
STATUTORY INSTRUMENTS

2004 No. 293

The European Parliamentary Elections Regulations 2004

PART 4

LEGAL PROCEEDINGS

Interpretation of Part 4

- 86.** In this Part of these Regulations, unless the context otherwise requires—
- “appropriate officer” means the returning officer;
 - “candidate” has the same meaning as in Part 2 of these Regulations;
 - “costs” includes charges and expenses;
 - “declaration as to election expenses” means a declaration made under regulation 52;
 - “elective office” means any office to which a local government election is held in England or Wales;
 - “judicial office” includes the office of justice of the peace;
 - [^{F1}“Licensing Acts” means the Licensing Act 2003 or, in relation to Scotland, the Licensing (Scotland) Act 2005, or in relation to Gibraltar, the Licensing and Fees Act, the Clubs Act, the Entertainment Act and the Leisure Areas (Licensing) Act 2001;]
 - “money” and “pecuniary reward” shall be deemed to include—
 - (a) any office, place or employment, and
 - (b) any valuable security or other equivalent of money, and
 - (c) any valuable consideration,and expressions referring to money shall be construed accordingly;
 - “payment” includes any pecuniary or other reward;
 - “prescribed” means prescribed by rules of court; and
 - “public office” in relation to Scotland means any office held in Scotland—
 - (a) under the Crown, or
 - (b) under the charter of a city or [^{F2}burgh], or
 - (c) under the Acts relating to local government or public health or public education,whether the office is that—
 - (i) of mayor, provost, chief magistrate, chairman, alderman, councillor, member of a board, commission or other local authority in any local government or other area; or
 - (ii) of proper officer or other officer under a council, board, commission or other authority; or
 - (iii) of any other office to which a person is elected or appointed under any such charter or enactment as is mentioned above, including any other municipal or parochial office; and
 - “return as to election expenses” means a return made under regulation 51.

Status: Point in time view as at 30/01/2009.

Changes to legislation: There are currently no known outstanding effects for the The European Parliamentary Elections Regulations 2004, PART 4. (See end of Document for details)

Textual Amendments

- F1** Words in reg. 86 substituted (30.1.2009) by [The European Parliamentary Elections \(Amendment\) Regulations 2009 \(S.I. 2009/186\)](#), regs. 1(2), **33(a)**
- F2** Word in reg. 86 substituted (30.1.2009) by [The European Parliamentary Elections \(Amendment\) Regulations 2009 \(S.I. 2009/186\)](#), regs. 1(2), **33(b)**

Computation of time for purposes of Part 4

87. Regulation 32 applies in computing any period of time for the purposes of this Part of these Regulations as for the purposes of Part 2 of these Regulations.

Method of questioning European Parliamentary elections

88.—(1) No European Parliamentary election and no declaration of the result by the returning officer under rule 56 of the European Parliamentary elections rules shall be questioned except by a petition complaining of an undue election or undue declaration (“a European Parliamentary election petition”) presented in accordance with this Part of these Regulations.

(2) A petition complaining that no declaration of the result has been given by the returning officer shall be deemed to be a European Parliamentary election petition and the High Court—

- (a) may make such order on the petition as they think expedient for compelling a declaration to be made; or
- (b) may allow the petition to be heard by an election court as provided with respect to ordinary European Parliamentary election petitions.

(3) No European Parliamentary election petition may be brought on the grounds of the commission of corrupt or illegal practices, except those in regulations 23 and 24.

(4) No European Parliamentary election petition may be brought where an application may be made under section 11 of the 2002 Act.

Presentation and service of European Parliamentary election petitions

89.—(1) A European Parliamentary election petition may be presented by one or more of the following persons—

- (a) a person who voted as an elector at the election or who had a right so to vote; or
- (b) a person claiming to have had a right to be elected or returned at the election; or
- (c) a person alleging himself to have been a candidate at the election.

[^{F3}(1A) The reference in paragraph (1)(a) to a person who voted as an elector at an election or who had the right so to vote does not include a person who had an anonymous entry in a register of electors.]

