



# FALKLAND ISLANDS

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## Electoral Ordinance 1988

(ORDINANCE No. 21 OF 1988)

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## FALKLAND ISLANDS

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### Electoral Ordinance 1988

AN ORDINANCE To make fresh provision as to the election of persons to the Legislative Assembly, the preparation of registers of electors, corrupt and illegal practices and election petitions and for connected purposes.

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

[DATE OF COMMENCEMENT: 28TH APRIL 1989]  
(Unless otherwise indicated)

### PART I PRELIMINARY

#### 1 Short title

This Ordinance may be cited as the Electoral Ordinance 1988.

#### 2 Interpretation

In this Ordinance, unless the context otherwise requires-

"**application for a postal vote**" has the meaning given by section 23(1);

"**application for a postal proxy vote**" has the meaning given by section 34(1);

[S. 5(2)/Ord. 14/13/w.e.f. 10/9/13.]

"**application for a proxy vote**" has the meaning given by section 27(2);

"**appropriate constituency**" has the meaning given by section 8(2);

"**business day**" means any day other than a Saturday, Sunday or public holiday;

**"by-election"** means an election following upon the vacation of his seat by an elected member of the Legislative Assembly for any reason other than the dissolution of the Legislative Assembly;

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

**"candidate"** means a person in respect of whom the returning officer has accepted a nomination paper as being validly completed in accordance with the provisions of this Ordinance;

**"claim"** has the meaning given by section 9(2);

**"closed period"** has the meaning given by section 23(6);

**"committee room"** shall not include any house or room occupied by a candidate as a dwelling, by reason only of the candidate there transacting business 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 addressing therein electors, committee men or others;

**"Commonwealth citizen"** and **"Commonwealth country"** have the same meaning as they have in the Constitution;

**"conclusion of the election"** means the time at which the result of the election is first published;

**"Constitution"** means Schedule I to the Falkland Islands Constitution Order;

**"constituency"** means one or other of the Camp and Stanley constituencies as defined in section 6;

**"Corporation"** means the Falkland Islands Development Corporation;

**"delivered"**, with reference to the registration officer, means handed to him personally or personally received by him after transmission in the post or after having been left at his office but with reference to the returning officer a document is, unless otherwise provided, not delivered until it is actually received by him;

**"declaration as to election expenses"** in Part VI means a declaration made under section 147;

**"dependant"** means a person who is the spouse or child under eighteen years of age of another person in relation to whom his dependency is to be ascertained or who by reason of his own illness, infirmity or advancing years is substantially financially dependent on that other person;

**"disputed claim"**, in Part VI of this Ordinance, has the meaning assigned to it by section 144(1) as extended by section 145;

**"dwelling"** means a building, structure or vessel including, where appropriate, a moveable building, structure or vessel, in which a person usually sleeps;

**"election"** means a by-election or general election of a member or members of the Legislative Assembly;

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

**"election expenses"** in relation to an election means expenses incurred, whether before, during or after the election, on account of or in respect of the conduct or management by or on behalf of a candidate of the election and whether incurred by the candidate, his election agent or by any other person;

**"elector"** means a person whose name appears on the register;

**"electoral number"** means a person's number in the register;

**"electoral offence"** means an offence under Part III of this Ordinance;

**"Falkland Islands Government office", "Falkland Islands Government Representative"** and **"Recording Officer"** each have the meanings given by Article 2(2) of the Electoral (Postal Voting) (United Kingdom) Order 2005;

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

**"general election"** means an election following upon a dissolution of the Legislative Assembly;

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

**"mobile polling direction"** has the meaning given by section 61(2);

**"objection"** has the meaning ascribed by section 10(l), and "objector" has a corresponding meaning;

**"official mark"** means the mark referred to in section 75(1);

**"partner"** means one of a married couple, one of an unmarried couple, or one of a civil partnership;

*[S. 5(2)/Ord. 8/11/w.e.f. 31/8/11.]*

**"payment"** includes any pecuniary or other reward and "pecuniary reward" and "money" shall, save in sections 164 and 165, be deemed to include any office, place or employment, and any valuable security or other equivalent for money, and any valuable consideration, and expressions relating to money shall be construed accordingly;

**"personal expenses"** as used with respect to the expenditure of any candidate in relation to an election includes the reasonable travelling expenses of the candidate;

**"polling day"** means the date stated in the writ as that on which the election is to be held;

**"postal ballot paper"** means a ballot paper sent to a voter pursuant to section 79(1);

**"postal proxy voters' list"** has the meaning given by section 35;

**"postal voter"** has the meaning given by section 24(a);

**"postal voters' list"** has the meaning given by section 24;

**"preliminary list"** means the list required to be prepared under section 9(1)(b);

**"proxy"** means a person appointed to vote on behalf of another person;

**"public officer"** has the same meaning as it has in the Constitution;

**"qualifying address"**, in relation to a person registered in a register of electors, is the address in respect of which he is entitled to be so registered;

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

**"qualifying date"** has the meaning given to it by section 8(5)(a);

*[S. 5(3)/Ord. 8/11/w.e.f. 31/8/11.]*

**"qualifying period"** has the meaning given to it by section 8(5)(b);

*[S. 5(4)/Ord. 8/11/w.e.f. 31/8/11.]*

**"receptacle for ballot paper envelopes"** has the meaning given by section 91(11)(b);

*[S. 5(3)/Ord. 14/13/w.e.f. 10/9/13.]*

**"receptacle for declarations of identity"** has the meaning given by section 91(11)(a)

*[S. 5(4)/Ord. 14/13/w.e.f. 10/9/13.]*

**"referendum legislation"** means, in relation to a referendum, the legislation under which-

- (a) the referendum has been called; and
- (b) the specific arrangements for that referendum have been made;

*[S. 5(5)/Ord. 8/11/w.e.f. 31/8/11.]*

**"register"** means the register of electors for a constituency for the time being in force under the provisions of section 15;

**"registration expenses"** has the meaning given by section 45(1);

**"registration officer"** means, in a relation to a constituency, either-

- (a) the person appointed under section 7(1) to be the registration officer for that constituency; or
- (b) if section 7(4) applies, the Registrar General;

*[S. 5(6)/Ord. 8/11/w.e.f. 31/8/11.]*

**"relevant person"** except in section 3(5), has the meaning assigned by section 9(2)(a);

**"resident"** has the meaning given by section 3(1);

**"return as to election expenses"** means a return (including the bills and receipts to be transmitted therewith) to be made under section 146(1);

**"Schedule"** means a Schedule to this Ordinance and where in this Ordinance there appears a reference to a Schedule followed by a number it shall be construed as a reference to the Schedule of that number of this Ordinance; and

**"unmarried couple"** means two persons who habitually live together in a relationship with some or all of the characteristics of a marriage or a civil partnership;

[S. 5(7)/Ord. 8/11/w.e.f. 31/8/11.]

**"writ"** has the meaning given by section 48(1).

**3** ...

[S. 2/Ord. 2/97/w.e.f. 1/5/97 and s. 2/Ord. 1/05/w.e.f. 21/2/05.]

**4** ...

[S. 6/Ord. 8/11/w.e.f. 31/8/11.]

**5** ...

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

## **PART II ELECTORAL REGISTRATION**

### *Preliminary*

#### **6 Constituencies**

(1) For the purposes of this Ordinance, and except as provided by subsection (3), the Stanley constituency consists of all those parts of the Falkland Islands as lie within such distance as may be prescribed from the spire of Christ Church Cathedral, Stanley.

(2) For the purposes of this Ordinance, and except as provided by subsection (3), the Camp constituency consists of all those parts of the Falkland Islands as lie further than the prescribed distance from the spire of Christ Church Cathedral, Stanley.

(3) Where a dwelling would otherwise lie partly within the Stanley constituency and partly within the Camp constituency, it shall be deemed to lie wholly within the Stanley constituency.

#### **7 Appointment of registration officer**

(1) The Governor must appoint a person to be the registration officer for each constituency (and may appoint the same person to be the registration officer for both constituencies).

(2) A person appointed under subsection (1) holds office as registration officer until one of the following happens-

- (a) another person is appointed under subsection (1);
- (b) the person gives written notice of resignation to the Governor; or
- (c) the person is convicted of an offence against this Ordinance.

- (3) Subsection (4) applies whenever either-
- (a) no-one holds an appointment as registration officer for a constituency; or
  - (b) the person appointed to be the registration officer is unable to act.
- (4) If this subsection applies, the Registrar General must act as the registration officer.
- (5) The registration officer-
- (a) is not disqualified from either-
    - (i) being registered as an elector; or
    - (ii) voting in an election; but
  - (b) must not stand for election to the Legislative Assembly while holding office as registration officer.

[S. 7/Ord. 8/11/w.e.f. 31/8/11.]

### ***Entitlement to registration***

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

## **8 Entitlement to be registered as an elector**

- (1) To be entitled to be registered in the Register of Electors, a person must satisfy each of the three conditions in subsections (2) to (4).
- (2) The first condition is that the person-
- (a) must be qualified under section 32(1) of the Constitution to be registered as an elector for the purpose of the election of members of the Legislative Assembly; and
  - (b) must not be disqualified under section 32(2) of the Constitution.
- [S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]
- (3) The second condition is that the person must, on the qualifying date, either-
- (a) be resident in the Falkland Islands; or
  - (b) be treated as being resident in the Falkland Islands under section 8A, 8B or 8C.
- (4) The third condition is that the person must, throughout the qualifying period, either-
- (a) have been resident in the Falkland Islands; or
  - (b) have been treated as being resident in the Falkland Islands under section 8A, 8B or 8C.
- (5) For the purposes of section 32(5)(c) of the Constitution-
- (a) "qualifying date" means, in relation to a person, means the date on which an application for registration is either-

- (i) made; or
- (ii) treated under section 11(2) as having been made; and

(b) "**qualifying period**" means the period of 12 months ending on the qualifying date.

*[S. 8/Ord. 8/11/w.e.f. 31/8/11.]*

## **8A Residence: general**

(1) This section applies where the question whether a person is-

- (a) is resident at a particular address on the qualifying date;
- (b) has been resident in the Falkland Islands for the qualifying period,

for the purposes of section 8 falls to be determined for the purposes of that section

(2) Regard shall be had, in particular, to the purpose and other circumstances, as well as to the fact of-

- (a) his presence at, or absence from, the particular address on the date;
- (b) his absence from the Falkland Islands at any time during the qualifying period,

by way of example, where at a particular time a person is staying at any place (whether within or outside the Falkland Islands) otherwise than on a permanent basis, he may in all the circumstances to be taken to be at that time-

- (i) resident there if he has no home elsewhere; or
- (ii) not resident there if he does have a home elsewhere.

(3) For the purpose of determining whether a person is resident in a dwelling on the qualifying date for the purposes of section 8 and whether on that date he had been resident within the Falkland Islands for the qualifying period, his residence in the dwelling shall not be taken to have been interrupted by reason of his absence in the performance, in the Falkland Islands or elsewhere, of any duty arising from or incidental to any office, service or employment held or undertaken by him if-

- (a) he intends to resume actual residence,
- (b) the dwelling serves as a permanent place of residence (whether for himself or for himself and other persons) and he would be in actual residence there but for his absence in the performance of that duty.

*[S.R. & O. 14/2024/w.e.f. 31/07/2017]*

(4) For the purposes of subsection (3) any temporary period of unemployment shall be disregarded.

(5) Subsection (3) shall also apply in relation to a person's absence by reason of his attendance on a course provided by a n educational institution, whether in the Falkland Islands or elsewhere, as it applies in relation to a person's absence in the performance of any duty such as is mentioned in that subsection.

(6) Subject to the subsequent provisions of this Part, a person who is detained at any place in legal custody, whether in the Falkland Islands or elsewhere, shall not, by reason of his presence there, be treated for the purposes of section 8 as resident there but as being resident at the address at which he would under the foregoing provisions of this section be treated as being resident if he had not been detained in legal custody.

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

### **8B Residence: merchant seamen**

At any time when a merchant seaman is not resident in the Falkland Islands and who would have been resident there but for the nature of his occupation, he shall be treated for the purposes of section 8 as being resident at any place in the Falkland Islands at which he would have been resident but for the nature of his occupation. For this purpose "**merchant seamen**" means any person other than a member of Her Majesty's Services or the armed services of any other country whose employment or the greater part of it is carried out onboard seagoing ships, and includes any such person while temporarily without employment.

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

### **8C Residence: person remanded in custody etc**

(1) This section applies to a person who is detained at any place and is detained otherwise than after-

- (a) being convicted of any offence, or
- (b) a finding in criminal proceedings that he did the act or made the omission charged.

(2) A person to whom this section applies shall be regarded for the purposes of section 8 as being resident in the dwelling house in which, under section 8A, he would be treated as being resident if his absence therefrom were an absence in the performance of a duty arising from or incidental to any office, service or employment held or undertaken by him and to which section 8(3)(b) applied.

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

## ***Registration of Electors***

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

### **9 Registers of Electors**

(1) The Registration Officer shall maintain a Register of Electors for each constituency.

(2) Each Register shall contain-

- (a) the names of the persons appearing to the Registration Officer to be entitled to be registered in it (subject to their complying with any prescribed requirements);
- (b) insofar as it is practicable to do so and subject to any prescribed exceptions, the qualifying addresses of the persons registered in it; and

(c) in relation to each such person, that person's electoral number.

(3) A person's electoral number is such number (with or without any letters) as is for the time being allocated by the Registration Officer to that person as his electoral number for the purposes of the Register in question and those numbers shall be allocated by the Registration Officer in such a way as to ensure, so far as is reasonably practicable, that the numbers run consecutively.

(4) The Registration Officer's duty under subsection (1) includes the duty to take reasonable steps to obtain information required by him in connection with the performance of his duty under that subsection (without prejudice to any specific requirement of this Ordinance or Regulation under it).

*[S. 2/Ord. 1/05/w.e.f. 21/02/05.]*

## **10 Maintenance of Registers: annual canvass**

(1) The Registration Officer shall conduct an annual canvass for the purpose of ascertaining the persons who are for the time being entitled to be, or to remain, registered as electors in relation to a constituency.

(2) The canvass for any year shall be conducted by reference to residence on the 15th March in that year.

(3) The form to be used for the purposes of a canvass shall be either a form prescribed for those purposes or a form to the same effect.

(4) In connection with a canvass the Registration Officer may, for the purpose of-

- (a) supplementing the information obtained by the use of any such form, or
- (b) where any such form has not been returned, obtaining any information designed to be obtained by the use of the form.

make such further enquiries as he thinks fit.

(5) On the conclusion of a canvass a Registration Officer shall make such alterations in his registers as fall to be made in accordance with section 11 as a result of the canvass.

(6) In this section "residence" means residence for the purposes of section 8.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

## **11 Maintenance of the Registers: registration of electors**

(1) The Registration Officer shall determine all applications for registration which are-

- (a) made to him in accordance with the section 11A;

*[S. 6/Ord. 14/13/w.e.f. 10/9/13.]*

- (b) treated as made to him by virtue of subsection (2) of this section.

(2) Where-

- (a) in connection with the canvass under section 10, the form completed in respect of any address specifies any person as a person who is entitled to be registered in a Register, and
- (b) that person is not for the time being registered in the Register in respect of that address,

he shall be treated as having made, on the 15th March in the year in question, an application for registration in the Register in respect of that address.

(3) The Registration Officer shall also determine all objections to a person's registration made in accordance with the prescribed requirements by another person whose name appears in the Register in question.

(4) Subsections (1) and (3) of this section apply to applications and objections asking-

- (a) for the omission, insertion or alteration of a date as that on which a person will become of voting age and entitled to registration, or
- (b) for the alteration of the qualifying address in respect of which a person is registered,

as they apply to applications for registration and objections to a person's registration respectively,

(5) Where the name of a person ("the elector") is duly entered in a Register in respect of any address, the elector is entitled to remain registered in the Register in respect of that address until such time as the Registration Officer-

- (a) determines, on the conclusion of a canvass under section 10, that the elector was not resident at that address on the 15th March in question, or that because-
  - (i) the form mentioned in section 10(4) was not returned in respect of that address, or
  - (ii) for any other reason, insufficient information was obtained as to whether the elector was resident at that address,

the Registration Officer is unable to satisfy himself that the elector was then so resident at that address,

- (b) determines in any prescribed circumstances, that the elector has ceased to be resident at that address or has otherwise ceased to satisfy the conditions for registration set out in section 8.

(6) Where the entitlement of a person to remain registered in a Register in respect of any address terminates by virtue of subsection (5) of this section, the Registration Officer shall remove that person's entry from the Register once the Officer has satisfied any prescribed requirements applying in relation to the removal of that entry.

(7) Subsection (6) does not apply if, or to the extent that, regulations so provide in relation to any prescribed circumstances; and regulations may, in particular, authorise the Registration Officer to retain entries in his Registers for the prescribed period if he thinks fit in cases where the form mentioned in section 10(4) has not been returned in respect of any address.

(8) In this section-

"determines" means determines in accordance with regulations; and

"resident" means resident for the purposes of section 8.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

### **11A Application for registration**

(1) An application for registration made under section 10 or 11 may be made by one of the following methods-

- (a) handing it personally to the Registration Officer (or leaving it at the office of the Registration Officer);
- (b) sending it by post to the Registration Officer;
- (c) sending it by fax to the Registration Officer; or
- (d) sending it by e-mail to the Registration Officer.

(2) An application must be received in legible form.

(3) If an application is made by e-mail, it must consist of a scanned image of a signed application form.

(4) An applicant's signature must be witnessed by-

- (a) a bank manager;
- (b) a commissioner for oaths;
- (c) an elector;
- (d) a justice of the peace;
- (e) a police officer;
- (f) a teacher of (or tutor to) the applicant; or
- (g) another person approved by the Registration Officer.

*[S. 7/Ord. 14/13/w.e.f. 10/9/13.]*

### **12 Publication of Registers**

(1) The registration officer may, at any time, publish a revised version of the Register of Electors for either constituency (or for both constituencies).

(2) Each year after conducting the canvass under section 10, the registration officer must publish revised versions of the Registers for each constituency no later than either-

- (a) 1 May in that year; or
- (b) if a later date is provided for in regulations, that date instead.

(3) A revised version of a Register must incorporate every alteration required to be made under either section 10(5) or section 13(3) that has had effect since the last version of that Register was published until the day before the date on which the Register is published.

(4) When revising a Register for publication under this section, the registration officer must make whatever changes affecting the electoral numbers of persons registered in the Register are necessary to comply with section 9(3).

*[S. 9/Ord. 8/11/w.e.f. 31/8/11.]*

### **13 Alteration of Registers**

(1) A published version of the Register of Electors may only be altered under this section.

(2) Subsection (3) applies in each of the following circumstances-

(a) when-

(i) a person applies to be registered;

(ii) if requirements have been prescribed in relation to such applications, the person complies with them; and

(iii) the registration officer determines that the person is entitled to be registered;

(b) when the registration officer is required by a provision in this Part to remove a person's entry from the register;

(c) when the registration officer is notified of any decision on an appeal under section 19 which requires an alteration in the register to be made under section 19(4) of that section; and

(d) when the registration officer determines that the register contains a clerical error.

(3) Whenever this subsection applies, the registration officer must (as soon as possible after the circumstances arise) make the appropriate alteration in the register.

(4) Unless section 14(2) applies under section 14(1), an alteration made under subsection (3) takes effect immediately after it is made.

(5) If regulations have been made under section 210 in relation to the determination of entitlement to be registered, the registration officer must comply with those regulations when making a determination under subsection (1).

*[S. 10/Ord. 8/11/w.e.f. 31/8/11.]*

### **14 Pending election or referendum: alterations not effective during closed period**

(1) Subsection (2) applies to an alteration in a Register of Electors that-

(a) would otherwise take effect under section 13(4) during the closed period for an election or referendum for the constituency to which the Register relates; and

(b) does not reflect circumstances that arose before the start of the closed period.

(2) An alteration to which this subsection applies does not take effect until immediately after the election or referendum.

[S. 11/Ord. 8/11/w.e.f. 31/8/11.]

