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## STATUTORY INSTRUMENTS

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# 1999 No. 929

## Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999

### PART XI

#### REPRESENTATION OF THE PEOPLE ACT 1983

##### Interpretation and application

**3.11.1**—(1) In this Part—

“sheriff clerk” means, except in rule 3.11.2, the sheriff clerk of the sheriff court district where the trial of the election petition is to take place;

“the Act” means the Representation of the People Act 1983 <sup>M1</sup>.

(2) This Part applies to election petitions under the Act.

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##### Marginal Citations

M1 1983 c.2.

##### Initiation of proceedings

**3.11.2**—(1) The election petition shall be lodged with the sheriff clerk of a sheriff court district within which the election questioned has taken place.

(2) The sheriff clerk shall without delay transmit it to the sheriff principal who shall forthwith appoint—

- (a) the time and place for trial of the petition;
- (b) the amount of the security to be given by the petitioner; and
- (c) if he thinks fit, answers to be lodged within a specified time after service.

(3) Service in terms of section 136(3) of the Act (security for costs) <sup>M2</sup> shall be effected—

- (a) personally within—
  - (i) 5 days; or
  - (ii) such other period as the sheriff principal may appoint, of the giving of security; or
- (b) by first class recorded delivery post within—
  - (i) 5 days; or
  - (ii) such other period as the sheriff principal may appoint, of the giving of security.

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### Marginal Citations

- M2** Section 136 was amended by the [Representation of the People Act 1985 \(c.50\)](#), [Schedule 4](#), paragraph 48.

### Security for expenses by bond of caution

**3.11.3**—(1) If the security proposed is in whole or in part by bond of caution, it shall be given by lodging with the sheriff clerk a bond for the amount specified by the sheriff principal.

(2) Such bond shall—

- (a) recite the nature of the petition; and
- (b) bind and oblige the cautioner and the petitioner jointly and severally, and their respective heirs, executors and successors whomsoever, that the petitioner shall make payment of all costs, charges and expenses that may be payable by him to any person by virtue of any order or decree pronounced in the petition.

(3) The sufficiency of the cautioner must be attested to the satisfaction of the sheriff clerk, as in the case of judicial bonds of caution.

### Objections to bond of caution

**3.11.4**—(1) Objections to a bond of caution shall be lodged with the sheriff clerk within 14 days of service in terms of section 136(3) of the Act.

(2) Objections shall be heard and disposed of by the sheriff clerk.

(3) If any objection is allowed, it may be removed by a deposit of such sum of money as the sheriff clerk shall determine, made in the manner provided in rule 3.11.5 and within 5 days after the date of the sheriff clerk's determination.

### Security by deposit

**3.11.5**—(1) Security tendered in whole or in part by deposit of money shall be made in such bank as the sheriff clerk may select.

(2) The deposit receipt shall be—

- (a) taken in joint name of the petitioner and the sheriff clerk;
- (b) handed to the sheriff clerk; and
- (c) held by the sheriff clerk subject to the orders of the court in the petition.

### Amendment of pleadings

**3.11.6**—(1) Subject to paragraph (2), the sheriff principal shall have power at any stage to allow the petition and any answers to be amended upon such condition as to expenses or otherwise as he shall think fit.

(2) No amendment altering the ground upon which the election was questioned in the petition as presented shall be competent, except to the extent sanctioned by section 129(6) of the Act (time for presentation or amendment of petition questioning local election).

### Notice of date and place of trial

**3.11.7**—(1) The sheriff clerk shall, as soon as he receives intimation of the time and place fixed for trial—

- (a) display a notice thereof on the walls of his principal office; and
- (b) send by first class post one copy of such notice to—
  - (i) the petitioner;
  - (ii) the respondent;
  - (iii) the Lord Advocate; and
  - (iv) the returning officer.

(2) The returning officer on receipt of notice from the sheriff clerk shall forthwith publish the time and place fixed for trial in the area for which the election questioned was held.

(3) Subject to paragraph (4), display of a notice in accordance with paragraph (1)(a) shall be deemed to be notice in the prescribed manner within the meaning of section 139(1) of the Act (trial of petition) and such notice shall not be vitiated by any miscarriage of or relating to all or any copies sent by post.

(4) At any time before the trial it shall be competent for any party interested to bring any miscarriage of notice sent by post before the sheriff principal, who shall deal therewith as he may consider fit.

#### **Clerk of court**

**3.11.8** The sheriff clerk shall attend and act as clerk of court at the trial of the petition.

#### **Shorthand writer's charges**

**3.11.9** The shorthand writer's charges, as approved by the sheriff principal, shall be paid in the first instance by the petitioner.

#### **Appeals**

**3.11.10** The application to state a special case referred to in section 146(1) of the Act (special case for determination of the Court of Session) shall be made by minute in the petition proceedings.

#### **List of votes objected to and of objections**

**3.11.11**—(1) When a petitioner claims the seat for an unsuccessful candidate, alleging that such candidate had a majority of lawful votes, he and the respondent shall, 5 days before the day fixed for the trial, respectively deliver to the sheriff clerk, and send by first class post to the other party and the Lord Advocate, a list of the votes intended to be objected to, and of the objections to each such vote.

