



# Local Government (Scotland) Act 1973

## 1973 CHAPTER 65

### PART III

#### GENERAL PROVISIONS AS TO MEMBERS OF LOCAL AUTHORITIES AND PROCEEDINGS

##### *Qualifications and disqualifications*

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

- (1) A person shall, unless disqualified by virtue of this Act or any other enactment, be qualified to be nominated as a candidate for election as, or to be elected, or to be, a member of a local authority if he has attained the age of [<sup>F1</sup>18] years, is a [<sup>F2</sup>qualifying Commonwealth citizen] or a citizen of the Irish Republic [<sup>F3</sup>or a relevant citizen of the Union] and not subject to any legal incapacity and—
- (a) is, on the day on which he is nominated as a candidate, a local government elector for the area of the authority; or
  - (b) has, during the whole of the twelve months preceding the day on which he is nominated as a candidate, occupied as owner or tenant any land or other premises in the area of the authority; or
  - (c) his principal or only place of work in the twelve months preceding the day on which he is nominated as a candidate has been in the area of the authority; or
  - (d) has, during the whole of the twelve months preceding the day on which he is nominated as a candidate, resided in the area of the authority.

[<sup>F4</sup>(1A) A person who has received a severance payment (within the meaning of section 12 of the Local Governance (Scotland) Act 2004 (asp 9)) shall not be so qualified.]

- (2) In subsection (1) above,

[<sup>F5</sup>“citizen of the Union” shall be construed in accordance with Article 8.1 of the Treaty establishing the European Community (as amended by Title II of the Treaty on European Union) and “relevant citizen of the Union” means such a citizen

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who is not a [<sup>F6</sup>qualifying] Commonwealth citizen or a citizen of the Republic of Ireland; and]

“owner” includes heir of entail in possession, liferenter and beneficiary entitled under any trust to the rents and profits of land or other premises, and does not include fiar of land or other premises subject to a liferent, or tutor, curator, judicial factor or commissioners.

[<sup>F7</sup>(3) For the purposes of this section, a person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either—

- (a) is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom, or
- (b) is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act.

(4) But a person is not a qualifying Commonwealth citizen by virtue of subsection (3) (a) if he does not require leave to enter or remain in the United Kingdom by virtue only of section 8 of the Immigration Act 1971 (exceptions to requirement for leave in special cases).]

#### Textual Amendments

- F1** Word in s. 29(1) substituted (20.1.2005) by [Local Governance \(Scotland\) Act 2004 \(asp 9\), ss. 8, 17\(2\)](#); [S.S.I. 2004/558, art. 2](#)
- F2** Words in s. 29(1) substituted (1.1.2007 for E.W.S. and 1.7.2008 for N.I.) by [Electoral Administration Act 2006 \(c. 22\), ss. 18, 77, Sch. 1 para. 46\(2\)](#); [S.I. 2006/3412, art. 3, Sch. 1 para. 14\(bb\)\(i\)](#) (subject to art. 6); [S.I. 2008/1316, arts. 2\(2\), 4\(z\)\(i\)](#)
- F3** Words in s. 29(1) inserted (1.1.1996) by [S.I. 1995/1948, regs. 1\(2\), 3\(2\)](#)
- F4** S. 29(1A) inserted (14.9.2006) by [Local Governance \(Scotland\) Act 2004 \(asp 9\), ss. 12\(4\), 17\(2\)](#); [S.I. 2006/470, art. 2](#)
- F5** Definition of "citizen of the Union" in s. 29(2) inserted (1.1.1996) by [S.I. 1995/1948, regs. 1\(2\), 3\(2\)](#)
- F6** Word in s. 29(2) inserted (1.1.2007 for E.W.S. and 1.7.2008 for N.I.) by [Electoral Administration Act 2006 \(c. 22\), ss. 18, 77, Sch. 1 para. 46\(3\)](#); [S.I. 2006/3412, {art. 3}](#), [Sch. 1 para. 14\(bb\)\(i\)](#) (subject to art. 6); [S.I. 2008/1316, arts. 2\(2\), 4\(z\)\(i\)](#)
- F7** S. 29(3)(4) inserted (1.1.2007 for E.W.S. and 1.7.2008 for N.I.) by [Electoral Administration Act 2006 \(c. 22\), ss. 18, 77, Sch. 1 para. 46\(4\)](#); [S.I. 2006/3412, art. 3, Sch. 1 para. 14\(bb\)\(i\)](#) (subject to art. 6); [S.I. 2008/1316, arts. 2\(2\), 4\(z\)\(i\)](#)