(2) If the petition complains of the conduct of—

- (a) the returning officer,
- (b) any local returning officer,

the officer (or officers) in question shall be deemed to be the respondent (or respondents), together with any MEP returned at the election.

(3) The petition shall be in the prescribed form, state the prescribed matters and be signed by the petitioner, or all the petitioners if more than one, and shall be presented to—

(a) the High Court, where it relates to the combined region or any electoral region wholly in England and Wales,

(b) the Court of Session, where it relates to Scotland.

(4) The petition shall be presented by delivering it to the prescribed officer or otherwise dealing with it in the prescribed manner; and the prescribed officer shall send a copy of it to the returning officer of the electoral region to which the petition relates, who shall forthwith publish it in that electoral region.

(5) The petition shall be served in such manner as may be prescribed.

Textual Amendments

F3 Reg. 89(1A) inserted (30.1.2009) by [The European Parliamentary Elections \(Amendment\) Regulations 2009 \(S.I. 2009/186\)](#), regs. 1(2), **34**

Time for presentation or amendment of European Parliamentary election petition

90. A European Parliamentary election petition shall be presented within 21 days after the day on which the result of the election was declared under rule 56 of the European Parliamentary elections rules.

Constitution of election court and place of trial

91.—(1) A European Parliamentary election petition shall be tried by two judges on the rota for the trial of parliamentary election petitions, and the judges for the time being on that rota shall, unless they otherwise agree, try the European Parliamentary election petitions standing for trial according to their seniority, and the judges presiding at the trial of a European Parliamentary election petition are hereinafter referred to as the election court.

(2) The election court has, subject to the provisions of these Regulations, the same powers, jurisdiction and authority as a judge of the High Court (or, in Scotland, a judge of the Court of Session presiding at the trial of a civil cause without a jury) and shall be a court of record.

(3) In the application of this regulation to a European Parliamentary election relating to the combined region, in paragraph (1), after the word “petitions”, in the first place where it occurs, insert “and a judge of the Gibraltar Supreme court”.

Judges' expenses and reception: England and Wales

92. In relation to the trial of a European Parliamentary election petition in England (including the combined region) and Wales, the travelling and other expenses of the judges and all expenses properly incurred in providing them with necessary accommodation and with a proper court shall be defrayed by the Treasury out of moneys provided by Parliament.

Judges' expenses and reception: Scotland

93. In relation to the trial of a European Parliamentary election petition in Scotland the travelling and other expenses of the judges, and of the officer or officers in attendance on them, and all expenses properly incurred in providing the judges with a proper court shall be defrayed by the Treasury out of moneys provided by Parliament.

Security for costs

94.—(1) At the time of presenting a European Parliamentary election petition or within three days afterwards the petitioner shall give security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.

(2) The security shall be such amount not exceeding £5,000 as the High Court or a judge of the High Court directs on an application made by the petitioner; and shall be given in the prescribed manner by recognisance entered into by any number of sureties not exceeding four or by a deposit of money, or partly in one way and partly in the other; but in Scotland—

(a) the amount mentioned above shall be such amount not exceeding £5,000 as the Court of Session or a judge of the Court of Session directs and the amount mentioned in subparagraph (b) shall be such amount not exceeding £2,500 as the election court or the sheriff directs; and

(b) the persons finding caution for that amount may exceed four.

(3) Within the prescribed time after giving the security the petitioner shall serve on the respondent in the prescribed manner—

(a) a notice of the presentation of the petition and of the amount and nature of the security, and

(b) a copy of the petition.

(4) Within a further prescribed time, the respondent may object in writing to any recognisance on the ground that any surety is insufficient or is dead or cannot be found or ascertained for want of a sufficient description in the recognisance, or that a person named in the recognisance has not duly acknowledged the recognisance.

(5) An objection to a recognisance shall be decided in the prescribed manner.

(6) If the objection is allowed, the petitioner may within a further prescribed time, remove it by a deposit in the prescribed manner of such sum of money as will, in the opinion of the court or officer having cognisance of the matter, make the security sufficient.

(7) If no security is given as required by this regulation or any objection is allowed and not removed as mentioned above, no further proceedings shall be had on the petition.