(2) The sheriff clerk shall allow inspection of such list to all parties concerned.

(3) No evidence shall be allowed to be given against any vote or in support of any objection not specified in such list, except by leave of the sheriff principal granted upon such terms as to the amendment of the list, postponement of the trial, and payment of expenses as to him may seem fit.

#### **Petition against undue return**

**3.11.12**—(1) When on the trial of a petition complaining of an undue return and claiming the office for some person, the respondent intends to give evidence to prove that that person was not duly elected, such respondent shall, 5 days before the day appointed for the trial, deliver to the sheriff clerk, and send by first class post to the petitioner and the Lord Advocate, a list of the objections to the election upon which he intends to rely.

(2) No evidence shall be allowed to be given by a respondent in support of any objection to the election not specified in such list except by leave of the sheriff principal granted upon such terms

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as to the amendment of the list, postponement of the trial, and payment of expenses as to him may seem fit.

### **Prescribed officer**

**3.11.13** The sheriff clerk shall be the prescribed officer for the purposes of sections 143(1) (expenses of witnesses) and 155(2) (neglect or refusal to pay costs) of the Act.

### **Leave to abandon**

**3.11.14**—(1) Application for leave to withdraw a petition in terms of section 147(1) of the Act (withdrawal of petition), shall be made by minute in Form 17 and shall be preceded by written notice of the intention to make it, sent by first class post to—

- (a) the respondent;
- (b) the Lord Advocate; and
- (c) the returning officer.

(2) The returning officer shall forthwith publish the fact of his having received such notice in the area for which the election questioned was held.

(3) The sheriff principal, upon the application being laid before him, shall by interlocutor, fix the time, not being earlier than 8 days after the date of the interlocutor, and place for hearing it.

(4) The petitioner shall, at least 6 days before the day fixed for the hearing, publish in a newspaper circulating in the district named in the interlocutor a notice in Form 18.

### **Death of petitioner**

**3.11.15**—(1) In the event of the death of the sole petitioner, or of the last survivor of several petitioners, the sheriff clerk shall forthwith, upon the fact being brought to his knowledge, insert in a newspaper circulating in the district a notice in Form 19.

(2) The time within which any person who might have been a petitioner in respect of the election may apply to the court by minute in the petition proceedings to be substituted as a petitioner shall be 21 days from the date of publication of such notice.

### **Notice by respondent that he does not oppose petition**

**3.11.16**—(1) Notice that a respondent does not intend to oppose a petition shall be given by leaving a written notice to that effect at the office of the sheriff clerk at least 6 days (exclusive of the day of leaving such notice) before the day fixed for the trial.

(2) On such notice being left with the sheriff clerk, or on its being brought to his knowledge that a respondent other than a returning officer has died, resigned, or otherwise ceased to hold the office to which the petition relates, the sheriff clerk shall forthwith—

- (a) advertise the fact once in a newspaper circulating in the district; and
- (b) send intimation thereof by first class post to—
  - (i) the petitioner;
  - (ii) the Lord Advocate; and
  - (iii) the returning officer, who shall publish the fact in the district.

(3) The advertisement to be made by the sheriff clerk shall state the last day on which, under this Part, application to be admitted as a respondent to oppose the petition can be made.

### **Application to be admitted as respondent**

**3.11.17** Application to be admitted as a respondent to oppose a petition on the occurrence of any of the events mentioned in section 153(1) of the Act (withdrawal and substitution of respondents before trial) must be made by minute in the petition proceedings within 10 days after the date of publication of the advertisement mentioned in rule 3.11.16, unless the sheriff principal on cause shown sees fit to extend the time.

### **Public notice of trial not proceeding**

**3.11.18**—(1) This rule applies where after the notice of trial has been published the sheriff clerk receives notice of—

- (a) the petitioner’s intention to apply for leave to withdraw;
- (b) the respondent’s intention not to oppose;
- (c) the abatement of the petition by death; or
- (d) the occurrence of any of the events mentioned in section 153(1) of the Act.

(2) Where this rule applies the sheriff clerk shall forthwith give notice by advertisement inserted once in a newspaper circulating in the district, that the trial will not proceed on the day fixed.

### **Notice to a party’s agent sufficient**

**3.11.19** Where a party to proceedings under this Part is represented by a solicitor any reference to such party shall, where appropriate, be construed as a reference to the solicitor representing that party and a notice sent to his solicitor shall be held to be notice to the party.

### **Cost of publication**

**3.11.20** Where under this Part the returning officer or the sheriff clerk requires to have published a notice or advertisement, the cost shall be paid in the first instance by the petitioner or in the case of a notice under rule 3.11.15 from the estate of the sole or last surviving petitioner and shall form part of the general expenses of the petition.

### **Expenses**

**3.11.21** The expenses of petitions and other proceedings under the Act shall be taxed by the auditor of the sheriff court.

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