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STATUTORY INSTRUMENTS

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**2003 No. 284**

The National Assembly for Wales  
(Representation of the People) Order 2003

PART I  
GENERAL

**Citation, commencement and revocation**

1.—(1) This Order may be cited as the National Assembly for Wales (Representation of the People) Order 2003 and shall come into force on the day after the day on which it is made.

(2) This Order revokes the National Assembly for Wales (Representation of the People) Order 1999<sup>(1)</sup> and the National Assembly for Wales (Representation of the People) (Amendment) Order 2002<sup>(2)</sup>.

**Interpretation**

2.—(1) In this Order, except where the context requires otherwise—

“appropriate returning officer” means a constituency returning officer in relation to a constituency election and a regional returning officer in relation to a regional election,

“Assembly constituency” is to be construed in accordance with section 2(2) of, and Schedule 1 to, the 1998 Act,

“Assembly election” means a constituency election or a regional election,

“Assembly election petition” means a petition presented in pursuance of Part IV of this Order,

“Assembly electoral region” is to be construed in accordance with section 2(2) of, and Schedule 1 to, the 1998 Act,

“available for inspection” means available for inspection during ordinary office hours,

“citizen of the Union” shall be interpreted in the same way as in section 202(1) of the 1983 Act,

“constituency election” means an election to return an Assembly member for an Assembly constituency,

“constituency returning officer” means the person who is the returning officer for a constituency election,

“constituency vote” means a vote given to a candidate to be an Assembly member for an Assembly constituency,

“dwelling” includes any part of a building where that part is occupied separately as a dwelling,

“election to fill a casual vacancy” means a constituency election held otherwise than at an ordinary election,

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(1) S.I.1999/450.

(2) S.I. 2002/834.

“election court” means the judges presiding at the trial of an Assembly election petition,

“elector” means any person whose name is for the time being on the register to be used at an Assembly election, but does not include those shown in the register as below voting age on the day fixed for the poll,

“electoral region vote” means a vote given for—

- (a) a registered political party which has submitted a list of candidates to be Assembly members for an Assembly electoral region, or
- (b) an individual who is a candidate to be an Assembly member for that Assembly electoral region,

“European Parliamentary election” has the same meaning as in section 27(1) of the 1985 Act,

“individual candidate” means a candidate at an Assembly regional election other than a party list candidate,

“legal incapacity” includes (in addition to any incapacity arising by virtue of any subsisting provision of the common law) any disqualification imposed by this Order or by any other enactment,

“legal process” means a claim form, application notice, writ, summons or other process,

“local government election” includes a mayoral election,

“mayoral election” means an election for the return of an elected mayor of a local authority in Wales,

“ordinary election” means the holding of constituency and regional elections for the return of all Assembly members,

“party list” means a list of not more than twelve candidates (but it may be a list of only one candidate) to be Assembly members for an Assembly electoral region which is to be or has been submitted to a regional returning officer by a registered political party; and references in this Order to a group of party list candidates include a case where there is only one such candidate,

“party list candidate” means a candidate included on a party list; and references in this Order to a group of party list candidates refer to all the candidates included on such a list,

“person” includes (without prejudice to the provisions of the Interpretation Act 1978<sup>(3)</sup>) an association corporate or unincorporate,

“postal proxy” means a person entitled to vote by post as proxy at an election,

“presiding officer of the Assembly” means the person elected in accordance with—

- (a) section 52(1)(a) of the 1998 Act, or
- (b) section 52(1)(b) of that Act where he is for the time being performing the functions of presiding officer of the Assembly,

“regional election” means an election to return Assembly members for an Assembly electoral region,

“regional returning officer” means the person who is the returning officer for a regional election,

“register” means the register of electors,

“registered emblem” means an emblem registered by a registered political party under Part II of the 2000 Political Parties Act,

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(3) 1978 c. 30.

“registered nominating officer” means the person registered under Part II of the 2000 Political Parties Act as the officer with responsibility for the matters referred to in section 24(3) of that Act in respect of a registered political party,

“registered political party” means (subject to paragraph 69 of Schedule 5) a party registered under Part II of the 2000 Political Parties Act,

“registration officer” means an electoral registration officer,

“relevant citizen of the Union” means a citizen of the Union who is not a Commonwealth citizen or a citizen of the Republic of Ireland,

“service voter” means a person who has made a service declaration in accordance with section 15 of the 1983 Act and is registered or entitled to be registered in pursuance of it,

“sub-agent” has the meaning given by article 36(1),

“universal postal service provider” means a universal service provider within the meaning of the Postal Services Act 2000 (4),

“the Assembly” means the National Assembly for Wales established by section 1(1) of the 1998 Act,

“the absent voters list”, in relation to an Assembly election, has the meaning given by article 10(1),

“the list of proxies”, in relation to an Assembly election, has the meaning given by article 10(1)(b),

“the 1983 Act” means the Representation of the People Act 1983(5),

“the 1985 Act” means the Representation of the People Act 1985(6),

“the 1998 Act” means the Government of Wales Act 1998(7),

“the 2000 Act” means the Representation of the People Act 2000(8),

“the 2000 Political Parties Act” means the Political Parties, Elections and Referendums Act 2000(9),

“the 1986 Regulations” means the Representation of the People Regulations 1986(10),

“the 2001 Regulations” means the Representation of the People (England and Wales) Regulations 2001(11), and

“voter” means a person voting at an Assembly election and includes a person voting as proxy and, except in Schedule 5, a person voting by proxy, and “vote” (whether noun or verb) shall be construed accordingly, except that in that Schedule any reference to an elector voting or an elector’s vote shall include a reference to an elector voting by proxy or elector’s vote given by proxy.

(2) References in this Order to the giving of two votes at an ordinary election refer to the giving of a constituency and an electoral region vote.

(3) For the purposes of this Order a person shall be deemed not to have attained a given age until commencement of the relevant anniversary of the day of his birth.

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(4) 2000 c. 26.

(5) 1983 c. 2.

(6) 1985 c. 50.

(7) 1998 c. 38.

(8) 2000 c. 2.

(9) 2000 c. 41.

(10) S.I. 1986/1081.

(11) S.I. 2001/341.

## PART II

### ASSEMBLY FRANCHISE AND ITS EXERCISE

#### **Voting at Assembly elections**

3.—(1) A constituency vote shall be given in an Assembly constituency.

(2) Although given in relation to an Assembly electoral region, in accordance with section 4(1) and (3) of the 1998 Act, an electoral region vote shall also be given in an Assembly constituency.

#### **Registers of electors etc**

4.—(1) An alteration in a register of electors under section 13A or 56 of the 1983 Act (alteration of registers and registration appeals) shall not have effect for the purposes of an Assembly election if it was made after the last day for the delivery of nomination papers set out in the Table in paragraph 1(1) of Schedule 5.

(2) Schedule 1 (which makes provision in connection with electors lists and registers) has effect.

#### **Registration appeals**

5.—(1) Subject to giving notice of the appeal in accordance with paragraph 8(1) of Schedule 2, an appeal lies to the county court 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 Assembly election only.

(2) No appeal lies from the decision of the Court of Appeal on appeal from a decision of the county court under this article.

(3) An appeal to the county court or Court of Appeal by virtue of this article or section 56 of the 1983 Act which is pending when notice of an Assembly election is given shall not prejudice the operation as respects the Assembly 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 in the manner provided by rules of court of the decision of the county court or of the Court of Appeal on any appeal by virtue of this article, and the registration officer shall make such alterations in the—

- (a) record kept under article 8(3), or
- (b) record kept under article 12(6),

as may be required to give effect to the decision.

(5) 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 day for the delivery of nomination papers at an Assembly election set out in the Table in paragraph 1(1) of Schedule 5, paragraph (3) shall not apply to that appeal as respects that Assembly 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.

(7) Order 45, rule 2 of the County Court Rules 1981(12) (appeal from decision of registration officer) shall have effect in relation to appeals under this article subject to the following modifications—

- (a) in rule 2(1), “regulations made under section 53 of the said Act of 1983”, and
- (b) in rule 2(4)(a), “to the regulations mentioned in paragraph (1)”,

shall be construed as including a reference to paragraph 8 of Schedule 2.

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

6.—(1) For the purpose of Assembly elections every Assembly constituency shall be divided into polling districts and subject to the provisions of this article there shall be a polling place for each polling district.

(2) Subject to paragraph (3), the polling districts and polling places to have effect at Assembly elections under this article shall be the districts and places as have effect at parliamentary elections.

(3) Where special circumstances make it desirable, the council of a county or county borough may determine that other polling districts or polling places shall have effect in its area at an Assembly election.

(4) Any determination under paragraph (3) shall be taken in accordance with the rules set out in section 18(2) of the 1983 Act.

(5) 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.

### **Manner of voting at Assembly elections**

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

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

(4) If he is entitled to vote by proxy at the Assembly 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.

(5) If he is not entitled as an elector to an absent vote at the Assembly 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—

- (a) as a constable,
- (b) by a constituency returning officer, in the case of a constituency election,
- (c) by a regional returning officer, in the case of a regional election, or
- (d) by a constituency returning officer, in the case of a regional election where that officer is exercising functions in relation to the election,

on the date of the poll for a purpose connected with the election (subject to paragraph (6)), he may vote in person at any polling station in the Assembly constituency—

- (i) for which the election is being held, in the case of a constituency election, or

(ii) in which he is entitled to give his vote, in the case of a regional election.

(6) But if a person is employed at an ordinary election for a purpose connected with only one of two elections at which he is entitled to give a vote, he shall be treated for the purposes of paragraph (5) as employed for a purpose connected with both elections: provided that, if a person is so treated, in exercising the right conferred by paragraph (5) those votes shall be given at the same polling station.

(7) Nothing in the preceding provisions of this article applies to—

(a) a person to whom section 7 of the 1983 Act (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 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).

(8) For the purposes of the provisions of this Order, a person entitled to vote as an elector at an Assembly 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 voters list for the election as so entitled; and references in those provisions to entitlement as an elector to an absent vote at an Assembly election are references to entitlement as an elector to vote by post or entitlement to vote by proxy at the election.

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

**8.—(1)** Where a person applies to the registration officer to vote by post, or to vote by proxy, at Assembly elections (whether for an indefinite period or for a particular period specified in his application), the registration officer shall grant the application (subject to paragraph (5)) if—

(a) in the case of an application to vote by proxy, he is satisfied that the applicant is eligible to vote by proxy at Assembly elections,

(b) he is satisfied that the applicant is or will be registered in the register for local government elections, and

(c) the applicant meets the requirements set out in Schedule 2.

(2) For the purposes of this article, a person is eligible to vote by proxy at Assembly 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,

(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 or his spouse's attendance on a course provided by an educational institution, or

(d) if he cannot go in person from his qualifying address to that polling station without making a journey by air or sea.

(3) The registration officer shall keep a record of those whose applications under this article have been granted showing whether their applications were to vote by post or proxy for an indefinite or a particular period (specifying that period).

(4) The record kept under paragraph (3) shall also show—

- (a) 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
  - (b) 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 (3)—
- (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 (3) as voting by post may subsequently alter his choice by applying to the registration officer to vote by proxy instead (whether for an indefinite period or for a particular period specified in his application); and if the registration officer would be required to grant that application if it were an application to vote by proxy under paragraph (1), the registration officer shall amend the record accordingly.
- (7) A person shown in the record kept under paragraph (3) as voting by proxy may subsequently alter his choice by applying to the registration officer to vote by post instead (whether for an indefinite period or for a particular period specified in his application); and if the application meets the requirements of Schedule 2, the registration officer shall amend the record accordingly.
- (8) A person applying to vote by post must provide an address in the United Kingdom as the address to which his ballot paper or, where he is entitled to give two votes at an ordinary election, ballot papers shall be sent.

### **Absent vote at a particular Assembly election**

- 9.—(1) Where a person applies to the registration officer to vote by post, or to vote by proxy, at a particular Assembly election, the registration officer shall grant the application (subject to paragraph (4)) 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 of local government electors, and
  - (c) the application meets the requirements set out in Schedule 2.
- (2) Paragraph (1) above does not apply to a person who is included in the record kept under article 8 but such a person may, in respect of a particular Assembly election, apply to the registration officer—
- (a) for his ballot paper or, where he is entitled to give two votes at an ordinary election, ballot papers to be sent to a different address in the United Kingdom, or
  - (b) to vote by proxy,
- if he is shown in the record so kept as voting by post at Assembly elections.

- (3) The registration officer shall grant an application under paragraph (2) if—
- (a) in the case of any application, it meets the requirements set out in Schedule 2; and
  - (b) in the case of an application to vote by proxy, he is satisfied 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.

(4) A person applying to vote by post must provide an address in the United Kingdom as the address to which his ballot paper or, where he is entitled to give two votes at an ordinary election, ballot papers shall be sent.

(5) For the purposes of this article, articles 11 and 12 and Schedule 2, "particular election" shall, where a person (whether as elector or as proxy) is entitled to give two votes at an ordinary election, refer to both elections at which he is entitled to so vote; and references to an absent vote at a particular Assembly election shall be construed accordingly.

#### **Absent voters list at Assembly elections**

**10.**—(1) Subject to paragraph (2), the registration officer shall, in respect of each Assembly 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 8 as voting by post at Assembly elections (excluding those so shown whose applications under article 9(2) to vote by proxy at the election have been granted), together with the addresses provided by them in their applications under article 8 or article 9(2) as the addresses to which their ballot papers are to be sent, and
  - (ii) those whose applications under article 9(1) 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 8 as voting by proxy at Assembly elections or whose applications under article 9 to vote by proxy at the election have been granted, together with the names and addresses of those appointed as their proxies.

(2) Where electors are entitled to give two votes at an ordinary election in an Assembly constituency, only one absent voters list shall be kept under paragraph (1) and that list shall have effect in relation to both elections.

#### **Proxies at Assembly 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 Assembly 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 an Assembly election (whether in the same Assembly constituency or elsewhere).

(3) A person is not capable of being appointed to vote, or voting, as proxy at an Assembly 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 an Assembly 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—

- (a) in the case of an ordinary election, at constituency elections in Assembly constituencies in an Assembly electoral region (or in one such election),
- (b) in the case of a constituency election other than at an ordinary election, at the constituency election,
- (c) at a regional election (whether or not at an ordinary election),

on behalf of more than two persons of whom he 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 Assembly 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 2 and he is satisfied that the elector is or will be—

- (a) registered in the register of local government electors for Assembly elections, and
- (b) shown in the record kept under article 8 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 Assembly election, the registration officer shall make the appointment if the application meets the requirements set out in Schedule 2 and he is satisfied that the elector is or will be—

- (a) registered in the register of local government electors for that election, and
- (b) entitled to vote by proxy at that election by virtue of an application under article 9, 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 on the issue of a proxy paper appointing a different person to vote for him at an Assembly election or Assembly elections (whether in the same Assembly 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), 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 8 in pursuance of the same application under that article.

### **Voting as proxy at Assembly elections**

**12.—**(1) A person entitled to vote as proxy at an Assembly 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 Assembly 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 an Assembly election is entitled so to vote by post if he is included in the list kept under paragraph (8) in respect of the election.