Petition at issue

95.—(1) The petition shall be at issue as from the relevant time, as defined by paragraph (2).

(2) In this paragraph “the relevant time” means—

(a) where the petitioner gives the security for costs required by regulation 94 by a deposit of money equal to the amount of the security so required, the time when the security is so given; and

(b) in any other case, the time when—

(i) the time prescribed for the making of objections under regulation 94(4) expires, or

(ii) if such an objection is made, that objection is disallowed or removed,

whichever happens later.

Trial of election issue

96.—(1) A European Parliamentary election petition shall be tried in open court, without a jury, and notice of the time and place of trial shall be given in the prescribed manner, not less than 14 days before the day of trial.

(2) The election court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.

(3) The trial of a European Parliamentary election petition shall be proceeded with notwithstanding that one (or more) of the respondents is no longer an MEP.

(4) On the trial of a petition complaining of an undue election and claiming the seat or office for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

(5) If the petition relates to an election conducted under the European Parliamentary elections rules and it appears that there is an equality of votes between any registered parties or individual candidates at the election, and that the addition of a vote would entitle any of those registered parties or individual candidates to be declared elected then—

- (a) any decision under the provisions as to equality of votes in the European Parliamentary elections rules, as the case may be, shall in so far as it determines the question between those registered parties or individual candidates, be effective also for the purposes of the petition; and
- (b) in so far as that question is not determined by such a decision, the court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

Witnesses

97.—(1) Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in an action tried in the High Court.

(2) On the trial a member of the election court may, by order signed by him, require any person who appears to him to have been concerned in the election to attend as a witness, and any person refusing to obey the order shall be guilty of contempt of court.

(3) The election court may examine any person so required to attend or who is in court although he is not called and examined by any party to the petition.

(4) A witness may, after his examination by the court, be cross-examined by or on behalf of the petitioner and respondent, or either of them.

(5) In Scotland one of the deputies of the Lord Advocate or the procurator-fiscal of the district may, if the Lord Advocate so decides, and shall, if the election court so requests attend the trial of the petition as part of his official duty.

Duty to answer relevant questions

98.—(1) A person called as a witness respecting an election before any election court shall not be excused from answering any question relating to any offence at or connected with the election—

- (a) on the ground that the answer to it may incriminate or tend to incriminate—
 - (i) that person or that person's [^{F4}spouse or civil partner], or
 - (ii) in Scotland, that person; or
- (b) on the ground of privilege.

(2) An answer by a person to a question put by or before any election court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be in any proceeding, civil or criminal, admissible in evidence against—

- (a) that person or that person's [^{F5}spouse or civil partner]; or
- (b) in Scotland, that person.

Status: Point in time view as at 30/01/2009.

Changes to legislation: There are currently no known outstanding effects for the The European Parliamentary Elections Regulations 2004, PART 4. (See end of Document for details)

Textual Amendments

- F4** Words in reg. 98(1)(a)(i) substituted (5.12.2005) by [The Civil Partnership Act 2004 \(Amendments to Subordinate Legislation\) Order 2005 \(S.I. 2005/2114\)](#), reg. 1, **Sch. 8 para. 2(3)**
- F5** Words in reg. 98(2)(a) substituted (5.12.2005) by [The Civil Partnership Act 2004 \(Amendments to Subordinate Legislation\) Order 2005 \(S.I. 2005/2114\)](#), reg. 1, **Sch. 8 para. 2(3)**

Expenses of witnesses

99.—(1) The reasonable expenses incurred by any person in appearing to give evidence at the trial of a European Parliamentary election petition, according to the scale allowed to witnesses on the trial of civil actions, may be allowed to him by a certificate of the election court or of the prescribed officer.

(2) If the witness was called and examined by virtue of regulation 97(2), the expenses referred to in paragraph (1) shall be deemed part of the expenses of providing a court, but otherwise they shall be deemed costs of the petition.