#### **14A Pending election or referendum: publication of revised version of Register**

(1) Before each election or referendum for a constituency, the registration officer must publish a revised version of the Register that incorporates all alterations made to the register that have taken effect before the election or referendum.

(2) The revised version of the Register must be published-

- (a) as soon as possible after all of those alterations have been made; and
- (b) no later than the third day before the election or referendum is due to take place.

[S. 12/Ord. 8/11/w.e.f. 31/8/11.]

### *Supplemental provisions as to elections*

#### **15 Effect of Registers**

(1) Subsection (2) applies to a person who is either-

- (a) registered as an elector; or
- (b) entered into the list of proxies.

(2) A person to whom this subsection applies may not be excluded from voting on the ground that either-

- (a) the person is not qualified under section 32(1) of the Constitution; or
- (b) that the person is disqualified from voting under section 32(2) of the Constitution.

(3) Subsection (2) does not either-

- (a) prevent the rejection of a vote under scrutiny; or
- (b) affect a person's liability to a penalty for voting when either-
  - (i) not qualified to vote; or
  - (ii) disqualified from voting.

[S. 13/Ord. 8/11/w.e.f. 31/8/11.]

#### **16 Effect of misdescription**

No misnomer or inaccurate description of any person or place named-

- (a) in a register of electors, or

- (b) in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Ordinance

affects 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.

*[S. 2(e)/Ord. 7/00/w.e.f. 15/9/00 and s. 2/Ord. 1/05/w.e.f. 21/2/05.]*

## **17 Discharge of registration duties**

(1) The Registration Officer shall comply with any general or special directions which may be given by the Governor with respect to the arrangements to be made by the Registration Officer for carrying out his functions under this Ordinance.

(2) Without prejudice to the generality of subsection (1), the directions which may be given under that provision include directions requiring the Registration Officer to maintain Registers in a specified electronic form; and any such directions may in particular specify-

- (a) the software which is to be used in connection with the maintenance of the Registers in that form;
- (b) the standards in accordance with which that software is to be maintained and updated;
- (c) how information required (by or under any enactment) to be included in the Registers is to be recorded and stored in that form.

(3) Any of the duties and powers of a Registration Officer may be performed or exercised by any deputy for the time being approved by the Chief Executive, and the provisions of this 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.

(4) Any acts authorised or required to be done by or with respect to the Registration Officer may, in the event of his incapacity to act or of a vacancy, be done by the Chief Executive or any other public officer authorised by the Chief Executive to do that act.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

## **18 Power to make regulations as to registration etc**

Without prejudice to the generality of the power of the Governor under section 209 of this Ordinance to make regulations, provision may be made by regulations made under that section-

- (a) with respect to the form of the Register of Electors and any special lists or records required by this Ordinance in connection with the Register or with any election;
- (b) with respect to-
  - (i) the procedure to be followed in the preparation of the Register and the place and manner of its publication, and
  - (ii) the procedure to be followed in the preparation of any such special lists or records, and the time, place and manner of their publication; and

- (c) generally with respect to any matters incidental to the provisions of this Ordinance so far as those provisions relate to the registration of electors or to voting by post or proxy.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

## **19 Registration appeals**

(1) An appeal lies to the Magistrate's Court-

- (a) from any decision under this Ordinance of the Registration Officer on any application for registration or objection to a person's registration made to and considered by him,
- (b) from any decision under this Ordinance of the Registration Officer disallowing a person's application to vote by proxy or by post as elector or to vote by post as proxy, in any case where the application is not made for a particular election only,

but an appeal does not lie where a person desiring to appeal has not availed himself of a prescribed right to be heard by or make representations to the Registration Officer on the matter which is the subject of the appeal, or has not given the prescribed notice of appeal within the prescribed time.

(2) Subject to the Constitution, no appeal shall lie from a decision of the Magistrate's Court under this section, except that an appeal shall lie as of right to the Supreme Court against any order for the payment of costs.

(3) An appeal to the Magistrate's Court by virtue of this section which is pending when notice of an election is given shall not prejudice the operation as respects the 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 of the decision of the Magistrate's Court on any appeal by virtue of this section, and the Registration Officer shall in accordance with the preceding provisions of this Part make such alterations in the Register as may be required to give effect to the decision.

(5) Where, as a result of the decision on an appeal, an alteration in the Register made in pursuance of subsection (4) of this section takes effect under section 12(5), 13(2) or 14(3) on or before the last day on which nomination papers nominating candidates at an election may be delivered to the Returning Officer, subsection (3) of this section does not apply to that appeal as respects that election.

(6) The Registration Officer shall undertake such duties in connection with appeals brought by virtue of this section as may be prescribed and shall on any such appeal be deemed to be a party to the proceedings.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

## **20 Disqualification list**

(1) The Registration Officer shall on or after the 15<sup>th</sup> day of March in each year compile a list of such persons appearing to him to be otherwise qualified to be registered as electors for the

relevant constituency and who, in his opinion, are by virtue of any provision of section 32(2) of the Constitution disqualified from being so registered ("the disqualification list").

[S. 14/Ord. 8/11/w.e.f. 31/8/11.]

(2) The disqualification list shall not be open to inspection by the public, but the Registration Officer shall upon the application of any person inform him, and if so requested, in writing, whether his name appears on the disqualification list.

(3) The Registration Officer may require the Chief Medical Officer, the Chief Police Officer or any other person who, in the opinion of the Registration Officer, may have information relevant to the preparation of the disqualification list to provide such information to him and any person so required shall provide that information to the Registration Officer within seven days.

(4) An appeal lies to the Magistrate's Court at the instance of any person whose name appears on the disqualification list against the decision of the Registration Officer to include his name upon that list but such an appeal does not lie where the person desiring to appeal has not availed himself of a prescribed right to be heard by or make representations to the Registration Officer in relation to the appearance of that persons name upon the disqualification list. Subsections (2) to (6) of the preceding section apply in relation to an appeal under subsection (4) of this section as they do in relation to an appeal under subsection (1) of the preceding section.

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

**21** ...

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

**22** ...

[S. 2/Ord. 1/05/w.e.f. 21/2/05.]

### **PART III POSTAL VOTES, PROXY VOTES AND POSTAL PROXY VOTES**

#### *Postal votes*

#### **23 Application for postal vote**

(1) Any elector may by making application delivered to the registration officer apply to be allowed to vote in a referendum or at an election by post ("an application for a postal vote").

[S. 2/Ord. 8/01/w.e.f. 13/6/01.]

(1A) For the purposes of this section, "delivered" means-

- (a) handed personally to the Registration Officer (or left at the office of the Registration Officer);
- (b) sent by post to the Registration Officer;

- (c) sent by fax to the Registration Officer; or
- (d) sent by e-mail to the Registration Officer.

*[S. 8(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(IB) An application must be received in legible form.

*[S. 8(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(IC) If an application is delivered by e-mail, it must consist of a scanned image of a signed application form.

*[S. 8(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(2) An application for a postal vote may be made-

- (a) in respect of a specified referendum or election or in respect of referenda or elections held within a period stated in the application; or

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

- (b) in respect of referenda and elections generally.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(3) An application for a postal vote shall be invalid unless-

- (a) it is signed by the elector personally;
- (b) the applicant's signature is witnessed by-
  - (i) a bank manager;
  - (ii) a commissioner for oaths;
  - (iii) an elector;
  - (iv) a justice of the peace;
  - (v) a police officer;
  - (vi) a teacher of (or tutor to) the applicant; or
  - (vii) another person approved by the Registration Officer.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05 and s. 8(3)/Ord. 14/13/w.e.f. 10/9/13.]*

- (c) it specifies an address in the Falkland Islands or in the United Kingdom to which postal ballot papers for completion by the elector may be sent.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

(4) Where an application for a postal vote does not specify whether it is made-

- (a) in respect of a specified referendum or election or all referenda or elections held within a period specified in the application; or

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

- (b) in respect of referenda and elections generally,

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

it shall be deemed to have been made in respect of referenda and elections generally.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(4A) Subsection (4B) applies in relation to an application for a postal vote if-

- (a) it was made in accordance with an arrangement made under the Referendum (Falkland Islands Political Status) Ordinance (No 16 of 2012);
- (b) either-
  - (i) it was made in respect of all referenda or elections within a period specified in that application; or
  - (ii) it was made (or deemed to have been made) in respect of referenda and elections generally.

*[S. 8(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(4B) If this subsection applies to an application for a postal vote, it is to be treated as if it had validly been made in accordance with subsection (1) and will continue to apply.

*[S. 8(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(5) Subject to subsection (6), the registration officer shall without delay grant every valid application for a postal vote.

(6) The registration officer shall not grant an application for a postal vote between 12 noon on the day preceding the last day for nominations for an election and the return of the writ in respect of that election or between 12 noon on the fourteenth day preceding the date on which a referendum is to be held and the declaration of the result of that referendum ("the closed period") but nothing in this subsection shall operate so as to prevent an application for a postal vote made before or during the closed period being granted after the expiry of the closed period.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(7) If the registration officer grants an application for a postal vote, he shall notify the applicant in writing that he has done so and if the registration officer rejects an application for a postal vote he shall notify the applicant in writing of his reasons for so doing.

(8) A notification to an applicant that his application for a postal vote has been granted shall contain a statement to the effect that so long as the applicant is registered as a postal voter he will not be allowed to vote at an election by completing a ballot paper at a polling place.

*[S. 8(5)/Ord. 14/13/w.e.f. 10/9/13.]*

## **23A Facilities for voting overseas**

(1) The Governor may by Order make provision enabling an elector to make application to the Registration Officer to be registered as a postal voter at an address in the United Kingdom to which postal ballot papers for completion by the elector may be sent.

(2) No such provision as is referred to in subsection (1) shall be made by Order unless that order appoints a Falkland Islands Government Office in the United Kingdom as the place to which postal ballot papers for completion by electors sent postal ballot papers to an address in the United Kingdom may send such ballot papers when completed.

(3) An Order under subsection (1) shall make provision requiring the electronic transmission to the Returning Officer of a true copy of any postal ballot paper and prescribed document accompanying the postal ballot paper to the Recording Officer.

(4) An Order under this section may contain such further provisions as are necessary or expedient and in particular such provisions as may be necessary or expedient to enable and require copy postal ballot papers received by the Recording Officer and transmitted under the provisions of the Order to be counted in the same way as if they were original postal ballot papers in respect of the same constituency and received by the Returning Officer in the Falkland Islands.

(5) An Order under subsection (1) may make such consequential amendments as may be required to any provision of this Ordinance insofar as it relates to postal voting, postal ballot papers or the counting of postal paper.

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

## **24 Postal voters' list**

The registration officer shall maintain a list ("the postal voters' list") in which he shall record-

- (a) the name of every person in respect of whom an application for a postal vote has been granted ("a postal voter").
- (b) in respect of every postal voter-
  - (i) the address or location and description of the dwelling in respect of which he is registered as an elector;
  - (ii) the address in the Falkland Islands or the United Kingdom specified in the postal application for a postal vote or substituted in accordance with section 25 to which postal ballot papers for that person are to be sent;

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

- (iii) the referendum or referenda, election or elections in respect of which the application for a postal vote was granted or, alternatively, that the person is a postal voter generally, that is to say for all elections.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

## **25 Cancellation or variation of postal vote arrangement**

(1) A postal voter may by notice in writing delivered to the registration officer cancel the arrangement whereby he is a postal voter.

(2) A notice under subsection (1) shall be signed by the postal voter and his signature thereon shall be witnessed by an elector or by a justice of the peace.

(3) The registration officer shall give effect to a notice complying with subsections (1) and (2) forthwith, except that he shall not do so in the closed period, and on giving effect to it he shall notify the former postal voter in writing that he has done so.

(4) On giving effect to a notice complying with subsections (1) and (2), the registration officer shall remove the entries relating to the former postal voter in the postal voters' list.

(5) A postal voter may by notice in writing signed by him and witnessed as required in subsection (5A) specify an address in the Falkland Islands or in the United Kingdom different from that presently appearing the postal voters list, or if the address presently appearing in the postal voters list as that which postal ballot papers for him are to be sent, and the registration officer shall give effect to such notice and notify the postal voter in writing that he has done so, except that the registration officer shall not give effect to such a notice during the closed period.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

(5A) The notice in writing referred to in subsection (5) is to be witnessed-

- (a) if the notice is signed in the Falkland Islands, by an elector or justice of the peace; or
- (b) if the notice is signed in the United Kingdom, by a minister of religion, bank manager, commissioner for oaths, police officer or any other person approved by the registration officer for the purpose.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

(6) On giving effect to a notice under subsection (5), the registration officer shall in the postal voters' list substitute the address specified in that notice for the address previously appearing in the postal voters' list under section 24(b)(ii).

## **26 Duration of postal voting arrangements**

(1) A person who has become a postal voter in accordance with the foregoing provisions of this Part shall be entitled to vote only by completing a postal ballot paper unless-

- (a) it would be inconsistent with his application for a postal vote for him to be entitled to vote at that election only by completing a postal ballot paper;
- (b) the registration officer has given effect to a notice by him under section 25(1); or
- (c) he has ceased to be an elector since he became a postal voter.

(2) The postal voters' list shall be admissible in evidence in any proceedings and if produced by the registration officer or by any other person appearing to the court to have authority to produce it on his behalf shall be conclusive evidence as to-

- (a) whether or not a person is a postal voter;
- (b) the address in the Falkland Islands or in the United Kingdom to which postal ballot papers for any person named therein are to be sent;

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

- (c) the referenda elections for which any person mentioned therein is a postal voter.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*



## *Proxy vote*

### **27 Application for proxy vote**

(1) Any elector may apply to the registration officer to be permitted to vote by proxy.

(1A) An application must be-

- (a) handed personally to the Registration Officer (or left at the office of the Registration Officer);
- (b) sent by post to the Registration Officer;
- (c) sent by fax to the Registration Officer; or
- (d) sent by e-mail to the Registration Officer.

*[S. 9(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(IB) An application must be received in legible form.

*[S. 9(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(IC) If an application is made by e-mail, it must consist of a scanned image of a signed application form.

*[S. 9(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(2) An application to be permitted to vote by proxy ("an application for a proxy vote") may be made-

- (a) in respect of a specified referendum or election or in respect of referenda or elections held within a period stated in the application; or
- (b) in respect of referenda and elections generally.

*[S. 9(3)/Ord. 14/13/w.e.f. 10/9/13.]*

(2A) An application to be permitted to vote by proxy ("an application for a proxy vote") is invalid unless-

- (a) it states the full name and address of the person whom the applicant wishes to appoint as proxy;
- (b) it is signed by the elector personally; and
- (c) the applicant's signature is witnessed by-
  - (i) a bank manager;
  - (ii) a commissioner for oaths;
  - (iii) an elector;
  - (iv) a justice of the peace;
  - (v) a police officer;

- (vi) a teacher of (or tutor to) the applicant; or
- (vii) another person approved by the Registration Officer.

*[S. 9(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(3) Only a person who is an elector in respect of the same constituency may be named as a proxy under subsection (2A)(a).

*[S. 9(5)/Ord. 14/13/w.e.f. 10/9/13.]*

(4) An application under subsection (2) shall be accompanied by the consent in writing of the person named under paragraph (b) thereof as the person to be appointed as proxy, to act as such proxy.

*[S. 9(6)/Ord. 14/13/w.e.f. 10/9/13.]*

(5) A person may not be appointed the proxy of more than two other electors.

(5A) Subsection (5B) applies to an application for a proxy vote if it does not specify whether it is made-

- (a) in respect of a specified referendum or election or all referenda or elections held within a period specified in the application; or
- (b) in respect of referenda and elections generally,

*[S. 9(7)/Ord. 14/13/w.e.f. 10/9/13.]*

(5B) If this subsection applies to an application for a proxy vote, it will be deemed to have been made in respect of referenda and elections generally.

*[S. 9(7)/Ord. 14/13/w.e.f. 10/9/13.]*

(5C) Subsection (5D) applies in relation to an application for a proxy vote if-

- (a) it was made in accordance with an arrangement made under the Referendum (Falkland Islands Political Status) Ordinance;
- (b) either-
  - (i) it was made in respect of all referenda or elections within a period specified in that application; or
  - (ii) it was made (or deemed to have been made) in respect of referenda and elections generally.

*[S. 9(7)/Ord. 14/13/w.e.f. 10/9/13.]*

(5D) If this subsection applies to an application for a proxy vote, it is to be treated as if it had validly been made in accordance with subsection (1) and will continue to apply.

*[S. 9(7)/Ord. 14/13/w.e.f. 10/9/13.]*

(6) An application for permission to vote by proxy shall not be granted during the closed period.

(7) The registration officer shall forthwith consider an application to vote by proxy received by him and, subject to subsection (6), if he is satisfied that the requirements of subsection (1) to (4) are satisfied in relation to it and that the person named under subsection (2A)(a) is not already the proxy of two other electors, he shall grant it.

*[S. 9(8)(a) and (b)/Ord. 14/13/w.e.f. 10/9/13.]*

(8) If the registration officer rejects an application to be permitted to vote by proxy, he shall forthwith notify the applicant in writing that he has rejected the application and of his reasons for so doing.

(9) If the registration officer grants an application for a proxy vote, he shall forthwith notify the applicant and the proxy in writing of that fact, and shall also notify the applicant in writing of the effect of section 28.

## **28 Position of proxy**

(1) A person who is the proxy of an elector is entitled to complete a ballot paper in a referendum or at an election on behalf of that elector but-

- (a) he is not bound so to do;
- (b) if he completes a ballot paper on behalf of that elector, it is not relevant for any purpose of this Ordinance as to whether he has done so in accordance with that elector's wishes or intentions.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) A person who is the proxy of an elector cannot as such proxy nominate or second a candidate.

## **29 Inducement or intimidation as to appointment of proxy**

(1) A person commits an offence under this Ordinance who-

- (a) offers or pays a sum of money or other valuable consideration to an elector or any other person with the intention of inducing that elector to apply to the registration officer to be permitted to vote by proxy;
- (b) offers or pays a sum of money or other valuable consideration to an elector or any other person with the intention of inducing that elector not to give notice under section 30 to cancel an arrangement whereby he is permitted to vote by proxy.

(2) A person commits an offence under this Ordinance who makes any threat to an elector or any other person with either of the intentions mentioned in subsection (1).

## **30 Proxy list**

(1) The registration officer shall maintain a list ("the proxy list") in which he shall record-

- (a) the names and addresses of every person who has been appointed as a proxy for an elector, and in relation to every such person, the names and addresses of the electors in respect of whom he is the proxy;

- (b) the names and addresses of every elector who has appointed a proxy to vote on his behalf, and in relation to every such elector, the name and address of the person who is his proxy,

and the particulars required to be recorded by paragraph (a) shall constitute Part 1 of the proxy list and the particulars required to be recorded by paragraph (b) shall constitute Part 2 of the proxy list.

(2) In addition to the particulars required to be recorded by subsection (1), the registration officer shall record-

- (a) in Part 1 of the proxy list, in relation to the elector in respect of whom a person has been appointed a proxy, the elections in respect of which he has been so appointed;
- (b) in Part 2 of the proxy list, whether or not a postal proxy vote has been granted to the proxy under section 34 and, if it has, a reference to the entry in the postal proxy list relating thereto.

### **31 Cancellation of proxy voting arrangements**

(1) An elector whose application to be permitted to vote by proxy has been granted may by notice in writing delivered to the registration officer and complying with subsection (2) cancel that arrangement.

(2) A notice to which subsection (1) relates shall be signed by the elector concerned whose signature shall be witnessed by another elector or by a justice of the peace.

(3) The registration officer shall give immediate effect to a notice complying with the above subsections except that he shall not do so during the closed period.

(4) When the registration officer gives effect to a notice complying with subsection (1) and (2) he shall forthwith notify the elector and former proxy in writing of that fact.

(5) Whenever a proxy voting arrangement is cancelled under the above provisions of this section, the registration officer shall delete all entries relating thereto in Part 1 and Part 2 of the proxy list.

### **32 Automatic cesser of proxy voting arrangement**

(1) A proxy voting arrangement is ended-

- (a) by the death of the elector who appointed the proxy;
- (b) if the elector or the proxy ceases to be an elector in respect of the same constituency as that of which he was an elector at the time of the making of the arrangement;
- (c) by the death of the proxy.

