sea.
- (4) The registration officer shall keep a record of those whose applications under this article have been granted showing—
- (a) whether their applications were to vote by post or proxy for an indefinite or a particular period (specifying that period);
  - (b) in the case of those who may vote by post, the addresses provided by them in their application as the addresses to which their ballot papers are to be sent; and
  - (c) in the case of those who may vote by proxy, the names and addresses of those appointed as their proxies.
- (5) The registration officer shall remove a person from the record kept under paragraph (4) above—
- (a) if he applies to the registration officer to be removed;
  - (b) in the case of any registered person, if he ceases to be registered or registered at the same qualifying address or ceases to be, or becomes, registered in pursuance of—
    - (i) a service declaration, or
    - (ii) a declaration of local connection;
  - (c) in the case of any person shown in the record as voting by proxy, if the registration officer gives notice that he has reason to believe there has been a material change of circumstances; or
  - (d) in the case of a person who applied to vote by post or proxy for a particular period, once that period has expired.
- (6) A person shown in the record kept under paragraph (4) above as voting by post or, as the case may be, voting by proxy (in either case, whether for an indefinite period or for a particular period specified in his application) may subsequently alter his choice on an application to the registration officer that meets the requirements set out in Schedule 3 and the registration officer shall amend the record accordingly.

#### **Absent vote at a particular Scottish parliamentary election and absent voters' list**

**10.**—(1) Where a person applies to the registration officer to vote by post, or to vote by proxy, at a particular Scottish parliamentary election, the registration officer shall grant the application (subject to paragraph (4) below) if—

- (a) he is satisfied in the case of an application to vote by proxy that the applicant's circumstances on the date of the poll will be or are likely to be such that he cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to him under this Order;
- (b) he is satisfied that the applicant is or will be registered in the register; and
- (c) the application meets the requirements set out in Schedule 3.

(2) Paragraph (1) above does not apply to a person who is included in the record kept under article 9 above but such a person may, in respect of a particular Scottish parliamentary election, apply to the registration officer—

- (a) for his ballot papers to be sent to a different address; or
- (b) to vote by proxy,

if he is shown in the record so kept as voting by post.

(3) The registration officer shall grant an application under paragraph (2) above if it meets the requirements set out in Schedule 3.

(4) Subject to paragraph (2) above, the registration officer shall, in respect of each Scottish parliamentary election, keep a special list (“the absent voters list”) consisting of—

- (a) a list of—
  - (i) those who are for the time being shown in the record kept under article 9 as voting by post (excluding those so shown whose applications under paragraph (2) above to vote by proxy at the election have been granted), together with the addresses provided by them in their applications under article 9 or, as the case may be, paragraph (2) above as the addresses to which their ballot papers are to be sent; and
  - (ii) those whose applications under paragraph (1) above to vote by post at the election have been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent; and
- (b) a list (“the list of proxies”) of those who are for the time being shown in the record kept under article 9 as voting by proxy or whose applications under this article to vote by proxy at the election have been granted, together with the names and addresses of those appointed as their proxies.

### **Proxies at Scottish parliamentary elections**

**11.**—(1) Subject to the provisions of this article, any person is capable of being appointed proxy to vote for another (in this article and article 12 referred to as “the elector”) at any Scottish parliamentary election and may vote in pursuance of the appointment.

(2) The elector cannot have more than one person at a time appointed as proxy to vote for him at a Scottish parliamentary election.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at a Scottish parliamentary election—

- (a) if he is subject to any legal incapacity (age apart) to vote at that election as an elector; or
- (b) if he is neither a Commonwealth citizen nor a citizen of the Republic of Ireland nor a relevant citizen of the Union.

(4) A person is not capable of voting as proxy at a Scottish parliamentary election unless on the date of the poll he has attained the age of eighteen.

(5) A person is not entitled to vote as proxy in any constituency at the same Scottish parliamentary election on behalf of more than two electors of whom that person is not the husband, wife, parent, grandparent, brother, sister, child or grandchild.