Conclusion of trial of European Parliamentary election petition

100.—(1) At the conclusion of the trial of a European Parliamentary election petition, the election court shall determine whether—

- (a) the member or members whose election is complained of were duly elected,
- (b) some other person or persons should have been declared to be elected, or
- (c) the election of all members for that electoral region was void,

and the determination so certified shall be final to all intents as to the matters at issue on the petition.

(2) The election court shall forthwith certify in writing the determination to the Secretary of State.

(3) If the judges constituting the election court differ as to any matter which they are required to determine, they shall certify that difference and, to the extent that there is such a difference, the result of the election shall stand.

Special case for determination of the High Court

101.—(1) If, on the application of any party to a petition made in the prescribed manner to the High Court, it appears to the High Court that the case raised by the petition can be conveniently stated as a special case, the High Court may direct it to be stated accordingly and the special case shall be heard before the High Court.

(2) In the case of a European Parliamentary election petition, the High Court shall certify to the Secretary of State its decision on the special case.

(3) If it appears to the election court on the trial of a European Parliamentary election petition that any question of law as to the admissibility of evidence or otherwise requires further consideration by the High Court, the election court may postpone the granting of a certificate until the question has been determined by the High Court, and for this purpose may reserve the question by stating a case for the decision of the High Court.

(4) In Scotland the decision of the Court of Session on a special case under paragraph (1) shall be final.

Withdrawal of petition

102.—(1) A petitioner shall not withdraw a European Parliamentary election petition without the leave of the election court or High Court on special application, made in the prescribed manner and at the prescribed time and place.

(2) The application shall not be made until the prescribed notice of the intention to make it has been given in the electoral region to which the petition relates.

(3) Where there are more petitioners than one, the application shall not be made except with the consent of all the petitioners.

(4) If a petition is withdrawn the petitioner shall be liable to pay the costs of the respondent.

Abatement of petition

^{F6}**103.**

Textual Amendments

F6 Reg. 103 omitted (30.1.2009) by virtue of [The European Parliamentary Elections \(Amendment\) Regulations 2009 \(S.I. 2009/186\)](#), regs. 1(2), 35

Costs of petition

104.—(1) All costs of and incidental to the presentation of a European Parliamentary election petition and the proceedings consequent on it, except such as are by these Regulations otherwise provided for, shall be defrayed by the parties to the petition in such manner and in such proportions as the election court or High Court may determine.

(2) In particular—

(a) any costs which in the opinion of the election court or High Court have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or of the respondent, and

(b) any needless expense incurred or caused on the part of the petitioner or respondent,

may be ordered to be defrayed by the parties by whom it has been incurred or caused whether or not they are on the whole successful.

Neglect or refusal to pay costs

105.—(1) Paragraph (2) applies if, in the case of a European Parliamentary election petition a petitioner neglects or refuses for six months after demand to pay to any person summoned as a witness on his behalf or to the respondent any sum certified to be due to that person or the respondent for his costs, and the neglect or refusal is, within one year after the demand, proved to the satisfaction of the High Court, or, in Scotland, the election court.

(2) Where paragraph (1) applies, every person who under these Regulations entered into a recognisance relating to that petition shall be held to be in default of the recognisance, and—

(a) the prescribed officer shall thereupon certify the recognisance to be forfeited, and

(b) it shall be dealt with as if forfeited by the Crown Court,

but in Scotland the prescribed officer shall, where otherwise competent under the provisions of this paragraph—

(i) certify that the conditions contained in the bond of caution have not been fulfilled; and

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- (ii) it shall then be competent for the party or parties interested to register that bond, and do diligence upon it as accords of law.

Appeals and jurisdiction

106.—(1) No appeal lies without the special leave of the High Court from the decision of the High Court on any question of law, whether on appeal or otherwise, under the foregoing provisions of this Part of these Regulations, and if leave to appeal is granted the decision of the Court of Appeal in the case shall be final and conclusive.

(2) The High Court has, subject to the provisions of these Regulations, the same powers, jurisdiction and authority with respect to a European Parliamentary election petition and the proceedings on it as if the petition were an ordinary action within its jurisdiction.