#### Modifications etc. (not altering text)

- C1** S. 29 modified (8.11.1994) by [1994 c. 39, s. 7\(1\), Sch. 2 para. 3](#) (with s. 7(2)); [S.I. 1994/2850, art. 2, Sch. 2](#)  
S. 29 applied (temp. from 6.4.1995 to 1.4.1996) by [S.I. 1994/3255, art. 3, Sch. I para. 1](#)

## 30 Re-election.

A person ceasing to hold office to which he is elected under [<sup>F8</sup>the Local Government etc. (Scotland) Act 1994] shall, unless he is not qualified or is disqualified, be eligible for re-election.

#### Textual Amendments

- F8** Words in s. 30 substituted (1.4.1996) by [S.I. 1996/739, art. 7\(1\), Sch. 1 Pt. I para. 3\(2\)](#)

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

(1) Subject to subsections (2) and (3) below, a person shall be disqualified for being nominated as a candidate for election as, or for being elected, or for being, a member of a local authority if—

- (a) <sup>F9</sup> .....
- (b) he is a person whose estate has been sequestrated by a court in Scotland or who has been adjudged bankrupt elsewhere than in Scotland; or
- [<sup>F10</sup>(ba) he is subject to a bankruptcy restrictions order;]
- (c) he has, within five years before the day of nomination, or election or since his election, as the case may be, been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
- (d) he is disqualified for being elected or for being a member of that authority under Part III of the [<sup>F11M1</sup>Representation of the People Act 1983].

[<sup>F12</sup>(1A) A person is disqualified for being a member of a joint board if he or a partner of his holds any paid office or employment (other than the office of [<sup>F13</sup>convener or depute convener] of the board) or other place of profit in the gift or disposal of the board.]

(2) Where a person is disqualified under subsection (1) above by reason of his estate having been sequestrated, the disqualification shall cease if and when—

- (a) the sequestration of his estate is recalled or reduced; or
- [<sup>F14</sup>(b) he is discharged under or by virtue of the Bankruptcy (Scotland) Act 1985.]

(3) Where a person is disqualified under subsection (1) above by reason of having been adjudged bankrupt, then—

- (a) if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification shall cease on the date of the annulment;
- (b) if he is discharged with a certificate that the bankruptcy was caused by misfortune without any misconduct on his part, the disqualification shall cease on the date of his discharge; and
- (c) if he is discharged without such a certificate, his disqualification shall cease on the expiration of five years from the date of his discharge.

[<sup>F15</sup>(3A) A person who is for the time being an officer or employee of the Strathclyde Passenger Transport Authority or an employee of a subsidiary of that Authority shall be disqualified for being appointed or for being a member of the Strathclyde Passenger Transport Authority.]

[<sup>F16</sup>(3B) In subsection (1)(ba) above, “bankruptcy restrictions order” means—

- (a) a bankruptcy restrictions order made under section 56A of the Bankruptcy (Scotland) Act 1985;
- (b) a bankruptcy restrictions undertaking entered into under section 56G of that Act;
- (c) a bankruptcy restrictions order made under paragraph 1 of Schedule 4A to the Insolvency Act 1986 (c. 45); or
- (d) a bankruptcy restrictions undertaking entered into under paragraph 7 of that Schedule.]

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F17(4) .....