(2) If the registration officer becomes aware of circumstances in which a proxy voting arrangement has come to an end by virtue of the provisions of subsection (1) he shall-

- (a) delete in Part 1 and Part 2 of the proxy list all entries relating to that proxy voting arrangement;

- (b) notify in writing the elector (if he remains an elector for the same or another constituency) and the proxy (if he remains an elector for the same or another constituency) that the proxy voting arrangement has come to an end and the reason for that.

### **33 Supplemental provisions relating to cancellation of proxy voting arrangements**

(1) It is declared for the sake of avoidance of doubt that when an elector gives notice to the registration officer of cancellation of a proxy voting arrangement he may at the same time apply pursuant to section 27 to be permitted to vote by proxy through a different proxy.

(2) Whenever, pursuant to section 31(3), the registration officer gives effect to a notice cancelling a proxy voting arrangement he shall delete in Part 1 and Part 2 of the proxy list all entries relating to that proxy voting arrangement.

### *Postal proxy votes*

### **34 Application for a postal proxy vote**

(1) A person who is the proxy of an elector may by notice in writing delivered to the registration officer apply to be allowed to vote as proxy by post ("a postal proxy vote").

(1A) For the purposes of this section, "delivered" means-

- (a) handed personally to the Registration Officer (or left at the office of the Registration Officer);
- (b) sent by post to the Registration Officer;
- (c) sent by fax to the Registration Officer; or
- (d) sent by e-mail to the Registration Officer.

*[S. 10(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(IB) An application must be received in legible form.

*[S. 10(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(IC) If an application is delivered by e-mail, it must consist of a scanned image of a signed application form.

*[S. 10(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(2) An application for a postal proxy vote shall be disallowed unless-

- (a) it complies with the provisions of subsection (3); and
- (b) the proxy is already a postal voter in respect of his right to vote otherwise than as a proxy for another, or an application made by him under section 23 is allowed at the same time;

(3) An application for a postal proxy vote shall be invalid unless-

- (a) it is signed by the proxy personally;
- (b) the applicant's signature is witnessed by-
  - (i) a bank manager;
  - (ii) a commissioner for oaths;
  - (iv) a justice of the peace;
  - (v) a police officer;
  - (vi) a teacher of (or tutor to) the applicant; or
  - (vii) another person approved by the Registration Officer;

*[S. 10(3)/Ord. 14/13/w.e.f. 10/9/13.]*

- (c) it specifies an address in the Falkland Islands to which postal ballot papers for completion by him as proxy for the elector of whom he is the proxy.

(4) Section 23(4) to (8) shall apply to an application for a postal proxy vote as it does to an application for a postal vote with the substitution of the words "postal proxy vote" for the words "postal vote" wherever they appear in those provisions.

*[S. 10(4)/Ord. 14/13/w.e.f. 10/9/13.]*

### **35 Postal proxy list**

The registration officer shall maintain a list ("the postal proxy voters' list") in which he shall record-

- (a) the names of every person in respect of whom an application for a postal proxy vote has been granted ("a postal proxy voter");
- (b) in respect of every postal proxy voter-
  - (i) the name of the elector in respect of whom the postal proxy voter is the proxy;
  - (ii) the address in the Falkland Islands specified in the postal proxy voter's application for a postal proxy vote or substituted in accordance with section 36 to which postal ballot papers are to be sent;
  - (iii) the referendum or referenda, election or elections in respect of which the application for a postal proxy vote was granted or, alternatively that the person is a postal proxy voter generally, that is to say for all elections while he remains a proxy for the elector in question having regard to the provisions of this Part.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

### **36 Cancellation or variation of postal proxy vote arrangements**

Section 25 shall apply in relation to the cancellation or variation of postal proxy vote arrangements as it does to postal vote arrangements but with the following substitutions:

- (a) for the words "postal voter" wherever they appear therein there shall be substituted the words "postal proxy voter";

- (b) for the words "postal voters' list" wherever they appear therein shall be substituted the words "postal proxy voters' list"; and
- (c) for the reference to section 24(b)(ii) appearing in subsection (6) of section 25 there shall be substituted a reference to section 35(b)(ii).

### **37 Duration of postal proxy arrangements**

A person who is a proxy and who has become a postal proxy voter in accordance with the foregoing provisions of this Part shall be entitled to vote as proxy for an elector in respect of whom he has obtained a postal proxy vote only by completing a postal ballot paper on behalf of that elector unless-

- (a) it would be inconsistent with his application for a postal proxy vote for him to be entitled to vote as proxy at that election or referendum only by completing a postal ballot paper on behalf of the elector for whom he is the proxy; or

*[S. 15/Ord. 8/11/w.e.f. 31/8/11.]*

- (b) the registration officer has given effect to a notice by him under section 25(1), as modified in relation to postal proxy voters by section 36.

### **38 Cancellation of entries in postal proxy list**

Whenever by reason of-

- (a) the cancellation of the proxy voting arrangement in question under section 31; or
- (b) the proxy voting arrangement in question coming to an end under section 32,

the right of the former proxy to complete a postal ballot paper on behalf of another elector is ended, the registration officer shall cancel all entries in the postal proxy voters' list relating to the postal proxy vote arrangements.

## *Supplementary*

### **39 Admission of proxy voters' list and postal proxy voters' list in evidence**

(1) The proxy voters' list shall, subject to this subsection, be admissible in evidence in any proceedings, and saving any inconsistency with the register shall, if produced by the registration officer or any other person appearing to the court to have authority to produce it on his behalf, be conclusive evidence as to-

- (a) whether or not a person has been duly appointed a proxy for an elector,
- (b) the elector in respect of whom that person has been appointed to be the proxy;
- (c) the referenda or elections in respect of which the person has been appointed the proxy of that elector;

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

but shall not be admissible in evidence to prove-

- (i) that the person in respect of whom the proxy has been appointed as such is an elector; or
- (ii) that the proxy is himself an elector in his own right.

(2) The postal proxy voters' list shall, subject to this subsection, be admissible in evidence, and saving any inconsistency with the register and the proxy voters' list, shall if produced by the registration officer or any other person appearing to the court to have authority to produce it on his behalf, be conclusive evidence as to-

- (a) whether or not arrangements have been made under this Part to enable the proxy to complete a postal ballot paper on behalf of another person;
- (b) the referendum or referenda, election or elections in respect of which such arrangements have been made,

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

but shall not be admissible in evidence to prove-

- (i) anything which, under subsection (1), the proxy voters' list is not admissible in evidence to prove;
- (ii) anything of which the proxy voters' list is, under subsection (1), conclusive evidence.

#### **40 Inspection of and copies of lists**

(1) The registration officer shall permit any person who wishes to do so to inspect a copy of-

- (a) the postal voters' list;
- (b) the proxy voters' list; and
- (c) the postal proxy voters' list,

altered or amended in accordance with this Part or any other provision of this Ordinance up to the date of such inspection at all reasonable times during the hours between which Government offices are open to the public.

(2) The registration officer shall, at the request of any person and on the payment of such fee as may be prescribed by regulations made under this Ordinance (or if none on payment of the sum of £1) in respect of every copy of a list supplied, supply to that person a copy of any list mentioned in subsection (1), altered or amended in accordance with this Part or any other provision of this Ordinance up to the date of such supply.

**PART IV  
SUPPLEMENTAL TO PARTS II AND III**

**41** ...

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

**42** **Publicity for certain matters**

(1) The registration officer shall from time to time cause such publicity as the Governor may direct, and in the absence of such direction or additionally to the requirements of any such direction, such publicity as the registration officer shall think fit-

- (a) as to the provisions of this Ordinance relating to postal voting, the appointment of a proxy for an elector and postal voting by proxy;
- (b) as to the manner in which, by whom and the time within which claims may be made for the inclusion of a person's name in the register;
- (c) as to the manner in which, by whom, and the time within which objections to the inclusion of a person's name in a register of electors may be made; and

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

- (ca) as to the manner, and the times of which, a person may make application for his name to be included in an electoral register and the qualifications for such inclusion;

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

- (d) as to the right of appeal from the decision of the registration officer on a claim or objection and by whom, the manner in which, and the time within which such right of appeal may be exercised.

(2) Publicity about all the matters referred to in subsection (1) must additionally be given-

- (a) during May in each year; and
- (b) at least two months before a referendum is to be held.

*[S. 16(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) Publicity about the matters referred to in subsection (1)(a) must be given during the period between the publication of the writ for an election and the start of the closed period for that election.

*[S. 16(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(3A) Publicity about the matters referred to in subsection (1)(a) must also be given during the period between 28 and 15 days before a referendum is to be held.

*[S. 16(4)/Ord. 8/11/w.e.f. 31/8/11.]*

(4) No failure to comply with the preceding provisions of this subsection shall in any way invalidate-

- (a) the register; or
- (b) any referendum or election.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

**43 Power of registration officer to require documents to be produced or a statutory declaration to be made, etc.**

(1) The registration officer before including the name of any person in the preliminary list or in the register may, if he considers it necessary-

- (a) require that person either to make and deliver to him a statutory declaration as to the date of his birth or to produce the original or a copy certified by the issuing authority of his birth certificate;
- (b) require that person to produce such documents as may be necessary to prove that the person was on the qualifying date a British Citizen, British Overseas Territories Citizen or a British Overseas Citizen; or

*[S. 17(2)/Ord. 8/11/w.e.f. 31/8/11.]*

- (c) require that person to make and deliver a statutory declaration that, on the qualifying date, the person was not, by the person's own act, under an acknowledgement of allegiance, obedience or adherence to a foreign Power or State.

*[S. 17(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) The registration officer's powers under subsection (1) may be exercised in connection with an objection or claim or otherwise.

(3) Where any statutory declaration is made pursuant to a requirement under subsection (1), any fee proved to have been paid in connection therewith shall be repaid by the registration officer as part of his registration expenses.

(4) Any statutory declaration made pursuant to a requirement under subsection (1) and a copy of any document produced in response to any such requirement shall be maintained at the registration officer's office and produced at any reasonable time before the time for disposal of claims and objection has expired, for inspection by any person requiring to see the same.

(5) Any person who-

- (a) in any statutory declaration made in pursuance to a requirement under subsection (1), makes any statement he knows to be false or does not believe to be true; or
- (b) in response to any such requirement produces or causes another to produce a document which he knows or believes to be false or misleading in any material respect,

commits, in addition to any other offence he may have committed, an offence under this Ordinance.

(6) If a person who has been required by the registration officer pursuant to subsection (1)-

- (a) to produce to him any document; or

(b) to make and deliver to him a statutory declaration as to any matter,

fails within such time as, in all the circumstances, is reasonable to produce such document or to make or deliver to the registration officer such statutory declaration, the registration officer may draw such inference as he thinks fit from such failure and may act in accordance with that inference.

**44** ...

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

#### **45 Registration expenses**

(1) Any expenses properly incurred by a registration officer in the performance of his duties under this Ordinance ("the registration expenses") shall be paid out of moneys provided by the legislature.

(2) Any fees or other sums received by the registration officer in respect of his registration duties other than sums paid to him in respect of his registration expenses, shall be paid into the Consolidated Fund, and shall be accounted for accordingly.

(3) The registration expenses payable to the registration officer shall include-

- (a) any honorarium or allowance payable to him in respect of his services;
- (b) any out-of-pocket expenditure actually and reasonably incurred in the performance of his duties including, without limitation of the generality of the foregoing:
  - (i) any travelling or accommodation expenses incurred by him or any other person appointed by him to assist him under section 19(1);
  - (ii) any sum paid by him pursuant to section 19(2).

(4) The Financial Secretary may advance to the registration officer out of the Consolidated Fund such sum or sums as the Financial Secretary thinks fit on account of registration expenses and the registration officer shall account to the Financial Secretary when required so to do for any such advance and shall repay to him on demand any balance thereof for the time being unexpended.

**46** ...

*[S. 2/Ord. 1/05/w.e.f. 21/2/05.]*

**PART V**  
**REFERENDA, ELECTIONS AND VOTING**

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

*Preliminary*

**47 Returning officer**

(1) The Governor, acting in his discretion, shall in respect of each constituency appoint a person to be the returning officer, but the same person may be appointed to be the returning officer in respect of both constituencies.

(2) Subsection (2A) applies whenever either-

- (a) no-one holds an appointment as returning officer; or
- (b) the person appointed to be the returning officer is unable to act.

*[S. 18(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(2A) If this subsection applies, the Chief Executive must act as returning officer.

*[S. 18(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) No person shall be subject to any incapacity to vote in a referendum [or] at an election by reason of his being Chief Counting Officer or Returning Officer thereat.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(4) A person may not be appointed to be the returning officer if-

- (a) the person is under the age of 21;
- (b) the person is not a British Citizen, a British Overseas Territories Citizen or a British Overseas Citizen;
- (c) the person has, at any time, been-
  - (i) convicted of an electoral offence (whether in the Falklands Islands or anywhere else); or
  - (ii) sentenced by a court (whether in the Falkland Islands or anywhere else) to a term of imprisonment (by whatever name called);
- (d) the person either-
  - (i) is an elected member of the Legislative Assembly; or
  - (ii) has been an elected member of the Legislative Assembly (or the former Legislative Council) within the previous five years; or

- (e) the person either-
  - (i) holds an office in a political party; or
  - (ii) has done within the previous five years.

[S. 18(4)/Ord. 8/11/w.e.f. 31/8/11.]

(5) A person appointed to be the returning officer in respect of a constituency under subsection (1) shall cease to be such returning officer-

- (a) when notice in writing signed by him resigning his appointment is received by the Governor;
- (b) when any event occurs which, if it had occurred before he was appointed would, under subsection (4), have disqualified him from appointment as such returning officer.

#### **47A Independent observation**

(1) The Returning Officer may appoint individuals (from inside or outside the Falkland Islands) to act as independent observers of the electoral or referendum process.

(2) The Governor may make regulations providing for individuals appointed under subsection (1) to have (for observation purposes) access to restricted elements of the electoral or referendum process.

[S. 11/Ord. 14/13/w.e.f. 10/9/13.]

#### **48 Writs of election**

(1) Whenever the Governor in accordance with the provisions of section 33 of the Constitution by proclamation appoints a date for the election of a member or members of the Legislative Assembly, the Governor shall also issue a writ of election ("the writ") over his signature and the Public Seal addressed to the returning officer for the constituency or constituencies in respect of which the election is to be held.

[Ss. 4(1 and 19(2))/Ord. 8/11/w.e.f. 31/8/11.]

(2) The Governor must send a copy of the writ to-

- (a) the returning officer; and
- (b) unless the Chief Executive is acting as returning officer under section 47(2A), the Chief Executive.

[S. 19(3)/Ord. 8/11/w.e.f. 31/8/11.]

(3) It is not necessary for the name of the returning officer to appear in the writ.

(4) On receiving the copy of the writ sent under subsection (2), the Chief Executive must arrange for it to be published in the *Gazette* as soon as possible

[S. 19(4)/Ord. 8/11/w.e.f. 31/8/11.]

## **49 Contents of writ**

The writ shall-

- (a) specify the constituency or constituencies to which it relates;
- (b) state the date on which the election is to be held ("polling day") (which shall be the same date as is specified in the proclamation);
- (c) require the returning officer to cause an election to be made according to law of such number of members of the Legislative Assembly as is requisite;

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (d) require the returning officer to certify by writing over his signature the name of the person or the names of the persons elected at the election required by the writ.

## **50 Election timetable**

The proceedings at an election subsequent to the issue of the writ shall be conducted in accordance with the following timetable:

- (a) notice of the election ("the notice") shall be published in the Gazette as required by section 51 not later than the third business day from the day on which the returning officer received the writ;
- (b) nomination papers shall be obtainable from the returning officer during a period beginning not later than the third business day after the day on which the returning officer received the writ and ending with such day as is specified in the notice and being not earlier than fourteen days from the date of publication of the notice nor later than twenty-one days from such date;
- (c) the last day for delivery to the returning officer of completed nomination papers shall be the last day on which nomination papers may be obtained from him;
- (d) the last day for withdrawal of nominations shall be the last day on which completed nomination papers may be delivered to the returning officer;
- (e) a list of candidates, if there is to be a poll, shall be published not later than the fourth business day following the last day for delivery to the returning officer of completed nomination papers; and
- (f) the day on which a poll is to be taken ("polling day") shall (if the election is contested) be not earlier than thirty-five days following the publication of the notice and not later than forty-two days following such publication.

## **51 Notice of election**

(1) The returning officer shall cause notice of the election to be published in the Gazette and the notice shall comply with the provisions of this section.

(2) The notice shall state-

- (a) the number of persons to be elected as members of the Legislative Assembly in respect of the constituency at the election;

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (b) the days between and including which nomination papers may be obtained from the office of the returning officer;
- (c) the hours between which nomination papers may be so obtained;
- (d) the address or location of the office of the returning officer (which shall be within the Falkland Islands, but need not be within the constituency);
- (e) the last day on which completed nomination papers may be handed to the returning officer and the latest hour on such day by which they must be so handed;
- (f) the hours between which on the last day for delivery of completed nomination papers to him the returning officer will be in attendance at his office for the purpose of receiving the same; and
- (g) polling day and the hours between which the poll will be conducted ("the polling hours").

(3) The days specified under subsection (2)(b) shall be deemed to exclude Saturdays, Sundays and public holidays.

(4) The day specified under subsection (2)(e) and polling day may not be a Saturday, Sunday or public holiday.

(5) The hours specified under subsection (2)(f) must aggregate at least six hours falling between 8 a.m. and 6 p.m.

(6) Polling hours must constitute a period of at least six consecutive hours falling between 7am and 8pm.

*[S. 12(2)/Ord. 14/13/w.e.f. 10/9/13.]*

(7) Polling hours for polling places in the Camp Constituency and polling hours for polling places in the Stanley Constituency may be different.

*[S. 12(3)/Ord. 14/13/w.e.f. 10/9/13.]*

## **52 Delivery of nomination papers**

(1) Every nomination paper shall be delivered or sent by or on behalf of the candidate so as to be received by the returning officer personally and shall be deemed not to have been received by the returning officer until it is received by him personally except that whenever a nomination paper is left at his office in an envelope addressed to him it shall (unless it is actually received by him at an earlier time) be deemed to have been received by him personally not later than 4.30 p.m. of the second business day following the day on which it was so left.

(2) No election shall be invalidated by the fact that the returning officer is absent from his office on any day provided that he is in personal attendance thereat on the last day for delivery of nomination papers between the hours specified pursuant to section 51(2)(f).

### *Disqualification*

#### **53 Disqualification from election (with power for Governor to amend by order)**

(1) A person is qualified to be elected as a member of the Legislative Assembly if the person-

(a) is qualified under section 28 of the Constitution (qualifications for election); and

(b) is not disqualified under section 29 of the Constitution (disqualifications for election).

(2) Section 29(1) of the Constitution lists a number of disqualifications from election as a member of the Legislative Assembly.

(3) Section 29(1)(c) provides that a person is disqualified from election as a member of the Legislative Assembly if the person holds (or is acting in) a public office, except as may be specified (either individually or by reference to a class of office or otherwise) by Ordinance.

(4) For the purposes of section 29(1)(c), the following public offices are specified as offices that do not disqualify the holders of them (or persons acting in them), from election as members of the Legislative Assembly-

(a) an office in (or membership of) the Falkland Islands Defence Force, except in the following posts (and the holders of those posts and persons acting in them are disqualified from election as members of the Legislative Assembly)-

(i) Commanding Officer;

(ii) Permanent Staff Assistant; and

(iii) Training Sergeant;

(b) office in (or membership of) the Falkland Islands Fire and Rescue Service as a Retained Firefighter.

(5) In accordance with section 29(4)(b) of the Constitution, the office of General Manager in the Falkland Islands Development Corporation is prescribed as one that is deemed to be a public office (and the holder of that post or a person acting in it is disqualified from election as a member of the Legislative Assembly).

(6) Subsection (7) applies to a person who would be disqualified from election as a member of the Legislative Assembly because that person holds (or is acting in) a public office ("the disqualifying office") which has not been specified in subsection (4).

