

## CHAPTER 69

### ELECTION PETITIONS

#### Interpretation of this Chapter

**69.1.** In this Chapter-

"the Act of 1983" means the Representation of the People Act 1983 (a);  
"election court" has the meaning assigned in section 123 of the Act of 1983;  
"election petition" means a petition presented under Part III of the Act of 1983 or a petition presented under Part III of the Act of 1983 as applied and modified by article 85 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 1999; and any reference in this Chapter to an election petition shall be construed as a reference to a Scottish parliamentary election petition where it is a petition brought in relation to a Scottish parliamentary election;  
"region" means a region for the purposes of the Scotland Act 1998(b); and any reference in this Chapter to a constituency shall be construed as a reference to a constituency for the purposes of the said Act of 1998 where it is used in relation to a Scottish parliamentary election;  
"Scottish parliamentary election" means an election for membership of the Scottish Parliament.

#### Form of election petitions

**69.2.**(1) An election petition shall be in Form 69.2.

(2) Such a petition shall-

- (a) specify the name, designation and address of-
  - (i) each petitioner, and
  - (ii) each person referred to as, or deemed to be, the respondent by virtue of section 121(2) of the Act of 1983; and
- (b) set out in numbered paragraphs-
  - (i) the title of the petitioner under section 121(1) of the Act of 1983 to present the petition;
  - (ii) the proceedings at, and the result of, the election; and
  - (iii) the facts relied on in support of the prayer of the petition.

#### Presentation of petition

**69.3.** The election petition shall be lodged in the Petition Department with-

- (a) a process;
- (b) six copies of the petition; and
- (c) a letter signed by or on behalf of the petitioner-
  - (i) giving the name and address of a solicitor whom he authorises to act on his behalf or stating that he acts for himself, as the case may be; and
  - (ii) specifying an address within Scotland at which notices addressed to him may be delivered.

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(a) 1983 c.2

(b) 1998 c.46.

## Security for expenses

**69.4.**-(1) On presentation of an election petition, the petitioner shall apply by motion for-

- (a) an order for intimation and service of the petition within such period as the court thinks fit after the giving of security,
- (b) for an order for the respondent to lodge any objections in writing under section 136(4) of the Act of 1983 (**b/f**) (objections to form of security) within such period as the court thinks fit, and
- (c) the fixing of the amount of security for expenses;

and the petition shall be placed forthwith before the Lord Ordinary or the vacation judge, in court or in chambers, who shall fix the security to be given.

(2) A motion under paragraph (1) shall not be intimated to any person.

(3) Where the security to be given by the petitioner under section 136 of the Act of 1983 is given in whole or in part by bond of caution, the bond shall be in Form 69.4.

## Service and intimation of election petition

**69.5.**-(1) On serving the election petition on the respondent under subsection (3) of section 136 of the Act of 1983(**a**), the petitioner shall intimate a copy of each of the documents mentioned in that subsection to –

- (a) the Lord Advocate; and
- (b) the Advocate General for Scotland.

(2) The notice of presentation of the petition mentioned in section 136(3) of the Act of 1983(**b**) shall be in Form 69.5.

(3) Within 5 days after serving the petition under section 136 of the Act of 1983, the petitioner shall lodge in process an execution copy of the election petition containing the certificate of service and a copy of the notice mentioned in that subsection which was served on the respondent.

(4) Where the court makes an order for intimation and service of an election petition, the Deputy Principal Clerk shall send a copy of the petition to the Electoral Commission

## Objection to form of security

**69.6.**-(1) Where the respondent makes an objection under section 136(4) of the Act of 1983 (objection to form of security), he shall-

- (a) set out in writing the grounds of the objection;
- (b) lodge the objection in process; and
- (c) intimate a copy of the objection to the petitioner.

(2) As soon as possible after the lodging of an objection under paragraph (1), the Keeper of the Rolls shall-

- (a) fix a diet for a hearing on the objections before one of the judges on the rota for the trial of election petitions or the vacation judge; and
- (b) give written intimation of the time and place of the diet to the parties.

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<sup>a</sup>  
(a) Section 136(4) of the Act of 1983 was amended by the Representation of the People Act 1985 (c.50), Schedule 4, paragraph 48(e).

(b) Section 136(3) of the Act of 1983 was substituted by the Representation of the People Act 1985, Schedule 4, paragraph 48(d).