(3) The duties to be performed in relation to European Parliamentary elections by the prescribed officer under this Part shall be performed by such one or more of the masters of the Supreme Court (Queen’s Bench Division) as the Lord Chief Justice may determine.

(4) In the application of this regulation to Scotland, paragraphs (1) and (3) shall be omitted, but the duties to be performed in relation to European Parliamentary elections by the prescribed officer under this Part shall be performed by the Principal Clerk of Session.

Persons convicted of corrupt or illegal practices

107.—(1) Subject to the provisions of paragraph (2) and regulation 112, a candidate or other person convicted of a corrupt or illegal practice—

- (a) shall during the relevant period specified in paragraph (3) be incapable of—
- (i) being registered as an elector or voting at any parliamentary or European Parliamentary election in the United Kingdom or at any local government election in Great Britain,
 - (ii) being registered as a European Parliamentary elector or voting at any European Parliamentary election in Gibraltar,
 - (iii) being elected to the House of Commons or the European Parliament, or
 - (iv) holding any elective office; and
- (b) if already elected to a seat in the House of Commons or the European Parliament, or holding any such office, shall vacate the seat or office as from the date of the conviction.

(2) The incapacity imposed by paragraph (1)(a)(i) applies only to a candidate or other person convicted of a corrupt practice under regulation 23 or of an illegal practice under regulation 24.

(3) For the purposes of paragraph (1) the relevant period is the period beginning with the date of the conviction and ending—

- (a) in the case of a person convicted of a corrupt practice, five years after that date, or
- (b) in the case of a person convicted of an illegal practice, three years after that date,

except that if (at any time within that period of five or three years) a court determines on an appeal by that person against the conviction that it should not be upheld, the relevant period shall end at that time instead.

(4) Where paragraph (1)(b) applies to any person, he shall (subject to paragraph (5)) vacate the seat or office in question at the appropriate time for the purposes of this regulation, namely—

- (a) the end of the period which is the period prescribed by law within which notice of appeal may be given, or an application for leave to appeal may be made, by him in respect of the conviction, or

- (b) if (at any time within that period) that period is extended—
 - (i) the end of the period as so extended, or
 - (ii) the end of the period of three months beginning with the date of the conviction, whichever is the earlier.

(5) If (before the appropriate time mentioned in paragraph (4)) notice of appeal is given, or an application for leave to appeal is made, by such a person in respect of the conviction, he shall vacate the seat or office in question at the end of the period of three months beginning with the date of the conviction unless—

- (a) such an appeal is dismissed or abandoned at any earlier time (in which case he shall vacate the seat or office at that time), or
- (b) at any time within that period of three months the court determines on such an appeal that the conviction should not be upheld (in which case the seat or office shall not be vacated by him).

(6) Where such a person vacates a seat or office in accordance with paragraph (4) or (5), no subsequent determination of a court that his conviction should not be upheld shall entitle him to resume the seat or office.

(7) If a person convicted of a corrupt or illegal practice has already been elected to a seat in the House of Commons or the European Parliament or to any elective office, he shall (in addition to being subject to the incapacities mentioned in paragraph (1)(a)) be suspended from performing any of his functions as a Member of Parliament or a Member of the European Parliament, or (as the case may be) any of the functions of that office, during the period of suspension specified in paragraph (8).

(8) For the purposes of paragraph (7) the period of suspension is the period beginning with the date of the conviction and ending with—

- (a) the date on which the seat or office is vacated in accordance with paragraph (4) or (5), or
- (b) where paragraph (5)(b) applies, the date on which the court determines that the conviction should not be upheld.

(9) Any incapacities or other requirement applying to a person by virtue of paragraph (1) or (7) applies in addition to any punishment imposed under regulation 109 or 110; but each of those regulations has effect subject to regulation 112.

(10) Subject to the provisions of regulation 112 but in addition to any incapacity arising by virtue of paragraph (1) or (7), a candidate or other person convicted of a corrupt practice—

- (a) shall for the period of five years beginning with the date of the conviction, be incapable of holding any public or judicial office in Scotland, and
- (b) if already holding such an office, shall vacate it as from that date.