- (4) Where a person applies to the registration officer to vote by post—
- (a) as proxy at Assembly elections (whether for an indefinite period or for a particular period specified in his application), or
  - (b) as proxy at a particular Assembly election,
- the registration officer shall (subject to paragraph (10)) grant the application if the conditions set out in paragraph (5) are satisfied.
- (5) Those conditions are—
- (a) that the registration officer is satisfied that the elector is or will be registered in the register of local government electors, and
  - (b) that there is in force an appointment of the applicant as the elector's proxy to vote for him at Assembly elections or, as the case may be, the Assembly election concerned, and
  - (c) that the application meets the requirements set out in Schedule 2.
- (6) The registration officer shall keep a record of those whose applications under paragraph (4) (a) 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.
- (7) Where, in the case of a particular election, a person included in the record kept under paragraph (6) applies to the registration officer for his ballot paper or, where he is entitled to give two votes in the case of an ordinary election, ballot papers to be sent to a different address in the United Kingdom, the registration officer shall grant the application if it meets the requirements set out in Schedule 2.
- (8) Subject to the proviso to this paragraph, the registration officer shall, in respect of each Assembly election, keep a special list of—
- (a) those who are for the time being included in the record kept under paragraph (6), together with the addresses provided by them in their applications under paragraph (4)(a) or paragraph (7) as the addresses to which their ballot papers are to be sent, and
  - (b) those whose applications under paragraph (4)(b) have been granted in respect of the election concerned, together with the addresses to which their ballot papers are to be sent.
- Provided that where electors are entitled to give two votes at an ordinary election in an Assembly constituency, only one list shall be kept under this paragraph and that list shall have effect in relation to both elections.
- (9) The registration officer shall remove a person from the record kept under paragraph (6)—
- (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 as mentioned in paragraph (4)(a), 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).
- (10) A person applying to vote by post as proxy must provide an address in the United Kingdom as the address to which his ballot paper or, where he is entitled to give two votes at an ordinary election, ballot papers shall be sent.

## **Offences**

13. A person who —

- (a) in any declaration or form used for any of the purposes of articles 8, 9, 11 or 12 makes a statement which he knows to be false, or
- (b) attests an application under article 8 or 9 when he knows that he is not authorised to do so or that it contains a statement which is false,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

14.—(1) For the purposes of section 59 of the 1983 Act (supplemental provisions as to members of forces and service voters)—

- (a) subsection (3)(a) 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) subsection (3)(b) shall be similarly construed.

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

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

## **Combination of polls at Assembly and local government elections**

15.—(1) Where the polls at an ordinary Assembly 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 an Assembly election and local government election for related areas are to be taken on the same date but are not required by paragraph (1) to be taken together, they may nevertheless be so taken if the returning officer for each election thinks fit.

(3) For the purposes of paragraph (2), two areas are related if one is coterminous with or situated wholly or partly within the other.

(4) Where the polls at an ordinary Assembly election and an ordinary local government election are combined under paragraph (1) 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 among the elections in such proportions as the Assembly may by order specify; and an order under this paragraph may specify different proportions in relation to different functions.

(5) Where the polls at an Assembly election and another election are combined under paragraph (2) 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 equally among the elections.

(6) The power to make orders under paragraph (4) shall be exercised by statutory instrument.

(7) Schedule 4 (which makes provision in connection with the combination of polls at Assembly and local government elections) has effect but, where the poll at an Assembly election is combined with a mayoral election, only Parts I and II of Schedule 4 shall apply.

### **Conduct of Assembly elections etc**

**16.**—(1) The proceedings at Assembly elections and return of Assembly members shall be conducted in accordance with Schedule 5.

(2) In addition to the functions otherwise conferred or imposed on a constituency or regional returning officer at an Assembly election it is the general duty of such an officer to do all such acts as may be necessary for effectively conducting the election in the manner provided by Schedule 5.

(3) No Assembly election shall be declared invalid by reason of any act or omission by such a returning officer or any other person in breach of his official duty in connection with the election or otherwise of Schedule 5 if it appears to the election court having cognizance of the question that—

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

### **Returning officers**

**17.**—(1) For the purpose of Assembly elections there shall be—

- (a) a constituency returning officer for each Assembly constituency, and
- (b) a regional returning officer for each Assembly electoral region, and

such persons shall hold office in accordance with paragraphs (2) and (3).

(2) A constituency returning officer shall be a person—

- (a) appointed under section 35(1A)(a) of the 1983 Act<sup>(13)</sup> to be the returning officer for elections of councillors of a county or county borough situated wholly or partly in the Assembly constituency, and (in the case where there is more than one such person)
- (b) who is for the time being designated by the Assembly as returning officer for the constituency.

(3) A regional returning officer shall be a person—

- (a) appointed under section 35(1A)(a) of the 1983 Act to be the returning officer for elections of councillors of a county or county borough situated wholly or partly in the Assembly electoral region, and
- (b) who is for the time being designated by the Assembly as returning officer for the electoral region.

(4) A designation made under this article shall be in writing.

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

**18.**—(1) The council of each county or county borough shall place the services of its officers at the disposal of any constituency returning officer for an Assembly constituency wholly or partly situated in its area.

(2) The services placed at the disposal of a constituency returning officer under paragraph (1) may relate to the exercise of that officer's functions in connection with a constituency election, a regional election or to both such elections.

(3) The council of each county or county borough shall also place the services of its officers at the disposal of any regional returning officer for an Assembly electoral region partly situated in its area.

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(13) Subsection (1A) was added by the Local Government (Wales) Act 1994 (c. 19), Schedule 16.

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

19.—(1) A constituency or a regional returning officer at an Assembly election may, in writing, appoint one or more persons to discharge all or any of his functions.

(2) Paragraph (1) applies to a constituency returning officer at a constituency or a regional election.

(3) In relation to an ordinary election and to a regional election other than at an ordinary election, it shall be the duty of each regional returning officer and each constituency returning officer for an Assembly constituency in the Assembly electoral region to co-operate with each other in the discharge of their functions.

(4) The duty imposed by paragraph (3) applies as between constituency returning officers in an Assembly electoral region as well as between such officers and the regional returning officer for the electoral region.

(5) In this Order, a reference to a constituency returning officer in relation to the discharge of functions at a regional election is a reference to the discharge of such functions in relation to the Assembly constituency for which he is the returning officer.

### **Returning officers: general**

20.—(1) An Assembly 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 an Assembly election by reason of being returning officer at that election.

### **Payments by and to returning officer**

21.—(1) A constituency or a regional returning officer shall be entitled to recover his charges in respect of services properly rendered, or expenses properly incurred, for, or in connection with, an Assembly election if—

- (a) the services or expenses are of a kind specified in an order made by the Assembly, and
- (b) the charges are reasonable,

and in the case of a constituency returning officer, this paragraph applies to services rendered or expenses incurred for, or in connection with, a constituency or a regional election.

(2) In any order made under paragraph (1) the Assembly may specify a maximum recoverable amount for services or expenses of any specified description and, subject to paragraph (3), the returning officer may not recover more than that amount in respect of any such services or expenses.

(3) The Assembly may, in a particular case, authorise the payment of more than the specified amount for any specified services or expenses if satisfied—

- (a) that it was reasonable for the returning officer concerned to render the services or incur the expenses, and
- (b) that the charges in question are reasonable.

(4) Any order under paragraph (1) which specifies the maximum amount for services or expenses of a particular description may—

- (a) provide for that amount to increase at such dates, or after such periods, by reference to such formula or other method of determination as may be specified in the order, and
- (b) make such transitional provision in connection with any such increase as the Assembly considers appropriate.

(5) Any order under paragraph (1) may make different provision for constituency elections (on the one hand) and regional elections (on the other).

(6) The power to make orders under paragraph (1) shall be exercised by statutory instrument.

(7) The Assembly shall pay the amount of any charges recoverable in accordance with this article on an account being submitted to it but the Assembly may if it thinks fit, before payment, apply for the account to be taxed under the provisions of article 22.

(8) Where the superannuation contributions required to be paid by a local authority in respect of any person are increased by any fee paid under this article as part of a returning officer's charges at an Assembly election; then on an account being submitted to the Assembly, a sum equal to the increase shall be paid by the Assembly to the authority.

(9) On a returning officer's request for an advance on account of his charges, the Assembly may, on such terms as it thinks fit, make such an advance.

(10) The Assembly by regulations may make provision as to the time when and the manner and form in which accounts are to be rendered to the Assembly for the purpose of the payment of a returning officer's charges; and such regulations may make different provision for constituency elections (on the one hand) and regional elections (on the other).

#### **Taxation of returning officer's account**

**22.**—(1) An application for a returning officer's account to be taxed shall be made to the county court and in this article the expression "the court" means the county court.

(2) On any such application the court has jurisdiction to tax the account in such manner and at such time and place as the court thinks fit, and finally to determine the amount payable to the returning officer.

(3) On any such application the returning officer may apply to the court to examine any claim made by any person against him in respect of matters charged in the account; and the court, 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 court shall be final for all purposes and against all persons.

(4) Order 45, rule 1 of the County Court Rules 1981(**14**) (application for taxation of returning officer's account under section 30 of the 1983 Act) shall have effect in relation to applications made under this article and, accordingly, in that rule the references to—

(a) the Secretary of State shall be construed as including references to the Assembly, and

(b) returning officers shall be construed as including references to—

(i) constituency returning officers in relation to a constituency election, and

(ii) constituency and regional returning officers in relation to a regional election.

#### **Loan of equipment for Assembly elections**

**23.**—(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 an Assembly 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 within the meaning of the Local Government Act 1972(**15**) shall, on request (if not required for immediate use by that authority), be lent to a constituency returning officer at an Assembly election on such terms and conditions as may be agreed.

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(14) S.I. 1981/1687.

(15) 1972 c. 70.

### **Effect of registers**

**24.**—(1) Any entry in the register of local government 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 an Assembly 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 an Assembly election on any of the grounds set out in paragraph (3); 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) 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, or
  - (iii) a relevant citizen of the Union, or
- (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), the “relevant date” means—

- (a) in relation to a person registered in the register of local government electors as published in accordance with section 13(1) of the 1983 Act, 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.

### **Effect of misdescription**

**25.** In relation to an Assembly election no misnomer or inaccurate description of any person or place named—

- (a) in the register of local government electors, or
- (b) in any list, record, proxy paper, individual or party nomination paper, ballot paper, notice or other document required for the purposes of this Order,

shall affect 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**

**26.**—(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, 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 county or county borough council 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) Any acts authorised or required to be done by or with respect to the registration officer under this Order may, in the event of his incapacity to act or of a vacancy, be done by or with respect to the proper officer of the county or county borough council by whom the registration officer was appointed.

(4) A county or county borough council by whom a registration officer is appointed shall assign such officers to assist him as may be required in carrying out his functions under this Order.

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

**27.**—(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 county or county borough council 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 county or county borough council by whom he was appointed.

(3) On the request of a registration officer for an advance on account of registration expenses, the county or county borough council by whom the registration officer was appointed may, if it thinks fit, make such an advance to him of such an amount and subject to such conditions as it may approve.

### **Personation**

**28.**—(1) In relation to an Assembly election 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 an Assembly 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**

**29.**—(1) 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 (6), 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.

(2) 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 an Assembly election, or at Assembly 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,



- (b) he applies for the appointment of a proxy to vote for him at any Assembly election or at Assembly 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 an Assembly election, knowing that that person is subject to a legal incapacity to vote.
- (3) For the purposes of paragraph (2), 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.
- (4) A person shall be guilty of an offence if—
- (a) he votes as elector otherwise than by proxy either—
    - (i) more than once in the same Assembly constituency at any Assembly election,
    - (ii) in more than one Assembly constituency at an ordinary election, or
    - (iii) in any Assembly constituency at an Assembly election when there is in force an appointment of a person to vote as his proxy at the election in some other constituency,
  - (b) he votes as elector in person at an Assembly election at which he is entitled to vote by post,
  - (c) he votes as elector in person at an Assembly 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 Assembly elections in any Assembly 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.
- (5) 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 Assembly constituency at any Assembly election, or
    - (ii) in more than one Assembly constituency at an ordinary election,
  - (b) he votes in person as proxy for an elector at an Assembly 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 an Assembly election knowing that the elector has already voted in person at the election.
- (6) A person shall also be guilty of an offence if he votes as proxy—
- (a) in the case of an ordinary election, at constituency elections in Assembly constituencies in an Assembly electoral region (or in one such election),
  - (b) in the case of a constituency election other than at an ordinary election, at a constituency election,
  - (c) at a regional election (whether or not at an ordinary election),
- for more than two persons of whom he is not the husband, wife, parent, grandparent, brother, sister, child or grandchild.
- (7) 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.
- (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 article 122, 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 (7).

(9) Where a person is entitled to give two votes at an ordinary election in an Assembly constituency (whether in person as elector or by proxy, or by post as elector or by proxy) he votes once in relation to each Assembly election for which his votes are given.

### **Breach of official duty**

**30.**—(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 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 registration officer, returning officer or presiding officer,
- (b) any member of staff of the Assembly,
- (c) any other person whose duty it is to be responsible after an Assembly election for the used ballot papers and other documents (including returns and declarations as to expenses),
- (d) any official designated by a universal postal service provider, and
- (e) any deputy of a person mentioned in any of sub-paragraphs (a) to (d) 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 Assembly elections or the registration of local government electors.

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

**31.**—(1) A person shall be guilty of an offence if, at an Assembly election, he—

- (a) fraudulently defaces or fraudulently destroys any individual nomination or party 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) If—

(a) a constituency returning officer at a constituency election,  
(b) a constituency or regional returning officer at a regional election,  
(c) a presiding officer, or  
(d) 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—

- (i) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both, or
- (ii) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding six months, or to both.

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

#### **False statements in nomination papers etc.**

**32.** A person shall be guilty of a corrupt practice if, in the case of an Assembly election, he causes or permits to be included in a document delivered or otherwise furnished to a returning officer for use in connection with the election —

- (a) a statement of the name or home address of a candidate at the election which he knows to be false in any particular, or
- (b) anything which purports to be the signature of an elector who proposes, seconds or assents to, the nomination of such a candidate but which he knows —
  - (i) was not written by the elector by whom it purports to have been written, or
  - (ii) if written by that elector, was not written by him for the purpose of signifying that he was proposing, seconding or (as the case may be) assenting to, that candidate's nomination.

#### **Requirement of secrecy**

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

- (a) a constituency returning officer at a constituency election,
- (b) a constituency or regional returning officer at a regional election,
- (c) a presiding officer or clerk, or
- (d) a candidate or election agent or 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 votes the number on the back of any ballot paper,

- (b) communicate any information obtained at the counting of votes as to how any vote is given on any particular ballot paper.
- (3) No person shall—
  - (a) interfere with or attempt to interfere with a voter when giving his vote,
  - (b) otherwise obtain or attempt to obtain in a polling station information as to how 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 how 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 how 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 purposes 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 the 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 how any vote is given on 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 shall communicate at any time to any person any information as to how that voter intends to vote or has voted, or as to the number on the back of the 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 level 5 on the standard scale or to imprisonment for a term not exceeding six months.

### **Prohibition on publication of exit polls**

- 34.—**(1) No person shall, in the case of an Assembly election, publish before the poll is closed—
- (a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or
  - (b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.
- (2) If a person acts in contravention of paragraph (1) above, he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months.
- (3) In this article —
- “forecast” includes estimate;
  - “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means;

and any reference to the result of an election is a reference to the result of the election either as a whole or so far as any particular candidate or candidates at the election is or are concerned.

## PART III

### THE ELECTION CAMPAIGN

#### **Appointment of election agent**

**35.**—(1) At an Assembly election, not later than the latest time for delivery of notices of withdrawal of candidature, a person shall be named by, or on behalf of—

- (a) each candidate, in the case of a constituency election, and
- (b) each individual candidate, in the case of a regional election,

as the candidate's election agent, and the name and address of the candidate's election agent shall be declared in writing by the candidate, or some other person on his behalf, to the appropriate returning officer not later than that time.

(2) A candidate at a constituency election or an individual candidate at a regional election may name himself as election agent.

(3) At a regional election, not later than the latest time for delivery of notices of withdrawal of candidature, a person shall be named by, or on behalf of, each group of party list candidates as those candidates' election agent, and the name and address of the candidates' election agent shall be declared in writing by the candidate whose name appears first on the list, or some other person on his behalf (including another candidate on the list), to the regional returning officer not later than that time.

(4) A candidate included on a party list may be named as election agent for the candidates included on the list.

