
STATUTORY INSTRUMENTS

2007 No. 937

The Scottish Parliament (Elections etc.) Order 2007

PART III

THE ELECTION CAMPAIGN

Authorised excuses for failure as to return and declarations

52.—(1) A candidate, a party's nominating officer or an election agent may apply for relief under this article to—

- (a) the Court of Session;
- (b) an election court; or
- (c) the sheriff.

(2) Where an application is made under this article the person or persons making the application shall notify the Lord Advocate of the application and the Lord Advocate may attend or be represented at 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 for return as a constituency member, and to an individual candidate for return as a regional member, in respect of any failure to deliver the return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them;
- (b) to a candidate on a registered party's regional list, in respect of any failure to deliver the declaration as to election expenses, or any part of it, or in respect of any error or false statement in it;
- (c) to a registered party's nominating officer, in respect of any failure to deliver a return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them; or
- (d) to an election agent, in respect of any failure to deliver the return and declaration as to election expenses, 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) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, of his election agent or sub agent (or any clerk or officer of such agent); or
 - (ii) in the case of a candidate included in a registered party's regional list, of any person;
- (c) where the applicant is an election agent, by reason of the death or illness—
 - (i) of any prior election agent;
 - (ii) where he is an election agent for a candidate, of the candidate; or

- (iii) where he is an election agent for a registered party submitting a regional list, of any candidate included in that list;
 - (d) where the applicant is an election agent, by reason of the absence, death, illness or misconduct of any sub agent, clerk or officer of any election agent;
 - (e) where the applicant is a registered party's nominating officer, by reason of the death, absence, misconduct or illness—
 - (i) of any election agent of that party or clerk or officer of such agent;
 - (ii) of any candidate included in a regional list submitted by that party; or
 - (iii) of any person having the authority to act in accordance with arrangements for which the nominating officer is responsible; or
 - (f) 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 constituency or region in relation to 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 of that candidate (or, in the case of a candidate on a party's regional list, the party's nominating officer) 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 the election agent or, as the case may be, nominating officer.

(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 of this Order.

(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.

(10) The jurisdiction vested by this article in the sheriff may be exercised other than in open court.

(11) An appeal lies to the Court of Session from any order of the sheriff made by virtue of this article.