(3) The period within which the petitioner may, under section 136(7) of the Act of 1983(a), remove the objection shall be such period from the date of the decision on the objection as the court thinks fit.

#### **Consequences of failure to give security etc.**

**69.7.** If no security is given, or an objection to a security is allowed and not removed, the respondent may apply by motion to have the prayer of the petition refused.

#### **List of election petitions**

**69.8.**-(1) In preparing the list of election petitions in terms of section 138(1) of the Act of 1983, the Deputy Principal Clerk shall insert the names of the solicitors, if any, acting for the petitioner and respondent, and the addresses, if any, to which any notices may be sent.

(2) The list of election petitions may be inspected in the Petition Department at any time during its normal office hours.

#### **Time and place of trial**

**69.9.**-(1) The time and place of the trial of an election petition shall be fixed by the Keeper of the Rolls, who shall give written intimation of the date of the trial by post to-

- (a) the parties;
- (b) the Lord Advocate;
- (ba) the Advocate General for Scotland;
- (c) the returning officer for the relevant constituency or as the case may be, region; and
- (d) the House of Commons shorthand writer.

(2) On receipt of intimation given under paragraph (1), the returning officer shall forthwith publish the date of the diet of trial in the constituency or as the case may be, region to which it relates.

#### **Postponement of trial**

**69.10.**-(1) The election court or any of the judges on the rota for the trial of election petitions, may, at its or his own instance or on the motion of a party, postpone the trial of a petition to such day as may be specified.

(2) Written intimation of such postponement shall be given by the Keeper of the Rolls to the returning officer who shall forthwith publish the postponement and its new date in the constituency or as the case may be, region.

#### **Procedure where seat claimed**

**69.11.**-(1) Where a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of, and the party defending, the return, not less than 6 days before the date of the trial, shall each-

- (a) lodge in process a list of the voters intended to be objected to, and of the objections to each voter; and
- (b) intimate a copy of that list to-
  - (i) every other party;
  - (ii) the Lord Advocate and
  - (iii) the Advocate General for Scotland..

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(a) Section 136(7) of the Act of 1983 was amended by the Representation of the People Act 1985, Schedule 4, paragraph 48(e).

(2) No evidence shall be allowed to be given against any vote or in support of any objection which is not specified in the list, except by leave of the election court or, on a motion heard before the date of the trial, of any of the judges on the rota for the trial of election petitions, on such terms as to amendment of the list, postponement of the trial and payment of expenses as may be ordered.

### **Evidence under section 139(5) of the Act of 1983**

**69.12.-** (1) Where the respondent intends to give evidence permitted under section 139(5) of the Act of 1983 (evidence to prove person not duly elected), he shall, not less than 6 days before the date of the trial-

- (a) lodge in process a list of the objections to the election on which he intends to rely; and
- (b) intimate a copy of that list to-
  - (i) every other party;
  - (ii) the Lord Advocate and
  - (iii) the Advocate General for Scotland.

(2) No evidence shall be allowed to be given on behalf of the respondent in support of any objection to the return not specified in the list, except with leave of the election court or, on a motion heard before the date of the trial, of any of the judges on the rota for the trial of election petitions, on such terms as to amendment of the list, postponement of the trial and payment of expenses as may be ordered.

### **Lodging of statement of evidence to be led**

**69.13.-** (1) Subject to paragraph (2), any party shall, not less than 6 days before the date of the trial, lodge in process a statement of the matters on which he intends to lead evidence.

(2) Before lodging such a statement in process, the party proposing to lodge it shall intimate a copy of the statement to-

- (a) every other party;
- (b) the Lord Advocate and
- (c) the Advocate General for Scotland.

### **Evidence at trial**

**69.14.-** (1) No evidence shall be led at the trial of an election petition other than matters contained in-

- (a) the list lodged under rule 69.11 (procedure where seat claimed) or 69.12 (evidence under section 139(5) of the Act of 1983),
- (b) the statement lodged under rule 69.13 (statement of evidence to be led), or
- (c) matters which have been sufficiently set out in the petition,

except with the leave of the election court or one of the judges on the rota for the trial of election petitions, on such conditions as to postponement of the trial, payment of expenses or otherwise, as may be ordered.

(2) The admissibility of any evidence sought to be led on the matters referred to in paragraph (1) shall be within the discretion of the election court.