(5) Where a candidate has been named or has named himself as an election agent, so far as circumstances permit, he shall be subject to the provisions of this Order both as a candidate and as an election agent and, except where the context otherwise requires, any reference in this Order to an election agent shall be construed to refer to the candidate acting in his capacity as election agent.

(6) One election agent only shall be appointed for—

- (a) each candidate at a constituency election,
- (b) each individual candidate at a regional election, and
- (c) each group of party list candidates at a regional election,

but the appointment, whether the election agent appointed be a candidate himself or not, may be revoked.

(7) If (whether before, during or after the election) the appointment (or deemed appointment) of an election agent is revoked or an election agent dies, another election agent shall be appointed forthwith and his name and address declared in writing to the appropriate returning officer.

(8) The declaration as an election agent of a person other than—

- (a) an individual candidate, or
- (b) a party list candidate whose name appears first on the list,

shall be of no effect under this article unless it is made and signed by that person or is accompanied by a written declaration of acceptance signed by him.

(9) Upon the name and address of an election agent being declared to the appropriate returning officer—

- (a) the appropriate returning officer shall forthwith give public notice of that name and address, and
- (b) in the case of a regional election, the regional returning officer shall forthwith give notice of that name and address to the constituency returning officer for each Assembly constituency in the Assembly electoral region.

### **Nomination of sub-agent**

**36.**—(1) At an Assembly election an election agent, subject to the provisions of this article, may appoint to act in any part of—

- (a) the Assembly constituency, in the case of a constituency election, or
- (b) the Assembly electoral region, in the case of a regional election,

one, but not more than one, deputy election agent (in this Order referred to as a sub-agent).

(2) As regards matters in the part of an Assembly constituency or electoral region for which there is a sub-agent the election agent may act by the sub-agent and—

- (a) anything done for the purposes of this Order by or to the sub-agent in his part of the Assembly constituency or electoral region shall be deemed to be done by or to the election agent,
- (b) any act or default of a sub-agent which, if he were the election agent, would be an illegal practice or other offence against this Order shall be an illegal practice and offence against this Order committed by the sub-agent, and the sub-agent shall be liable to punishment accordingly, and
- (c) a candidate shall suffer the like incapacity as if that act or default had been the election agent's act or default.

(3) Not later than the second day before the day of the poll the election agent shall declare in writing the name and address of every sub-agent to the appropriate returning officer, and—

- (a) the returning officer shall forthwith give public notice of the name and address of every sub-agent so declared, and
- (b) in the case of a regional election, the regional returning officer shall forthwith give notice of that name and address to the constituency returning officer for each Assembly constituency in any part of which the sub-agent is appointed to act.

(4) The appointment of a sub-agent—

- (a) shall not be vacated by the election agent who appointed him ceasing to be election agent, but
- (b) may be revoked by whoever is for the time being the election agent,

and in the event of the revocation of the appointment or of the death of a sub-agent another sub-agent may be appointed, and his name and address shall be forthwith declared in writing to the appropriate returning officer, who shall forthwith give the like notice required by paragraph (3)(a) and, if applicable, (b).

(5) The declaration to be made to the appropriate returning officer, and such notice to be given by him, under paragraph (3) or (4) shall specify the part of the Assembly constituency or electoral region within which any sub-agent is appointed to act.

### **Office of election agent and sub-agent**

**37.**—(1) Every election agent and every sub-agent shall have an office to which all claims, notices, legal processes and other documents may be sent, and the address of the office shall be—

- (a) declared to the appropriate returning officer at the same time as the appointment of the agent is declared to him,
  - (b) stated in the public notice, and
  - (c) in the case of a regional election, stated in the notice to the constituency returning officers.
- (2) The office—
- (a) subject to article 38(6), of an election agent for a constituency election shall be—
    - (i) in the Assembly constituency for which the election is held or an adjoining Assembly constituency, or
    - (ii) in a county or county borough which is partly comprised in or adjoins the first mentioned Assembly constituency,
  - (b) subject to article 38(6), of an election agent for a regional election shall be in the Assembly electoral region, and
  - (c) of a sub-agent shall be in the area within which he is appointed to act.
- (3) Any claim, notice, legal process or other document delivered at the office of the election agent or sub-agent and addressed to him, shall be deemed to have been served on him and every election agent may, in respect of any matter connected with the election in which he is acting, be sued in any court having jurisdiction at the place where his office is situated.

#### **Effect of default in election agent's appointment**

**38.—**(1) If no person's name and address is given as required by article 35 as the election agent of a candidate or a group of party list candidates who remain validly nominated at the latest time for delivery of notices of withdrawal of candidature—

- (a) in the case of a candidate at a constituency election or an individual candidate at a regional election, the candidate shall be deemed at that time to have named himself as election agent and to have revoked any appointment of another person as his election agent, and
  - (b) in the case of a group of party list candidates at a regional election, the candidate whose name appears first on the list shall be deemed at that time to have been named as election agent and for there to have been revoked any appointment of another person as those candidates' election agent.
- (2) This paragraph applies if—
- (a) the person whose name and address have been so given as those of an election agent for an individual candidate (not being the candidate himself) or a group of party list candidates dies, and
  - (b) a new appointment is not made on the day of the death or on the following day.
- (3) Where paragraph (2) applies—
- (a) in the case of a candidate at a constituency election or an individual candidate at a regional election, he shall be deemed to have appointed himself as from the time of death, and
  - (b) in the case of the death of an election agent for a group of party list candidates at a regional election—
    - (i) the candidate whose name appears first on the list shall be deemed to have been appointed from the time of death, or
    - (ii) where paragraph (2) applies through the death of such a candidate, the candidate whose name appears next highest on the list shall be deemed to have been appointed from the time of death.
- (4) If the appointment of an election agent is revoked without a new appointment being made—

- (a) in the case of a candidate at a constituency election or an individual candidate at a regional election, the candidate himself shall be deemed to have been appointed (or re-appointed) election agent, and
  - (b) in the case of a group of party list candidates at a regional election, the candidate whose name appears first on that list shall be deemed to have been appointed (or re-appointed) election agent.
- (5) The deemed appointment of an election agent may be revoked as if it were an actual appointment.
- (6) Where a candidate is by virtue of this article to be treated as an election agent he shall be deemed to have his office at his address as given in the statement of persons nominated.
- (7) The appropriate returning officer on being satisfied that a person is by virtue of this article to be treated as an election agent, shall forthwith proceed to give such like notice as if the name and address of the person and the address of his office had been duly given to him under articles 35 and 37.

#### **Control of donations to constituency and individual candidates**

- 39.**—(1) In the case of any constituency or individual candidate at an Assembly election, any money or other property provided (whether as a gift or loan) —
- (a) by any person other than the candidate or his election agent, and
  - (b) for the purpose of meeting election expenses incurred by or on behalf of the candidate
- must be provided to the candidate or his election agent.
- (2) Paragraph (1) does not apply to any money or other property so provided for the purpose of meeting any such expenses which may be lawfully paid by a person other than the candidate, his election agent or any sub-agent.
- (3) A person who provides any money or other property in contravention of paragraph (1) shall be guilty of an illegal practice.
- (4) Schedule 6 has effect for the purpose of controlling donations to constituency and individual candidates at an Assembly election.
- (5) In this article and that Schedule “property” includes any description of property and references to the provision of property accordingly include the supply of goods.

#### **Expenses of constituency candidate**

**40.** For the purpose of this Part of this Order, sums paid or expenses incurred by, or in respect of, an individual candidate at a constituency election in respect of whom the constituency returning officer has received a certificate issued by the registered nominating officer of a registered political party under paragraph 5(1) of Schedule 5, are not to be regarded as having been paid or incurred by that party.

#### **Constituency and individual candidates: payment of expenses by or through election agent**

- 41.**—(1) Subject to paragraph (4), no payment (of whatever nature) shall be made by —
- (a) a constituency or individual candidate at an Assembly election, or
  - (b) any other person,
- in respect of election expenses incurred by or on behalf of the candidate unless it is made by or through the candidate’s election agent.



(2) Every payment made by an election agent in respect of any election expenses shall, except where less than £20, be vouched for by a bill stating the particulars or by a receipt.

(3) The references in paragraphs (1) and (2) to an election agent shall be taken as references to the election agent acting by himself or by a sub-agent

(4) This article does not apply to —

- (a) any expenses which are, in accordance with article 42(1) or (3), 47(6) or 48(2), paid by the candidate;
- (b) any expenses which are paid in accordance with article 42(5) by a person authorised as mentioned in that provision;
- (c) any expenses included in a declaration made by the election agent under article 43; or
- (d) any expenses which are regarded as incurred by or on behalf of the candidate by virtue of article 61(5)(b).

(5) A person who makes any payment (of whatever nature) in contravention of paragraph (1) shall be guilty of an illegal practice.

#### **Expenses which may be paid otherwise than by election agent**

**42.—**(1) A candidate (including a party list candidate) at an Assembly election may pay any personal expenses incurred by him on account of or in connection with or incidental to the election, but the amount which a candidate may pay (subject to paragraph (2)) shall not exceed —

- (a) £600, in the case of a candidate at a constituency election, or
- (b) £900, in the case of a candidate at a regional election,

and any further personal expenses incurred by him shall be paid by the election agent.

(2) Where at an ordinary election a person is a candidate at a constituency election and an individual or a party list candidate at a regional election—

- (a) the amount of any such personal expenses paid by him in respect of both elections shall not exceed £900, but
- (b) the amount of any such personal expenses paid by him in respect of the constituency election shall not exceed £600.

(3) A candidate at an Assembly election may also pay any election expenses (other than expenses falling within paragraph (1)) which were incurred by him or on his behalf and in respect of which payment falls to be made before the date on which he appoints (or is deemed to have appointed) an election agent.

(4) A candidate shall send to the election agent within the time permitted by this Order for sending in claims a written statement of the amount of personal expenses paid as mentioned in paragraph (1) or (3) by the candidate.

(5) Any person may, if so authorised in writing by an election agent, at an Assembly election pay any necessary expenses of stationery, postage, telephonic communication (or any other similar means of communication) and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(6) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent within the time limited by this Order for sending in claims, and shall be vouched for by a bill containing that person's receipt.

(7) Articles 47 and 48 do not apply to expenses which, in accordance with any provision of this article, are paid otherwise than by the candidate's election agent.

### **Expenses incurred otherwise than for election purposes**

**43.**—(1) Articles 41, 47 and 48 shall not apply to election expenses —

- (a) which are incurred by or on behalf of the candidate otherwise than for the purposes of the candidate’s election, but
- (b) which by virtue of article 61(1) fall to be regarded as election expenses by reason of the property, services or facilities in respect of which they are incurred being used for the purposes of the candidate’s election.

(2) The candidate’s election agent shall make a declaration of the amount (determined in accordance with article 62) of any election expenses falling within paragraph (1).

(3) In this article “for the purposes of the candidate’s election” has the same meaning as in articles 61 to 63.

### **Constituency and individual candidates: prohibition of expenses not authorised by election agent etc**

**44.**—(1) No expenses shall, with a view to promoting or procuring the election of a constituency or individual candidate at an Assembly election, be incurred at such an election by any person other than the candidate, his election agent and persons authorised in writing by the election agent on account —

- (a) of holding public meetings or organising any public display; or
- (b) of issuing advertisements, circulars or publications; or
- (c) in the case of a constituency election, of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate; or
- (d) in the case of a regional election, of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another individual candidate or any or all of a group of party list candidates,

but sub-paragraphs (c) and (d) of this paragraph shall not —

- (i) restrict the publication of any matter relating to the election in a newspaper or any other periodical or in a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990<sup>(16)</sup> or Part I or II of the Broadcasting Act 1996<sup>(17)</sup>, or
- (ii) apply to any expenses incurred by any person which do not exceed in the aggregate the sum of £500 in the case of a constituency election or £1,000 in the case of a regional election (and are not incurred by that person as part of a concerted plan of action), or to expenses incurred by any person in travelling or in living away from home or similar personal expenses.

(2) For the purpose of paragraph (1) expenses shall be regarded as incurred by a person “as part of a concerted plan of action” if they are incurred by that person in pursuance of any plan or other arrangement whereby that person and one or more other persons are to incur, with a view to promoting or procuring the election of the same candidate, expenses which (disregarding paragraph (1)(ii)) fall within paragraph (1) above.

(3) Where a person incurs any expense in respect of an individual candidate required by this article to be authorised by the election agent —

- (a) that person shall within 21 days after the day on which the result or results of the election are declared deliver to the appropriate returning officer a return of the amount of those

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<sup>(16)</sup> 1990 c. 42.

<sup>(17)</sup> 1996 c. 55.

expenses stating the constituency or regional election at which, and the candidate in whose support, they were incurred, and

- (b) the return shall be accompanied by a declaration made by that person (or, in the case of an association or body of persons, by a director, general manager, secretary or other similar officer of the association or body) verifying the return and giving particulars of the matters for which the expenses were incurred,

but this paragraph does not apply to any person engaged or employed for payment or promise of payment by a candidate or his election agent.

(4) The return and declaration under the foregoing provisions of this article shall be in the forms set out in English and Welsh in Schedule 7, and the authority received from the election agent shall be annexed to and deemed to be part of the return.

(5) A copy of every return and declaration made under paragraph (3) in relation to an Assembly election shall be sent to the Assembly within 21 days after the day on which the result of the election is declared by the person making the return or declaration and paragraph 64 of Schedule 5 applies to any documents sent to the Assembly under this article.

(6) If a person—

- (a) incurs, or aids, abets, counsels or procures any other person to incur any expenses in contravention of this article, or
- (b) knowingly makes the declaration required by paragraph (3) falsely,

he shall be guilty of a corrupt practice; and if a person fails to deliver or send any declaration or return or a copy of it as required by this article he shall be guilty of an illegal practice, but—

- (i) the court before whom a person is convicted under this article may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of article 122, and
- (ii) a candidate shall not be liable, nor shall his election be avoided, for a corrupt or illegal practice under this article committed by an agent without his consent or connivance.

(7) Where any act or omission of an association or body of persons, corporate or unincorporate, is an offence declared to be a corrupt or illegal practice by this article, any person who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves—

- (a) that the act or omission took place without his consent or connivance, and
- (b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the other circumstances.

#### **Constituency and individual candidates: limitation of election expenses**

**45.—**(1) The election expenses incurred by or on behalf of a constituency or individual candidate at an Assembly election must not in the aggregate exceed the maximum amount specified in paragraph (3).

(2) Where any election expenses are incurred in excess of the maximum amount specified in paragraph (3) any candidate or election agent who —

- (a) incurred, or authorised the incurring of, the election expenses, and
- (b) knew or ought reasonably to have known that the expenses would be incurred in excess of that maximum amount,

shall be guilty of an illegal practice.

- (3) The maximum amount is —
- (a) at an ordinary election, for a candidate at a constituency election—
    - (i) for an Assembly constituency which is coterminous with a parliamentary constituency which is a county constituency, £5,761 together with an additional 6.5p for every entry in the register of electors, and
    - (ii) for an Assembly constituency which is coterminous with a parliamentary constituency which is a borough constituency, £5,761 together with an additional 4.8p for every entry in the register of electors,
  - (b) at an election to fill a casual vacancy, for a candidate at a constituency election —
    - (i) for an Assembly constituency which is coterminous with a parliamentary constituency which is a county constituency, £100,000, and
    - (ii) for an Assembly constituency which is coterminous with a parliamentary constituency which is a borough constituency, £100,000, and
  - (c) for an individual candidate at a regional election, the aggregate of the maximum amounts under sub-paragraph (a)(i) or (ii) as apply, or would apply, at that time at a constituency election in respect of each Assembly constituency in the Assembly electoral region for which the election is held.

(4) In paragraph (3) “the register of electors” means the register of local government electors for the Assembly constituency or Assembly electoral region in question as it has effect on the last day for publication of notice of the election.

(5) The maximum amount mentioned for an individual candidate at an Assembly election is not required to cover his personal expenses.