(6) Where the elector applies to the registration officer for the appointment of a proxy to vote for him at Scottish parliamentary elections (whether for an indefinite period or for a particular period specified in his application), the registration officer shall make the appointment if the application meets the requirements set out in Schedule 3 and he is satisfied that the elector is or will be—

- (a) registered in the register of electors for that election; and
- (b) shown in the record kept under article 9 as voting by proxy at such elections, and that the proxy is capable of being and willing to be appointed to vote as proxy at such elections.

(7) Where the elector applies to the registration officer for the appointment of a proxy to vote for him at a particular Scottish parliamentary election, the registration officer shall make the appointment if the application meets the requirements set out in Schedule 3 and he is satisfied that the elector is or will be—

- (a) registered in the register of electors for that election; and
  - (b) entitled to vote by proxy at that election by virtue of an application under article 10,
- and that the proxy is capable of being and willing to be appointed.
- (8) The appointment of a proxy under this article is to be made by means of a proxy paper issued by the registration officer.
- (9) The appointment may be cancelled by the elector by giving notice to the registration officer and shall also cease to be in force, where the appointment related to a Scottish parliamentary election or Scottish parliamentary elections, on the issue of a proxy paper appointing a different person to vote for him at a Scottish parliamentary election or Scottish parliamentary elections (whether in the same Scottish parliamentary constituency or elsewhere); and where the appointment was for a particular period, the appointment shall cease to be in force once that period expires.
- (10) Subject to paragraph (9) above, the appointment shall remain in force—
- (a) in the case of an appointment for a particular election, for that election; and
  - (b) in any other case, while the elector is shown as voting by proxy in the record kept under article 9 in pursuance of the same application under that article.

### **Voting as proxy**

- 12.—(1) A person entitled to vote as proxy at a Scottish parliamentary election may do so in person at the polling station allotted to the elector under this Order unless he is entitled to vote by post as proxy for the elector at the election, in which case he may vote by post.
- (2) Where a person is entitled to vote by post as proxy for the elector at any election, the elector may not apply for a ballot paper for the purpose of voting in person at the election.
- (3) For the purposes of this Order, a person entitled to vote as proxy for another at a Scottish parliamentary election is entitled so to vote by post if he is included in the list kept under paragraph (7) below in respect of the election.
- (4) Where a person applies to the registration officer to vote by post as proxy at Scottish parliamentary elections (whether for an indefinite period or for a particular period specified in his application), the registration officer shall grant the application if—
- (a) the registration officer is satisfied that the elector is or will be registered in the register of electors; and
  - (b) there is in force an appointment of the applicant as the elector's proxy to vote for him
- and the application meets the requirements set out in Schedule 3.
- (5) The registration officer shall keep a record of those whose applications under paragraph (4) have been granted showing—
- (a) whether their applications were to vote by post as proxy for an indefinite or a particular period (specifying that period); and
  - (b) the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.
- (6) Where, in the case of a particular election, a person included in the record kept under paragraph (5) above applies to the registration officer for his ballot papers to be sent to a different address, the registration officer shall grant the application if it meets the requirements set out in Schedule 3.
- (7) The registration officer shall, in respect of each Scottish parliamentary election, keep a special list of—
- (a) those who are for the time being included in the record kept under paragraph (5) above, together with the addresses provided by them in their applications under paragraph (4) or,

as the case may be, paragraph (6) above as the addresses to which their ballot papers are to be sent; and

- (b) those whose applications under paragraph (4) above have been granted in respect of the election concerned, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent,

and shall forthwith supply to the constituency returning officer a copy of that list on completion of the compilation of it.

- (8) The registration officer shall remove a person from the record kept under paragraph (5) above—
  - (a) if he applies to the registration officer to be removed;
  - (b) in the case of a person who applied to vote by post as proxy for a particular period, once that period expires;
  - (c) if the elector ceases to be registered in the register of electors; or
  - (d) if the appointment of the person concerned as the elector’s proxy ceases to be in force (whether or not he is re appointed).

