
STATUTORY INSTRUMENTS

2007 No. 937

The Scottish Parliament (Elections etc.) Order 2007

PART III

THE ELECTION CAMPAIGN

Prohibition of expenses not authorised by election agent: candidates for return as constituency members and individual candidates for return as regional members

41.—(1) No expenses, with a view to promoting or procuring the election of a candidate for return as a constituency member or an individual candidate for return as a regional member at a Scottish parliamentary election, shall be incurred after he becomes a candidate at such an election by any person other than the candidate or his election agent and persons authorised in writing by the election agent on account—

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

but sub paragraph (c) or (d) of this paragraph does not restrict the publication of any matter relating to the election in—

- (i) a newspaper or other 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 1 or 3 of the Broadcasting Act 1990⁽¹⁾ or Part 1 or 2 of the Broadcasting Act 1996⁽²⁾.

(2) Paragraph (1) does not apply to any expenses incurred by any person—

- (a) which do not exceed in the aggregate £500 (and are not incurred by that person as part of a concerted plan of action), or
- (b) in travelling or in living away from home or similar personal expenses.

(3) For the purposes of paragraph (2)(a), 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 (2)(a)) fall within paragraph (1).

(1) 1990 c. 42.

(2) 1996 c. 55.

(4) Where a person incurs any expense 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 of the election is declared deliver to the appropriate returning officer a return of the amount of those expenses stating the 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.

(5) The return and declaration under the foregoing provisions of this article shall be respectively in the forms A and B set out in the Appendix and the authority received from the election agent shall be annexed to and deemed to be part of the return.

(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 (4) 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 section 173 of the 1983 Act (as applied by this Order); 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, 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.

(8) For the purposes of paragraph (1), expenditure incurred before the date when a person becomes a candidate at the election is to be treated as having been incurred after that date if it is incurred in connection with any thing which is used or takes place after that date.

(9) The appropriate returning officer shall forward to the sheriff clerk (determined in accordance with rule 69(1) of the Scottish Parliamentary Election Rules) every document sent to him in pursuance of paragraph (4), and rule 71(1) of the Scottish Parliamentary Election Rules shall apply to any document sent to the sheriff clerk under this paragraph.