(6) Where at a constituency election notice of poll is countermanded or the poll is abandoned by reason of a candidate’s death, the maximum amount of election expenses shall, for any of the other candidates who then remain validly nominated, be twice, or if there has been a previous increase under this paragraph, three times what it would have been but for any increase under this paragraph.

(7) The maximum amount mentioned for a candidate shall not be affected by the change in the timing of an Assembly election or of any step in the proceedings at an Assembly election.

### **Power to vary provisions concerning election expenses**

**46.—**(1) After such consultation with the Assembly as appears to the Secretary of State to be appropriate, he may by order made by statutory instrument vary any of the sums to which this article applies—

- (a) where he considers that the variation is expedient in consequence of changes in the value of money, or
- (b) in order to give effect to a recommendation of the Electoral Commission.

(2) This article applies to any of the sums for the time being specified in articles 41(2), 42(1) or (2), or 44(2).

(3) An order under paragraph (1) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **Time for sending in and paying claims**

**47.—**(1) Every claim against—

- (a) a candidate or his election agent at a constituency election, or
- (b) an individual candidate or his election agent at a regional election,

in respect of election expenses which is not sent in to the election agent not later than 21 days after the day on which the result or results of the election are declared shall be barred and not paid.

(2) All election expenses shall be paid not later than 28 days after the day set out in paragraph (1).

(3) Any person who pays a claim in contravention of paragraph (1) or makes a payment in contravention of paragraph (2) shall be guilty of an illegal practice.

(4) Where the election court reports that it has been proved to the court that any payment so made was by an election agent without the sanction or connivance of a candidate at a constituency election or an individual candidate at a regional election—

(a) the candidate's election shall not be void, nor

(b) shall he be subject to any incapacity under this Order by reason only of that payment having been made in contravention of this article.

(5) In respect of a claim, the payment of which is otherwise barred by paragraph (1)—

(a) a claimant,

(b) a candidate or his election agent at a constituency election, or

(c) an individual candidate or his election agent at a regional election,

may apply to the High Court or to a county court for leave to pay the claim although sent in after the period of 21 days or although sent in to a candidate and not as required to the election agent, and the court on cause shown to their satisfaction may by order grant the leave.

(6) Any sum specified in the order of leave under paragraph (5) may be paid by a candidate or his election agent, and when paid in pursuance of the leave shall not be deemed to be in contravention of paragraph (2).

(7) The jurisdiction vested by paragraph (5) in a county court may be exercised otherwise than in open court.

(8) An appeal lies to the High Court from any order of a county court made by virtue of paragraph (5).

### **Disputed claims**

**48.**—(1) If an election agent disputes any claim sent in within the period of 21 days mentioned in article 47(1) or refuses or fails to pay the claim within the period of 28 days mentioned in article 47(2) the claim shall be deemed to be a disputed claim.

(2) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court and any sum paid by a constituency or an individual candidate in pursuance of the judgement or order of the court shall not be deemed to be in contravention of article 41(1) or 47(2).

(3) Article 47(5), (6), (7) and (8) applies in relation to a disputed claim as it applies in relation to a claim for election expenses sent in after the period of 21 days.

### **Election agent's claim**

**49.** So far as circumstances admit, this Order applies to an election agent's claim for his remuneration and to its payment in like manner as if he were any other creditor, and if any difference arises about the amount of the claim, the claim shall be a disputed claim within the meaning of this Order and shall be dealt with accordingly.

### **Constituency or individual candidates: return as to election expenses**

**50.**—(1) Within 35 days after the day on which the result or results of an Assembly election are declared the election agent of every —

- (a) candidate, in the case of a constituency election, and
  - (b) individual candidate, in the case of a regional election,
- at the election shall deliver to the appropriate returning officer a true return in the form set out in English and Welsh in Schedule 7, or to the like effect, containing as respects that candidate —
- (i) a statement of all election expenses incurred by or on behalf of the candidate; and
  - (ii) a statement of all payments made by the election agent together with all bills or receipts relating to the payments.
- (2) A return under this section must —
- (a) specify the poll by virtue of which the return is required;
  - (b) specify the name of the candidate to whom the return relates and of the candidate's election agent; and
  - (c) deal under a separate heading with any expenses in respect of which a return is required by virtue of article 44(3) above.
- (3) The return shall also contain as respects that candidate —
- (a) a statement of all payments made —
    - (i) by the candidate in accordance with article 42(1) or (3), or
    - (ii) by any other person in accordance with article 42(5)
 together with all bills or receipts relating to any such payments made in accordance with article 42(3) or (5);
  - (b) a statement of all disputed claims of which the election agent is aware,
  - (c) a statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court or county court;
  - (d) any declarations of value falling to be made by the candidate's election agent by virtue of article 43(2) or 63(2);
  - (e) a declaration of the amount of expenses which are to be regarded as election expenses incurred by or on behalf of the candidate by virtue of article 61(5)(b);
  - (f) a statement of donations made to the candidate or his election agent which complies with the requirements of paragraphs 11 and 12 of Schedule 6; and
  - (g) a statement of the amount, if any, of money provided by the candidate from his own resources for the purpose of meeting election expenses incurred by him or on his behalf.
- (4) Where after the date at which the return as to election expenses is delivered leave is given by the court under article 47(5) for any claims to be paid, the candidate or his election agent shall, within seven days after its payment, deliver to the appropriate returning officer a return of the sums paid in pursuance of the leave accompanied by a copy of the order of the court giving the leave and in default he shall be deemed to have failed to comply with requirements of this article without such authorised excuse as is mentioned in article 56.

### **Constituency and individual candidates: declarations as to election expenses**

- 51.**—(1) Each return delivered under article 50(1) shall be accompanied by a declaration made by the election agent in the form set out in English and Welsh in Schedule 7.
- (2) At the same time the election agent delivers that return, or within seven days thereafter—
- (a) each candidate at a constituency election, and
  - (b) each individual candidate at a regional election,

shall deliver to the appropriate returning officer a declaration made by him in the form set out in English and Welsh in that Schedule.

(3) Where a candidate is out of the United Kingdom when the return is so delivered—

(a) the declaration required by paragraph (2) may be made by him within 14 days after his return to the United Kingdom, and

(b) in that case, the declaration shall be forthwith delivered to the appropriate returning officer, but the delay authorised by this provision in making the declaration shall not exonerate the election agent from complying with the provisions of this Order relating to the return and declaration as to election expenses.

(4) Where a candidate at a constituency election or an individual candidate at a regional election is his own election agent, the declaration by the election agent as to the election expenses need not be made and the declaration by the candidate as to election expenses shall be modified as specified in the form set out in English and Welsh in Schedule 7.

(2005) If a candidate or election agent knowingly makes the declaration required by this article falsely, he shall be guilty of a corrupt practice.

#### **Party list candidates: declarations as to election expenses**

**52.**—(1) At the same time as the treasurer of a registered political party delivers a return under section 80 of the 2000 Political Parties Act, or within 7 days thereafter, each candidate on a regional list submitted by that registered party shall deliver to the Assembly a declaration

made by that candidate in the form set out in English and Welsh in Schedule 7.

(2) Where any such candidate is out of the United Kingdom when the return is so delivered —

(a) the declaration required by paragraph (1) above may be made by him within 14 days after his return to the United Kingdom; and

(b) in that case, the declaration shall forthwith be delivered to the Assembly,

but the delay authorised by this article in making the declaration shall not exonerate the treasurer of the registered party from complying with the provisions of the 2000 Political Parties Act relating to the return of party expenditure.

(3) If a person knowingly makes the declaration required by this article falsely, he shall be guilty of a corrupt practice.

#### **Circumstances in which no return or declaration is required**

**53.** Notwithstanding anything in article 50 or 51, no return or declaration as to election expenses shall be required in the case of a person—

(a) who is a candidate at an Assembly election, but is so only because he has been declared by others to be a candidate, and

(b) who has not consented to the declaration or taken any part as a candidate at the election.

#### **Penalty for failure as respects return of declarations**

**54.** Subject to the provisions of article 56, if any candidate or election agent fails to comply with the requirements of article 50 or 51 he shall be guilty of an illegal practice.

#### **Penalty for sitting or voting where no return and declarations are delivered etc**

**55.**—(1) If—

(a) in the case of a candidate at a constituency election or an individual candidate at a regional election, the return and declarations as to election expenses, or

(b) in the case of a party list candidate, his declaration as to election expenses,

are not delivered before the expiry of the time limited for the purpose, the candidate shall not, after the expiry of that time, sit or vote in the Assembly as member for the Assembly constituency or electoral region for which the election was held until either—

- (i) where sub-paragraph (a) applies, that return and those declarations have been delivered,
- (ii) where sub-paragraph (b) applies, that declaration has been delivered, or
- (iii) the date of the allowance of an authorised excuse for the failure to deliver that return and those declarations or, as the case may be, that declaration,

and if he sits or votes in contravention of this paragraph he shall forfeit £100 for every day on which he so sits or votes.

(2) Civil proceedings for a penalty under this article shall be commenced within the period of one year beginning with the day in respect of which the penalty is alleged to have been incurred.

(3) For the purpose of paragraph (2)—

- (a) where the service or execution of legal process on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, the issue of legal process shall be deemed to be a commencement of a proceeding, but,
- (b) where sub-paragraph (a) does not apply, the service or execution of legal process on or against the alleged offender, and not its issue, shall be deemed to be the commencement of the proceeding.

#### **Authorised excuses for failures as to return and declarations**

**56.**—(1) A constituency or individual candidate or his election agent may apply for relief under this article to the High Court, an election court or a county court.

(2) Where an application is made under this article the person or persons making the application shall notify the Director of Public Prosecutions of the application and the Director or his assistant or any barrister, advocate or solicitor duly appointed as the Director's representative may attend the hearing of the application and make representations at the hearing in respect of it.

(3) Relief under this article may be granted—

- (a) to a candidate, in respect of any failure to deliver the return and declarations as to election expenses, or any part of them, or in respect of any error or false statement in them, or
- (b) to an election agent, in respect of any failure to deliver the return and declaration as to election expenses which he was required to deliver, or any part of them or in respect of any error or false statement in them.

(4) The application for relief may be made on the ground that the failure, error or false statement arose—

- (a) by reason of the applicant's illness,
- (b) where the applicant is a candidate, by reason of the absence, death, illness or misconduct—
  - (i) of the election agent or sub-agent, or
  - (ii) of any clerk or officer of such agent,
- (c) where the applicant is an election agent—
  - (i) by reason of the death or illness of any prior election agent of the candidate, or
  - (ii) by reason of the absence, death, illness or misconduct of any sub-agent, clerk or officer of any election agent of the candidate,



(d) by reason of inadvertence or any reasonable cause of a like nature, and not by reason of any want of good faith on the applicant's part.

(5) The court may—

- (a) after such notice of the application in the Assembly constituency or electoral region for which the election was held, as it considers fit, and
- (b) on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as it considers fit,

make such order for allowing an authorised excuse for the failure, error or false statement as it considers just.

(6) Where it is proved to the court by a candidate—

- (a) that any act or omission of the election agent in relation to the return or declarations was without the sanction or connivance of the candidate, and
- (b) that the candidate took all reasonable means for preventing the act or omission,

the court shall relieve the candidate from the consequences of the act or omission of his election agent.

(7) An order under paragraph (5) may make the allowance conditional on the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seem best calculated for carrying into effect the objects of this Part.

(8) An order under paragraph (5) shall relieve the applicant for the order from any liability or consequences under this Order in respect of the matter excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Order as the date of the allowance of the excuse.

### **Court's power to require information from election agent or sub-agent**

**57.—**(1) Where on an application under article 56 it appears to the court that any person who is or has been an election agent or sub-agent has refused or failed to make such return, or to supply such particulars, as will enable -

- (a) a candidate and his election agent at a constituency election, or
- (b) an individual candidate and his election agent at a regional election,

to comply with the provisions of this Order as to the return or declarations as to election expenses the court, before making an order under that article, shall order that person to attend before the court.

(2) The court shall on the attendance of that person, unless he shows cause to the contrary, order him—

- (a) to make the return and declaration, or
- (b) to deliver a statement of the particulars required to be contained in the return,

as the court considers just, within such time, to such person and in such manner as it may direct, or may order him to be examined with respect to the particulars.

(3) If a person fails to comply with any order of the court under this article, the court may order him to pay a fine not exceeding the amount of the maximum fine to which he would be liable if at the time the order is made he were convicted of a summary offence on conviction of which he was liable to a fine of level 5 on the standard scale.

### **Duty of appropriate returning officer to forward returns and declarations to Electoral Commission**

58. Where the appropriate returning officer receives any return or declaration under article 44, 50 or 51 in respect of an election to the Assembly, he shall as soon as reasonably practicable after receiving the return or declaration deliver a copy of it to the Electoral Commission and, if so requested by the Commission, he shall also deliver to them a copy of any accompanying documents.

### **Publication of time and place of inspection of returns and declarations**

59.—(1) At an Assembly election the appropriate returning officer, within ten days after the end of the time allowed for delivering to him returns as to election expenses, shall—

- (a) publish in not less than—
  - (i) two newspapers circulating in the Assembly constituency, or
  - (ii) three newspapers circulating in the Assembly electoral region for which the election was held, and
- (b) send—
  - (i) in the case of a constituency election, to each of the election agents, and
  - (ii) in the case of a regional election, to each of the election agents for individual candidates,
 a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(2) At an ordinary election or at a regional election other than at an ordinary election, the Assembly, within ten days after the end of the time allowed for delivering to it returns as to election expenses, shall—

- (a) in the case of an ordinary election, publish in not less than five newspapers circulating in Wales,
- (b) in the case of a regional election other than at an ordinary election, publish in not less than three newspapers circulating in the Assembly electoral region for which the election was held, and
- (c) send to each of the election agents for individual candidates —
  - (i) in the case of an ordinary election, at regional elections at the ordinary election, or
  - (ii) in the case of a regional election other than at an ordinary election, at the regional election,
 a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(3) But if any return or declaration has not been received by the appropriate returning officer or the Assembly before the notice is despatched for publication, the notice shall so state and a like notice about that return and declaration, if afterwards received, shall within ten days after the receipt be published in like manner and sent to such persons to whom the first notice is sent other than an election agent who is in default or an election agent for a candidate who is in default.

### **Constituency and individual candidates: inspection of returns and declarations**

60.—(1) Where the appropriate officer receives any return or declaration under article 44, 50 or 51 he shall —

- (a) as soon as reasonably practicable after receiving the return or declaration make a copy of it, and any accompanying documents, available for public inspection at his office, or some

other convenient place chosen by him, for a period of two years beginning with the date when the return is received by him;

- (b) if requested to do so by any person, and on payment of the fee specified in paragraph (4), supply that person with a copy of the return or declaration and any accompanying documents.

(2) If any such return contains a statement of donations in accordance with article 50(3)(f) above, the appropriate officer shall secure that the copy of the statement made available for public inspection under sub-paragraph (1)(a) above or (as the case may be) supplied under sub-paragraph (1)(b) above does not include, in the case of any donation by an individual, the donor's address.

(3) The fee for inspecting a return or declaration (including any accompanying documents) referred to in sub-paragraph (1)(a) shall be £1.50.

(4) The fee payable for a copy of any such return, declaration or document referred to in sub-paragraph (1)(b) shall be at the rate of 15p for each side of each page.

(5) After the expiry of those two years the appropriate returning officer —

- (a) may cause those returns and declarations (including the accompanying documents) to be destroyed, or  
(b) if the candidate or his election agent so require, shall return them to the candidate.

(6) Any returns or declarations delivered under article 44 shall be returned not to a candidate (if he or his election agent so require) but to the person delivering them if he so requires.

(7) The Assembly may by order made by statutory instrument vary the amount of any fee payable under paragraph (3) or (4).