Application for relief

108.—(1) An application for relief under this regulation may be made to the High Court or an election court or else, if in respect of a payment made in contravention of regulation 48(1) or (2), to a county court.

(2) Where a person makes an application under this regulation he shall notify the Director of Public Prosecutions of the application and the Director or his assistant or representative may attend the hearing of the application and make representations at the hearing in respect of it.

(3) If it is shown to the court by such evidence as to the court seems sufficient—

- (a) that any act or omission of any person would apart from this regulation by reason of being in contravention of these Regulations be an illegal practice, payment, employment or hiring,

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- (b) that the act or omission arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature, and in any case did not arise from any want of good faith, and
- (c) that such notice of the application has been given in the electoral region as to the court seems fit,

and under the circumstances it seems to the court to be just that either that or any other person should not be subject to any of the consequences under these Regulations of the act or omission, the court may make an order allowing the act or omission to be an exception from the provisions of these Regulations making it an illegal practice, payment, employment or hiring and upon the making of the order no person shall be subject to any of the consequences under these Regulations of that act or omission.

- (4) This regulation shall apply to Gibraltar subject to the following modifications—
 - (a) in paragraph (1), for “a county court”, substitute “ the Gibraltar court ”;
 - (b) in paragraph (2), in the case of an application to the Gibraltar court, references in paragraph (2) to the Director of Public Prosecutions shall be construed as references to the Attorney General for Gibraltar.

Prosecution for corrupt practices

109.—(1) A person who is guilty of a corrupt practice shall be liable—

- (a) on conviction on indictment—
 - (i) in the case of a corrupt practice under regulation 23 [^{F7}or paragraph 11 of Schedule 2], to imprisonment for a term not exceeding two years, or to a fine, or to both,
 - (ii) in any other case, to imprisonment for a term not exceeding one year, or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding the statutory maximum, or to both.

(2) If it appears to the court by which any person holding a licence or certificate under the Licensing Acts is convicted of the offence of bribery or treating that the offence was committed on his licensed premises—

- (a) the court shall direct the conviction to be entered in the proper register of licences, and
- (b) the entry shall be taken into consideration by the licensing authority in determining whether they will or will not grant a renewal of the licence or certificate, and may be a ground, if the authority think fit, for refusing its renewal.

Textual Amendments

F7 Words in reg. 109(1)(a)(i) inserted (30.1.2009) by [The European Parliamentary Elections \(Amendment\) Regulations 2009 \(S.I. 2009/186\)](#), regs. 1(2), **36**

Prosecutions for illegal practices

110. A person who is guilty of an illegal practice shall be liable to a fine not exceeding level 5 on the standard scale; and on a prosecution for an illegal practice it shall be sufficient to allege that the person charged was guilty of an illegal practice.

Conviction of illegal practice on charge of corrupt practice

111. A person charged with a corrupt practice may, if the circumstances warrant such finding, be found guilty of an illegal practice (which offence shall for that purpose be an indictable offence), and a person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Mitigation and remission etc

112.—(1) Where any person is subject to any incapacity by virtue of a conviction and any witness who gave evidence against that person upon the proceeding for the conviction is convicted of perjury in respect of that evidence, the incapacitated person may apply to the High Court, and the court, if satisfied that the conviction so far as respects that person was based upon perjury, may order that the incapacity shall thenceforth cease.

(2) In the application of this regulation to Gibraltar, for “High Court” substitute “Gibraltar court”.

Illegal payments

113.—(1) A person guilty of an offence of illegal payment or employment shall, on summary conviction, be liable to a fine not exceeding level 5 on the standard scale; and on a prosecution for such an offence it shall be sufficient to allege that the person charged was guilty of an illegal payment or employment as the case may be.

(2) A candidate or election agent who is personally guilty of an offence of illegal payment or employment shall be guilty of an illegal practice.

(3) Any person charged with an offence of illegal payment or employment may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

Time limit for prosecution

[^{F8}114.—(1) A proceeding against a person in respect of any offence under any provision contained in these Regulations shall be commenced within one year after the offence was committed, and the time so limited by this regulation shall, in the case of any proceedings under the Magistrates’ Court Act 1980 or, in the case of Gibraltar, the Criminal Procedure Act, for any such offence be substituted for any limitation of time contained in those Acts.