### **Warrant to cite witnesses**

**69.15.** The warrant for the citation of a witness to the trial of an election petition shall be granted on the motion of any party and shall be in Form 69.15.

### **Clerk of court at trial**

**69.16.** At an election court held for the trial of an election petition, a clerk of session nominated by the Principal Clerk and appointed by the court shall discharge the duties of clerk of court of the election court.

### **Expenses of witnesses**

**69.17.-** (1) The prescribed officer for the purposes of section 143(1) of the Act of 1983 shall be the clerk of session appointed to act as clerk of court under rule 69.16.

(2) The expenses of a witness permitted under section 143(1) of the Act of 1983 shall be ascertained by the clerk of court.

(3) The expenses allowed under section 143(1) of the Act of 1983 shall, in the first instance, be paid by the party adducing that witness.

### **Applications for special case**

**69.18.** An application under section 146(1) of the Act of 1983 for a special case, shall be made by motion to the Inner House or the vacation judge.

### **Applications for leave to withdraw election petitions**

**69.19.-** (1) A notice of intention to withdraw an election petition under section 147(2) of the Act of 1983 shall be in Form 69.19-A.

(2) A copy of such notice shall be intimated by the petitioners to-

- (a) the respondent;
- (b) the Lord Advocate;
- (ba) the Advocate General for Scotland;
- (c) the returning officer for the relevant constituency or as the case may be, region; and
- (d) the Deputy Principal Clerk.

(3) On receipt of a notice under paragraph (2), the returning officer shall publish it in the constituency or as the case may be, region to which it relates.

(4) An application for leave to withdraw an election petition shall-

- (a) be in Form 69.19-B;
- (b) state the ground on which the application to withdraw is made;
- (c) be signed by the person making the application and by the consenters, if any, or by their respective solicitors; and
- (d) be lodged in the process of the election petition.

### **Applications to be substituted as petitioner on withdrawal**

**69.20.-** (1) A person who seeks to apply under section 150(1) of the Act of 1983 to be substituted as a petitioner, shall, within 5 days after the date on which the notice of intention to withdraw has been given under section 147(2) of the Act of 1983 and rule 69.19 (applications for leave to withdraw election petitions), give notice in writing signed by him or on his behalf to the Deputy Principal Clerk of his intention to apply, at the hearing of the application for leave to withdraw, to be substituted as the petitioner.

(2) A copy of the notice given under paragraph (1) shall be intimated by the applicant to-

- (a) the respondent;
- (b) the Lord Advocate;
- (ba) the Advocate General for Scotland; and
- (c) the returning officer for the relevant constituency.

(3) Any informality in such a notice shall not defeat an application to be substituted as the petitioner if it is made at the hearing of the application to withdraw, subject to such order as to postponement of that hearing and expenses as the election court thinks fit.

#### **Hearing of applications for leave to withdraw**

**69.21.-** (1) Subject to paragraph (2), the time and place for hearing an application for leave to withdraw an election petition shall be fixed by one of the judges on the rota for the trial of election petitions or by the vacation judge, who shall hear and determine the application unless he considers that the application should be determined by the Inner House.

(2) The time fixed under paragraph (1) shall not be earlier than 7 days after the expiry of the period specified in rule 69.20.

(3) The Keeper of the Rolls shall give written intimation of the diet fixed under paragraph (1) to-

- (a) the petitioner;
- (b) the respondent;
- (c) the Lord Advocate;
- (ca) the Advocate General for Scotland;
- (d) the returning officer for the relevant constituency; and
- (e) to any person who has given notice under rule 69.20 of his intention to apply to be substituted as the petitioner.

#### **Security of substituted petitioner**

**69.22.-** (1) The period within which security shall be given on behalf of a substituted petitioner before he proceeds with the petition shall be 5 days after the order of substitution.

(2) The substituted petitioner shall lodge the letter referred to in rule 69.3(c) (name and address of solicitor etc.) within 5 days after the order of substitution.

#### **Death of petitioner**

**69.23.-** (1) In the event of the death of the petitioner or the surviving petitioner, the notice for the purpose of section 152(3) of the Act of 1983 (notice of abatement of petition by death) shall be intimated in Form 69.23 by the solicitor acting for the petitioner, the respondent, the returning officer or any other person interested to whose knowledge the death of the petitioner shall come, to, as the case may be-

- (a) the respondent;
- (b) the Lord Advocate;
- (ba) the Advocate General for Scotland;
- (c) the returning officer for the relevant constituency or as the case may be, region; and
- (d) the Deputy Principal Clerk.