### **Meaning of “election expenses”**

**61.**—(1) In this Part “election expenses”, in relation to a candidate at a constituency election or an individual candidate at a regional election, means (subject to paragraphs (2) and (3) and articles 62 and 63) any expenses incurred in respect of —

- (a) the acquisition or use of any property, or  
(b) the provision by any person of any goods, services or facilities,

which is or are used for the purposes of the candidate's election after the date when he becomes a candidate at the election.

(2) Paragraph (1) applies whether the expenses are incurred before or after that date.

(3) No election expenses shall be regarded as incurred, by virtue of paragraphs (1) or (2) or articles 62 and 63, in respect of —

- (a) the payment of any deposit required by paragraph 10 of Schedule 5 to this Order;  
(b) the publication of any matter, other than an advertisement, relating to the election in —  
(i) a newspaper or periodical;  
(ii) a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru, or  
(iii) a programme included in any service licensed under Part I or III of the Broadcasting Act 1990<sup>(18)</sup> or Part I or II of the Broadcasting Act 1996<sup>(19)</sup>;  
(c) the provision of any facilities provided in pursuance of any right conferred on candidates at an election by this Order other than facilities in respect of which expenses fall to be defrayed by virtue of article 68(4);

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(18) 1990 c. 42.

(19) 1996 c. 55.

(d) the provision by an individual of his own services which he provides voluntarily in his own time and free of charge.

(4) In this article and in articles 62 and 63 “for the purposes of the candidate’s election” means with a view to, or otherwise in connection with, promoting or procuring the candidate’s election at the election.

(5) For the purposes of this Part —

(a) election expenses are incurred by or on behalf of a candidate at an election if they are incurred —

(i) by the candidate or his election agent, or

(ii) by any person authorised by the candidate or his election agent to incur the expenses; and

(b) any reference to election expenses incurred by or on behalf of a candidate at an election includes expenses which are incurred as mentioned in sub-paragraph (a)(i) or (ii) above before the date when he becomes a candidate at the election but which by virtue of paragraphs (1) and (2) above fall to be regarded as election expenses.

(6) In this Part and in Part IV, any reference (in whatever terms) to promoting or procuring a candidate’s election at an election includes doing so by prejudicing the electoral prospects of another candidate at the election.

### **Incurring of election expenses for purposes of article 61**

**62.**—(1) The election expenses which are to be regarded as incurred for the purposes of article 61(1) above shall (subject to paragraph (2) and article 63) be the actual expenses incurred in respect of the acquisition or use of the property, or (as the case may be) the provision of the goods, services or facilities mentioned in article 61(1).

(2) Where the property, goods, services or facilities mentioned in paragraph (1) above is or are not used exclusively for the purposes of the candidate’s election, the election expenses to be regarded as incurred for the purposes of article 61(1) shall be such proportion of the expenses incurred in respect of their acquisition, use or provision (as the case may be) as is reasonably attributable to the use of the property or (as the case may be) the goods, services or facilities for the purposes of the candidate’s election.

### **Property, goods, services etc provided free of charge or at a discount**

**63.**—(1) This article applies where, in the case of a candidate at an Assembly election —

(a) either —

(i) property or goods is or are transferred to the candidate or his election agent free of charge or at a discount of more than 10 per cent of the market value of the property or goods, or

(ii) property, goods, services or facilities is or are provided for the use or benefit of the candidate free of charges or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the goods, services or facilities, and

(b) the property, goods, services or facilities is or are made use of by or on behalf of the candidate in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the candidate in respect of that use, they would be (or are) election expenses incurred by or on behalf of the candidate.

(2) Where this article applies —

- (a) an amount of election expenses determined in accordance with this article (“the appropriate amount”) shall (subject to article 61(3)) be treated, for the purposes of this Part of this Act, as incurred by the candidate, and (in that case)
- (b) the candidate’s election agent shall make a declaration of that amount,

unless that amount is not more than £50.

(3) Where paragraph (1)(a)(i) above applies, the appropriate amount is such proportion of either —

- (a) the market value of the property or goods (where the property or goods is or are transferred free of charge), or
- (b) the difference between the market value of the property or goods and the amount of expenses actually incurred by or on behalf of the candidate in respect of the property or goods (where the property or goods is or are transferred at a discount),

as is reasonably attributable to the use made of the property or goods as mentioned in paragraph (1)(b).

(4) Where paragraph (1)(a)(ii) applies, the appropriate amount is such proportion of either —

- (a) the commercial rate for the use of the property or the provision of the goods, services or facilities (where the property, goods, services or facilities is or are provided free of charge), or
- (b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the candidate in respect of the use of the property or the provision of the services or facilities (where the property, goods, services or facilities is or are provided at a discount),

as is reasonably attributable to the use made of the property, goods, services or facilities as mentioned in paragraph (1)(b).

(5) Where the services of an employee are made available by his employer for the use or benefit of a candidate, then for the purposes of this section the commercial rate for the provision of those services shall be the amount of the remuneration and allowances payable to the employee by his employer in respect of the period for which his services are so made available (but shall not include any amount in respect of any contributions or other payments for which the employer is liable in respect of the employee).

(6) In this section “market value”, in relation to any property or goods, means the price which might reasonably be expected to be paid for the property or goods on a sale in the open market; and paragraph 2(6)(a) of Schedule 6 shall apply with any necessary modifications for the purpose of determining, for the purposes of paragraph (1) above, whether property or goods is or are transferred to a candidate or his election agent.

### **Right to send election address post free**

**64.—(1)** At an ordinary election or at an Assembly election other than at an ordinary election, each individual candidate or group of party list candidates at such an election (subject to such reasonable terms and conditions as the universal postal service provider concerned may specify) shall be entitled to send free of any charge for postage which would otherwise be made by a universal postal service provider either—

- (a) one unaddressed postal communication, containing matter relating to such election wholly and not exceeding 60 grammes in weight, to each place in the Assembly constituency or electoral region for which the election is being held at which he or they are a candidate or candidates which, in accordance with those terms and conditions, constitutes a delivery point for the purposes of this article, or

(b) one such postal communication addressed to each elector.

(2) He or they shall also, subject as mentioned in paragraph (1), be entitled to send free of any such charge for postage as is mentioned in that paragraph to each person entered in the list of proxies for the election of which he or they are a candidate or candidates one such communication as mentioned in paragraph (1) for each appointment in respect of which that person is so entered.

(3) In relation to a candidate at a constituency election or to an individual candidate at a regional election, the person shall not be deemed to be a candidate for the purposes of this article unless he is shown as standing nominated in the statement of persons nominated but until publication of that statement any person who declares himself to be a candidate shall be entitled to exercise the right of free postage conferred by this article if he gives such security as may be required by the universal postal service provider concerned for the payment of postage should he not be shown as standing nominated as mentioned above.

(4) In relation to a group of party list candidates at a regional election, those persons shall not be deemed to be candidates for the purposes of this article unless they are all shown as standing nominated in the statement of persons nominated but until publication of that statement persons who declare themselves to be, and comprise all, such candidates shall be entitled to exercise the right of free postage conferred by this article if they give such security as may be required by the universal postal service provider concerned should they not all be shown as standing nominated as mentioned above.

(5) For the purposes of this article “elector”—

(a) means a person who is registered in the register of local government electors for the Assembly constituency or electoral region on the last day for publication of notice of the election; and

(b) includes a person then shown in that register as below voting age if (but only if) it appears from the register that he will be of voting age on the day fixed for the poll.

(6) The regional returning officer shall be entitled to treat any purported exercise by a group of party list candidates of the right of free postage conferred by this article through their election agent as a valid exercise of that right.

(7) If at a regional election the area of the returning officer is situated in the area of more than one official designated by a universal postal service provider, the controlling designated official shall be determined by the regional returning officer.

(8) A universal service provider who provides a postal service free of charge pursuant to this article shall be entitled to be remunerated for that service at the rate determined by or in accordance with a scheme made under section 89 of the Postal Services Act 2000<sup>(20)</sup> and the amount of such remuneration shall be paid by the Assembly.

### **Broadcasting from outside United Kingdom**

**65.**—(1) No person shall, with intent to influence persons to give or refrain from giving their votes at an Assembly election, include, or aid, abet, counsel or procure the inclusion of, any matter relating to the election in any programme service (within the meaning of the Broadcasting Act 1990<sup>(21)</sup>) provided from a place outside the United Kingdom otherwise than in pursuance of arrangements made with—

(a) the British Broadcasting Corporation,

(b) Sianel Pedwar Cymru, or

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<sup>(20)</sup> 2000 c. 26.

<sup>(21)</sup> 1990 c. 42.

- (c) the holder of any licence granted by the Independent Television Commission or the Radio Authority,

for the reception and re-transmission of that matter by that body or the holder of that licence.

(2) An offence under this article shall be an illegal practice, but the court before whom a person is convicted of an offence under this article may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of article 122.

(3) Where any act or omission of an association or body of persons, corporate or unincorporate, is an illegal practice under this article, any person who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, or was purporting to act in any such capacity, shall be deemed to be guilty of the illegal practice, unless he proves—

- (a) that the act or omission took place without his consent or connivance, and
- (b) that he exercised all such diligence to prevent the commission of the illegal practice as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

### **Broadcasting of local items during election period.**

**66.**—(1) Each broadcasting authority shall adopt a code of practice with respect to the participation of candidates at an Assembly election in items about the constituency or electoral region in question which are included in relevant services during the election period.

(2) The code for the time being adopted by a broadcasting authority under this article shall be either —

- (a) a code drawn up by that authority, whether on their own or jointly with one or more other broadcasting authorities, or
- (b) a code drawn up by one or more other such authorities;

and a broadcasting authority shall from time to time consider whether the code for the time being so adopted by them should be replaced by a further code falling within sub-paragraph (a) or (b).

(3) Before drawing up a code under this article a broadcasting authority shall have regard to any views expressed by the Electoral Commission and any such code may make different provision for different cases.

(4) The Independent Television Commission and the Radio Authority shall each do all that they can to secure that the code for the time being adopted by them under this article is observed in the provision of relevant services; and the British Broadcasting Corporation and Sianel Pedwar Cymru shall each observe in the provision of relevant services the code so adopted by them.

(5) For the purpose of paragraph (1) “the election period”, in relation to an Assembly election, means the period beginning with the last date for publication of notice of the election and ending with the close of the poll.

(6) In this article —

“broadcasting authority” means the British Broadcasting Corporation, the Independent Television Commission, the Radio Authority or Sianel Pedwar Cymru;

“candidate”, in relation to an Assembly election, means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it;

“relevant services” —

- (a) in relation to the British Broadcasting Corporation or Sianel Pedwar Cymru, means services broadcast by that body;

- (b) in relation to the Independent Television Commission, means services licensed under Part I of the Broadcasting Act 1990<sup>(22)</sup> or Part I of the Broadcasting Act 1996<sup>(23)</sup>; and
- (c) in relation to the Radio Authority, means services licensed under Part III of the Broadcasting Act 1990 or Part II of the Broadcasting Act 1996.

### **Imitation poll cards**

**67.** No person shall for the purpose of promoting or procuring a particular result at an Assembly election issue any poll card or document so closely resembling an official poll card as to be calculated to deceive, and article 65(2) and (3) shall apply as if an offence under this article were an offence under that article.

### **Schools and rooms for Assembly election meetings**

**68.**—(1) Subject to the provisions of this article, a candidate at an Assembly election is entitled for the purpose of holding public meetings to promote or procure the giving of votes at that election—

- (a) for himself, in the case of an individual candidate, or
- (b) for the registered political party on whose list he is included, in the case of a party list candidate,

to the use free of charge at reasonable times between the last day on which notice of the election may be published in accordance with the Table in paragraph 1(1) of Schedule 5 and the day preceding the date of the poll of—

- (i) a suitable room in the premises of a school to which this article applies,
- (ii) any meeting room to which this article applies.

(2) This article applies to a community, foundation or voluntary school of which—

- (a) in the case of a constituency election, the premises are situated in the Assembly constituency for which the election is held or an adjoining Assembly constituency, and
- (b) in the case of a regional election, the premises are situated in the Assembly electoral region for which the election is held,

but, in relation to sub-paragraph (a), a candidate is not entitled under this article to the use of a room in school premises outside the Assembly constituency if there is a suitable room in other premises in the constituency which are reasonably accessible from the same parts of the constituency as those outside and are premises of a school to which this article applies.

(3) This article applies to a meeting room situated—

- (a) in the case of a constituency election, in the Assembly constituency for which the election is held, or
- (b) in the case of a regional election, in the Assembly electoral region for which the election is held,

the expense of maintaining which is payable wholly or mainly out of public funds or by a body whose expenses are so payable.

(4) Where a room is used for a meeting in pursuance of the rights conferred by this article, the person by whom or on whose behalf the meeting is convened—

- (a) shall defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting, and

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(22) 1990 c. 42.

(23) 1996 c. 55.



(b) shall defray any damage done to the room or the premises in which it is situated, or the furniture, fittings or apparatus in the room or premises.

(5) A candidate is not entitled to exercise the rights conferred by this article except on reasonable notice; and this article does not authorise any interference with the hours during which a room in school premises is used for education purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) Schedule 8 (which makes provision with respect to the rights conferred by this article and the arrangements to be made for their exercise) has effect.

(7) For the purposes of this article (except those of paragraph (4)(b)), the premises of a school shall not be taken to include any private dwelling, and in this article—

(a) the expression “meeting room” means any room which it is the practice to let for public meetings, and

(b) the expression “room” includes a hall, gallery or gymnasium.

(8) In paragraph (2) the reference to a community, foundation or voluntary school includes a reference to a county or grant-maintained school.

### **Disturbances at Assembly election meetings**

**69.**—(1) A person who at a lawful public meeting to which this article applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an illegal practice.

(2) This article applies to a political meeting held—

(a) in relation to a constituency election, in the Assembly constituency for which the election is held, and

(b) in relation to a regional election, in the Assembly electoral region for which the election is held,

during the period beginning with the last day on which notice of election may be published in accordance with the Table set out in paragraph 1(1) of Schedule 5 and ending with the day of election.

(3) If a constable reasonably suspects any person of committing an offence under paragraph (1), he may if requested so to do by the chairman of the meeting require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or gives a false name and address, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

### **Officials not to act for candidates**

**70.**—(1) If—

(a) any constituency or regional returning officer at a constituency election,

(b) any constituency or regional returning officer at a regional election,

(c) any officer or clerk appointed under Schedule 5, or

(d) any partner or clerk of any such person,

acts as an agent for an individual candidate or a group of party list candidates in the conduct or management of the election, he shall be guilty of an offence, but nothing in this article prevents an individual candidate from acting as his own election agent or a party list candidate from acting as election agent for the candidates on the list.

(2) A person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 4 of the standard scale.

### **Illegal canvassing by police officers**

71.—(1) No member of a police force shall by word, message, writing or in any other manner, endeavour to persuade any person to give, or dissuade any person from giving, his vote, whether as an elector or as proxy—

- (a) at any constituency election for an Assembly constituency, or
- (b) at any regional election for an Assembly electoral region,

wholly or partly within the police area.

(2) A person acting in contravention of paragraph (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; but nothing in that paragraph shall subject a member of a police force to any penalty for anything done in the discharge of his duty as a member of the force.

### **False statements as to candidates**

72.—(1) A person who, or any director of any body or association corporate which—

- (a) before or during an Assembly election,
- (b) for the purpose of affecting how a vote is given at the election,

makes or publishes any false statement of fact in relation to—

- (i) an individual candidate's, or
- (ii) any or all of a group of party list candidates',

personal character or conduct shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true.