#### **Absent voting at elections: miscellaneous**

**13.**—(1) Section 59 of the 1983 Act<sup>(6)</sup> (supplemental provisions as to members of forces and service voters) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications:—

- (a) in subsection (3)(a), “this Act” shall be construed as including a reference to this Order in connection with the rights conferred by this Order on a person having a service qualification by virtue of section 14(1)(a) or (b) of that Act in relation to the making and cancellation of appointments of a proxy and in relation to voting by post; and
- (b) in subsection (3)(b), “this Act and any regulations made under it” shall be similarly construed.

(2) Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections) has effect.

(3) Schedule 4 (which makes provision in connection with the issue and receipt of postal ballot papers) has effect.

#### **Combination of polls**

**14.**—(1) Where the polls at a Scottish parliamentary general election and an ordinary local government election are to be taken on the same date, they shall be taken together.

(2) Where the polls at a Scottish parliamentary election and another election for related areas are to be taken on the same date but are not required by paragraph (1) above to be taken together, they may nevertheless be so taken if the returning officer for each election thinks fit.

(3) In paragraph (2) above the reference to another election means a local government election; and for the purposes of that paragraph two areas are related if one is coterminous with or situated wholly or partly within the other.

(4) Where the polls at a Scottish parliamentary election and a local government election are combined under this article the cost of taking the combined polls (excluding any cost solely attributable to one election) and any cost attributable to their combination shall be apportioned in such proportions as the Secretary of State may determine.

(5) Schedule 5 (which makes provision about the combination of polls) has effect.

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<sup>(6)</sup> Section 59 was amended by the 2000 Act, Schedule 1, paragraph 16.

### **Constituency returning officers**

15.—(1) The constituency returning officer for a Scottish parliamentary election in a constituency other than the Orkney Islands and the Shetland Islands shall be the person who under section 25 of the 1983 Act (returning officers: Scotland) is the returning officer for parliamentary elections in that parliamentary constituency.

(2) The constituency returning officer for a Scottish parliamentary election in the Orkney Islands shall be the person who, under section 41 of the 1983 Act (local government elections in Scotland) is, or may discharge the functions of, the returning officer at elections of councillors for the Orkney Islands Council.

(3) The constituency returning officer for a Scottish parliamentary election in the Shetland Islands shall be the person who, under that section 41, is, or may discharge the functions of, the returning officer at elections of councillors for the Shetland Islands Council.

### **Officers of councils to be placed at disposal of returning officers**

16.—(1) Every local authority in Scotland shall place at the disposal of the constituency returning officer for a constituency wholly or partly situated in their area, for the purpose of assisting the constituency returning officer in the discharge of any functions conferred on him in relation to a Scottish parliamentary election, the services of officers employed by the authority.

(2) Every local authority in Scotland shall place at the disposal of the regional returning officer for a region wholly or partly situated in their area, for the purpose of assisting the regional returning officer in the discharge of any function conferred on him in relation to a Scottish parliamentary election, the services of officers employed by the authority.

### **Returning officers: discharge of functions**

17.—(1) A returning officer at a Scottish parliamentary election may, in writing, appoint one or more persons to discharge all or any of his functions.

(2) Except in the case of an election to fill a vacancy in the seat of a constituency member, it shall be the duty of each regional returning officer and each constituency returning officer for a Scottish parliamentary constituency within that region to co operate with each other in the discharge of their functions.

(3) The duty imposed by paragraph (2) above applies as between constituency returning officers in any region as well as between such officers and the regional returning officer for that region.

### **Returning officers: general**

18.—(1) A Scottish parliamentary election is not liable to be questioned 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) A person is not subject to any incapacity to vote at a Scottish parliamentary election by reason of being or acting as a constituency returning officer or a regional returning officer at that election.

### **Payments by and to returning officers**

19. Section 29 of the 1983 Act<sup>(7)</sup> (payments by and to returning officers) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications:—

- (a) any reference to a parliamentary election shall be construed as a reference to an election for membership of the Scottish Parliament;

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(7) Section 29 is amended by the 2000 Political Parties Act, Schedule 21, para 6(3): the amendments are not yet in force.