(7) A person to whom this subsection applies may still stand as a candidate for election as a member of the Legislative Assembly but only if that person undertakes in writing to relinquish the disqualifying office (or to cease to act in it) if elected as a member of the Legislative Assembly.

*[S.R. & O. 19/13/w.e.f. 10/9/13.]*

(8) Subsection (9) applies to a person who-

- (a) has given an undertaking under subsection (7); and
- (b) is elected as a member of the Legislative Assembly.

(9) A person to whom this subsection applies-

- (a) will be incapable of taking a seat in the Legislative Assembly until the undertaking has been fulfilled; and
- (b) is to be treated as having vacated the seat if the undertaking has not been fulfilled within 100 days after the date on which the person was elected as a member of the Legislative Assembly.

(10) The Governor may amend this section by order.

*[S. 13/Ord. 14/13/w.e.f. 10/9/13 (as corrected by S.R. & O. 19/13/w.e.f. 10/9/13).]*

## **54 Conduct of elections**

(1) The proceedings in a referendum [or] at an election shall be conducted in accordance with the subsequent provisions of this Part.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) It is the duty of the returning officer to do all such acts and things as may be necessary for effectually conducting the referendum or election in the manner provided by subsequent provisions of this Part.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(3) Notwithstanding subsection (2), no election shall be declared invalid by reason of any act or omission by the returning officer or by any other person in breach of his duty in connection with the referendum or election if it appears to the court that the referendum or election was so conducted as to be substantially in accord with the law as to referenda or elections, as the case may be, and that the act or omission did not affect its result.

*[S. 2/Ord. 9/01/w.e.f. 13/6/01.]*

### ***Manner of voting and closing of register, etc.***

## **55 Manner of voting**

Except as otherwise provided by this Part, every elector desiring to vote in a referendum [or] at an election shall personally attend at a polling place.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

## **56 Closing of register and lists**

(1) Subject to any order of the Supreme Court and subject to subsection (2), no alteration shall be made, so far as it concerns that referendum or election, during the closed period in respect of any referendum or election in-

- (a) the register;
- (b) the postal voters' list;
- (c) the proxy voters' list; or
- (d) the postal proxy voters' list.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) Subsection (1) does not prevent a mis-spelling of a person's name or a minor error or slip of a similar nature being corrected, provided that such correction does not confer upon a person or take away from a person-

- (a) an ability to vote in the referendum or at the election; or

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

- (b) an ability or requirement to vote in a manner different from that in which, but for the correction, he could have voted.

## **57 Postal voters and postal proxy voters voting at polling place**

(1) A postal voter and a postal proxy voter shall not be required to attend at a polling place in order to vote in a referendum or at an election, and except as provided by subsection (2) shall not be permitted to vote at a polling place but shall vote (if at all) in the manner provided by this Part in relation to voting by post.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) . . .

*[S. 20/Ord. 8/11/w.e.f. 31/8/11.]*

(3) A postal voter commits an offence under this Ordinance who, having received a postal ballot paper for completion by him, at the same election votes at a polling place (and whether or not he completes and sends, to the returning officer a postal ballot paper).

(4) Nothing in the above provisions of this section shall apply so as to prevent or in any way render unlawful a person voting by post on his own behalf and by attendance at a polling place as proxy for another elector or so as to prevent a person voting on his own behalf by attendance at a polling place and voting by post as proxy for another elector.

(5) For the purposes of all the above provisions of this section, a place at which a mobile polling team attends for the purpose of receiving ballot papers completed by electors is a polling place.

## **58 Electors to be able to vote at any polling place**

- (1) Subsection (3) applies at a general election.
- (2) Subsection (3) also applies whenever voting (in an election, in a referendum or in both) is taking place for both constituencies on the same day.
- (3) If this subsection applies, an elector who is permitted to vote at a polling place may do so at any polling place in the Falkland Islands (whether or not that polling place is within the constituency in which the elector is registered to vote).
- (4) Subsection (5) applies when-
  - (a) voting is taking place for the Camp constituency; but
  - (b) voting is not taking place for the Stanley constituency on the same day.
- (5) If this subsection applies, an elector who is permitted to vote at a polling place on that day may do so at any polling place appointed under section 59(4) or (7).
- (6) Neither subsection (3) nor subsection (5) allows an elector registered to vote for one constituency to vote for the other constituency.

[S. 21/Ord. 8/11/w.e.f. 31/8/11.]

### *Polling places and mobile polling*

## **59 Appointment of polling places**

- (1) The Governor, acting with discretion, must appoint polling places for each election and referendum.
- (2) The Governor must appoint polling places at least ten days before-
  - (a) in the case of an election, polling day; and
  - (b) in the case of a referendum, the date on which it is to be held.
- (3) If voting is taking place at an election for the Stanley constituency or in a referendum for that constituency, the Governor must appoint at least one polling place that is within the Stanley constituency.
- (4) If voting is taking place at an election for the Camp constituency or in a referendum for that constituency, the Governor must appoint-
  - (a) at least one polling place that is on the island of West Falkland; and
  - (b) at least one polling place that is-
    - (i) on the island of East Falkland; but
    - (ii) outside the Stanley constituency.

(5) If voting is taking place for both constituencies on the same day, every polling place in the Falkland Islands is a polling place for both constituencies.

(6) Subsection (7) applies if-

- (a) voting is taking place for the Camp constituency; but
- (b) voting is not taking place for the Stanley constituency on the same day.

(7) If this subsection applies, the Governor must appoint at least one polling place within the Stanley constituency at which persons permitted to vote at a polling place may vote in that election or referendum for the Camp constituency.

(8) Subsection (9) applies if-

- (a) voting is taking place for the Camp constituency; but
- (b) voting is not taking place for the Stanley constituency on the same day.

(9) If this subsection applies-

- (a) the Governor may appoint one or more polling places in the Camp constituency at which persons permitted to vote at a polling place in respect of the Stanley constituency may vote in the election or referendum; but
- (b) there is no requirement for this to be done.

(10) The returning officer must arrange for notice of the polling places appointed under this section to be published in the Gazette at least seven clear days before-

- (a) in the case of an election, polling day; and
- (b) in the case of a referendum, the date on which it is to be held.

*[S. 22/Ord. 8/11/w.e.f. 31/8/11.]*

## **60 Voting by inmates and staff of institutions**

(1) The Governor may by regulations under this section make provision as to voting by persons who are inmates of or members of the staff of any institution and who are entitled to vote in a referendum or at an election to which this Ordinance relates.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) For the purposes of this section "institution" means the King Edward VII Memorial Hospital, Stanley and the Jack Hayward Housing, Stanley or any other building by Order made by the Governor under this subsection declared to be an institution for the purposes of this section.

*[S. 2/Ord. 2/97/w.e.f. 1/9/97.]*

(3) Regulations under this section may make such incidental and consequential provision as the Governor considers necessary in relation to voting by persons who are inmates or members of the staff of an institution.

(4) Nothing in section 55 applies to a voter who votes pursuant to regulations under this section.

(5) Section 106 does not apply in relation to a ballot box used for the purpose of voting in accordance with regulations made under this section, but such regulations shall contain provisions which appear to the Governor to fulfil the purposes of that section.

(6) Section 113(2) does not apply in respect of voting under regulations made under this section in so far as it requires a voter to proceed into a voting compartment, section 113(3) does not apply to voting under such regulations in so far as it might require a voter to leave the place in which he has voted, and the other provisions of section 113(2) may be excluded or modified as may be provided by such regulations in relation to voting thereunder.

(7) The presiding officer shall permit at the request of a voter who is an inmate of an institution who votes pursuant to regulations under this section to vote with the assistance of any person present the voter chooses, and section 115 shall not apply.

(8) In relation to voting under regulations under this section, section 119 shall apply subject to such modifications as are specified in those regulations.

*[S. 2/Ord. 16/92/w.e.f. 9/12/92.]*

#### **60A Emergency voting**

(1) The Governor may make regulations to allow for emergency voting by persons who would otherwise be unable to vote (for themselves or as proxy for others)-

- (a) in person at a polling place or with a mobile polling team;
- (b) being an inmate or member of staff at an institution, at that institution;
- (c) by post;
- (d) by proxy; or
- (e) by postal proxy vote.

(2) Regulations made under subsection (1) may include provisions allowing for emergency voting by persons whose proxies are unable to vote as set out in subsection (1).

*[S. 14/Ord. 14/13/w.e.f. 10/9/13.]*

#### **61 Mobile polling teams in the Camp Constituency**

(1) Whenever voting is to take place in the Camp constituency, the Governor, acting in his discretion, may direct that electors of that constituency may vote during the visit of a mobile polling team to any place in that constituency.

*[S. 23(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(1A) If voting is taking place in both the Stanley and Camp Constituencies in the same poll, voters from both constituencies may vote with a mobile polling team.

*[S. 15/Ord. 14/13/w.e.f. 10/9/13.]*

(2) A direction pursuant to subsection (1) ("a mobile polling direction") shall be published in the Gazette and shall specify-

- (a) the dates and approximate times of the visit of a mobile polling team to any place in the Camp constituency for the purpose of receiving the votes of electors in accordance with the provisions of this Part;
- (b) the location at any place specified under paragraph (a) at which votes will be received by the mobile polling team.

(3) The dates specified in a mobile polling direction may be any one or more days in the five business days ending with polling day or the day on which the referendum is to be held.

*[S. 23(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(4) A mobile polling team shall consist of a presiding officer (who shall be the team leader) and, if the returning officer so decides, additionally one or more other persons who shall be poll clerks, but the identity and number of the persons comprising the mobile polling team need not be the same in respect of all places visited by a mobile polling team pursuant to this section.

(5) The team leader shall use his best endeavours to ensure that the mobile polling team visits every place specified in a mobile polling direction on the date and at approximately the time therein specified.

(6) The dates and times specified in a mobile polling direction may be varied by the team leader if, in his discretion-

- (a) the exigencies of the weather;
- (b) the non-availability of transport;
- (c) the state of any aerodrome;
- (d) civil disturbance, war, threat of war or hostilities, civil emergency; or
- (e) any other serious and weighty cause,

render that necessary.

(7) Whenever the team leader varies the date or time of a visit to any place he shall give or cause to be given such notice to affected persons of the variation as is reasonably possible, and shall so soon as reasonably practicable inform the returning officer of the variation and the notice of it given in accordance with this subsection.

(8) A direction under subsection (1) shall be published in the Gazette.

(9) The failure of a mobile polling team to visit a place specified in a mobile polling direction-

- (a) at all; or
- (b) on the date or at the time specified therein;

shall not constitute a ground on which a referendum or an election may be declared to be void by a court.

[S. 2/Ord. 8/01/w.e.f. 13/6/01.]

### **61A Allocated polling places**

(1) The Governor may make regulations under this section to allow for a system allocating polling stations to individual voters.

(2) The principal purpose of a system of allocating polling stations to individual voters must be to seek to minimise the risk of an elector voting twice in the same election.

[S. 16/Ord. 14/13/w.e.f. 10/9/13.]

### **62 Publicity for election and referendum arrangements: power to make subsidiary legislation**

(1) The Governor may make subsidiary legislation relating to the publicity to be given to the arrangements for an election or referendum (or for elections, referenda or both generally).

(2) Subsidiary legislation made under subsection (1) may include provisions requiring information or material relating to an election or referendum (or to elections, referenda or both generally) to be published or broadcast.

(3) Before making subsidiary legislation that includes provisions covered by subsection (2), the Governor must consult those who would be required to publish or broadcast information or material.

(4) Provisions covered by subsection (2) must still comply with the requirements of Part 1 of the Constitution (and, in particular, sections 1(c)(ii), 13, 14 and 16 of the Constitution).

[S. 24/Ord. 8/11/w.e.f. 31/8/11.]

## *Nomination of candidates*

### **63 Nomination of candidates**

(1) Each candidate shall be nominated by a separate nomination paper, in the prescribed form, delivered by the candidate himself or by one of the electors signing the same as nominator or supporter to the returning officer at the returning officer's office.

(2) The nomination paper shall state the full names, place of residence and (if desired) description of the candidate and the surname shall be placed first in the list of names.

(3) The description (if any) shall not exceed six words in length, and need not refer to his rank, profession or calling so long as, with the other particulars of the candidate, it is sufficient to identify him.

### **64 Subscription of nomination paper**

(1) The nomination paper shall be subscribed by two electors as nominators and by four other electors as supporters of the nomination.

(2) Where a nomination paper bears the signatures of more than the required number of persons as nominators or supporters, the signature or signatures (up to the required number) appearing on the paper in each category shall be taken into account to the exclusion of all others in that category.

(3) The nomination paper shall give the electoral number of each person subscribing it.

(4) The returning officer shall supply any elector with a form of nomination paper at the place and during the time for delivery of nomination papers and shall at the request of any elector prepare a nomination paper for signature; but it shall not be necessary for a nomination paper to be on a form supplied by the returning officer.

(5) No person shall subscribe more nomination papers at any election than there are persons to be elected at that election and, if he does, his signature shall be inoperative on any nomination paper delivered to the returning officer after the number of nomination papers permitted to be subscribed by that person has been delivered to the returning officer; but a person shall not be prevented from validly subscribing a nomination paper by reason only of his having subscribed that or those of a candidate or candidates who has or have died or withdrawn before delivery of the first mentioned paper.

## **65 Consent to nomination**

(1) A person is not validly nominated unless either-

- (a) the person had consented to being nominated within the six weeks before the person's nomination paper is delivered to the returning officer under section 63; or
- (b) the person subsequently consents to being nominated before nominations close.

(2) Unless subsection (4) applies, a person's consent-

- (a) must be-
  - (i) in writing;
  - (ii) signed by the person;
  - (iii) witnessed by another person; and
  - (iv) delivered to the returning officer before nominations close.
- (b) must contain each of the following statements-
  - (i) that the person consents to being nominated;
  - (ii) that the person is aware of the provisions of section 32 of the Constitution; and
  - (iii) that, to the best of the person's knowledge and belief, the person is qualified to be elected as a member of the Legislative Assembly; and
- (c) must also contain one of the following statements-
  - (i) that, to the best of the person's knowledge and belief, the person is not disqualified from being elected as a member of the Legislative Assembly;

- (ii) that, to the best of the person's knowledge and belief, the person is only disqualified from being elected as a member of the Legislative Assembly by holding a public office (or an office deemed to be a public office) that, if elected, the person will relinquish; or
- (iii) that, to the best of the person's knowledge and belief, the person is only disqualified from being elected as a member of the Legislative Assembly by acting in a public office (or an office deemed to be a public office) in which, if elected, the person will cease to act.

(3) Subsection (4) applies if the returning officer is satisfied that it has not been reasonably practicable for a person to comply with subsection (2) because the person has been either-

- (a) away from the Falkland Islands; or
- (b) in a remote part of the Falkland Islands.

(4) If this subsection applies, the returning officer may accept other satisfactory evidence-

- (a) that the person consents (or has consented) to being nominated; and
- (b) as to the other matters referred to in subsections (2)(b) and (2)(c).

*[S. 25/Ord. 8/11/w.e.f. 31/8/11.]*

## **66 Deposit**

(1) A person shall not be validly nominated unless the sum of £100 is deposited by him or on his behalf with the returning officer at his office and during the time for delivery of nominations.

(2) The deposit may be made either by the deposit of any legal tender, or by means of a banker's draft, or with the consent of the returning officer, in any other manner; but the returning officer may refuse to accept a deposit made by means of a banker's draft drawn on any bank which does not, to his knowledge, maintain a branch in the Falkland Islands.

## **67 Right to attend nomination**

(1) Except for the purpose of delivering a nomination paper or of assisting the returning officer, no person shall be entitled to attend the proceedings during the time for the delivery of nomination papers or making objections thereto unless he is a person standing nominated as a candidate or is the election agent, or a person who has subscribed the nomination paper of a candidate standing nominated; but where a candidate acts as his own election agent, he may name one other person who shall be entitled to attend in place of his agent.

(2) Where a person stands nominated by more than one nomination paper only the persons subscribing such one of those papers as he may select or in default of any such selection, that one of the papers which is first delivered, shall be entitled to attend as a person who has subscribed his nomination paper.

(3) The right to attend conferred by this section shall include the right to inspect, and to object to the validity of, any nomination paper.

## **68 Decisions as to validity of nomination papers**

- (1) Where a nomination paper and the candidate's consent thereto are delivered and a deposit is made in accordance with section 66, the candidate shall be deemed to stand nominated unless and until the returning officer decides that the nomination paper is invalid, or proof is given to the satisfaction of the returning officer of the candidate's death, or the candidate withdraws.
- (2) The returning officer is entitled to hold a nomination paper invalid only on one of the following grounds, that is to say-
  - (a) that the particulars of the candidate or the persons subscribing the paper are not as required by law; and
  - (b) that the paper is not subscribed as so required.
- (3) The returning officer shall give his decision on any objection to a nomination paper as soon as practicable after it is made.
- (4) Where the returning officer decides that a nomination paper is invalid, he shall endorse and sign on the paper the fact and the reasons for his decision.
- (5) The decision of the returning officer that a nomination paper is valid shall be final and shall not be questioned in any proceeding whatsoever.
- (6) Subject to subsection (5), nothing in this section shall prevent the validity of a nomination being questioned on an election petition.

## **69 Withdrawal of candidates**

- (1) A candidate may withdraw his candidature by notice of withdrawal signed by him and attested by one witness and delivered to the returning officer at the office of the returning officer before the close of nominations.
- (2) In the case of a candidate who is outside the Falkland Islands a notice of withdrawal signed by one of his nominators and accompanied by a written declaration also so signed of the candidate's absence from the Falkland Islands shall be of the same effect as a notice of withdrawal signed by the candidate:

Provided that where the candidate stands nominated by more than one nomination paper a notice of withdrawal under this paragraph shall be effective if, but only if-

- (a) it and the accompanying declaration are signed by a nominator in relation to every such paper except any who is, and is stated in the said declaration to be, outside the Falkland Islands; or
- (b) it is accompanied, in addition to the said declaration, by a written statement signed by the candidate that the nominator giving the notice is authorized to do so on the candidate's behalf during his absence from the Falkland Islands.

## **70 Publication of nominations and withdrawals, etc.**

(1) The returning officer shall prepare and cause to be published in the Gazette a statement showing the persons who have been and stand nominated and any other persons who have been nominated, with the reason why they no longer stand nominated.

(2) The statement shall show the names, addresses, and descriptions of the persons nominated as given in their nomination papers, together with the names of the persons subscribing those papers.

(3) The statement shall show the persons standing nominated arranged alphabetically in the order of their surnames, and, if there are two or more of them with the same surname, of their other names.

(4) In the case of a person nominated by more than one nomination paper, the returning officer shall take the particulars required by the foregoing provisions of this section from such one of the papers as the candidate or the returning officer in default of the candidate may select, but if the election is contested a candidate standing nominated may require the returning officer to include in the statement the names of the persons subscribing a second and third nomination paper.

## **71 Abandonment of nomination proceedings**

Where the proceedings for or in connection with nomination are on any day interrupted or obstructed by riot or open violence, the proceedings shall be abandoned for that day, and if that day is the last day for the delivery of nomination papers, the proceedings shall be continued on the next day as if that were the last day for the delivery thereof, and that day shall be treated for the purposes of this Part as being that said last day (subject however to any further application of this section in the event of interruption or obstruction on that day); but where proceedings are abandoned by virtue of this section nothing may be done after they are continued, if the time for doing it has passed at the time of the abandonment, nor shall anything done before the abandonment lie invalidated by reason thereof.

## **72 Method of election**

(1) If the statement of persons nominated prepared in accordance with section 70 discloses that no greater number of persons stand nominated than there are vacancies to be filled at the election, the persons whose names appear in that statement shall be declared to be elected in accordance with the subsequent provisions of this Part.

(2) If the statement of persons nominated prepared in accordance with section 70 discloses that a greater number of persons stand nominated than there are vacancies, a poll shall be taken in accordance with the subsequent provisions of this Part.

## *Poll: Introductory provisions*

### **73 Polls to be taken by ballot**

(1) In an election, the votes at the poll shall be given by ballot and the result shall be ascertained by counting the votes given to each candidate, and the candidate or candidates to whom the greatest number of votes have been given shall be declared to have been elected.