(2) A candidate shall not be liable, nor shall his election be avoided, for any illegal practice under paragraph (1) committed—

- (a) in the case of an individual candidate, by his agent other than his election agent,
- (b) in the case of a party list candidate, by the agent of any or all of the candidates on the list other than their election agent,

unless—

- (i) it can be shown that the candidate, the election agent or (in the case of a party list candidate) another candidate on the list has authorised or consented to the committing of the illegal practice by the other agent or has paid for the circulation of the false statement constituting the illegal practice, or
- (ii) an election court find and report that the election of the candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

(3) A person making or publishing any false statement of fact as mentioned above may be restrained by interim or perpetual injunction by the High Court or county court from any repetition of that false statement or of a false statement of a similar character in relation to the candidate or candidates and, for the purpose of granting an interim injunction, prima facie proof of the falsity of the statement shall be sufficient.

(4) Any person who, before or during an Assembly election, knowingly publishes a false statement of the withdrawal—

- (a) of an individual candidate, or

(b) of any or all of a group of party list candidates, at the election for the purpose of promoting or procuring a particular result at the election shall be guilty of an illegal practice.

(5) A candidate shall not be liable, nor shall his election be avoided, for any illegal practice under paragraph (4) committed—

- (a) in the case of an individual candidate, by his agent other than his election agent, or
- (b) in the case of a party list candidate, by the agent of any or all of the candidates on the list other than their election agent.

(6) An appeal lies to the High Court from any order of a county court made by virtue of paragraph (3).

### **Corrupt withdrawal from candidature**

73. Any person who corruptly induces or procures any other person to withdraw from being a candidate at an Assembly election, in consideration of any payment or promise of payment, and any person withdrawing in pursuance of the inducement or procurement, shall be guilty of an illegal payment.

### **Payments for exhibition of election notices**

74.—(1) No payment or contract for payment for the purpose of promoting or procuring a particular result at an Assembly election shall be made to an elector or his proxy on account of the exhibition of, or the use of any house, land, building or premises for the exhibition of, any address, bill or notice, unless—

- (a) it is the ordinary business of the elector or proxy as an advertising agent to exhibit for payment bills and advertisements, and
- (b) the payment or contract is made in the ordinary course of that business.

(2) If any payment or contract for payment is knowingly made in contravention of this article either before, during or after an election—

- (a) the person making the payment or contract, and
- (b) if he knew it to be in contravention of this Order, any person receiving the payment or being a party to the contract,

shall be guilty of an illegal practice.

### **Printer's name and address on election publications**

75.—(1) A person shall not—

- (a) print or publish, or cause to be printed or published, any bill, placard or poster having reference to an Assembly election or any printed document distributed for the purpose of promoting or procuring a particular result at the election,
- (b) post or cause to be posted any such bill, placard or poster as mentioned above, or
- (c) distribute or cause to be distributed any printed document for that purpose,

unless the bill, placard, poster or document bears upon its face the name and address of the printer and publisher.

(2) For the purposes of this article, any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression “printer” shall be construed accordingly.

(3) The following persons, namely—

(i) an individual candidate or his election agent, or  
(ii) any or all of a group of party list candidates or their election agent,  
acting in contravention of this article shall be guilty of an illegal practice, and any other person so acting shall on summary conviction be liable to a fine not exceeding level 5 on the standard scale.

### **Prohibition of paid canvassers**

76. If a person is, either before, during or after an Assembly election, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting or procuring a particular result at the Assembly election—

- (a) the person so engaging or employing him, and
- (b) the person so engaged or employed,

shall be guilty of illegal employment.

### **Providing money for illegal purposes**

77. Where a person knowingly provides money—

- (a) for any payment which is contrary to the provisions of this Order,
- (b) for any expenses incurred in excess of the maximum amount allowed by this Order, or
- (c) for replacing any money expended in any such payment or expenses,

except where the payment or the incurring of the expenses may have been previously allowed in pursuance of article 118 to be an exception, that person shall be guilty of an illegal payment.

### **Bribery**

78.—(1) A person shall be guilty of a corrupt practice if he is guilty of bribery.

(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf—

- (a) gives any money or procures any office—
  - (i) to or for any voter,
  - (ii) to or for any other person on behalf of any voter, or
  - (iii) to or for any other person,
in order to induce any voter to vote or refrain from voting,
- (b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or
- (c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, a particular result at an Assembly election or the vote of any voter,

or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure a particular result at an Assembly election or the vote of any voter.

(3) For the purposes of paragraph (2)—

- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure any money or valuable consideration, and

(b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.

(4) A person shall be guilty of bribery if he advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money or any part of it shall be expended in bribery at an Assembly election or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election.

(5) The foregoing provisions of this article shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning an Assembly election.

(6) A voter shall be guilty of bribery if before or during an Assembly election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(7) A person shall be guilty of bribery if after an Assembly election he directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

(8) In this article the expression “voter” includes any person who has or claims to have a right to vote.

### **Treating**

**79.**—(1) A person shall be guilty of a corrupt practice if he is guilty of treating.

(2) A person shall be guilty of treating if he corruptly, by himself or by any other person, either before, during or after an Assembly election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—

- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting, or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.

(3) Every elector or his proxy who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating.

### **Undue influence**

**80.**—(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.

(2) A person shall be guilty of undue influence—

- (a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting, or
- (b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting.

### **Rights of creditors**

**81.** The provisions of this Part prohibiting—

- (a) payments and contracts for payments,
- (b) the payment or incurring of election expenses in excess of the maximum amount allowed by this Order, or
- (c) the incurring of expenses not authorised by an election agent,

do not affect the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this Order.

### **Savings as to Assembly elections**

**82.—**(1) Where a person has been declared by others to be a candidate at an Assembly election without his consent, nothing in this Part shall be construed to impose any liability on that person, unless he has afterwards given his assent to the declaration or has been nominated.

(2) Nothing in this Part makes it illegal for an employer to permit Assembly electors or their proxies to absent themselves from his employment for a reasonable time for the purpose of voting at the poll at an Assembly election without having any deduction from their salaries or wage on account of their absence, if the permission—

- (a) is (so far as practicable without injury to the employer’s business) given equally to all persons alike who are at the time in his employment,
- (b) is not given with a view to inducing any person to give his vote in a particular way at the election, and
- (c) is not refused to any person for the purpose of preventing him from giving his vote in a particular way at the election,

but this paragraph shall not be construed as making illegal any act which would not be illegal apart from this paragraph.

### **Interpretation of Part III**

**83.** In this Part, unless the context otherwise requires —

a person becomes a “candidate” in relation to an Assembly election —

- (a) on the last day for publication of notice of the election if on or before that day he is declared by himself or by others to be a candidate at the election; and
- (b) otherwise, on the day on which he is so declared by himself or by others or on which he is nominated as a candidate at the election (whichever is the earlier),

or, in the case of a party list candidate, on the day on which the list is submitted by the party to the regional returning officer.

“committee room” does not include any house or room occupied by a candidate as a dwelling, by reason only of the candidate transacting business there with his agents in relation to the election, and no room or building shall be deemed to be a committee room by reason only of the candidate or any agent of the candidate addressing in it electors, committee members or others,

“date of the allowance of an authorised excuse” has the meaning given by article 56(9),

“declaration as to election expenses” means a declaration made under article 51,

“disputed claim” has the meaning given by article 48(1) as extended by article 49,

“money” and “pecuniary reward” shall (except in articles 78 and 79) be deemed to include —

- (a) any office, place or employment,

(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,

“personal expenses” as used with respect to the expenditure of any candidate in relation to any Assembly election includes the reasonable travelling expenses of the candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to the election, and

“return as to election expenses” means a return (including the bills and receipts to be delivered with it) to be made under article 50(1).

### **Computation of time for purposes of Part III**

**84.**—(1) Where the day or last day on which anything is required or permitted to be done by or in pursuance of this Part is any of the days mentioned in paragraph (2)—

(a) the requirement or permission shall be deemed to relate to the first day thereafter which is not one of those days, and

(b) in computing any period of not more than seven days for the purposes of this Part any of the days so mentioned shall be disregarded.

(2) The days referred to in paragraph (1) are—

(a) a Saturday or a Sunday,

(b) Christmas Eve, Christmas Day, Maundy Thursday or Good Friday,

(c) a day which is a bank holiday in Wales under the Banking and Financial Dealings Act 1971(24), or

(d) a day appointed for public thanksgiving or mourning.

## **PART IV**

### **LEGAL PROCEEDINGS**

#### **Method of questioning Assembly election**

**85.**—(1) No Assembly election and no return to the Assembly shall be questioned except by a petition complaining of an undue election or undue return (“an Assembly election petition”) presented in accordance with this Part; and “Assembly election petition” includes a petition complaining of an undue return under section 9 of the 1998 Act.

(2) A petition complaining of no return shall be deemed to be an Assembly election petition and the High Court—

(a) may make such order on the petition as they think expedient for compelling a return to be made, or

(b) may allow the petition to be heard by an election court as provided with respect to ordinary Assembly election petitions.

(3) The expression “return” as the context requires refers to a return following an Assembly election or to a return under section 9 of the 1998 Act.

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(24) 1971 c. 80.

### **Presentation and service of Assembly election petition**

**86.**—(1) An Assembly 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,
- (b) a person claiming to have had a right to be elected or returned at the election,
- (c) a person alleging himself to have been a candidate at the election, or
- (d) a person claiming to have had a right to be returned under section 9 of the 1998 Act.

(2) Any Assembly member whose election or return is complained of is hereinafter referred to as a respondent but if the petition complains of the conduct of a constituency or a regional returning officer, the returning officer shall for the purposes of this Part be deemed to be a respondent.

(3) Paragraph (2) also applies if the petition complains of the conduct of a constituency returning officer in the exercise of his functions in relation to a regional election.

(4) 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 the High Court.

(5) 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 Assembly constituency or electoral region to which the petition relates, who shall forthwith publish it in that Assembly constituency or electoral region.

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

### **Time for presentation or amendment of Assembly election petition**

**87.**—(1) Subject to the provisions of this article, an Assembly election petition shall be presented within 21 days after the day on which the name of any member to whose election or return the petition relates has been returned in accordance with Schedule 5 to this Order or section 9(6) of the 1998 Act.

(2) If the petition questions the election or return upon an allegation of corrupt practices and specifically alleges a payment of money or other reward to have been made by such member or on his account or with his privity since the time of that return in pursuance or in furtherance of the alleged corrupt practice, it may be presented within 28 days after the date of the payment.

(3) A petition questioning the election or return upon an allegation of an illegal practice may, so far as respects that illegal practice, be presented—

- (a) within 21 days after the day specified in paragraph (4), or
- (b) if specifically alleging a payment of money or some other act to have been made or done since the day so specified by such member to whose election or return the petition relates or an agent of his, or with the privity of that member or the election agent, in pursuance or in furtherance of the alleged illegal practice, within 28 days after the date of the payment or other act.

(4) The day referred to in paragraph (3) is the tenth day after the end of the time allowed for delivering returns as to election expenses at the election or, if later—

- (a) where that member was an individual candidate, that day on which the appropriate returning officer receives the return and declarations as to election expenses by that member and his election agent,
- (b) where that member was a party list candidate, that day on which the Assembly receives—
  - (i) the return and declaration as to election expenses by the registered political party's registered nominating officer, and
  - (ii) the declaration as to election expenses by that member,



- (c) where the return and declarations are received on different days, the last of those days, or
  - (d) where there is an authorised excuse for failing to make the return and declarations, the date of the allowance of the excuse, or if there was a failure as regards two or more of them, and the excuse was allowed at different times, the date of the allowance of the last excuse.
- (5) An Assembly election petition presented within the time limited by paragraph (1) or (2) may, for the purpose of questioning the election or return upon an allegation of an illegal practice, be amended with the leave of the High Court within the time within which a petition questioning the election upon the allegation of that illegal practice could be presented under paragraph (3).
- (6) Paragraphs (3), (4) and (5) apply—
- (a) notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice, and
  - (b) to a corrupt practice under article 44, as if it were an illegal practice.
- (7) For the purposes of this article, an allegation that an election is avoided under article 115 shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.

### **Constitution of election court and place of trial**

- 88.**—(1) An Assembly 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 election petitions standing for trial according to their seniority, and the judges presiding at the trial of an Assembly election are hereinafter referred to as the election court.
- (2) The election court has, subject to the provisions of this Order, the same powers, jurisdiction and authority as a judge of the High Court and shall be a court of record.
- (3) The place of trial shall be within the Assembly constituency or electoral region for which the election was held (or, where article 86(1)(d) applies, within the Assembly electoral region for which a person claims to have had a right to be returned under section 9 of the 1998 Act), but the High Court may on being satisfied that special circumstances exist rendering it desirable that the petition should be tried elsewhere, appoint some other convenient place for the trial.
- (4) The election court may adjourn the trial from one place to another within the Assembly constituency or electoral region.

### **Judges' expenses and reception**

- 89.** In relation to the trial of an Assembly election petition, 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 Secretary of State out of money provided by Parliament.

### **Attendance of shorthand writer**

- 90.**—(1) The Assembly shall require a shorthand writer to attend the trial of an Assembly election petition and that person shall be sworn by one of the judges of the election court faithfully and truly to take down the evidence given at the trial and from time to time as occasion requires to transcribe that evidence or cause it to be transcribed.
- (2) The shorthand writer shall take down the evidence and from time to time transcribe it or cause it to be transcribed and a copy of the evidence shall accompany the certificate given by the election court to the presiding officer of the Assembly.

### **Security for costs**

**91.**—(1) At the time of presenting an Assembly 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.

(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 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 article or any objection is allowed and not removed as mentioned above, no further proceedings shall be had on the petition.

### **Petition at issue**

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

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

- (a) where the petitioner gives the security for costs required by article 91 by a deposit of money equal to the amount of the security required, the time when the security is given; and
- (b) in any other case, the time when—
  - (i) the time prescribed for the making of objections under article 91(4) expires, or
  - (ii) if such an objection is made, that objection is disallowed or removed,whichever happens later.

### **List of petitions**

**93.**—(1) The prescribed officer shall—

- (a) as soon as may be, make out a list of all Assembly election petitions at issue presented to the court of which he is officer, placing them in the order in which they were presented, and
- (b) keep at his office a copy of the list, open to inspection in the prescribed manner.

(2) The petitions shall, so far as convenient, be tried in the order in which they stand in the list.

(3) Where more petitions than one are presented relating to the same Assembly election (or return under section 9 of the 1998 Act), all those petitions shall be bracketed together in the election list and shall be dealt with as one petition, standing, unless the High Court otherwise direct, in the election list in the place where the last of them would have stood if it had been the only petition presented.

## **Trial of petition**

**94.**—(1) An Assembly 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 fourteen 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 an Assembly election petition shall be proceeded with notwithstanding a respondent having resigned his seat or if he becomes disqualified from being an Assembly member so that his seat is vacant.

(4) On the trial of an Assembly election petition, unless the court otherwise directs, any charge of a corrupt practice may be gone into, and evidence in relation to it received, before any proof has been given of agency on behalf of any candidate in respect of the corrupt practice.

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

(6) This paragraph applies if, in relation to an Assembly election petition, it appears that—

- (a) there is an equality of votes between any candidates at a constituency election, or
- (b) two or more individual candidates or registered political parties at a regional election have the same electoral region figure (within the meaning of section 6(3) of the 1998 Act),

and that the addition of a vote would entitle any of those individual candidates or any party list candidate of those parties to be declared elected.

(7) Where paragraph (6) applies—

- (a) any decision under the provisions in—
  - (i) paragraph 55 of Schedule 5, in the case of a constituency election, or
  - (ii) section 7(9) of the 1998 Act and paragraph 58(8) of Schedule 5, in the case of a regional election,

shall, in so far as it determines the question as to who is elected, 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**

**95.**—(1) At the trial of an Assembly election petition 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 Assembly election or return under section 9 of the 1998 Act 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 Assembly election petition.

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

(5) The Director of Public Prosecutions shall without any direction from the court cause any person appearing to him to be able to give material evidence as to the subject of the trial to attend the trial and shall, with the leave of the court, examine him as a witness.