(2) A magistrates’ court in England, Wales or Gibraltar may act under paragraph (3) if it is satisfied on an application by a constable or Crown Prosecutor, or in Gibraltar, the Attorney General—

- (a) that there are exceptional circumstances which justify the granting of the application, and
- (b) that there has been no undue delay in the investigation of the offence to which the application relates.

(3) A magistrates’ court may extend the time within which proceedings must be commenced in pursuance of paragraph (1) to not more than 24 months after the offence was committed.

(4) If a magistrates’ court acts under paragraph (3), it may also make an order under paragraph (5) if it is satisfied, on an application by a constable or Crown Prosecutor, or in Gibraltar, the Attorney General, that documents retained by the relevant registration officer in pursuance of rule 66 of the European Parliamentary elections rules may provide evidence relating to the offence.

(5) An order under this paragraph is an order—

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- (a) directing the relevant registration officer not to cause the documents to be destroyed at the expiry of the period of one year mentioned in rule 66 of the European Parliamentary elections rules, and
 - (b) extending the period for which he is required to retain them under that rule by such further period not exceeding 12 months as is specified in the order.
- (6) The making of an order under paragraph (5) does not affect any other power to require the retention of the documents.
- (7) An application under this regulation must be made not more than one year after the offence was committed.
- (8) Any party to—
- (a) an application under paragraph (2), or
 - (b) an application under paragraph (4),
- who is aggrieved by the refusal of the magistrates' court to act under paragraph (3) or to make an order under paragraph (5) (as the case may be) may appeal to the Crown Court or, in Gibraltar, the Supreme Court.
- (9) For the purposes of this regulation—
- (a) in England and Wales, the laying of information;
 - (b) in Gibraltar, the laying of information; and
 - (c) in Scotland, the granting of a warrant to apprehend or cite the accused (if, in relation to an offence alleged to have been committed within the United Kingdom, such warrant is executed without delay),
- shall be deemed to be the commencement of the proceeding.]

Textual Amendments

F8 Reg. 114 substituted (30.1.2009) by [The European Parliamentary Elections \(Amendment\) Regulations 2009 \(S.I. 2009/186\)](#), regs. 1(2), **37**

Prosecution of offences committed outside the United Kingdom

115. Proceedings in respect of an offence under these Regulations alleged to have been committed outside the United Kingdom or Gibraltar by a Commonwealth citizen or citizen of the Union may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom or Gibraltar.

Offences by associations

116. Where—

- (a) any corrupt or illegal practice or any illegal payment, employment or hiring, or
- (b) any offence under regulation 74,

is committed by any association or body of persons, corporate or unincorporate, the members of the association or body who have taken part in the commission of the offence shall be liable to any fine or punishment imposed for that offence by these Regulations.

Evidence by certificate of holding of elections

117. On any prosecution for a corrupt or illegal practice or for any illegal payment, employment or hiring, the certificate of the returning officer at a European Parliamentary election—

- (a) that the election mentioned in the certificate was duly held, and
- (b) that the person named in the certificate was a candidate at the election, and
- (c) that a registered party named in the certificate submitted a list at the election,

shall be sufficient evidence of the facts stated in it.

Evidence by certificate of electoral registration

118. The certificate of a registration officer that any person is or is not, or was or was not at any particular time, duly registered in one of the officer's registers in respect of any address shall be sufficient evidence of the facts stated in it; and a document purporting to be such a certificate shall be received in evidence and presumed to be such a certificate unless the contrary is proved.

Director of Public Prosecutions

119.—(1) Where information is given to the Director of Public Prosecutions that any offence under these Regulations has been committed, it is his duty to make such inquiries and institute such prosecutions as the circumstances of the case appear to him to require.

(2) The Director by himself or by his assistant or by his representative appointed under paragraph (3) may and, if the election court so requests him, shall attend the trial of every European Parliamentary election petition.