(2) In a referendum the votes shall be given by ballot and the result shall be ascertained by counting the votes cast for and against each question appearing on the ballot paper, and the result of the referendum shall be ascertained accordingly.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

### **74 Ballot papers: elections**

(1) At an election, the ballot of every voter is to consist of a ballot paper that meets the requirements of this section and those set out in section 74B.

(2) The persons identified as standing nominated in the statement of persons nominated are entitled to have their names appear on the ballot paper in the order in which they appear in that statement.

(3) No other person's name may appear on the ballot paper.

*[S. 26/Ord. 8/11/w.e.f. 31/8/11.]*

### **74A Ballot papers: referenda**

(1) At a referendum, the ballot of every voter is to consist of a ballot paper that meets the requirements of this section and those set out in section 74B.

(2) The question or questions prescribed in the referendum legislation must appear on the ballot paper.

(3) No other question may appear in the ballot paper.

*[S. 27/Ord. 8/11/w.e.f. 31/8/11.]*

### **74B Ballot papers: general requirements**

(1) Ballot papers must meet the following requirements-

(a) they must be in the form prescribed in-

(i) in the case of an election, regulations; and

(ii) in the case of a referendum, the referendum legislation;

(b) they must be printed in accordance with the directions in that form.

(c) they must be capable of being folded up;

(d) ...

*[S. 17(a)/Ord. 14/13/w.e.f. 10/9/13.]*

- (e) they must each have a counterfoil attached which has a serial number printed on its face;

*[S. 17(b)/Ord. 14/13/w.e.f. 10/9/13.]*

- (f) if subsection (3) applies, they must meet the requirement about colours in that subsection.

(2) Subsection (3) applies if more than one of the following is taking place on the same day-

- (a) polling in an election for the Stanley constituency;
- (b) polling in an election for the Camp constituency;
- (c) voting in a referendum for the Stanley constituency; and
- (d) voting in a referendum for the Camp constituency.

(3) If this subsection applies, each set of ballot papers used on that day must be a different colour.

*[S. 27/Ord. 8/11/w.e.f. 31/8/11.]*

## **75 Official marks**

(1) Every ballot paper must be marked with an official mark.

(2) An official mark may be either embossed or perforated.

(3) The official mark must be kept secret.

(4) Different official marks must be used for ballot papers issued in person and postal ballot papers used for the same election or referendum.

(5) The same official mark may be used at elections and referenda on the same day.

(6) An official mark that has been used for an election or referendum may not be used again at another election or referendum for at least 7 years.

*[S. 28/Ord. 8/11/w.e.f. 31/8/11.]*

## **76 Prohibition of disclosure of vote**

No person who has voted in a referendum or at an election shall, in any legal proceeding to question the referendum, election or return, be required to state for whom he voted.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

## **77 Use of public buildings**

(1) The returning officer may use free of charge, for the purpose of taking the poll or holding the referendum, any building in the occupation of the Government and any land in the occupation of the Government.

*[S. 29(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) The returning officer shall make good any damage done to any such building or land occasioned by its being used for the purpose of taking the poll or holding the referendum, and the cost of doing so shall constitute part of the expenses of the election or referendum.

*[S. 29(3)(a) and (b)/Ord. 8/11/w.e.f. 31/8/11.]*

## **78 Countermand or abandonment of poll on death of candidate**

(1) If at a contested election proof is given to the satisfaction of the returning officer before the result of the election is declared that one of the persons named or to be named as candidate in the ballot papers has died, then the returning officer shall countermand notice of the poll or, if polling has begun, direct that the poll be abandoned, and all proceedings with reference to the election shall be commenced afresh in all respects as if the writ had been received twenty-eight days after the day on which proof was given to the returning officer of the death except that-

- (a) no fresh nomination shall be necessary in the case of a person shown in the statement of persons nominated as standing nominated; and
- (b) in the case of a general election, as in the case of a by-election, the time for delivery of nomination papers and the time for polling shall be determined in accordance with this Part (with the necessary modification on any reference to the date on which notice of the elections is published).

(2) Where the poll is abandoned by reason of the death of a candidate, the proceedings at or consequent on that poll shall be interrupted and the presiding officer at any polling place and team leader of any mobile polling team shall take the like steps (so far as not already taken) for the delivery to the returning officer of ballot boxes and of ballot papers and other documents as he is required to take on the close of the poll in due course, and the returning officer shall dispose of ballot papers and other documents in his possession as he is required to do on the completion in due course of the counting of votes; but-

- (a) it shall not be necessary for any ballot paper account to be prepared or verified; and
- (b) the returning officer, without taking any step or further step for the counting of the ballot papers or of the votes, shall seal up all the ballot papers, whether the votes on them have been counted or not, and it shall not be necessary to seal up counted and rejected ballot papers in separate packets.

(3) The subsequent provisions of this Ordinance as to the inspection, production, retention and destruction of ballot papers and other documents relating to a poll at an election shall apply to any such documents relating to a poll abandoned by reason of the death of a candidate, with the following modifications:

- (a) ballot papers on which the votes were neither counted nor rejected shall be treated as counted ballot papers; and
- (b) no order shall be made for the production or inspection of any ballot papers or for the opening of a sealed packet of counterfoils or certificates as to employment on duty on the day of the poll unless the order is made by a court with reference to a prosecution.

## *Postal voting*

### **79 Postal ballot papers**

(1) The returning officer shall as soon as practicable send to those entitled to vote by post, at the address furnished by them for the purpose, a ballot paper and a declaration of identity in the prescribed form together with an envelope for their return ("the covering envelope") and a smaller envelope marked "ballot paper envelope".

*[S. 18/Ord. 14/13/w.e.f. 10/9/13.]*

(2) Except as provided by section 75(3) with respect to the official mark, the ballot papers to be sent to postal voters shall be in the same form as, and indistinguishable from, the ballot papers delivered to other voters.

(3) At the same time as the returning officer sends to an elector entitled to vote by post the documents referred to in subsection (1) he shall send to him a form of guidance as to the manner of voting by post in the prescribed form.

### **80 Persons entitled to be present at issue and receipt of postal ballot papers**

(1) In an election no person other than-

- (a) the Returning Officer and his clerks, or in the case of issue and receipt of postal ballot papers in respect of those entitled to vote by post in the United Kingdom, the Falkland Islands Government Representative and her clerk;

*[S.R & O. 17/05/w.e.f. 29/9/05.]*

- (b) a candidate;
- (c) an election agent or any person appointed by a candidate to attend in the election agent's place; and
- (d) any agents appointed under subsection (2),

may be present at the proceedings on the issue or receipt of postal ballot papers.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(1A) In a referendum, only the following people may be present at the proceedings on the issue or receipt of postal ballot papers-

- (a) in the case of issue and receipt of postal ballot papers in respect of those entitled to vote by post in the United Kingdom-
  - (i) the Falkland Islands Government Representative; and
  - (ii) clerks appointed by the Falkland Islands Government Representative; and
- (b) in all cases-
  - (i) the returning officer;
  - (ii) clerks appointed by the returning officer;

- (iii) the person who is the Chief Counting Officer under the referendum legislation;
- (iv) counting officers appointed by the Chief Counting Officer under the referendum legislation;
- (v) counting observers appointed by the Chief Counting Officer under the referendum legislation;
- (vi) anyone permitted by the Chief Counting Officer to be present.

*[S. 30/Ord. 8/11/w.e.f. 31/8/11.]*

(2) Where postal ballot papers are to be issued, or the envelopes contained in the postal voters' ballot boxes are to be opened, simultaneously in two or more batches, each candidate may appoint one or more agents up to the number he may be authorized by the returning officer to appoint not exceeding the number of such batches so, however, that the number authorized shall be the same in the case of each candidate.

(3) Notice of the appointment stating the names and addresses of the persons appointed shall be given by the candidate to the returning officer before the time fixed for the issue of the postal ballot papers or the opening of the said postal voters' ballot boxes, as the case may be.

(4) If an agent dies or becomes incapable of acting, the candidate may appoint another agent in his place and shall forthwith give to the returning officer notice in writing of the name and address of the agent appointed.

(5) Agents may be appointed and notice of appointment given to the returning officer by the candidate's election agent instead of by the candidate.

(6) A candidate may himself do any act or thing which any agent of his, if appointed, would have been authorized to do, or may assist his agent in doing any such act or thing.

(7) Where in this section or in sections any act or thing is required or authorized to be done in the presence of the candidates or their agents, the non-attendance of any such person or persons at the time and place appointed for the purpose shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

## **81 Declaration of secrecy in relation to postal ballot papers**

(1) Every person attending the proceedings on the issue or receipt of postal ballot paper shall make a declaration of secrecy in the form in subsection (3) of this section, or in a form as near thereto as circumstances admit, before the issue of postal ballot papers:

Provided that if any person attends only the proceedings on the receipt of postal ballot papers, he need not make the declaration before the issue but shall make it before he is permitted to attend the proceedings on the receipt of postal ballot papers.

(2) The Returning Officer shall make the declaration in the presence of the Attorney General, the Senior Magistrate or of a justice of the peace, the Recording Officer shall make the declaration before a commissioner for oaths, and any other person shall make the declaration in the presence either of the Attorney General, the Senior Magistrate, a justice of the peace, the Returning

Officer or the Recording Officer; and subsection (4) and (6) of section 98 below shall be read to the declarant in the presence of that person.

*[S.R & O. 17/05/w.e.f. 29/9/05.]*

(3) The declaration shall be as follows:

"I solemnly promise and declare that I will not do anything forbidden by subsections (4) and (6) of section 98 of the Electoral Ordinance, which have been read to me".

(4) Any person before whom a declaration is authorized to be made under this section may take the declaration.

## **82 Notice of issue of postal ballot papers**

(1) The returning officer shall give each candidate not less than two days' notice in writing of the time and place at which he will issue postal ballot papers and of the number of agents he may appoint under section 80(2) to attend the said issue.

(2) Where any subsequent issue of postal ballot papers is made the returning officer shall notify each candidate as soon as practicable of the time and place at which he will make such subsequent issue and of the number of agents he may appoint under section 80(2) to attend such issue.

## **83 Marking of postal ballot paper**

(1) Each postal ballot paper issued shall be stamped with the official mark, and the name and the number in the register of the elector shall be called out, and such number shall be marked on the counterfoil, and a mark shall be placed in the postal voters' list or the postal proxies' list against the number of the elector to denote that a ballot paper has been issued.

(2) . . .

*[S. 19/Ord. 14/13/w.e.f. 10/9/13.]*

## **84 Refusal to issue postal ballot paper**

Where a returning officer is satisfied that two or more entries in the postal voters' list or the list of postal proxies relate to the same elector or that a postal proxy has been appointed for a person entered in the postal voters' list, he shall not issue more than one ballot paper in respect of the same elector.

## **85 Posting of postal ballot papers**

(1) Envelopes addressed to postal voters in the Falkland Islands and in the United Kingdom shall be counted and forthwith delivered by the returning officer to the post office in Stanley, and the postmaster shall stamp with the post office date stamp a form of receipt to be presented by the returning officer stating the number of envelopes so delivered, and shall immediately forward such envelopes for delivery to the persons to whom they are addressed.

*[S.R & O. 17/05/w.e.f. 29/9/05.]*

(2) All such envelopes shall be marked "Certified Official" and all covering envelopes shall also be marked.

#### **86 Provision of postal voters' ballot box**

(1) The returning officer shall, at the proceedings on the original issue of postal ballot papers, provide a ballot box or ballot boxes for the reception of the covering envelopes when returned by the postal voters.

(2) Every such ballot box shall be shown open and empty to the persons and shall then be locked by the returning officer and sealed with the seal of the returning officer and the seals of such of the persons present as desire to affix their seals in such manner as to prevent its being opened without breaking the seal.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(3) Every such ballot box shall be marked "Postal Voters' Ballot Box" and with the name of the constituency for which the referendum or the election is held.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(4) The returning officer shall make provision for the safe custody of every such ballot box.

## **86A Ballot boxes at Falkland Islands Government office**

The Recording Officer shall at the Falkland Islands Government office also make corresponding provision of a ballot box or boxes as is required by section 86 above but in relation to the reception of the covering envelopes when returned by electors registered to vote by post at an address in the United Kingdom.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

## **87 Sealing up of special lists and counterfoils**

(1) The returning officer, as soon as practicable after the completion of the issue of the postal ballot papers, and in the presence of the agents, shall make up in separate packets-

- (a) the marked copies of the postal voters' list and of the list of postal proxies, and
- (b) the counterfoils of those ballot papers which were issued,

and shall seal such packets.

(2) The sealed packet containing the marked copies of the postal voters' list and of the list of postal proxies may be opened by the returning officer for the purposes of a subsequent issue, and on completion of that issue the copies shall be again made up and sealed in accordance with subsection (1).

## **88 Spoilt postal ballot papers**

(1) If a postal voter has inadvertently dealt with his postal ballot paper in such manner that it cannot be conveniently used as a ballot paper ("a spoilt postal ballot paper") he may return (either by hand or by post) to the returning officer the spoilt postal ballot paper, the declaration of identity, the ballot paper envelope and the covering envelope.

(2) The returning officer, on receipt of the said documents, shall, unless the documents are received too late for another postal ballot paper to be returned before the close of the poll, issue another postal ballot paper and the provisions of this Part, but not section 91 or section 93 shall apply accordingly.

## **89 Receipt of covering envelope**

The returning officer shall, immediately on receipt (whether by hand or by post) of a covering envelope before the close of the poll, place it unopened in a postal voters' ballot box locked and sealed in accordance with section 86.

## **89A Receipt of postal votes in United Kingdom**

The recording officer shall, immediately on receipt (whether by hand or by post) of a covering envelope before 10 am United Kingdom time on polling day place it unopened in a postal voters' ballot box locked and sealed in accordance with section 86 above.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

## **90 Opening of postal voters' ballot box**

(1) Each postal voters' ballot box shall be opened by the returning officer or in the case of a postal voters' ballot box at the Falkland Islands Government office by the Recording Officer, in the presence of the agents, in the case of an election and in the presence of one or more counting officers or counting observers, in the case of a referendum.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01 and S.R. & O. 17/05/w.e.f. 29/9/05.]*

(2) So long as the returning officer secures that there is at least one postal voters' ballot box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters' ballot boxes may previously be opened by him.

(3) In the case of an election, the returning officer or in the case of a postal voters' ballot box the Falkland Islands Government office by the Recording Officer, shall give each candidate at least twenty-four hours' notice in writing of the time and place of his opening of each postal voters' ballot box and the envelopes contained therein and of the number of agents the candidate may appoint under section 80(2) to be present at each opening.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01 and S.R. & O. 17/05/w.e.f. 29/9/05.]*

## **91 Opening of covering envelopes**

(1) When a postal voters' ballot box has been opened, the returning officer (or the Recording Officer)-

- (a) must count and note the number of covering envelopes; and
- (b) must then open each covering envelope separately.

(2) Subsection (3) applies to a covering envelope if it does not contain-

- (a) a declaration of identity and a ballot paper envelope;
- (b) a declaration of identity and a ballot paper; or
- (c) a ballot paper envelope.

(3) If this subsection applies to a covering envelope, the officer must-

- (a) mark it "Rejected";
- (b) if it contains anything, attach those contents to it; and
- (c) place it in a receptacle for rejected votes.

(4) Subsection (5) applies to a covering envelope if it contains only a ballot paper envelope.

(5) If this subsection applies to a covering envelope, the officer must open the ballot paper envelope to check whether or not the declaration is inside.

(6) If, on opening the ballot paper envelope, there is no declaration of identity inside, the officer must-

- (a) mark the ballot paper envelope "Rejected";

- (b) if it contains anything, attach those contents to it; and
- (c) place it in the receptacle for rejected votes.

(7) On opening a covering envelope, other than one to which subsection (3) or subsection (5) applies, the officer must first check whether or not the declaration of identity has been duly signed and dated.

(8) If it has not, the officer must-

- (a) mark the declaration "Rejected";
- (b) attach it to the ballot paper envelope (or, if there is no such envelope, to the ballot paper); and
- (c) place it in the receptacle for rejected votes.

(9) If one or more election agents are present, the officer must (before rejecting a covering envelope or a declaration) show it to them.

(10) If one or more of the election agents object to a covering envelope or declaration being rejected, the officer must add the words "Rejection objected to" to it.

(11) If the declaration has been duly signed and dated, the officer must-

- (a) place the declaration in a receptacle for declarations of identity; and
- (b) the ballot paper envelope (or the ballot paper) in a receptacle for ballot paper envelopes.

(12) Subsection (13) applies if-

- (a) either-
  - (i) there is no ballot paper envelope in a covering envelope; or
  - (ii) the ballot paper envelope has been opened in accordance with subsection (5); and
- (b) the declaration of identity has been signed and dated.

(13) If this subsection applies, the officer must-

- (a) place the declaration in the receptacle for declarations of identity; and
- (b) place the ballot paper in a ballot box which has previously been-
  - (i) shown as empty to the election agents present (if there were any);
  - (ii) locked by the officer; and
  - (iii) sealed with the officer's seal and the seal of any election agent who wishes to place a seal on the ballot box.

(14) Unless it is opened in accordance with subsection (5), the officer must not open a ballot paper envelope until it is opened under section 93.

*[S. 20/Ord. 14/13/w.e.f. 10/9/13.]*

## **92 Sealing up of rejected votes**

On the conclusion of the proceedings under section 91 the returning officer or Recording Officer (as the case may be) shall put the contents of the receptacle for votes rejected and the contents of the receptacle for declarations of identity into two separate packets and shall seal such packets.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

## **93 Opening of ballot paper envelopes**

(1) After sealing up the packets referred to in section 92, the returning officer (or the Recording Officer) must separately open each ballot paper envelope which is in the receptacle for ballot paper envelopes.

(2) If the ballot paper envelope does not contain a ballot paper, the officer must mark the envelope "Rejected".

(3) If the ballot paper envelope does contain a ballot paper, the officer must place the ballot paper in the ballot box referred to in section 91(13)(b).

(4) The officer must-

- (a) put the envelopes and the ballot papers marked "Rejected" under this section into a separate packet; and
- (b) seal that packet.

*[S. 21/Ord. 14/13/w.e.f. 10/9/13.]*

## **94 Abandoned poll: postal ballot papers**

Where a poll is abandoned, or countermanded after postal ballot papers have been issued, by reason of the death of a candidate, the returning officer-

- (a) shall not take any step further to open covering envelopes or deal with their contents,
- (b) shall, notwithstanding sections 92 and 93, treat all unopened covering envelopes and the contents of those which have been opened as if they were counted ballot papers.

## **95 Safe custody of postal ballot papers, documents and other items**

(1) The returning officer must either-

- (a) carry out the tasks to be carried out under subsections (2) and (4); or
- (b) arrange for them to be carried out by someone else.

(2) The following tasks must be carried out under this subsection-

- (a) preparing a statement of the number of postal ballot papers issued (which must be in a form approved by the Attorney General and contain other particulars required by the Attorney General);
- (b) except to the extent that section 94 applies, endorsing on each packet prepared under sections 87, 88, 92 and 93-

- (i) a description of the packet's contents (including the constituency to which it relates);
- (ii) the date of the election or referendum to which it relates; and
- (iii) if an election and a referendum are being held on the same date, whether the packet relates to the election or the referendum.

(3) Subsection (4) applies to each of the following-

- (a) covering envelopes that the returning officer receives after the close of the poll;
- (b) papers addressed to postal voters that are returned as undelivered too late to be re-addressed; and
- (c) spoilt ballot papers that are returned too late to enable replacement postal ballot papers to be issued.

(4) The tasks to be carried out under this subsection are-

- (a) putting the envelopes to which this subsection applies unopened into a separate packet;
- (b) putting the papers to which this subsection applies into that packet; and
- (c) sealing up the packet.

(5) The returning officer must arrange for the safe custody of the following items-

- (a) the statement prepared under subsection (2)(a);
- (b) the packets prepared under sections 87, 88, 92 and 93; and
- (c) the packet prepared under subsection (4).