#### **Duty to answer relevant questions**

**96.**—(1) A person called as a witness respecting an Assembly election or return under section 9 of the 1998 Act before any election court shall not be excused from answering any question relating to any offence at or connected with the election or return—

- (a) on the ground that the answer to it may incriminate or tend to incriminate that person or that person's husband or wife, 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 that person or that person's husband or wife.

#### **Expenses of witnesses**

**97.**—(1) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an Assembly 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 article 95(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 Assembly election petition**

**98.**—(1) Subject to paragraph (2), at the conclusion of the trial of an Assembly election petition, the election court shall determine whether—

- (a) any Assembly member whose election or return is complained of, or any and what other person, was duly elected or returned, or
- (b) if applicable, the election was void,

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

(2) Where the election court determine that at a regional election an Assembly member for an Assembly electoral region was not duly elected or returned, the court in addition shall determine that the regional election was void.

(3) The election court shall forthwith certify in writing the determination to the presiding officer of the Assembly.

(4) If the judges constituting the election court—

- (a) subject to paragraph (2), differ as to whether any Assembly member whose election or return is complained of was duly elected or returned, they shall certify that difference and the member shall be deemed to be duly elected or returned, or
- (b) where the petition relates to a constituency election, determine that such member was not duly elected or returned but differ as to the rest of the determination, they shall certify that difference and the election shall be deemed to be void.

(5) Where any charge is made in the petition of any corrupt or illegal practice having been committed at an Assembly election the court shall, in addition to giving a certificate, and at the same time, make a report to the presiding officer of the Assembly as required by articles 107 and 109

and also stating whether corrupt or illegal practices have, or whether there is reason to believe that corrupt or illegal practices have, extensively prevailed at the election.

(6) The election court may at the same time make a special report to the presiding officer of the Assembly as to matters arising in the course of the trial an account of which in the judgement of the court ought to be submitted to the Assembly.

(7) Every report sent to the presiding officer of the Assembly under this article shall be signed by both judges of the election court and if the judges differ as to the subject of the report, they shall certify that difference and make no report on the subject on which they so differ.

(8) The presiding officer of the Assembly shall publish any certificate or report of an election court received by him under this article.

### **Election court determination in respect of a constituency election etc**

**99.**—(1) Where by virtue of article 98 at a constituency election the election court determine that at a constituency election—

- (a) an Assembly member was not duly elected or returned, or
- (b) that the election was void,

and the return of the member at that election was taken into account for the purposes of deciding which members were to be returned for the Assembly electoral region in which the Assembly constituency is situated—

- (i) the determination by the election court, or
- (ii) the subsequent return of an Assembly member for that constituency,

shall not affect the validity of the return of those members for that electoral region.

(2) Where by virtue of article 98(4)(b) a constituency election is deemed to be void, the election court shall be treated as having determined that election to be void for the purposes of paragraph (1) (b).

### **Regional election determined to be void by election court**

**100.**—(1) Where by virtue of article 98 the election court determine that a regional election was void, the presiding officer of the Assembly shall (subject to paragraph (3)) forthwith after receipt of the certificate from the election court under article 98(3) —

- (a) fix a date in accordance with paragraph (2) for a poll to be held at another election in the Assembly electoral region for which the regional election is determined to be void, and
- (b) send a notice in accordance with paragraph (4) to the returning officer for the Assembly electoral region in which the election was held.

(2) The date fixed shall not be later than three months after receipt of the certificate from the election court.

(3) But an election shall not be held if it appears to the presiding officer of the Assembly that the latest date which may be fixed for the poll would fall within the period of three months preceding an ordinary election.

(4) A notice under paragraph (1)(b) shall—

- (a) state that the election has been determined to be void,
- (b) require that the election is held again for the purpose of returning the members for that Assembly electoral region, and
- (c) state the date fixed for the poll at the election.

(5) The regional returning officer shall on receipt of notice under paragraph (1)(b) inform each constituency returning officer for an Assembly constituency in the Assembly electoral region as to the contents of that notice.

(6) The results of the constituency elections in the Assembly electoral region for which the election is held at the last ordinary election shall have effect for the purposes of ascertaining the results of the regional election.

### **Special case for determination of High Court**

**101.**—(1) If, on the application of any party to an Assembly election 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) The High Court shall certify to the presiding officer of the Assembly its decision on the special case.

(3) If it appears to the election court on the trial of an Assembly 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) The presiding officer of the Assembly shall publish any certificate received by him under paragraph (2).

### **Withdrawal of petition**

**102.**—(1) A petitioner shall not withdraw an Assembly 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 Assembly constituency or electoral region to which the petition relates.

(3) Where there is more than one petitioner, 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 a respondent.

### **Costs of petition**

**103.**—(1) All costs of and incidental to the presentation of an Assembly election petition and the proceedings consequent on it, except such as are by this Order 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 a petitioner or of a respondent, and

(b) any needless expense incurred or caused on the part of a 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**

**104.**—(1) Paragraph (2) applies if, in relation to an Assembly election petition, a petitioner neglects or refuses, for six months after demand, to pay 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.

(2) Where paragraph (1) applies, every person who under this Order 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.

### **Further provision as to costs**

**105.**—(1) Where upon the trial of an Assembly election petition it appears to the election court—

- (a) that a corrupt practice has not been proved to have been committed in relation to an Assembly election by or with the knowledge and consent of a respondent to the petition, and
- (b) that the respondent took all reasonable means to prevent corrupt practices being committed on his behalf,

the court may, subject to the provisions of paragraph (2), make such order with respect to the whole or part of the costs of the petition as is mentioned in that paragraph.

(2) If it appears to the court that any person or persons is or are proved, whether by providing money or otherwise, to have been extensively engaged in corrupt practices, or to have encouraged or promoted extensive corrupt practices in relation to the Assembly election, the court may, after giving that person or those persons an opportunity of being heard by counsel or solicitor and examining and cross examining witnesses to show cause why the order should not be made—

- (a) order the whole or part of the costs to be paid by that person, or those persons or any of them, and
- (b) order that if the costs cannot be recovered from one or more of those persons they shall be paid by some other of those persons or by either of the parties to the petition.

(3) Where any person appears to the court to have been guilty of a corrupt or illegal practice, the court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceeding before the court in relation to that offence or to that person to be paid by that person to such person or persons as the court may direct.

### **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, and if leave to appeal is granted the decision of the Court of Appeal in the case shall be final and conclusive.

(2) Subject to the provisions of this Order, the principles, practice and rules on which committees of the House of Commons used to act in dealing with parliamentary election petitions shall be observed, so far as may be, by the High Court and election court in the case of Assembly election petitions.

(3) The High Court has, subject to the provisions of this Order, the same powers, jurisdiction and authority with respect to an Assembly election petition and the proceedings on it as if the petition were an ordinary action within its jurisdiction.

(4) The duties to be performed in relation to Assembly 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.

### **Report as to candidate guilty of a corrupt or illegal practice**

**107.**—(1) Other than where the petition relates to a return under section 9 of the 1998 Act, the report of an election court under article 98 shall state whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the Assembly election, and the nature of the corrupt or illegal practice.

(2) For the purposes of articles 108 and 109—

- (a) if it is reported that a corrupt practice other than treating or undue influence was committed with the knowledge and consent of a candidate, he shall be treated as having been reported personally guilty of that corrupt practice, and
- (b) if it is reported that an illegal practice was committed with the knowledge and consent of a candidate at an Assembly election, he shall be treated as having been reported personally guilty of that illegal practice.

(3) The report shall also state whether any of the candidates has at that Assembly election been guilty by his agents of any corrupt or illegal practice in relation to the election; but if a candidate is reported guilty by his agents of treating, undue influence or any illegal practice, and the court further reports that the candidate has proved to the court—

- (a) that no corrupt or illegal practice was committed at the election by the candidate or his election agent and the offences mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent,
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election,
- (c) that the offences mentioned in the report were of a trivial, unimportant and limited character, and
- (d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents,

then the candidate shall not be treated for the purposes of article 108 as having been reported guilty by his agents of the offences mentioned in the report.

### **Candidate reported guilty of corrupt or illegal practice**

**108.** If a candidate who has been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.

### **Persons reported personally guilty of corrupt or illegal practices**

**109.**—(1) Other than where the petition relates to a return under section 9 of the 1998 Act, the report of the election court under article 98 shall state the names of all persons (if any) who have been proved at the trial to have been guilty of any corrupt or illegal practice but in the case of someone—

- (a) who is not a party to the petition, or
- (b) who is not a candidate on behalf of whom the seat is claimed by the petition,

the election court shall first cause notice to be given to him, and if he appears in pursuance of the notice shall give him an opportunity of being heard by himself and of calling evidence in his defence to show why he should not be so reported.

(2) The report shall be laid before the Director of Public Prosecutions.



(3) Subject to the provisions of paragraph (4) and article 125, a candidate or other person reported by an election court personally guilty of a corrupt practice shall for five years from the date of the report be incapable—

- (a) of being registered as an elector or voting at any—
  - (i) Assembly election,
  - (ii) election to the House of Commons,
  - (iii) election to the European Parliament,
  - (iv) election to the Scottish Parliament,
  - (v) election to the Northern Ireland Assembly, or
  - (vi) election in Great Britain to any public office,
- (b) of being elected to and sitting in the Assembly, the House of Commons, the European Parliament, the Scottish Parliament or the Northern Ireland Assembly, and
- (c) of holding any public or judicial office,

and, if already elected to the Assembly or such other body mentioned in sub-paragraph (b), or holding such office, shall from that date vacate the seat or office.

(4) The incapacities imposed by sub-paragraph (3)(a) apply only to a candidate or other person reported personally guilty of a corrupt practice under article 28.

(5) Subject to the provisions of paragraph (6) and article 125, a candidate or other person reported by an election court personally guilty of an illegal practice shall for three years from the date of the report be incapable of being registered as an elector or voting at any Assembly election, any parliamentary election, any European Parliamentary election or at any election to a public office held—

- (a) if the offence was committed in relation to a constituency election, for or in—
  - (i) the Assembly constituency for which the election was held,
  - (ii) any other Assembly constituency in the Assembly electoral region in which the first mentioned constituency is situated,
  - (iii) the Assembly electoral region in which the first mentioned constituency is situated, or
  - (iv) any Assembly constituency or electoral region which includes the whole or any part of the first mentioned constituency as constituted for the purposes of the election (or any other Assembly constituency within that Assembly electoral region), or
- (b) if the offence was committed in relation to a regional election, for or in—
  - (i) the Assembly electoral region for which the election was held,
  - (ii) any Assembly constituency situated in that electoral region, or
  - (iii) any Assembly constituency or electoral region which includes the whole or part of the first mentioned electoral region as constituted for the purposes of the election (or any other Assembly constituency in that second mentioned Assembly electoral region).

(6) The incapacities imposed by paragraph (5)(a) or, as the case may be, paragraph (5)(b) apply only to a candidate or other person reported personally guilty of an illegal practice under article 29.

(7) The provisions of this article as to the consequences of the report that a candidate was guilty by his agents of a corrupt or illegal practice have effect subject to the express provisions of this Order relating to particular acts which are declared to be corrupt or illegal practices.

### **Persons reported personally guilty of corrupt or illegal practices at parliamentary elections or local government elections**

**110.**—(1) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of a corrupt practice under that Act, in addition to being subject to the incapacities set out in section 160(4) of that Act, he shall for five years from the date of that report be incapable of being elected to and sitting in the Assembly, and if already elected to the Assembly, he shall from that date vacate the seat.

(2) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of an illegal practice under that Act, in addition to being subject to the incapacities set out in section 160(5) of that Act, he shall for three years from the date of the report be incapable of being registered as an elector or voting at any Assembly election held—

- (a) if the offence was committed in relation to a parliamentary election,
  - (i) in the Assembly constituency which is coterminous with the parliamentary constituency,
  - (ii) in any other Assembly constituency in the Assembly electoral region in which the parliamentary constituency is situated,
  - (iii) in the Assembly electoral region in which the parliamentary constituency is situated, or
  - (iv) in any Assembly constituency or electoral region which includes the whole or any part of the parliamentary constituency as constituted for the purposes of the election (or any other Assembly constituency in that Assembly electoral region), or
- (b) if the offence was committed in relation to an election under the Local Government Act 1972<sup>(25)</sup>,
  - (i) in the Assembly constituency or electoral region which includes the whole or any part of the local government area for which the election was held (or any other Assembly constituency in that Assembly electoral region), or
  - (ii) in any Assembly constituency or electoral region which includes the whole or any part of the local government area for which the election was held as constituted for the purposes of the election (or any other Assembly constituency within that Assembly electoral region).

(3) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

### **Persons reported personally guilty of corrupt or illegal practices at European Parliamentary elections**

**111.**—(1) References in this article to the 1983 Act are to that Act as applied by the European Parliamentary Elections Regulations 1986<sup>(26)</sup>.

(2) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of a corrupt practice under the 1983 Act in addition to being subject to the incapacities set out in section 160(4) of that Act he shall for five years from the date of that report be incapable of being elected to and sitting in the Assembly and, if already elected to the Assembly, he shall from that date vacate the seat.

(3) Subject to the provisions of section 174 of the 1983 Act, if a person is reported by an election court personally guilty of an illegal practice in addition to being subject to the incapacities set out in

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<sup>(25)</sup> 1972 c. 70.

<sup>(26)</sup> S.I. 1986/2209.

section 160(5) of that Act he shall for three years from the date of the report be incapable of being registered as an elector or voting at any Assembly election.

(4) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

### **Justice of the peace**

**112.** Where a justice of the peace is reported by an election court to have been guilty of any corrupt practice in relation to an Assembly election the court shall report the case to the Lord Chancellor with such evidence as may have been given of the corrupt practice.

### **Members of legal and certain other professions**

**113.** Where a barrister, advocate, solicitor or any person who belongs to any profession the admission to which is regulated by law is reported by an election court to have been guilty of any corrupt practice in relation to an Assembly election—

- (a) the court shall bring the matter before the Inn of Court, High Court or tribunal having power to take cognisance of any misconduct of the person in his profession, and
- (b) the Inn of Court, High Court or tribunal may deal with him as if the corrupt practice were misconduct by him in his profession.

### **Holder of licence or certificate under Licensing Acts**

**114.—(1)** If it appears to an election court that a person holding a licence or certificate under the Licensing Acts has knowingly permitted any bribery or treating in relation to any Assembly election to take place upon his licensed premises—

- (a) the court shall, after affording him such rights as are conferred on those about to be reported under article 109(1), report the fact, and
- (b) the court shall bring the report before the licensing authority from whom, or on whose certificate, that person obtained his licence, and the licensing authority shall cause the report to be entered in the proper register of licences.

(2) The entry of the report in that register 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 of the person reported and may be a ground, if the authority think fit, for refusing renewal.

### **Avoidance of election for general corruption etc**

**115.—(1)** Where on an Assembly election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in relation to an Assembly election for the purpose of promoting or procuring the election of any person at the election have so extensively prevailed that they may be reasonably supposed to have affected the result—

- (a) his election, if he has been elected, shall be void, and
- (b) he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.

(2) Where on an Assembly election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed have prevailed in relation to a regional election for the purpose of promoting or procuring the giving of votes for a registered political party at the election, such acts, for the purposes of paragraph (1), shall be treated as having prevailed for the purpose of promoting or procuring the election of each candidate on that party's list.

(3) An election shall not be liable to be avoided otherwise than under this article by reason of general corruption, bribery, treating or intimidation.

#### **Avoidance of election for employing corrupt agent**

**116.**—(1) Subject to paragraph (2), if—

- (a) for an Assembly election any individual candidate or his election agent personally engages, or
- (b) for a regional election any or all of a group of party list candidates or their election agent personally engage,

as a canvasser or agent for the conduct or management of the election any person whom he knows or has (or they know or have) reasonable grounds for supposing to be subject to an incapacity to vote at the election by reason—

- (i) of his having been convicted or reported of any corrupt or illegal practice within the meaning of this Order, the 1983 Act, or of the law relating to elections to the European Parliament, the Northern Ireland Assembly or the Scottish Parliament, or
- (ii) of his having been convicted more than once of an offence under the Public Bodies Corrupt Practices Act 1889(27),

the candidate or candidates shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election is held.