(3) The Director may nominate a barrister or solicitor to be his representative for the purposes of this Part of these Regulations.

(4) There shall be allowed to the Director and his assistant or representative for the purposes of this Part (other than his general duties under paragraph (1)) such allowances for expenses as the Treasury may approve.

(5) The costs incurred in defraying the expenses of the Director incurred for those purposes (including the remuneration of his representative) shall, in the first instance, be paid by the Treasury, and shall be deemed to be expenses of the election court; but if for any reasonable cause it seems just to the court so to do, the court shall order all or part of those costs to be repaid to the Treasury by the parties to the petition, or such of them as the court may direct.

(6) In the application of this regulation to Scotland, paragraphs (2) to (5) shall be omitted.

(7) In the application of this regulation to Gibraltar, in paragraph (1) the reference to the Director of Public Prosecutions shall be construed as a reference to the Attorney General for Gibraltar.

Rules of procedure

120.—(1) The authority having for the time being power to make rules of court for the Supreme Court may make rules for the purposes of Part 2 and this Part of these Regulations.

(2) In relation to the power conferred by paragraph (1) to make rules—

(a) that power shall be exercisable by statutory instrument, and be treated for the purposes of the Statutory Instruments Act 1946^{M1} as if conferred by an Act on a Minister of the Crown; and

(b) a statutory instrument containing rules under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament; and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

Status: Point in time view as at 30/01/2009.

Changes to legislation: There are currently no known outstanding effects for the The European Parliamentary Elections Regulations 2004, PART 4. (See end of Document for details)

(3) The above provisions of this regulation do not apply to Scotland, but the Court of Session has power to make acts of sederunt for the purposes of Part 2 and this Part.

(4) The above provisions of this regulation do not apply to Gibraltar courts, but in those courts Gibraltar rules of court apply.

Marginal Citations

M1 1946 c. 36.

Costs

121.—(1) The rules of the Supreme Court with respect to costs to be allowed in actions, causes and matters in the High Court shall in principle and so far as practicable apply to the costs of petition and other proceedings under Part 2 or this Part of these Regulations, and the taxing officer shall not allow any costs higher than would be allowed in any action, cause or matter in the High Court on a common fund basis.

(2) Where any costs or other sums are, under the order of an election court or otherwise under this Part, to be paid by any person, those costs or sums shall be due from that person to the person or persons to whom they are to be paid and, if payable to the Treasury, shall be a debt due to Her Majesty and in either case may be recovered accordingly.

(3) The above provisions of this regulation do not apply to Scotland, but those costs shall, subject to any provision which the Court of Session may make by act of sederunt, be taxed as nearly as possible according to the same principles as expenses between solicitor and client are taxed in a cause in the Court of Session.

(4) The above provisions of this regulation do not apply to Gibraltar courts, but those costs shall be taxed as nearly as possible according to the same principles as expenses between solicitor and client are taxed in a cause in the Gibraltar court.

Services of notices

122.—(1) Any notice, legal process or other document required to be served on any person with reference to any proceeding respecting an election for the purpose of causing him to appear before the High Court, the county court, or any election court, or otherwise or of giving him an opportunity of making a statement, or showing cause, or being heard by himself before any court for any purpose of this Part of these Regulations may be served—

- (a) by delivering it to that person, or by leaving it at, or sending it by post by a registered letter or by the recorded delivery service, to his last known place of abode in the electoral region or, as the case may be, the area of the authority for which the election was held; or
- (b) if the proceeding is before any court in such other manner as the court may direct.

(2) In proving service by post under this regulation it shall be sufficient to prove that the letter was prepaid, properly addressed, and registered or recorded with the postal operator (within the meaning of the Postal Services Act 2000) concerned.

(3) In the application of the above provisions to post sent in Gibraltar, references to the postal operator shall be construed as references to the Gibraltar Post Office.

(4) This regulation does not apply in respect of any proceedings before the Gibraltar court.

Status:

Point in time view as at 30/01/2009.

Changes to legislation:

There are currently no known outstanding effects for the The European Parliamentary Elections Regulations 2004, PART 4.