(6) Sections 131 and 132 (which deal with orders for production and with the retention, public inspection and destruction of ballot papers, documents and other items) apply to the items listed in subsection (5).

[S. 31/Ord. 8/11/w.e.f. 31/8/11.]

### *Preparation for poll*

#### **96 Certified copies of Register and of lists**

(1) As soon as possible after the start of the closed period for an election or referendum, the registration officer must certify at least 6 copies of each of the following-

- (a) the Register;
- (b) the postal voters' list;
- (c) the proxy list; and
- (d) the postal proxy voters' list.

(2) Subject to subsection (3), the copies of the Register certified under subsection (1)(a) must contain the same entries as the version of the register published under section 14A(1).

(3) For the purpose of making the voting process more efficient-

(a) the certified copies of the Register and lists may be combined into a single document;

(b) entries in that document may be rearranged into a different order; and

(c) those entries may be supplemented by-

(i) marks for the purposes of section 99; and

(ii) additional information in connection with a system of allocation of polling stations provided for in regulations made under section 61A.

(4) The registration officer must forward the certified copies made under subsection (1) to the returning officer as soon as possible as they have been made.

*[S. 22/Ord. 14/13/w.e.f. 10/9/13.]*

## **97 Effect of registers, etc.**

(1) Subject to section 97A, the certified copies of the Register forwarded to the returning officer under section 96(4) are conclusive as to the following matters for the purposes of this Part (but only in relation to the referendum or the election for which those copies were produced)-

(a) that every person registered was resident at the address shown on the qualifying date;

(b) that the person's address is in the constituency to which the register relates;

(c) that, if a person's name appears in it, that person is an elector;

(d) that, if a person's name does not appear in it, that person is not an elector.

(2) Subject to section 97A, the certified copies of the postal voters' list forwarded to the returning officer under section 96(4) are be conclusive for the purposes of this Part as to whether or not a person's right to vote at the referendum or the election is exercisable by post (but only in relation to the referendum or the election for which those copies were produced).

(3) Subject to section 97A, the certified copies of the proxy list forwarded to the returning officer under section 96(4) are be conclusive for the purposes of this Part as to whether or not there is in force an appointment of a proxy to vote for a person and, if so, who is appointed (but only in relation to the referendum or the election for which those copies were produced).

(4) Subject to section 97A, the certified copies of the postal proxy voters' list forwarded to the returning officer under section 96(4) are be conclusive for the purposes of this Part as to whether or not a proxy voter's right to vote as proxy is exercisable by post (but only in relation to the referendum or the election for which those copies were produced).

*[S. 23/Ord. 14/13/w.e.f. 10/9/13.]*

## **97A Effect of registers, etc: supplementary**

(1) If a single document has been produced under section 96(3), references in section 97 to the Register (or to a list) refer to the entries in the single document that relate to entries in the Register (or the list).

(2) Subsection (3) applies to a person who is either-

- (a) registered as an elector; or
- (b) entered into the list of proxies.

(3) A person to whom this subsection applies may not be excluded from voting on the ground that either-

- (a) the person is not qualified under section 32(1) of the Constitution; or
- (b) that the person is disqualified from voting under section 32(2) of the Constitution.

(4) Subsection (3) does not do either of the following things-

- (a) preventing a vote from being rejected under scrutiny; or
- (b) affecting a person's liability to a penalty for voting when either-
  - (i) not qualified to vote; or
  - (ii) disqualified from voting.

(5) Subsection (6) applies to each of the following documents-

- (a) the Register;
- (b) the postal voters' list;
- (c) the proxy list;
- (d) the postal proxy voters' list;
- (e) a single document produced under section 96(3);
- (f) every proxy paper;
- (g) every nomination paper;
- (h) every ballot paper;
- (i) every notice or other document required for the purposes of this Part.

(6) No inaccuracy in the name or description of a person (or the description of a place) in a document to which this subsection applies affects the validity or operation of that document if the name or description of the person (or the description of the place) is such that it can still commonly be understood.

*[S. 24/Ord. 14/13/w.e.f. 10/9/13.]*

## 98 Requirement of secrecy

(1) The following persons-

- (a) every returning officer;
- (b) every presiding officer or clerk attending a polling place;
- (c) every member of a mobile polling team;
- (d) in a referendum, the Chief Counting Officer, every counting officer and every counting observer,

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorized by law, communicate to any person before the poll is closed-

- (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 place or with a mobile polling team;
- (ii) the number on the register of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling place or with a mobile polling team; 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) . . .

*[S. 25(2)/Ord. 14/13/w.e.f. 10/9/13.]*

- (b) communicate any information at the counting of votes about either-
  - (i) in the case of an election, the candidate or candidates for whom a vote has been given on a particular ballot paper; or
  - (ii) in the case of a referendum, how a question has been answered on a particular ballot paper.

*[S. 34/Ord. 8/11/w.e.f. 31/8/11.]*

(3) No person whatsoever shall-

- (a) interfere with or attempt to interfere with a voter when recording his vote;
- (b) otherwise obtain or attempt to obtain in a polling place or with a mobile polling team information as to the candidate or candidates for whom a voter is about to vote or has voted;
- (c) communicate at any time to any person any information obtained in a polling place or with a mobile polling team as to the candidate or candidates for whom a voter is about to vote or has voted.

*[S. 25(3)/Ord. 14/13/w.e.f. 10/9/13.]*

(4) Every person attending the proceedings in connection with the issue or receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of voting and shall not-

(a) except for some purpose authorized by law, communicate before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or

(b) ...

*[S. 25(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(c) ...

*[S. 25(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate or candidates for whom the vote or votes is or are given in any particular ballot paper or communicate any information with respect thereto obtained at the proceedings.

(5) No person having undertaken to assist a blind voter to vote shall communicate at any time to any person any information as to the candidate or candidates for whom that voter intends to vote or has voted.

*[S. 25(5)/Ord. 14/13/w.e.f. 10/9/13.]*

(6) A person who contravenes any provision of this section commits an offence and is liable on conviction to imprisonment for six months or to a fine not exceeding £500 or to both such imprisonment and fine.

## **99 Marking of register and lists**

(1) The certified copies forwarded to the returning officer under section 96(4) must be marked as follows-

(a) the entries relating to elector who are postal voters must be marked with the letter "M";

(b) the entries relating to electors who have appointed proxies must be marked with the letters "PXY";

(c) the entries relating to electors who are postal voters registered to vote at addresses in the United Kingdom must be marked with the letters "UKM"; and

(d) the entries relating to proxies who are postal proxy voters must be marked with the letters "PM".

(2) Subsection (3) applies if a single document has been produced under section 96(3).

(3) If this subsection applies, the returning officer must (as soon as practicable after receiving the certified copies of the single document)-

(a) check whether the marks required by subsection (1) have been made on them (and, if they have, that they have been made correctly); and

(b) make or correct the necessary marks as necessary.

(4) Subsection (5) applies if a single document has not been produced under section 96(3).

(5) If this subsection applies, the returning officer must (as soon as practicable after receiving the certified copies forwarded under section 96(4) make the necessary marks on the Register and Part 1 of the proxy list.

*[S. 26/Ord. 14/13/w.e.f. 10/9/13.]*

## **100 Appointment of presiding officers and clerks**

(1) The returning officer must appoint and pay-

- (a) for each polling place, one or more presiding officers;
- (b) if a mobile polling team is appointed, a team leader for the mobile polling team (and a team leader for each team if more than one is appointed); and
- (c) as many clerks as reasonably necessary to conduct the election or referendum.

*[S. 35(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(1A) The returning officer may not appoint a person under subsection (1) for an election if that person has been employed (whether on a paid basis or unpaid) by or on behalf of a candidate in or about that election.

*[S. 35(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) The returning officer may, if he thinks fit, preside at a polling place or be the team leader of a mobile polling team, and the provisions of this Part relating to a presiding officer or team leader shall apply to a returning officer so presiding or being a team leader with the necessary modifications as to things to be done by the returning officer to the presiding officer or team leader or by the presiding officer or team leader to the returning officer.

(3) A presiding officer or team leader may do, by the clerks appointed to assist him, any act (including the asking of questions) which he is required or authorized by this Part to do at a polling place or with a mobile polling team except order the arrest, exclusion or removal of any person from the polling station or from the vicinity of the mobile polling team.

(4) The returning officer shall pursuant to subsection (1) pay to the presiding officers, team leaders and clerks such fees as may be prescribed by regulations or, if no such regulations have been made, as are approved from time to time by the Governor; and all such fees paid shall constitute part of the expenses of the election or referendum.

*[S. 35(4)/Ord. 8/11/w.e.f. 31/8/11.]*

## **101 Equipment of polling places and mobile polling team**

(1) The returning officer shall provide each presiding officer and team leader with such number of ballot boxes and ballot papers as, in the opinion of the returning officer, may be necessary.

(2) Every ballot box shall be so constructed that the ballot papers can be put therein, but cannot be withdrawn therefrom, without the box being unlocked.

(3) The returning officer shall provide each polling place and mobile polling team with-

- (a) materials to enable voters to mark the ballot papers;
- (b) instruments for stamping thereon the official mark; and
- (c) copies of the certified copy of the register and lists marked by the returning officer in accordance with section 99.

(4) The returning officer must take reasonable steps to ensure that a notice in the prescribed form for giving guidance to voters is displayed at each polling place.

*[S. 36(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(5) The returning officer must also take reasonable steps to ensure that a notice in the prescribed form is displayed during each visit made by a mobile polling team.

*[S. 36(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(6) If the referendum legislation for a referendum contains specific provision for the notice to be displayed at polling places and by mobile polling teams, the returning officer must comply with the referendum legislation and need not comply with subsection (4) or (5).

*[S. 36(3)/Ord. 8/11/w.e.f. 31/8/11.]*

## **102 Appointment of polling and counting agents**

(1) Each candidate may, before the commencement of the poll, appoint polling agents to attend at polling stations or with mobile polling teams for the purpose of detecting personation and as counting agents to attend at the counting of the votes; but the returning officer may limit the number of counting agents, so however that the number shall be the same in the case of each candidate and the number allowed to a candidate shall not (except in special circumstances) be less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates.

(2) Notice in writing of the appointment, stating the names and addresses of the persons appointed, shall be given by the candidate to the returning officer and, shall be so given not later than the second business day before the day of the poll.

(3) If an agent dies, or becomes incapable of acting, the candidate may appoint another agent in his place and shall forthwith give to the returning officer notice in writing of the name and address of the agent appointed.

(4) Subsections (1) to (3) shall be without prejudice to the requirements of section 100(1) as to the appointment of paid polling agents, and any appointment authorized by this rule may be made and the notice of appointment given to the returning officer by the candidate's election agent, instead of by the candidate.

*[S. 37/Ord. 8/11/w.e.f. 31/8/11.]*

(5) In subsequent provisions of this Part references to polling and counting agents shall be taken as references to agents whose appointments have been duly made and notified and, where the number of agents is restricted, who are within the permitted number.

(6) Any notice required to be given to a counting agent by the returning officer may be delivered at or sent by post to the address stated in the notice of appointment.

(7) A candidate may himself do any act or thing which any polling or counting agent of his, if appointed, would have been authorized to do, or may assist his agent in doing any such act or thing.

(8) Where by any provision of this Part any act or thing is required or authorized to be done in the presence of the polling or counting agents, the non-attendance of any agents or agent at the time and place appointed for the purpose, shall not, if the act or thing is otherwise duly done, invalidate the act or thing done.

### **103 Declaration of secrecy**

(1) Before the opening of the poll a declaration of secrecy in the form in subsection (4), or in a form as near thereto as circumstances admit, shall be made by-

- (a) every candidate attending at a polling station or at the counting of the votes and every election agent so attending;
- (b) every clerk authorized to attend at a polling station or the counting of the votes;
- (c) every candidate attending at a polling station or at the counting of the votes and every election agent so attending;
- (d) every candidate's partner attending at the counting of the votes;

*[S. 38(2)/Ord. 8/11/w.e.f. 31/8/11.]*

- (e) every polling agent and counting agent;
- (f) every person permitted by the returning officer or, in a referendum, the Chief Counting Officer, to attend at the counting of the votes, though not entitled to do so; and

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

- (g) in a referendum, the Chief Counting Officer, every counting officer and every counting observer.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) Notwithstanding anything in the foregoing paragraph, the following persons attending at the counting of the votes, that is to say-

- (a) any candidate;
- (b) any election agent, or any candidate's partner attending by virtue of the rule authorizing election agents and candidate's partner to attend as such;

*[S. 38(3)/Ord. 8/11/w.e.f. 31/8/11.]*

- (c) any person permitted by the returning officer or, in a referendum, the Chief Counting Officer, to attend, though not entitled to do so; and

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

- (d) any clerk making the declaration in order to attend at the counting of the votes;

need not make the declaration before the opening of the poll but shall make it before he or she is permitted to attend the counting, and a polling or counting agent appointed after the opening of the poll shall make the declaration before acting as such agent.

(3) The returning officer and, in a referendum, the Chief Counting Officer shall make the declaration in the presence either of the Attorney General or a justice of the peace, and any other person shall make the declaration in the presence either of a justice of the peace or of the returning officer, and section 98(1), (2), (3) and (6) shall be read to the declarant by the person taking the declaration or shall be read by the declarant in the presence of that person.

[S. 2/Ord. 8/01/w.e.f. 13/6/01.]

(4) The declaration shall be as follows:

"I solemnly promise and declare that I will not do anything forbidden by subsections (1), (2) and (3) of section 98 of the Electoral Ordinance 1988 which have been read to me."

### *Conduct of poll*

#### **104 Admission to polling place, etc.**

(1) The presiding officer and a team leader shall regulate the number of voters to be admitted to a polling place or as the case may be, before a mobile polling team, at the same time, and shall exclude all other persons except-

- (a) the candidates and their election agents;
- (b) the polling agents appointed to attend thereat;
- (c) the clerks appointed to attend thereat;
- (d) the police officers on duty;
- (da) members of the press approved by the Returning Officer;

[S. 27/Ord. 14/13/w.e.f. 10/9/13.]

- (db) independent observers appointed under section 47A;

[S. 27/Ord. 14/13/w.e.f. 10/9/13.]

- (e) the companions of blind voters.

(2) Not more than one polling agent shall be admitted at the same time to a polling place on behalf of the same candidate.

#### **105 Keeping of order at polling place, etc.**

(1) It shall be the duty of the presiding officer to keep order at his polling place and the duty of the team leader to keep order before the mobile polling team.

(2) If a person misconducts himself at a polling place or before a mobile polling team, or fails to obey the lawful orders of the presiding officer or team leader, as the case may be, he may immediately, by order of the presiding officer be removed from the polling place or the vicinity

of the mobile polling team by a police officer or by any other person authorized in writing by the presiding officer or team leader to remove him.

(3) Any person so removed may, if charged with the commission at the polling place or before the mobile polling team of an offence, be dealt with as a person taken into custody by a police officer for an offence without a warrant.

(4) The powers conferred by this section shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling place or with a mobile polling team from having an opportunity of so voting.

### **106 Sealing of ballot boxes**

(1) Immediately before the departure from Stanley of a mobile polling team, the team leader shall show the ballot box empty to such persons as are present at the returning officer's office (including the candidates and their polling agents if they desire to be present) so that they may see that it is empty and shall then lock it up and place his seal on it in such manner as to prevent it from being opened without breaking the seal, and shall at all times until it is returned to the returning officer keep it in his custody, and while it is being used for the reception of votes, in his view, and keep it so locked and sealed.

(2) Immediately before the commencement of the poll the presiding officer shall show the ballot box to such persons, if any, as are present at the polling place, so that they may see that it is empty, and shall then lock it up and place his seal on it in such a manner as to prevent it being opened without breaking the seal, and shall place it in his view for the receipt of ballot papers, and keep it so locked and sealed.

### **107 Voting with mobile polling team**

For the purposes of this Ordinance, a person who votes with a mobile polling team shall be deemed to have voted at the commencement of the poll on polling day.

### **108 Questions to be put to voters; personation**

(1) The presiding officer or team leader may, and if required by a candidate or his election agent or polling agent shall, put to any person applying for a ballot paper at the time of his application, but not afterwards, the following questions or any of them:

(a) in the case of a person applying as an elector:

(i) "Are you the person registered in the electoral register now in force for this constituency as follows [read the whole entry from the register]?"

(ii) "Have you already voted, here or elsewhere, at this by-election [general election] [referendum], otherwise than as a proxy for some other person?"

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(b) in the case of a person applying as proxy at any election:

(i) "Are you the person whose name appears as A.B. in the proxy voters' list as entitled to vote as proxy for C.D.?"

- (ii) "Have you already voted here or elsewhere at the present election [referendum] as proxy for C.D.?"

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2) A person commits a corrupt practice if he commits, aids, abets, counsels, or procures the commission of the offence of personation.

(3) A person commits the offence of personation 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.

(4) For the purposes of this section, 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.

## **109 ...**

*[S. 39/Ord. 8/11/w.e.f. 16/11/11.]*

## **110 Challenge of voter**

(1) If at the time a person applies for a ballot paper for the purpose of voting in person, or after he has applied for a ballot paper for that purpose and before he has left the polling place or the vicinity of the mobile polling team, a candidate or his election or polling agent declares to the presiding officer or team leader that he has reasonable cause to believe that the applicant had committed an offence of personation and undertakes to substantiate the charge in a court of law, the presiding officer or team leader may ask a police officer to arrest the applicant and the request of the presiding officer or team leader shall be sufficient authority for the police officer so to do.

(2) A person against whom a declaration has been made under this section shall not by reason thereof be prevented from voting.

(3) A person arrested under the provisions of subsection (1) shall be dealt with as a person taken into custody by a police officer without a warrant.

## **110A Persons registered to vote by post attending to vote in person**

(1) Subsections (2) and (3) apply if-

- (a) a person attends at a polling place or before a mobile polling team and applies for a ballot paper; and

- (b) the entry relating to that person has been marked "M" or "UKM" in accordance with section 99.

*[S. 28/Ord. 14/13/w.e.f. 10/9/13.]*

(2) If this subsection applies, the presiding officer or team leader must refuse to issue a ballot paper to the person.

(3) If this subsection applies, the presiding officer or team leader must also ask the person the following question-

"Have you received a postal ballot paper for completion in this election [referendum]?"

(4) If the person answers that question in the affirmative, the presiding officer or team leader must ask the person the following question-

"Have you returned that postal ballot paper to the returning officer?"

(5) If the person answers that question in the negative, the presiding officer or team leader must offer to receive the postal ballot paper in its covering envelope.

(6) Subsection (7) applies if the postal ballot paper is delivered to the presiding officer or team leader before the polling station closes or the end of the mobile polling team's visit.

(7) If this subsection applies-

- (a) the postal ballot paper is to be treated as if it had been delivered to the returning officer before the close of the poll;
- (b) the presiding officer or team leader must place it in the ballot box for that polling station or mobile polling team visit; and
- (c) when that ballot box is opened-
  - (i) the postal ballot paper must be placed in a postal voters' ballot box;
  - (ii) it must be dealt with after that in accordance with sections 90 to 94.

*[S. 40/Ord. 8/11/w.e.f. 16/11/11.]*

### **111 Persons registered to vote by proxy attending to vote in person**

(1) Subsection (2) applies if-

- (a) a person attends at a polling place or before a mobile polling team and applies for a ballot paper; and
- (b) the entry relating to that person has been marked "PXY" in accordance with section 99.

*[S. 29/Ord. 14/13/w.e.f. 10/9/13.]*

(2) If this subsection applies, the presiding officer or team leader must refuse to issue a ballot paper to the person.

*[S. 41/Ord. 8/11/w.e.f. 16/11/11.]*

## **112 Proxy voters registered to vote by post attending to vote in person**

(1) Subsections (2) and (3) apply if-

- (a) a person attends at a polling place or before a mobile polling team and applies for a ballot paper as a proxy for another person; and
- (b) the entry relating to that person has been marked "PM" in accordance with section 99.

*[S. 30/Ord. 14/13/w.e.f. 10/9/13.]*

(2) If this subsection applies, the presiding officer or team leader must refuse to issue a ballot paper to the person.