#### Textual Amendments

- F9** S. 31(1)(a) repealed (20.1.2005) by Local Governance (Scotland) Act 2004 (asp 9), **ss. 7(1)**, 17(2); S.S.I. 2004/558, **art. 2**
- F10** S. 31(1)(ba) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 4(a)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)** (with arts. 4-6, 10)
- F11** Words substituted by Representation of the People Act 1983 (c. 2), s. 206, **Sch. 8 para. 15(b)**
- F12** S. 31(1A) inserted by Local Government and Housing Act 1989 (c. 42, SIF 81:2), **s. 1(4)(b)**
- F13** Words in s. 31(1)(a)(1A) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 92(8)(a)**; S.I. 1996/323, **art. 4(1)(c)**
- F14** S. 31(2)(b) substituted by Bankruptcy (Scotland) Act 1985 (c. 66, SIF 66), s. 75(1), **Sch. 7 para. 12**
- F15** S. 31(3A) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 92(8)(b)**; S.I. 1996/323, **art. 4(1)(c)**
- F16** S. 31(3B) inserted (1.4.2008) by Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), **ss. 4(b)**, 227(3) (with s. 223); S.S.I. 2008/115, **art. 3(1)** (with arts. 4-6, 10)
- F17** S. 31(4) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 92(8)(c), **Sch. 14**; S.I. 1996/323, **art. 4(1)(c)(d)**, **Sch. 2**

#### Modifications etc. (not altering text)

- C2** S. 31 applied (with modifications) (1.4.1996) by S.I. 1995/3026, **arts. 1(2)**, 14
- C3** S. 31(1)(2)(3) applied (temp. from 6.4.1995 to 1.4.1996) by S.I. 1994/3255, **art. 3**, **Sch. I para. 1**

#### Marginal Citations

- M1** 1983 c. 2.

### [<sup>F18</sup>31A Disqualification of officers, employees etc. from remaining members of local authority

- (1) A person elected a member of a local authority who is the holder of any paid office or employment or other place of profit in the gift or disposal of the authority is disqualified from remaining a member of the authority after the relevant day unless the person complies with subsection (2) below.
- (2) A person complies with this subsection by resigning, not later than the relevant day, from that office, employment or, as the case may be, other place of profit.
- (3) A resignation effected in pursuance of subsection (2) above terminates the holding of the office, employment or other place of profit with immediate effect notwithstanding any contrary provision in the terms and conditions under which the office, employment or place of profit is held.
- (4) In this section the relevant day is the day first occurring after that on which the person elected a member of the local authority was, under the local elections rules, declared to be so elected (no account being taken of a day which is a Saturday or Sunday or Christmas Eve, Easter Monday, or a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c. 80) or a day appointed for public thanksgiving or mourning in Scotland).
- (5) In subsection (4) above, the “local elections rules” means an order made under section 3(1) of the Local Governance (Scotland) Act 2004 (asp 9).

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- (6) This section does not affect section 1 (disqualification and political restriction of certain local government officers and staff) of the Local Government and Housing Act 1989 (c. 42).]

#### Textual Amendments

**F18** S. 31A inserted (20.1.2005) by [Local Governance \(Scotland\) Act 2004 \(asp 9\)](#), **ss. 7(2), 17(2)**; [S.S.I. 2004/558](#), **art. 2**

## 32 Proceedings for disqualification.

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

#### Modifications etc. (not altering text)

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

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### 33 Validity of acts done by unqualified persons.

The acts and proceedings of any person elected to an office under [<sup>F19</sup>the Local Government etc. (Scotland) Act 1994] and acting in that office shall, notwithstanding any question as to the validity of his election or his disqualification or want of qualification, be as valid and effectual as if he had been duly elected and qualified.

#### Textual Amendments

F19 Words in s. 33 substituted (1.4.1996) by S.I. 1996/739, art.7(1), Sch. 1 Pt. 1 para. 3(2)

#### Modifications etc. (not altering text)

C5 S. 33 applied (temp. from 6.4.1995 to 1.4.1996) by S.I. 1994/3255, art. 3, Sch. 1 para. 1

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