- (b) any reference to a returning officer shall be construed as a reference to a constituency returning officer and a regional returning officer;
- (c) subsections (1) and (2) shall be disregarded;
- (d) the reference in subsection (5) to “section 30 below” shall be construed as a reference to article 20 below; and

as if in subsection (8), for “Regulations may” there were substituted “the Secretary of State may by regulations”;

and as if after subsection (8) there were inserted—

“(8A) Any order made under subsection (3) above and any regulations made under subsection (8) above may make different provision in relation to different cases or in relation to different classes of case.”.

### **Taxation of returning officer’s accounts**

**20.**—(1) An application for the accounts of a constituency returning officer or a regional returning officer to be taxed shall be made to the Auditor of the Court of Session.

(2) On any such application the Auditor has jurisdiction to tax the account in such manner and at such time and place as he thinks fit, and finally to determine the amount payable to the constituency returning officer or, as the case may be, regional returning officer.

(3) On any such application the returning officer may apply to the Auditor to examine any claim made by any person against him in respect of matters charged in the account; and the Auditor, after notice given to the claimant and after giving him an opportunity to be heard and to tender any evidence, may allow or disallow or reduce the claim objected to with or without costs; and the determination of the Auditor shall be final for all purposes and against all persons.

### **Loan of equipment for Scottish parliamentary elections**

**21.**—(1) Any ballot boxes, fittings and compartments provided for parliamentary elections out of money provided by Parliament, may, on request, be lent to a constituency returning officer at a Scottish parliamentary election on such terms and conditions as the Secretary of State 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 a constituency returning officer at a Scottish parliamentary election on such terms and conditions as may be agreed.

### **Effect of registers**

**22.**—(1) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, shall for any purpose of this Part relating to him as elector be conclusive that until the date given in the entry he is not of voting age nor entitled to be treated as an elector except for the purposes of a Scottish parliamentary election at which the date fixed for the poll is that or a later date.

(2) A person registered as a local government elector, or entered in the list of proxies, shall not be excluded from voting at a Scottish parliamentary election on any of the grounds set out in paragraph (3) below; but this shall not prevent the rejection of the vote on a scrutiny, or affect his liability to any penalty for voting.

(3) The grounds referred to in paragraph (2) above are—

- (a) that he is not of voting age;
- (b) that he is not, or, on the relevant date or the date of his appointment (as the case may be), was not—

- (i) a Commonwealth citizen;
- (ii) a citizen of the Republic of Ireland,
- (iii) a relevant citizen of the Union;
- (c) that he is, or, on the relevant date or the date of his appointment (as the case may be), was, otherwise subject to any other legal incapacity to vote.
- (4) In paragraph (3) above, the “relevant date” means—
  - (a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act(8), the 15th October immediately preceding the date of publication of the register;
  - (b) in relation to any other person registered in the register, the relevant date for the purposes of section 4 of the 1983 Act(9).

### **Effect of misdescription**

- 23.** No misnomer or inaccurate description of any person or place named—
- (a) in the register of electors; or
  - (b) in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Order,

affects the full operation of the 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.

### **Discharge of registration duties**

**24.—(1)** A registration officer shall comply with any general or specific directions which may be given by the Secretary of State, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the 2000 Political Parties Act, with respect to the arrangements to be made by the registration officer in carrying out his functions under this Order.

(2) Any of the duties and powers of a registration officer under this Order may be performed and exercised by any deputy for the time being approved by the local authority which appointed the registration officer, and the provisions of this Order apply to any such deputy so far as respects any duties or powers to be performed or exercised by him as they apply to the registration officer.

(3) It shall be the duty of each local authority to assign such officers to assist the registration officer appointed by that authority as may be required for carrying out his functions under this Order.

### **Payment of expenses of registration**

**25.—(1)** Any expenses properly incurred by a registration officer in the performance of his functions under this Order (in this Order referred to as “registration expenses”) shall be paid by the local authority by whom the registration officer was appointed.

(2) Any fees paid to the registration officer under this Order shall be accounted for by him and paid to the local authority by whom he was appointed.

(3) On the request of a registration officer for an advance on account of registration expenses, the local authority by whom the registration officer was appointed may, if they think fit, make such an advance to him of such an amount and subject to such conditions as they may approve.