(3) If this subsection applies, the presiding officer or team leader must also ask the person the following question-

"Have you received a postal ballot paper for completion as proxy for [name of voter] in this election [referendum]?"

(4) If the person answers that question in the affirmative, the presiding officer or team leader must ask the person the following question-

"Have you returned that postal ballot paper to the returning officer?"

(5) If the person answers that question in the negative, the presiding officer or team leader must offer to receive the postal ballot paper in its covering envelope.

(6) Subsection (7) applies if the postal ballot paper is delivered in its covering envelope to the presiding officer or team leader before the polling station closes or the end of the mobile polling team's visit.

(7) If this subsection applies-

- (a) the postal ballot paper is to be treated as if it had been delivered to the returning officer before the close of the poll;
- (b) the presiding officer or team leader must place it in the ballot box for that polling station or mobile polling team visit; and
- (c) when that ballot box is opened-
  - (i) the postal ballot paper must be placed in a postal voters' ballot box;
  - (ii) it must be dealt with after that in accordance with sections 90 to 94.

*[S. 42/Ord. 8/11/w.e.f. 16/11/11.]*

## **113 Voting procedure**

(1) Unless section 110A, 111 or 112 applies, a ballot paper shall be delivered to a voter who applies therefor, and immediately before delivery-

- (a) the ballot paper shall be stamped with the official mark;

- (b) the number, name and address of the elector as stated in the copy of the register (or the single document produced under section 96(3)) must be called out;

*[S. 31(2)(a)/Ord. 14/13/w.e.f. 10/9/13.]*

- (c) the number of the elector shall be marked on the counterfoil; and

*[S. 31(2)(b)/Ord. 14/13/w.e.f. 10/9/13.]*

- (d) a mark shall be placed against the entry relating to that voter (in the Register or the single document) to denote that a ballot paper has been received by that voter (but without showing the particular ballot paper that has been received).

*[S. 31(2)(c)/Ord. 14/13/w.e.f. 10/9/13.]*

- (e) . . .

*[S. 43/Ord. 8/11/w.e.f. 16/11/11 and S. 31(2)(d)/Ord. 14/13/w.e.f. 10/9/13.]*

(1A) Subsection (1B) applies if-

- (a) the person is applying for a ballot paper as a proxy; and
- (b) a single document has not been produced under section 96(3).

*[S. 31(3)/Ord. 14/13/w.e.f. 10/9/13.]*

(1B) If this subsection applies, a mark must also be placed against the entry relating to that person in the proxy voters' list.

*[S. 31(3)/Ord. 14/13/w.e.f. 10/9/13.]*

(2) The voter, on receiving the ballot paper shall forthwith proceed into one of the compartments in the polling place (or, if he is voting with a mobile polling team, to a place assigned for the purpose) and there secretly mark his paper and fold it up so as to conceal his vote, and shall then show to the presiding officer or team leader the back of the paper, so as to disclose the official mark, and put the ballot paper so folded up into the ballot box in the presence of the presiding officer or team leader.

(2A) A voter may, by marking his ballot paper in such manner as is prescribed or permitted by law, vote for as many candidates whose names appear on that ballot paper as there are members of the Legislative Assembly to be elected in respect of the relevant constituency at that election, but his ballot paper is not to be held to be invalid merely because he voted for one such candidates only or for a lesser number of such candidates than that which pursuant to this subsection he could lawfully have voted. Nor, subject to the foregoing provisions of this subsection, shall a ballot paper be held to be invalid merely because the voter has indicated by the manner in which he has marked his ballot paper his order of preference in relation to the candidates for whom he has voted.

*[S. 4/Ord. 2/97/w.e.f. 1/9/97 and s. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) The voter shall vote without undue delay, and shall leave the polling place or the vicinity of the mobile polling team as soon as he has put his ballot paper into the ballot box.

#### **114 Votes marked by presiding officer**

(1) The presiding officer or team leader on the application of-

- (a) a voter who is incapacitated by blindness or other physical cause from voting in the manner directed by these rules; or
- (b) a voter who declares orally that he is unable to read shall in the presence of the polling agents (if any) cause the vote of the voter to be marked on a ballot paper in the manner directed by the voter, and the ballot paper to be placed in the ballot box.

(2) The name and number on the register of electors of every voter whose vote is marked in pursuance of this section, and the reason why it is so marked, shall be entered on a list (in this Part called "the list of votes marked by the presiding officer"). In the case of a person voting as proxy for an elector, the number to be entered together with the name of the voter shall be the number of the elector.

### **115 Voting by blind persons**

(1) If a voter makes an application to the presiding officer or team leader to be allowed on the ground of blindness to vote with the assistance of another person by whom he is accompanied (in this Part rules referred to as "the companion"), the presiding officer or team leader shall require the voter to declare orally whether he is so incapacitated by his blindness as to be unable to vote without assistance.

(2) If the presiding officer or team leader is satisfied that the voter is so incapacitated and is also satisfied by a written declaration made by the companion (in this Part referred to as "the declaration made by the companion of a blind voter") that the companion is a qualified person within the meaning of this section and has not previously assisted more than one blind person to vote at the election, the presiding officer shall grant the application, and thereupon anything which is by this Part required to be done to or by the said voter in connection with the giving of his vote, may be done to or with the assistance of the companion.

(3) For the purposes of this section, a person shall be qualified to assist a blind voter to vote, if that person is either-

- (a) a person who is entitled to vote as an elector in the referendum [or] at the election; or

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

- (b) the father, mother, brother, sister, husband, wife, son or daughter of the blind voter and has attained the age of eighteen years.

(4) The name and number in the register of electors of every voter whose vote is given in accordance with this section and the name and address of the companion shall be entered on a list (in this Part referred to as "the list of blind voters assisted by companions"). In the case of a person voting as proxy for an elector, the number to be entered together with the name of the voter shall be the number of the elector.

(5) The declaration made by the companion-

- (a) shall be in the prescribed form;
- (b) shall be made before the presiding officer at the time when the voter applies to vote with the assistance of a companion and shall forthwith be given to the presiding officer who shall attest and retain it.

(6) No fee or other payment shall be charged in respect of the declaration.

## **116 ...**

*[S. 44/Ord. 8/11/w.e.f. 16/11/11.]*

## **117 Spoilt ballot papers**

A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may on delivering it to the presiding officer or team leader and proving to his satisfaction the fact of the inadvertence, obtain another ballot paper in the place of the ballot paper so delivered (in this Part referred to as "a spoilt ballot paper") and the spoilt ballot paper shall be immediately cancelled.

## **118 Adjournment of poll in case of riot**

(1) Where the proceedings at any polling place or before any mobile polling team are interrupted by riot or open violence, the presiding officer or team leader shall adjourn the proceedings and shall forthwith give notice to the returning officer.

(2) Where the poll is adjourned at a polling place-

- (a) the adjournment shall be to the next following business day;
- (b) the hours of polling on the day to which it is adjourned shall be the same as for the original day; and
- (c) any reference in this Part to the close of the poll shall be construed accordingly

(3) Where the poll is adjourned at a location visited by a mobile polling team the adjournment shall be to such day and time as may be notified.

(4) In any case to which subsection (3) applies, the team leader and the returning officer shall use their best endeavours to arrange a further visit by the mobile polling team before the close of the polls on polling day but if no such visit takes place the election is not thereby void, nor shall it thereby be subject to question.

## **119 Procedure on close of the poll**

(1) As soon as practicable after the close of the poll, the presiding officer shall, in the presence of the polling agents (if any), make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals-

- (a) each ballot box in use at the polling place, sealed so as to prevent the introduction of additional ballot papers and unopened, but with the key attached;
- (b) the unused and spoilt ballot papers placed together;
- (c) ...

*[S. 45(2)(a)/Ord. 8/11/w.e.f. 16/11/11.]*

- (d) the marked copies of the register of electors and of the list of proxies;
- (e) either-

- (i) the marked copies of the register of electors and of the list of proxies; or
- (ii) if single document has been produced under section 96(3), the marked copy of that single document;

*[S. 32(2)/Ord. 14/13/w.e.f. 10/9/13.]*

- (f) the list of blind voters assisted by companions, the list of votes marked by the presiding officer, a statement of the number of voters whose votes are so marked by the presiding officer under the heads "Physical Incapacity", and "Unable to Read", and the declarations made by the companions of blind voters,

*[S. 45(2)(b)/Ord. 8/11/w.e.f. 16/11/11.]*

separately in respect of each constituency and shall deliver the packets or cause them to be delivered to the returning officer to be taken charge of by him:

Provided that if the packets are not delivered by the presiding officer personally to the returning officer, the arrangements for their delivery shall require the approval of the returning officer.

(2) Subsection (2A) applies if a single document has not been produced under section 96(3).

*[S. 32(3)/Ord. 14/13/w.e.f. 10/9/13.]*

(2A) If this subsection applies, the marked copies of the register of electors and of the list of proxies must be placed in the same packet.

*[S. 32(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(2B) The counterfoils of the used ballot papers are placed in a separate packet from the one in which the marked copies of the register of electors and of the list of proxies (or the marked copy of the single document) are placed.

*[S. 32(4)/Ord. 14/13/w.e.f. 10/9/13.]*

(3) The packets shall be accompanied by a statement (in this Part referred to as "the ballot paper account") made by the presiding officer showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot paper issued and not otherwise accounted for, unused and spoilt ballot papers.

*[S. 45(3)/Ord. 8/11/w.e.f. 16/11/11.]*

## **120 Application of section 119 to mobile polling teams**

(1) The provisions of section 119 shall apply to a mobile polling team as it does to a polling place with the following substitutions:

- (a) the words "after completion of the itinerary of the mobile polling team" shall be substituted for the words "after the close of the poll"; and
- (b) the words "team leader" shall be substituted for the words "presiding officer" wherever they appear.

(2) The returning officer, if the things referred to in section 119(1) are delivered to him by or on behalf of a team leader before the close of the poll on polling day, shall cause them to be kept in safe custody until that time and shall not until that time otherwise deal with them.

## *The count*

### **121 Attendance at counting of votes**

(1) The returning officer shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll, and shall give to the counting agents notice in writing of the time and place at which he will begin to count the votes.

(2) In an election and without prejudice to subsection (6), no person other than-

- (a) the returning officer and his clerks;
- (b) the candidates and their partners;

*[S. 46/Ord. 8/11/w.e.f. 31/8/11.]*

- (c) the election agents;
- (d) the counting agents,

may be present at the counting of the votes, unless permitted by the returning officer to attend.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(2A) In a referendum and without prejudice to subsection (6), no person other than-

- (a) the Chief Counting Officer, the Returning Officer and his clerks;
- (b) persons appointed by the Chief Counting Officer for the purpose of the purpose of counting the votes;
- (c) persons appointed by the Chief Counting Officer to observe the counting of the votes and the verification of the ballot paper accounts,

may be present at the counting of the votes unless permitted by the Chief Counting Officer to attend.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(3) A person not entitled as of right to attend at the counting of the votes shall not be permitted to do so by the returning officer unless the returning officer is satisfied that the efficient counting of votes will not be impeded, and the returning officer has either consulted the election agent or is satisfied that it is impracticable to consult them.

(4) The returning officer shall give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with reference thereto, as he can give them consistently with the orderly conduct of the proceedings and the discharge of his duties in connection therewith.

(5) In particular, where the votes are counted by sorting the ballot papers according to the candidate for whom the vote is given and then counting the number of ballot papers for each candidate, the counting agents shall be entitled to satisfy themselves that the ballot papers are correctly sorted.

(6) So far as it is reasonably practicable the returning officer shall permit all persons who wish to attend the count to do so.

(7) In a referendum section (6) shall apply with the substitution of the words "the Chief Counting Officer" for the words "the Returning Officer".

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

### **121A Postal votes in United Kingdom to be incorporated in count**

(1) As soon as reasonably practicable after 10 am United Kingdom time on polling day, the Recording Officer shall-

- (a) count such of the postal ballot papers as have been duly returned and record that number.
- (b) cause true copies of each ballot paper duly returned to be sent by electronic means to the Returning Officer, ensuring that such copy includes the official mark;

*[S. 33/Ord. 14/13/w.e.f. 10/9/13.]*

- (c) cause to be sent by electronic means to the returning officer a copy of the record made in accordance with paragraph (a) above by way of verification of copy ballot papers sent to the Returning Officer by electronic means;
- (d) cause paper copies of each ballot duly returned to be taken, placed together in a sealed packet and retained at the Falkland Islands Government office in a secure place;
- (e) place all original postal ballot papers duly returned and counted in accordance with paragraph (a) above and copied in accordance with paragraph (d) above in a sealed packet;
- (f) open the sealed packets provided for in section 92 above containing the rejected votes and declarations of identity and cause paper copies of those documents to be taken, placed together in a sealed packet and retained at the Falkland Islands Government office in a secure place;
- (g) return the rejected votes and declarations of identity to their packets and reseal them;
- (h) deliver to the nearest Royal Mail post office for delivery to the Returning Officer by means of recorded delivery those sealed packets referred to at paragraphs (e) and (g) and shall obtain a receipt for these purposes in respect of each packet so delivered.

(2) The Returning Officer shall, on receipt of the electronic copy postal ballot papers from the Recording Officer, cause those ballot papers to be properly incorporated in the returning officer's count of postal ballot papers in accordance with section 122(1)(c) below as if they had been received by the returning officer in accordance with section 122(2) below.

*[S.R. & O. 17/05/w.e.f. 29/9/05.]*

### **122 The count**

(1) Before the returning officer proceeds to count the votes, he shall-

- (a) in the presence of the counting agents open each ballot box and, taking out the ballot papers therein separate the ballot papers relating to one constituency from ballot papers relating to the other constituency and count and record the numbers relating to each election;
- (b) in the presence of the election agents who are present verify each ballot paper account;
- (c) count such of the postal ballot papers as have been duly returned and record the number counted; and
- (d) then mix together the whole of the ballot papers relating to the election in the constituency.

(2) A postal ballot paper is not to be treated as duly returned unless-

- (a) either-
  - (i) it is returned in the proper envelope so as to reach the returning officer before the close of the poll; or
  - (ii) it is to be treated as if it has been under section 110A(7)(a) or 112(7)(a); and
- (b) it is accompanied by the declaration of identity, duly signed and authenticated.

*[S. 47(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) . . .

*[S. 47(3)/Ord. 8/11/w.e.f. 16/11/11.]*

(4) . . .

*[S. 34/Ord. 14/13/w.e.f. 10/9/13.]*

(5) The returning officer shall verify each ballot paper account by comparing it with the number of ballot papers recorded by him, and if necessary or if so required by a candidate or his election agent the unused and spoilt ballot papers in his possession (opening and resealing the packets containing the unused and spoilt ballot papers) and shall draw up a statement as to the result of the verification which any election agent may copy.

*[S. 47(4)/Ord. 8/11/w.e.f. 16/11/11.]*

(6) The returning officer shall, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment:

Provided that he may, in so far as he and the agents agree, exclude the hours between 9 p.m. and 9 a.m. on the following day. For the purposes of this proviso the agreement of a candidate or his election agent shall be as effective as the agreement of his counting agents.

(6A) There shall be counted in favour of a candidate all votes which, having regard to section 113(2A), were validly cast for him at the election.

*[S. 4/Ord. 2/97/w.e.f. 1/9/97 and s. 47(5)/Ord. 8/11/w.e.f. 31/8/11.<sup>i\*</sup>]*

(7) During the excluded time the returning officer shall place the ballot papers and other documents relating to the election under his own seal and the seals of such of the counting agents

as desire to affix their seals and shall otherwise take proper precautions for the security of the papers and documents.

(8) The preceding provisions of this section shall apply in a referendum with the substitution of the words "the Chief Counting Officer" for the words" the Returning Officer" wherever they appear.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

### **123 Re-count**

(1) A candidate or his election agent may, if present when the counting or any re-count of the votes is completed, require the returning officer to have the votes re-counted or again re-counted but the returning officer may refuse to do so if in his opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-counting of votes until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by this section.

### **124 Rejected ballot papers**

(1) Any ballot paper-

- (a) which does not bear the official mark; or
- (b) on which votes are given for more candidates than the voter is entitled to vote for; or
- (c) on which anything is written or marked by which the voter can be identified; or

*[S. 35/Ord. 14/13/w.e.f. 10/9/13.]*

- (d) which is unmarked or void for uncertainty,

shall, subject to the provisions of this section be void and not counted.

(2) Where the voter is entitled to vote for more than one candidate, or, in a referendum, in relation to more than one question, a ballot paper shall not be deemed to be void for uncertainty as respects any vote as to which no uncertainty arises and that vote shall be counted.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

(3) A ballot paper on which a vote is marked-

- (a) elsewhere than in the proper place; or
- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

shall not by reason thereof be deemed to be void (either wholly or as respects that vote), if an intention that the vote shall be for one or other of the candidates clearly appears and the way the paper is marked does not of itself identify the voter and it is not shown that he can be identified thereby.

(4) The returning officer shall endorse-

- (a) the word "Rejected" on any ballot paper which under this section is not to be counted; and
- (b) in the case of a ballot paper on which any vote is counted under subsection (2), the words "Rejection in part" and a memorandum specifying the votes counted,

and shall add to the endorsement the words "Rejection objected to" if an objection is made by a counting agent to his decision.

(5) The returning officer shall draw up a statement showing the number of ballot papers rejected, including those rejected in part, under the several heads of-

- (a) want of official mark;
- (b) voting for more candidates than voter is entitled to;
- (c) writing or mark by which voter could be identified;
- (d) unmarked or wholly void for uncertainty;
- (e) rejected in part.

(6) The preceding provisions of this section shall apply in a referendum with the substitution of the words "the Chief Counting Officer" for "the Returning Officer" wherever they appear in those provisions".

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

## **125 Decisions on ballot papers**

The decision of the returning officer in an election, and of the Chief Counting Officer, in a referendum, on any question arising on a ballot paper shall be final, but shall be subject to review on an election petition.

*[S. 2/Ord. 8/01/w.e.f. 13/6/01.]*

## **126 Determination of the result of an election**

(1) In a contested election, there shall be declared to be elected as members of the Legislative Assembly the same number of candidates whose names appear on the ballot paper for that election as there are persons to be so elected at that election. The candidate or candidates who shall be declared by the returning officer to be so elected at such an election is that candidate who has received, or (as the case may be) are those candidate whose name appears on the ballot paper who is not declared to be so elected at that election.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) Where after the counting of the votes (including any re-count) is completed, an equality of votes is found to exist between two or more candidates and the addition of a vote would entitled one or more of those candidates to be declared to be elected, the returning officer shall forthwith decide by lot which one or more of those candidates is to be declared to be elected and proceed as if the candidate on whom the lot falls had received an additional vote or, as the cause may be, shall proceed as if the candidates on whom the lots fall had each received an additional vote.

*[S. 4/Ord. 2/97/w.e.f. 1/9/97.]*

## **127 Declaration of result**

(1) In a contested election, when the result of the poll has been ascertained the returning officer shall forthwith declare to be elected the candidate or candidates to whom the majority of votes have been given, and shall as soon as possible publish the name or names of the candidate or candidates elected and the total number of votes given to each candidate, whether elected or not, together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

(2) In an uncontested election, the returning officer shall, not later than 11 a.m. on the day of the election, publish the name or names of the person or persons elected.

(3) In a referendum, when the result of the poll has been ascertained the Chief Counting Officer shall forthwith declare the number of votes cast for and against each question in the referendum-

- (a) in each constituency; and
- (b) in aggregate, in the Falkland Islands as a whole,

and shall cause public notice to be given in the *Gazette* of the result.

[S. 2/Ord. 8/01/w.e.f. 13/6/01.]

## **128 The return**

The returning officer shall forthwith upon declaration of the result of the election return the name of each person elected to the Governor.

### *Disposal of documents*

## **129 Sealing of ballot papers**

(1) On the completion of the counting at a contested election the returning officer shall seal up in separate packets the counted and rejected ballot papers, including ballot papers rejected in part.

(2) The returning officer shall not open the sealed packets of counterfoils or of marked copies of the register of electors and lists of proxies.

[S. 48/Ord. 8/11/w.e.f. 16/11/11.]