(2) In relation to party list candidates at a regional election, the incapacity imposed by paragraph (1) shall apply—

- (a) where their election agent engages such a person, to each candidate on the list, or
- (b) where their election agent does not engage such a person, only to that candidate who engages, or those candidates who engage, that person.

(3) A vote given—

- (a) at a constituency or regional election for a person who, at the time of the election, was by virtue of this article incapable of being elected, or
- (b) at a regional election for a registered political party where, at the time of the election, each candidate included on the party's list was by virtue of this article incapable of being elected,

shall not, by reason of that incapacity, be deemed to be thrown away so as to entitle another candidate to be declared elected, unless given at a poll consequent on the decision of an election court that he was so incapable.

#### **Votes to be struck off for corrupt or illegal practices**

**117.**—(1) Where, on an Assembly election petition claiming the seat for any person, a candidate is proved to have been guilty by himself, or by any person on his behalf, of bribery, treating or undue influence in respect of any person who voted at an Assembly election there shall, on a scrutiny, be struck off from the number of votes appearing to have been given—

- (a) where he is an individual candidate, to the candidate, or
- (b) where he is a party list candidate, to the registered political party for which he is such a candidate,

one vote for every person who voted at the election and is proved to have been so bribed, treated or unduly influenced.

(2) If any person who is guilty of a corrupt or illegal practice or of illegal payment, employment or hiring at an Assembly election votes at the election, his vote shall be void.

(3) If any person who is subject under any enactment relating to corrupt or illegal practices to an incapacity to vote at—

- (a) an Assembly election,
- (b) a parliamentary election,
- (c) a European Parliamentary election,
- (d) an election to the Scottish Parliament,
- (e) an election to the Northern Ireland Assembly, or
- (f) an election to any public office,

votes at that Assembly election, his vote shall be void.

### **Application for relief**

**118.**—(1) An application for relief under this article may be made to the High Court or an election court or else, if in respect of a payment made in contravention of article 47(1), (2) or (3), to a county court.

(2) Where a person makes an application under this article 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 article by reason of being in contravention of this Order be an illegal practice, payment, employment or hiring,
- (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 Assembly constituency or electoral region for which the election was held, 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 this Order of the act or omission, the court may make an order allowing the act or omission to be an exception from the provisions of this Order 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 this Order of that act or omission.

(4) The jurisdiction vested by this article in a county court may be exercised otherwise than in open court.

(5) An appeal lies to the High Court from any order of a county court made under this article.

### **Prosecutions for corrupt practices**

**119.**—(1) A person who is guilty of a corrupt practice under this Order shall be liable—

- (a) on conviction on indictment—
  - (i) in the case of a corrupt practice under article 28, 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, or

- (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.

### **Prosecutions for illegal practices**

**120.** A person guilty of an illegal practice shall on summary conviction 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 etc**

**121.** 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.

### **Incapacities on conviction of corrupt or illegal practice**

**122.—(1)** Subject to the provisions of article 125, but in addition to any punishment as provided by the above provisions —

- (a) a person convicted of a corrupt practice shall be subject to the incapacities imposed by article 109(3) as if at the date of the conviction he had been reported personally guilty of that corrupt practice, and
- (b) a person convicted of an illegal practice —
  - (i) in relation to a constituency election shall be subject to the incapacities imposed by article 109(5)(a), or
  - (ii) in relation to a regional election shall be subject to the incapacities imposed by article 109(5)(b),
 as if at the date of the conviction he had been reported personally guilty of that illegal practice.

(2) A person convicted of a corrupt or illegal practice who has already been elected to a seat in the Assembly shall (subject to paragraph (3)) vacate the seat at the appropriate time for the purposes of this article, 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.

(3) If (before the appropriate time mentioned in paragraph (2)) notice of appeal is given, or an application for leave is made, by such a person in respect of such a conviction, he shall vacate the seat 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 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 shall not be vacated by him).

(4) Where such a person vacates a seat in accordance with paragraph (2) or (3), no subsequent determination of a court that his conviction should not be upheld shall entitle him to resume the seat.

(5) A person convicted of a corrupt or illegal practice who has already been elected to a seat in the Assembly shall (in addition to being subject to the incapacities mentioned in paragraph (1)) be suspended from performing any of his functions as a member of the Assembly during the period of suspension specified in paragraph (6).

(6) For the purposes of paragraph (5) the period of suspension is the period beginning with the date of the conviction and ending with —

- (a) the date on which the seat is vacated in accordance with paragraph (2) or (3), or
- (b) where sub-paragraph (3)(b) applies, the date on which the court determines that the conviction should not be upheld.

(7) Any incapacities or other requirement applying to a person by virtue of paragraph (1) or (5) applies in addition to any punishment imposed under article 119 or 120 but each of those paragraphs has effect subject to section 174 of the 1983 Act.

### **Incapacities on conviction of corrupt or illegal practice at parliamentary or local government elections**

**123.**—(1) Subject to the provisions of section 174 of the 1983 Act, but in addition to any punishment as provided by the preceding provisions of that Act—

- (a) a person convicted of a corrupt practice under the 1983 Act shall be subject to the incapacities imposed by article 110(1) as if at the date of the conviction he had been reported personally guilty of that corrupt practice, and
- (b) a person convicted of an illegal practice under the 1983 Act—
  - (i) in relation to a parliamentary election, shall be subject to the incapacities imposed by article 110(2)(a), and
  - (ii) in relation to an election under the Local Government Act 1972<sup>(28)</sup>, shall be subject to the incapacities imposed by article 110(2)(b),as if at the date of the conviction he had been reported personally guilty of that illegal practice.

(2) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

### **Incapacities on conviction of corrupt or illegal practice at European Parliamentary elections**

**124.**—(1) References in this article to the 1983 Act are to that Act as applied by the European Parliamentary Elections Regulations 1986<sup>(29)</sup>.

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<sup>(28)</sup> 1972 c. 70.

<sup>(29)</sup> S.I. 1986/2209.

(2) Subject to the provisions of section 174 of the 1983 Act, but in addition to any punishment as provided by the preceding provisions of that Act—

- (a) a person convicted of a corrupt practice under the 1983 Act shall be subject to the incapacities imposed by article 111(2), and
- (b) a person convicted of an illegal practice under the 1983 Act shall be subject to the incapacities imposed by article 111(3),

as if at the date of the conviction he had been reported personally guilty of that corrupt or illegal practice.

(3) Section 174 of the 1983 Act shall apply to any incapacity imposed under this article as if the incapacity was imposed under section 160 of that Act.

### **Mitigation and remission etc**

**125.**—(1) Where—

- (a) any person is subject to any incapacity by virtue of the report of an election court, and
- (b) he or some other person in respect of whose acts the incapacity was imposed is on a prosecution acquitted of any of the matters in respect of which the incapacity was imposed,

the court may order that the incapacity shall thenceforth cease so far as it is imposed in respect of those matters.

(2) Where any person who is subject to any incapacity as mentioned above is on a prosecution convicted of any such matters as are mentioned above, no further incapacity shall be taken to be imposed by reason of the conviction, and the court shall have the like power (if any) to mitigate or remit for the future the incapacity so far as it is imposed by article 109 in respect of the matters of which he is convicted, as if the incapacity had been imposed by reason of the conviction.

(3) A court exercising any of the powers conferred by paragraphs (1) and (2) shall make an order declaring how far, if at all, the incapacities imposed by virtue of the relevant report remain unaffected by the exercise of that power, and that order shall be conclusive for all purposes.

(4) Where a person convicted of a corrupt or illegal practice is subsequently reported to have been guilty of that practice by an election court, no further incapacity shall be imposed on him under article 109 by reason of the report.

(5) Where any person is subject to any incapacity by virtue of a conviction or of the report of an election court, and any witness who gave evidence against that person upon the proceeding for the conviction or report 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 or report so far as respects that person was based upon perjury, may order that the incapacity shall thenceforth cease.

### **Illegal payments etc**

**126.**—(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 prosecutions**

**127.**—(1) A proceeding against a person in respect of any offence under any provision contained in this Order shall be commenced within one year after the offence was committed, and the time so limited by this article shall, in the case of any proceedings under the Magistrates' Courts Act 1980<sup>(30)</sup> (or, in Northern Ireland, the Magistrates' Courts (Northern Ireland) Order 1981)<sup>(31)</sup> for any such offence, be substituted for any limitation of time contained in that Act or Order.

(2) For the purposes of this article—

- (a) in England and Wales, the laying of an information,
- (b) 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), and
- (c) in Northern Ireland, the making of a complaint,

shall be deemed to be the commencement of a proceeding.

### **Prosecution of offences committed outside the United Kingdom**

**128.** Proceedings in respect of an offence under this Order alleged to have been committed outside the United Kingdom by a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant 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.

### **Offences by associations**

**129.** Where—

- (a) any corrupt or illegal practice or any illegal payment, employment or hiring, or
- (b) any offence under article 75,

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 this Order.

### **Evidence by certificate of holding of Assembly elections**

**130.** On—

- (a) any prosecution for a corrupt or illegal practice or for any illegal payment, employment or hiring, and
- (b) any proceedings for a penalty under article 55,

the certificate of the appropriate returning officer at an Assembly election—

- (i) that the election mentioned in the certificate was duly held, and
- (ii) that the person named in the certificate was a candidate at the election,

shall be sufficient evidence of the facts stated in it.

### **Evidence by certificate of electoral registration**

**131.** 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 his register of local government electors in respect of any address

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<sup>(30)</sup> 1980 c. 43.

<sup>(31)</sup> S.I. 1981/1675 (N.I.26).

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**

**132.**—(1) Where information is given to the Director of Public Prosecutions that any offence under this Order 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 Assembly election petition.

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

(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.

### **Rules of procedure**

**133.**—(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 III of this Order and this Part.

(2) In relation to the power conferred under 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<sup>(32)</sup> as if conferred 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.

(3) The Election Petition Rules 1960<sup>(33)</sup> shall have effect (subject to the modifications set out in Schedule 9) in relation to an Assembly election petition as if made in the exercise of the power conferred by paragraph (1).

### **Costs**

**134.**—(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 III of this Order or this Part 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.

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<sup>(32)</sup> 1946 c. 6.

<sup>(33)</sup> S.I. 1960/543.

## Service of notices

**135.**—(1) Any notice, legal process or other document required to be served on any person with reference to any proceeding for the purpose of causing him to appear before the High Court, a 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 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 Assembly constituency or electoral region 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 article 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<sup>(34)</sup>) concerned.

## Interpretation of Part IV

**136.**—(1) In this Part, unless the context otherwise requires—

“candidate” has the same meaning as in Part III of this Order and the saving in article 82(1) applies in relation to this Part as in relation to Part III,

“costs” include charges and expenses,

“date of the allowance of an authorised excuse” has the meaning assigned to it by article 56(9),

“declaration as to election expenses” means a declaration made under article 51,

“judicial office” includes the office of justice of the peace,

“Licensing Acts” means the Licensing Act 1964<sup>(35)</sup> and the Acts amending that Act, or the corresponding enactments forming part of the law of Scotland or Northern Ireland,

“money” and “pecuniary reward” shall be deemed to include—

- (a) any office, place or employment,
- (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,

“public office” means any office—

- (a) under the Crown, or
- (b) under the charter of a city or borough, 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

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<sup>(34)</sup> 2000 c. 26.

<sup>(35)</sup> 1964 c. 26.

- (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 article 50.

(2) For the purposes of section 119 of the 1998 Act anything required by this Part to be published by the presiding officer of the Assembly shall be treated as being required to be published by the Assembly.

#### **Computation of time for purposes of Part IV**

**137.** Article 84 applies in computing any period of time for the purposes of this Part as it applies for the purposes of Part III of this Order.

## **PART V**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### **Advertisements**

**138.** The Town and Country Planning (Control of Advertisement) Regulations 1992<sup>(36)</sup> shall have effect in relation to the display on any site in Wales relating specifically to an Assembly election or Assembly elections as they have effect in relation to the display of an advertisement relating specifically to a parliamentary election.

#### **Assembly constituencies not wholly within a county or county borough**

**139.** Where an Assembly constituency is not coterminous with, or wholly situated in, a county or county borough—

- (a) the registration officer for any part of the Assembly constituency shall, if he is not the returning officer for the constituency, consult him concerning the form of so much of—
  - (i) the register,
  - (ii) the electors lists, or
  - (iii) the absent voters list (including the list of proxies) and the list kept under article 12(8) (the list of postal proxies),as relate to the constituency in order to ensure that, so far as practicable, they are in a form similar to those in use elsewhere in the constituency, and
- (b) if the registration officer for any part of the Assembly constituency at an Assembly election is not the returning officer for the constituency, he shall forthwith supply to the constituency returning officer a copy of the lists compiled under article 10 and 12(8) on completion of the compilation of them.

#### **Forms: absent voting**

**140.** The registration officer shall supply free of charge as many copies of forms for use in connection with applications made under article 8, 9, 11, or 12 and Schedule 2 as appear to that officer reasonable in the circumstances to any person who satisfies that officer of his intention to use the forms in connection with an Assembly election or Assembly elections.

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(36) S.I. 1992/666.

### **Forms: general**

141.—(1) Subject to paragraph (2), the forms set out in this Order may be used with such variations as the circumstances may require.

(2) Paragraph (1) does not apply to the forms of ballot paper to be used at constituency and regional elections set out in the Appendix to Schedule 5.

(3) Without prejudice to the power conferred by paragraph (1), where any form to which that paragraph applies is set out in English and Welsh in this Order so that it is set out in English first and then in Welsh, that form may be varied so that—

- (a) the English and Welsh parts are combined, or
- (b) it is set out in Welsh first and then in English.

(4) Where any form is required to be completed by any person, and it is a form set out in this Order referred to in paragraph (3), such form may be validly completed by completion of either the English or Welsh parts.

### **Public notices, and declarations**

142.—(1) A public notice required by this Order to be given by a constituency or regional returning officer at an Assembly election shall be given by posting the notice in some conspicuous place or places—

- (a) in the case of a constituency election, in the Assembly constituency, and
- (b) in the case of regional election, in each Assembly constituency in the Assembly electoral region for which the election is held,

and may also be given in such other manner as he thinks desirable for publicising it.

(2) Any person before whom a declaration is authorised to be made under this Order may take the declaration.

### **Sending of applications and notices**

143. Any application or notice which is required by this Order to be made to a registration officer or a returning officer shall be made in writing and sent by post or delivered to his office or to the address specified by him for the purpose.

### **Publication of documents**

144.—(1) Any failure to publish a document in accordance with this Order shall not invalidate the document, but this provision shall not relieve a registration officer from any penalty for such a failure.

(2) Where a document is made available for inspection, any person may make a copy (whether in handwriting or by other means) of the whole or any part of such a document.

### **Interference with notices etc**

145. If any person without lawful authority destroys, mutilates, defaces or removes any notice published by a registration officer in connection with his registration duties under this Order or any copies of a document which have been made available for inspection in pursuance of those duties, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Premises used for election purposes**

**146.** In relation to premises in Wales, section 65(6) of the Local Government Finance Act 1988<sup>(37)</sup> (occupation for election meetings and polls) shall have effect as if—

- (a) the reference to public meetings in furtherance of a person's candidature at an election included a reference to public meetings promoting a particular result at an Assembly election, and
- (b) the reference to use by a returning officer for the purpose of taking the poll in an election included a reference to use by a constituency returning officer in taking a poll at an Assembly election in accordance with Schedule 5

28th February 2003

*Peter Hain*  
Secretary of State for Wales

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<sup>(37)</sup> 1988 c. 41.