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(8) Section 13 was substituted by the 2000 Act, Schedule 1, paragraph 6.

(9) Section 4 was substituted by the 2000 Act, section 1(2).

## Personation

26.—(1) A person shall be guilty of a corrupt practice if he commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person shall be deemed to be guilty of personation at a Scottish parliamentary election if he—

- (a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or
- (b) votes in person or by post as proxy—
  - (i) for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or
  - (ii) when he knows or has reasonable grounds for supposing that his appointment as proxy is no longer in force.

(3) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.

## Other voting offences

27.—(1) A person shall be guilty of an offence if—

- (a) he votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector at a Scottish parliamentary election, or at Scottish parliamentary elections, knowing that he is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
- (b) he applies for the appointment of a proxy to vote for him at any Scottish parliamentary election or at Scottish parliamentary elections knowing that he or the person to be appointed is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
- (c) he votes, whether in person or by post, as proxy for some other person at a Scottish parliamentary election, knowing that that person is subject to a legal incapacity to vote.

(2) For the purposes of paragraph (1) above, references to a person being subject to a legal incapacity to vote do not, in relation to things done before polling day at the election or first election at or for which they are done, include his being below voting age if he will be of voting age on that day.

(3) A person shall be guilty of an offence if—

- (a) he votes as elector—
  - (i) more than once in any constituency at a poll for the return of a constituency member; or
  - (ii) more than once in any constituency at a poll for the return of regional members; or
  - (iii) in more than one constituency at a Scottish parliamentary general election;
- (b) he votes as elector in person at a Scottish parliamentary election at which he is entitled to vote by post;
- (c) he votes as elector in person at a Scottish parliamentary election, knowing that a person appointed to vote as his proxy at the election either has already voted in person at the election or is entitled to vote by post at the election; or
- (d) he applies for a person to be appointed as his proxy to vote for him at Scottish parliamentary elections in any constituency without applying for the cancellation of a previous appointment of a third person then in force in respect of that or another

constituency or without withdrawing a pending application for such an appointment in respect of that or another constituency.

- (4) A person shall be guilty of an offence if—
- (a) he votes as proxy for the same elector either—
    - (i) more than once in the same constituency at any Scottish parliamentary election; or
    - (ii) in more than one constituency at a Scottish parliamentary general election;
  - (b) he votes in person as proxy for an elector at a Scottish parliamentary election at which he is entitled to vote by post as proxy for that elector; or
  - (c) he votes in person as proxy for an elector at a Scottish parliamentary election knowing that the elector has already voted in person at the election.

(5) A person shall also be guilty of an offence if he votes at a Scottish parliamentary election in any constituency as proxy for more than two persons of whom he is not the husband, wife, parent, grandparent, brother, sister, child or grandchild.

(6) A person shall also be guilty of an offence if he knowingly induces or procures some other person to do an act which is, or but for that other person's want of knowledge would be, an offence by that other person under the foregoing paragraphs of this article.

(7) For the purposes of this article a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted, but for the purpose of determining whether an application for a ballot paper constitutes an offence under paragraph (4) above, a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper shall, if he does not exercise that right, be disregarded.

- (8) An offence under this article shall be an illegal practice, but—
- (a) the court before whom a person is convicted of any such offence may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act (as applied by this Order)<sup>(10)</sup>; and
  - (b) a candidate shall not be liable, nor shall his election be avoided, for an illegal practice under this article of any agent of his other than an offence under paragraph (6) above.

(9) Where a person is entitled to give two votes in an election (whether in person as elector or proxy, or by post as elector or proxy) and so exercises that right he shall, for the purposes of this article, be treated as voting once in relation to each poll for which his votes are given.

### **Breach of official duty**

**28.**—(1) If a person to whom this article applies is, without reasonable cause, guilty of any act or omission in breach of his official duty, he shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale.

(2) No person to whom this article applies shall be liable for breach of his official duty to any penalty at common law and no action for damages shall lie in respect of the breach by such a person of his official duty.

