

2021 No. 437

REPRESENTATION OF THE PEOPLE

**The Scottish Local Government Elections Amendment Order
2021**

Made - - - - 24th November 2021

Coming into force - - 25th November 2021

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 3 and 16 of the Local Governance (Scotland) Act 2004^(a) and all other powers enabling them to do so.

In accordance with section 16(5) of that Act^(b), a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation, commencement and transitional provision

1.—(1) This Order may be cited as the Scottish Local Government Elections Amendment Order 2021.

(2) This Order comes into force on the day after the day on which it is made.

(3) The amendments made by this Order do not apply in relation to an election for which the date of poll is on or before 4 May 2022.

Amendment of the Scottish Local Government Elections Order 2011

2.—(1) Schedule 1 of the Scottish Local Government Elections Order 2011^(c) is amended in accordance with this article.

(2) In rule 7(2)(d) (decisions as to validity of nomination papers), omit “or the home address of the witness”.

(3) In rule 24 (issue of official poll cards and notifications), after paragraph (3) insert—

“(3A) Paragraph (3) does not apply in relation to the sending or delivery of an elector’s official poll card or notification to an elector to whom either of the following provisions of the 1983 Act applies—

(a) section 3(1A) (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months)^(d), or

(a) 2004 asp 9. Section 3 was amended by section 34(6) of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14) and section 6(3) of the Scottish Elections (Reform) Act 2020 (asp 12).

(b) Section 16(5) has been modified by paragraph 5 of Schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(c) S.S.I. 2011/399, as amended by S.S.I. 2012/60, S.S.I. 2012/342, S.S.I. 2016/7, S.S.I. 2016/354, S.S.I. 2020/239.

(d) Section 3(1A) was inserted by section 5(3) of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

(b) section 7A (residence: persons remanded in custody etc.)(a).

(3B) Where, by virtue of paragraph (3A), paragraph (3) does not apply, an elector's official poll card or notification must be sent or delivered to the elector's place of detention.”.

(4) In rule 53(2) (filling of last vacancies), for “shall be made” substitute “is required”.

Amendment of the Representation of the People Act 1983

3.—(1) The Representation of the People Act 1983(b) is amended in accordance with this article.

(2) In section 76(5A) (limitation of election expenses)(c), after paragraph (b) insert—

“(c) reasonable expenses incurred that are reasonably attributable to an individual's disability,

(d) reasonable expenses incurred in providing for the protection of persons or property at rallies or other public events,

(e) reasonable expenses incurred that are reasonably attributable to the translation of anything into another language.”.

(3) After section 88 (publication of time and place for inspection of returns and declarations), insert—

“Scottish local government elections: Publication of time and place for inspection of returns and declarations

88A.—(1) At a local government election in Scotland, the returning officer must, within 10 days after the end of the time allowed for the delivery of returns as to election expenses—

(a) publish a notice, in such manner as the returning officer considers appropriate, of the time and place at which the returns and declarations (including the accompanying documents) can be inspected, and

(b) send a copy of the notice to each of the election agents.

(2) If any return or declaration has not been received by the returning officer before the returning officer publishes a notice under subsection (1)(a), the returning officer must include in the notice a statement that the return or declaration has not been received.

(3) If the return or declaration referred to in subsection (2) is received after the notice is published under subsection (1)(a), the returning officer must, within 10 days after the return or declaration is received—

(a) publish a further notice, in such manner as the returning officer considers appropriate, of the time and place at which the late return or declaration (including the accompanying documents) can be inspected, and

(b) send a copy of the further notice to each of the election agents other than the agent who delivered the late return or declaration or the agent for the candidate who delivered the late declaration.”.

(4) In section 90ZB (Scottish local government elections: meaning of “election expenses”)—

(a) for subsection (2), substitute—

“(2) In this Part of this Act, “election expenses”, in relation to a candidate at such an election, means any expenses incurred at any time in respect of any matter specified in Part 1 of Schedule 4B which is used—

(a) Section 7A was inserted by section 5 of the Representation of the People Act 2000 (c. 2).

(b) 1983 c. 2.

(c) Section 76(5A) was inserted by S.S.I. 2016/354.

- (a) for the purposes of the candidate's election, and
 - (b) after the date when the candidate becomes a candidate at the election.”,
- (b) subsections (3) and (7) are repealed.

St Andrew's House,
Edinburgh
24th November 2021

GEORGE ADAM
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under powers in section 3 and 16 of the Local Governance (Scotland) Act 2004 and makes provision about the conduct of local government elections in Scotland. The Order amends the Scottish Local Government Elections Order 2011 (“the 2011 Order”), and the Representation of the People Act 1983 (“the 1983 Act”).

Article 2 makes a number of amendments to the 2011 Order. Article 2(2) removes wording from rule 7(2)(d) of schedule 1 of the 2011 Order to reflect that the home address of a witness is no longer required in the nomination paper. Article 2(3) adds paragraphs into rule 24 of schedule 1 of the 2011 Order to oblige the returning officer to send an official poll card or notification to a detained prisoner, or a prisoner held on remand, at the place at which they are being detained rather than the address at which they are registered to vote.

Article 2(4) amends rule 53(2) of schedule 1 of the 2011 Order so that, where the last vacancies are filled in accordance with rule 53(1), no further transfer of votes is required. Previously, rule 53(2) provided that no further transfer of votes shall be made. Where the count is conducted by means of an electronic counting system it is possible that the electronic counting system will automatically generate a further transfer of votes where the last vacancies are filled under rule 53(1), albeit this has no effect on the count. Article 2(3) ensures that any automatically generated transfer which occurs after the last vacancies have been filled is not in breach of rule 53(2).

Article 3 makes a number of amendments to the 1983 Act. Article 3(2) inserts new paragraphs (c) to (e) into section 76(5A) of the 1983 Act. Section 76 sets out limits on election expenses including a maximum amount for candidates at a local government election in Scotland. Section 76(5A) lists a number of matters which are not required to be covered by the maximum amount. Article 3(2) provides that reasonable expenses which are: reasonably attributable to a person’s disability; incurred in the protection of persons or property at public events; or reasonably attributable to the translation of anything into a different language, do not count towards this maximum amount of election expenditure.

Article 3(3) inserts new section 88A into the 1983 Act to place a duty on the returning officer to publish a notice of the time and place at which the returns and declarations made in relation to election expenses can be inspected. New section 88A also provides for how this duty is to be performed in the event of late declarations or returns.

Article 3(4) amends section 90ZB of the 1983 Act (as inserted by section 17 of the Local Electoral Administration and Registration Services (Scotland) Act 2006) so as to ensure that the definition of “election expenses” only includes expenditure which is incurred in respect of any matter in schedule 4B of the 1983 Act (also inserted by section 17 of the 2006 Act) which is used for the purposes of the candidate’s election after they became a candidate. Article 3(4) also repeals section 90ZB(3) which provided that the definition of “election expenses” includes expenditure on matters used for the purposes of the candidate’s election before and after they became a candidate. Finally, article 3(4) repeals section 90ZB(7) which is no longer required following the other amendments made by article 3(4).

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