(2) The returning officer shall, on receipt of such a notice, or, where he is giving notice under paragraph (1), on intimating such notice to those persons mentioned in that paragraph, publish the notice in the constituency or as the case may be, region to which it relates.

### **Applications to be substituted on death of petitioner**

**69.24.-** (1) An application to be substituted as a petitioner on the death of the petitioner or surviving petitioner shall be made by motion within 5 days after the publication of the notice.

(2) A motion under paragraph (1) shall be intimated to-

- (a) the respondent;
- (b) the Lord Advocate;
- (ba) the Advocate General for Scotland; and
- (c) the returning officer for the relevant constituency or as the case may be, region where he is not a respondent.

### **Notice that respondent does not oppose**

**69.25.-** (1) A notice, for the purposes of section 153(1) of the Act of 1983, by a respondent other than a returning officer, that he does not intend to oppose an election petition shall be-

- (a) signed by him; and
- (b) lodged in process not less than 6 days before the date of the trial.

(2) Where a respondent lodges a notice under paragraph (1), he shall forthwith intimate a copy of it to-

- (a) the petitioner;
- (b) any other respondent;
- (c) the Lord Advocate;
- (ca) the Advocate General for Scotland; and
- (d) the returning officer for the relevant constituency.

(3) On receipt of a notice under paragraph (1), the returning officer shall publish it in the constituency to which it relates.

### **Death, peerage or resignation of respondent**

**69.26.-** (1) Where, for the purposes of section 153(1) of the Act of 1983-

- (a) a respondent other than a returning officer dies,
- (b) in the case of a parliamentary election, a respondent other than a returning officer is summoned to Parliament as a Peer of Great Britain,
- (c) a respondent other than a returning officer has vacated his seat following a resolution by the House of Commons, or
- (d) a respondent resigns or otherwise ceases to be a member of the Scottish Parliament,

the agent for the respondent shall give notice of that fact in the constituency to which the election petition relates.

(2) Such a notice shall be published in at least one newspaper circulating in the constituency, and by intimating a copy of the notice, signed by him to-

- (a) the petitioner;
- (b) any other respondent;
- (c) the Lord Advocate;
- (ca) the Advocate General for Scotland;
- (d) the returning officer for the relevant constituency; and
- (e) the Deputy Principal Clerk.

### **Applications to be admitted as respondent**

**69.27.** The period of time within which a person may apply to be admitted as a respondent under section 153 of the Act of 1983 shall be-

- (a) 5 days after the notice is intimated under rule 69.25 (notice that respondent does not oppose);
- (b) 10 days after the notice is intimated under rule 69.26 (death, peerage or resignation of respondent); or
- (c) such other period as the court thinks fit.

### **Expenses in election petitions**

**69.28.** Where any expenses are awarded by the election court in the course of proceedings under the Act of 1983, such an award shall be deemed equivalent to a finding of expenses in the Court of Session.

### **Motions in election petitions**

**69.29.-** (1) Subject to any other provision in this Chapter or the Act of 1983, all applications shall be dealt with by motion.

(2) Subject to the provisions of this Chapter, Chapter 23 (motions) shall apply to a motion in an election petition.

(3) A motion in an election petition shall be intimated to-

- (a) the Lord Advocate;
- (aa) the Advocate General for Scotland; and
- (b) the returning officer for the relevant constituency or as the case may be, region.

### **Intimation to Lord Advocate**

**69.30.** All applications to the court in an election petition other than a motion under rule 69.4(1) (security for expenses) shall be intimated to

- (a) the Lord Advocate; and
- (b) the Advocate General for Scotland;

and the Lord Advocate and the Advocate General for Scotland shall be entitled to appear or be represented at the hearing of that application.

### **Evidence of publication by returning officer**

**69.31.-** (1) Where a returning officer publishes a notice in accordance with a provision in this Chapter or an order of the election court, he shall forthwith send to the Deputy Principal Clerk a letter-

- (a) certifying that the appropriate notice has been published; and
- (b) detailing the manner in which the publication has been made.

(2) Where publication has been made by inserting a notice in a newspaper or other publication, the letter under paragraph (1) shall be accompanied by-

- (a) a copy of the newspaper or other publication containing the notice; or
- (b) a certificate of publication by the publisher stating the date of publication and the text of the notice.