- (3) The persons to whom this article applies are—
- (a) any sheriff clerk, registration officer, returning officer or presiding officer;
  - (b) any official designated by a universal postal service provider (being a universal service provider as defined by section 4(3) of the Postal Services Act 2000); and

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<sup>(10)</sup> By Schedule 6 to this Order.

- (c) any deputy of a person mentioned in sub paragraph (a) or (b) or any person appointed to assist or in the course of his employment assisting a person so mentioned in connection with his official duties,

and “official duty” shall for the purpose of this article be construed accordingly, but shall not include duties imposed otherwise than by the law relating to Scottish parliamentary elections or the registration of local government electors.

### **Tampering with nomination papers, ballot papers etc**

**29.**—(1) A person shall be guilty of an offence, if, at a Scottish parliamentary election, he—

- (a) fraudulently defaces or fraudulently destroys any nomination paper;
- (b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any declaration of identity or official envelope used in connection with voting by post;
- (c) without due authority supplies any ballot paper to any person;
- (d) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in;
- (e) fraudulently takes out of the polling station any ballot paper;
- (f) 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 the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(2) A person shall be guilty of an offence if—

- (a) at a Scottish parliamentary election, he forges any nomination paper, delivers to a returning officer any nomination paper knowing it to be forged, or forges or counterfeits any ballot paper or the official mark on any ballot paper;
- (b) he signs any nomination paper as candidate or as nominating officer for any registered political party (or as a person authorised by such officer), or in any other capacity certifies the truth of any statement contained in it, knowing such statement to be false; or
- (c) he fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(3) If a returning officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers, is guilty of an offence under this article, he shall be liable—

- (a) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both;
- (b) on summary conviction, to a fine not exceeding the amount specified as level 5 on the standard scale, or to imprisonment for a term not exceeding three months, or to both.

(4) If any other person is guilty of an offence under this article he shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale, or to imprisonment for a term not exceeding three months, or to both.

(5) In this article “nomination paper” includes a regional list of a registered party.

### **Requirement of secrecy**

**30.**—(1) The following persons attending at a polling station, namely—

- (a) a returning officer or a member of his staff;

- (b) a presiding officer or clerk;
- (c) a candidate (including a candidate on a party's regional list);
- (d) a nominating officer of a registered party which has submitted a regional list;
- (e) an election agent;
- (f) a polling agent,

shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person before the poll is closed any information as to—

- (i) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;
- (ii) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or
- (iii) the official mark.

(2) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not—

- (a) ascertain or attempt to ascertain at the counting of the votes the number on the back of any ballot paper;
- (b) communicate any information obtained at the counting of the votes as to the candidate for whom or, as the case may be, registered political party for which, any vote is given on any particular ballot paper.

(3) No person shall—

- (a) interfere with or attempt to interfere with a voter when recording his vote;
- (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom or, as the case may be, the registered political party for which, a voter in that station is about to vote or has voted;
- (c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom or, as the case may be, the registered political party for which a voter in that station is about to vote or has voted, or as to the number on the back of a ballot paper given to a voter at that station; or
- (d) directly or indirectly induce a voter to display a ballot paper after he has marked it so as to make known to any person the name of the candidate for whom or, as the case may be, the registered political party for which, he has or has not voted.

(4) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not—

- (a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark;
- (b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number on the back of any ballot paper sent to any person;
- (c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on the back of any ballot paper; or
- (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the name of the candidate for whom or, as the case may be, the registered political party for which, any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(5) No person having undertaken to assist a voter with disabilities to vote shall communicate at any time to any person any information as to the name of the candidate for whom or, as the case may be, the registered political party for which, that voter intends to vote or has voted, or as to the number on the back of a ballot paper given for the use of that voter.

(6) If a person acts in contravention of this article he shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale or to imprisonment for a term not exceeding three months.

(7) In this article a voter with disabilities is a voter who has made a declaration under the Scottish Parliamentary Election Rules set out in Schedule 2 to this Order that he is so incapacitated by his blindness or other incapacity or by his inability to read, as to be unable to vote without assistance.