(3) In a referendum the preceding provisions of this section apply with the substitution of the words "the Chief Counting Officer" for "the Returning Officer".

[S. 2/Ord. 8/01/w.e.f. 13/6/01.]

## **130 Safe custody of ballot papers, documents and other items**

(1) The returning officer must arrange for the safe custody of the following items-

- (a) the packets of ballot papers prepared under section 129;
- (b) the ballot paper accounts;

- (c) the statements of-
    - (i) rejected ballot papers; and
    - (ii) the result of the verification of the ballot paper accounts;
  - (d) the lists of-
    - (i) blind voters assisted by companions;
    - (ii) votes marked by the presiding officer;
  - (e) the declarations made by the companions of blind voters;
  - (f) the statements relating to votes marked by the presiding officer;
  - (g) the packets of counterfoils and certificates as to employment on duty on-
    - (i) in the case of an election, the day of the poll; and
    - (ii) in the case of a referendum, the day on which the referendum was held;
  - (h) the packets containing-
    - (i) marked copies of registers; and
    - (ii) lists of proxies; and
  - (i) the packets delivered by the recording officer in accordance with section 121A(h).
- (2) The returning officer must either-
- (a) carry out the task to be carried out under subsection (3); or
  - (b) arrange for it to be carried out by someone else.
- (3) The task to be carried out under this subsection is endorsing on each packet-
- (a) a description of the packet's contents (including, if it is relevant, the constituency to which it relates);
  - (b) the date of the election or referendum to which it relates; and
  - (c) if an election and a referendum are being held on the same date, whether the packet relates to the election or the referendum.

*[S. 49/Ord. 8/11/w.e.f. 31/8/11.]*

### **131 Orders for production**

- (1) An order for-
- (a) the inspection or production of any rejected ballot papers, including ballot papers rejected in part; or
  - (b) for the opening of a sealed packet of counterfoils and certificates as to employment on duty on the day of the poll or for the inspection of counted ballot papers,

may be made by the Supreme Court, if the Court is satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of an election petition.

(2) The order may be made subject to such conditions as to persons, time, place and mode of inspection, production or opening as the Supreme Court may think expedient and may direct the returning officer or any other person having custody of the ballot papers and the sealed packets of counterfoils and certificates to retain them intact for such period as may be specified in the order.

*[S. 50(2)/Ord. 8/11/w.e.f. 31/8/11 and s. 36(1)/Ord. 14/13/w.e.f. 10/9/13.]*

(3) No appeal shall lie from any order of the Supreme Court made under this section.

(4) Any power given under this section to the Supreme Court may be exercised by any judge of the court otherwise than in open court.

(5) Where an order is made for the production by the returning officer or any other person of any document in his possession relating to any specified election, the production by him or his agent of the document ordered in such manner as may be directed by that order shall be conclusive evidence that the document relates to the specified election; and any endorsement on any packet of ballot papers so produced shall be prima facie evidence that the ballot papers are what they are stated to be by the endorsement.

*[S. 50(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(6) . . .

*[S. 36(3)/Ord. 14/13/w.e.f. 10/9/13.]*

(7) Save as by this section provided, no person shall be allowed to inspect any rejected or counted ballot papers in the possession of any person or to open any sealed packets of counterfoils.

### **132 Retention, public inspection and destruction of ballot papers, documents and other items**

(1) This section applies to ballot papers, documents and other items for which the returning officer must arrange for safe custody under sections 95 and 130.

(2) The returning officer must arrange for the ballot papers, documents and other items to be kept in safe custody for six months from the date of the election or referendum to which they relate.

(3) During those six months-

- (a) the documents (but not ballot papers or counterfoils) are open to inspection by members of the public; and
- (b) the returning officer must make arrangements for them to be made available for inspection during normal working hours.

(4) Unless (and except to the extent that) subsection (6) applies, the returning officer must arrange for the ballot papers, documents and other items to be destroyed as soon as possible after the end of the six months.

(5) Subsection (6) applies if (and to the extent that)-

- (a) the Supreme Court has made an order under section 131;
- (b) complying with subsection (4) would breach that order; and
- (c) the order still applies after the end of the six months.

(6) If (and to the extent that) this subsection applies, the returning officer must comply with the order rather than subsection (4).

[S. 51/Ord. 8/11/w.e.f. 31/8/11.]

### *Return or forfeiture of deposit*

#### **133 Return or forfeiture of deposit**

(1) The deposit made under section 66 shall either be returned to the person making it or his personal representatives or be forfeited to Her Majesty.

(2) Except as provided by subsection (4), the deposit shall be returned as soon as practicable after the result of the election is declared.

(3) If the candidate is not shown as standing nominated in the statement of the persons nominated, or the poll is countermanded or abandoned by reason of the death of any candidate, the deposit shall be returned as soon as practicable after the publication or the death as the case may be.

(4) Subject to subsection (3), a candidate's deposit shall be forfeited if a poll is taken and, after the counting of the votes by the returning officer, including any re-count, the candidate is found not to have polled more than one eighth of the relevant total.

(5) For the purposes of subsection (4), the relevant total is the total number of votes polled by all the candidates divided by the number of seats in the Legislative Assembly to be filled by the election in the constituency.

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

## **PART VI THE ELECTION CAMPAIGN AND ELECTION EXPENSES**

*Appointment, death, removal, etc. of election agent*

**134 Appointment of election agent**

(1) Not later than the latest time for delivery of notices of withdrawals for an election, a person may be named by or on behalf of each candidate 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 not later than that time; but if no person is named in accordance with the foregoing provisions of this subsection, the candidate shall be deemed to have appointed himself as his own election agent.

(2) A candidate who is his own election agent shall, so far as the circumstances admit, be subject to the provisions of this Ordinance both as a candidate and as an election agent and, except where the context otherwise requires, any reference in this Ordinance to an election agent shall be construed to refer to the candidate acting in his capacity as election agent.

(3) One election agent only shall be appointed for each candidate, but the appointment, whether the election agent appointed or deemed to be appointed be the candidate himself or not, may be revoked.

(4) If whether before, during, or after the election the 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 returning officer.

**135 Office of election agent: publication of particulars of agent**

(1) Every election agent shall have an office to which all claims, notices, writs, particulars of summons and documents may be sent, and the address of the office shall be declared at the same time as the appointment of the agent to the returning officer.

(2) If the candidate has appointed himself as his own election agent or is under section 134(1) deemed to have done so, and he has not declared an address pursuant to subsection (1) above, he shall be deemed to have declared for the purposes of that subsection the address for him appearing in his nomination paper.

(3) The returning officer shall cause to be published in the Gazette the name of the election agent for each candidate and the address of that election agent declared or deemed to have been declared under this section.

**136 Death of election agent: revocation of appointment of election agent**

(1) If a person who has been appointed as the election agent of a candidate (not being the candidate himself) dies and a new appointment is not made on the day of the death or the following day, the candidate shall be deemed to have appointed himself as his own election agent, in place of the deceased former election agent, as from the time of the death.

(2) If the appointment of a candidate's election agent is revoked without a new appointment being made, the candidate shall be deemed to have appointed (or re-appointed) himself as his own election agent in the place of the election agent whose appointment has been revoked.

(3) Where the identity of the election agent of a candidate changes, the provisions of section 135(3) shall apply, with such modifications only as are required in the circumstances of the case.

## *Control of amount of election expenses*

### **137 Limitation of election expenses**

(1) Subject to subsection (4), no sum shall be paid and no expense shall be incurred by a candidate or his election agent, whether before, during or after an election on account of or in respect of the conduct or management of the election, in excess of the maximum amount specified by or under this section, and a candidate or election agent knowingly acting in contravention of this subsection commits an offence which constitutes an illegal practice.

(2) Subject to section 138(4), the maximum amount for the purposes of subsection (1) and section 138, is —

- (a) £1,200 in the case of the Camp constituency; and
- (b) £1,000 in the case of the Stanley constituency.

*[S. 4/Ord. 13/25/w.e.f. 27/10/25]*

(2A) The Governor may, by regulations, amend the maximum amounts provided in subsection (2).

*[S. 4/Ord. 13/25/w.e.f. 27/10/25]*

(3) The said maximum amount shall not be required to cover the candidate's personal expenses.

(4) In the Camp constituency, where an election or a proxy for an elector is unable to reach a polling place without crossing the sea or a branch or an arm of the sea, nothing in the preceding subsections of this section or in section 138 shall apply to the provision by or on behalf of a candidate of means for conveying such an elector or proxy to any polling place within the Camp constituency at which he may vote.

### **138 Expenses of joint candidates**

(1) Where two or more candidates are candidates for election in the same constituency and-

- (a) appoint the same election agent;
- (b) by themselves or by any agent or agents-
  - (i) employ or use the services of the same clerks or messengers;
  - (ii) hire or use the same committee rooms for the election;
  - (iii) publish a joint address or a joint circular or notice at the election;

those candidates shall, subject to subsection (2), for the purposes of this section be joint candidates.

(2) The employment and use of the same clerk or messenger or committee room, if accidental or casual, or of a trivial and unimportant character, shall not be deemed of itself to constitute persons joint candidates.

(3) Where-

- (a) any excess of expenses above the maximum allowed for one or two or more joint candidates has arisen owing to his having ceased to be a joint candidate, or to his having become a joint candidate after having begun to conduct his election as a separate candidate;
- (b) the change was made in good faith;
- (c) the excess is not more than under the circumstances is reasonable; and
- (d) the total expenses of the candidate do not exceed the maximum allowed by section 137 for a separate candidate,

the excess shall be deemed to have arisen from a reasonable cause.

(4) Where there are two or more joint candidates, and subject to subsection (3), the maximum amount under section 137 shall, for each of those joint candidates, be reduced by a quarter or, if there are more than two joint candidates, by one third.

### **139 Making of contracts through election agent**

(1) The election agent of a candidate shall appoint every polling agent, clerk and messenger employed for payment on behalf of a candidate at an election and hire every committee room hired on behalf of a candidate.

(2) A contract whereby any election expenses are incurred shall not be enforceable against a candidate at the election unless made by the candidate himself or by his election agent, but this subsection shall not relieve the candidate from the consequences of any corrupt or illegal practice having been committed by his agent.

### **140 Payment of expenses through election agent**

(1) Except as permitted by sections 141, 143(5) or 144(2), no payment or advance or deposit shall be made by a candidate or by any agent on behalf of the candidate or by any other person at any time in respect of the election expenses otherwise than by or through the election agent of the candidate.

(2) Every payment made by an election agent in respect of any election expenses shall, except where less than £10, be vouched for by a bill stating the particulars or by a receipt.

(3) All money provided by any person other than the candidate for any election expenses, whether as a gift, loan, advance or deposit, shall be paid to the candidate or his election agent and not otherwise.

(4) The above subsections shall be deemed not to apply to any sum disbursed by any person out of his own money for any expense not exceeding £5 legally incurred by him if the sum is not repaid to him.

(5) A person who makes any payment, advance or deposit in contravention of subsection (1), or pays in contravention of subsection (3) of this section any money so provided as aforesaid commits an offence which constitutes an illegal practice.

#### **141 Personal expenses of candidate and petty expenses**

(1) The candidate at an election may pay any personal expenses incurred by him on account of or in connection with or incidental to an election, but the amount which a candidate may pay shall not exceed £100 and any further personal expenses so incurred by him shall be paid by his election agent.

(2) The candidate shall send to his election agent within fourteen days of the conclusion of the election a written statement of the amount of personal expenses paid by the candidate.

(3) Any person may, if so authorized in writing by the election agent of the candidate, pay any necessary expenses for stationery, postage, telegrams 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.

(4) A statement of the particulars of payments made by any person authorized pursuant to subsection (3) shall be sent to the election agent within fourteen days of the conclusion of the election.

#### **142 Prohibition of expenses not authorized by election agent**

(1) No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any person other than the candidate, his election agent and persons authorized in writing by the election agent on account-

- (a) of holding public meetings or organizing any public display;
- (b) of issuing advertisements, circulars or publications;
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing or disparaging another candidate,

but this paragraph shall not-

- (i) restrict the publication of material relating to the election in a newspaper or other periodical;

*[S. 52(a)/Ord. 8/11/w.e.f. 31/8/11.]*

- (ia) restrict the broadcast of matter relating to the election on a broadcasting station licensed under the Telecommunications Ordinance 1988 or the Broadcasting Ordinance 2004;

*[S. 52(b)/Ord. 8/11/w.e.f. 31/8/11.]*

- (ii) apply to any expenses not exceeding in the aggregate the sum of £5 which may be incurred by an individual and are not incurred in pursuance of a plan suggested by or concerted with others, or to expenses incurred by any person in travelling to or living away from home or similar personal expenses.

(2) Where a person incurs any expense required by this section to be authorized by the election agent, that person shall within fourteen days after the date of the conclusion of the election send to the returning officer a return of the amount of those expenses, stating the candidate in whose support they were incurred, and the return shall be accompanied by a declaration made by the

said person (or in the case of an association or body of persons, by a director, general manager, secretary or other similar officer thereof) verifying the return and giving particulars of the matters for which the expenses were incurred, but this subsection shall not apply to any person engaged or employed by the candidate or his election agent.

(3) The returning officer may require that the return and declaration under the above subsections of this section be in a form approved by him, and, in any case, the authority received from the election agent shall be annexed to and deemed to form part of the return.

(4) Any person who-

- (a) incurs or aids, abets, counsels, or procures any other person to incur any expenses in contravention of this section or;
- (b) knowingly makes the declaration required by subsection (2) falsely,

commits an offence which constitutes a corrupt practice.

(5) Any person who fails to send any declaration or return required by subsection (2) commits an offence which constitutes an illegal practice.

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

(1) Every claim against a candidate or his election agent in respect of election expenses which is not sent to the election agent within fourteen days of the conclusion of the election is barred and shall not be paid.

(2) All election expenses shall be paid within twenty-eight days of the conclusion of the election.

(3) An election agent who pays a claim in contravention of subsection (1) is guilty of an illegal practice.

(4) The claimant or the candidate or his election agent may apply to the Attorney General for leave to pay a claim for any election expenses, although sent in after the period of fourteen days mentioned in subsection (1) or although sent in to the candidate and not to the election agent, and the Attorney General shall grant such leave if he is satisfied that it is just and proper in all the circumstances of the case so to do.

(5) Any sum specified in any leave granted under subsection (4) may be paid by the candidate or his election agent and when paid in pursuance of such leave shall be deemed not to be in contravention of subsection (2).

#### **144 Disputed claims**

(1) If the election agent disputes any claim sent to him within the period mentioned in section 143(1) or refuses or fails to pay the same within the period mentioned in section 143(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 the candidate or his agent in pursuance of the judgment or order of the court shall not be deemed to be paid in contravention of section 140 or section 143.

(3) If the defendant in the action admits his liability but disputes the amount of the claim, the amount of the liability shall be determined by the court.

(4) Section 143(4) and (5) apply in relation to a disputed claim as they apply in relation to a claim for election expenses sent in after the period mentioned in section 143(1).

#### **145 Claim by election agent**

So far as circumstances admit, this Part applies to a claim for his remuneration by an election agent and to the payment thereof as if he were any other creditor, and if any difference arises respecting the amount of the claim, the claim shall be a disputed claim within the meaning of section 144 and shall be dealt with accordingly.

#### **146 Return as to election expenses**

(1) Within thirty-five days of the conclusion of the election, the election agent of every candidate shall transmit to the returning officer a true return in the prescribed form ("the return") containing as respects that candidate a statement of all payments made by the election agent together with all the bills and receipts.

(2) The return shall deal under a separate heading or sub-heading with any expenses included therein-

- (a) as respects which a return is required to be made under section 141(2); or
- (b) which are on account of the remuneration or expenses of speakers at public meetings.

(3) The return shall also contain as respects that candidate-

- (a) a statement of the amount of personal expenses, if any, paid by the candidate;
- (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 Attorney General;
- (d) a statement of all money, securities and equivalent of money received by the election agent from the candidate or any other person for the purposes of election expenses incurred or to be incurred with a statement of the name of every person from whom they may have been received.

(4) Where the candidate is his own election agent, a statement of all money, securities and equivalent of money paid by the candidate shall be substituted in the return as to election expenses for the statement of money, securities and equivalent of money received by the election agent from the candidate.

(5) Where after the date on which the return as to election expenses is transmitted, leave is given under section 143(4) for any claims to be paid, the candidate or his election agent shall, within seven days after the payment thereof, transmit to the returning officer a return of the sums paid in pursuance of the leave, accompanied by a copy of the order giving the leave; and in default he shall be deemed to have failed to comply with the requirements of this section without such authorized excuse as is mentioned in section 150.

#### **147 Declarations as to election expenses**

(1) The return submitted under section 146(1) shall be accompanied by a declaration made by the election agent which shall be in the prescribed form, but this subsection shall not apply where the candidate is his own election agent and subsection (2) shall then apply.

(2) Where a candidate is his own election agent the return submitted under section 146(1) shall be accompanied by a declaration by the candidate in the prescribed form.

(3) When subsection (1) and (2) do not apply, the candidate shall within seven days of the submission by the election agent of the return required by section 146(1) transmit or cause to be transmitted to the returning officer a declaration in the prescribed form verifying the declaration by the election agent:

Provided that where the candidate is out of the Falkland Islands when the return under section 146(1) is transmitted, the declaration required by this subsection may be made within fourteen days of his return to the Falkland Islands, but the election agent is not by such absence of the candidate excused from complying with section 146(1) or subsection (1) of this section.

(4) Every declaration required by this section shall be made before and subscribed by a justice of the peace.

(5) A candidate or election agent who knowingly makes a declaration required by this section falsely is guilty of a corrupt practice.

#### **148 Cases where return and declarations are not needed**

Notwithstanding sections 146 and 147, no return as to election expenses shall be required of a person-

- (a) who is a candidate at an 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 in the election.

#### **149 Punishment for failure to comply with sections 146 and 147**

Subject to the provisions of section 150, if an election agent or candidate fails to comply with the requirements of section 146 or 147 he is guilty of an illegal practice.

#### **150 Authorized excuses for failures as respects return and declarations**

(1) A candidate or his election agent may apply for relief under this section to the Supreme Court or to the Senior Magistrate.

(2) Relief under this section may be granted-

- (a) to a candidate, in respect of any failure to transmit the return and declarations as to election expenses, or any part of them, or in respect of any error or false statement therein; or

- (b) to an election agent, in respect of the failure to transmit the return and declarations which he was required to transmit, or any part of them, or in respect of any error or false statement therein.
- (3) The application for relief may be made on the ground that the failure, error or false statement arose-
- (a) by reason of the illness of the applicant; or
  - (b) where the applicant is the candidate, by reason of the absence, death, illness or misconduct of his election agent or any clerk or officer of such agent;
  - (c) where the applicant is the election agent, by reason of the death or illness of any prior election agent of the candidate, or of the absence, death, illness of any clerk or officer of any election agent or the candidate.
- (4) The court may, after such notice of the application as it shall think fit to order, if any, and on production of such evidence of the grounds stated in the application and of the good faith of the application and otherwise as to the court seems fit, make such order for allowing an authorized excuse for the failure, error or false statement as to the court seems just.
- (5) Where it is proved to the court by the candidate that any act or omission of the election agent in relation to the return and declarations was without the sanction or connivance of the candidate, and 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.
- (6) An order under subsection (4) may make the allowance conditional on the making of the return and declaration in a modified form or within an extended time, and upon compliance with such other terms as to the court seem best calculated for carrying into effect the objects of this Part.
- (7) An order under subsection (4) shall relieve the applicant for the order from any liability or consequences under this Ordinance in respect of the matter excused by the order.
- (8) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with it, is referred to in this Ordinance as the date of the allowance of the excuse.
- (9) The jurisdiction vested by this section in the Supreme Court may be exercised by any judge, sitting in court or in chambers, but shall not be exercisable by the Registrar or a master.
- (10) An appeal shall lie to the Supreme Court from any order of the Senior Magistrate made under this section.

### **151 Power of court to require information from election agent**

- (1) Where on an application under section 150 it appears to the court that any person who is or has been an election agent has refused or failed to make such return, or to supply such particulars, as will enable the candidate and his election agent respectively to comply with the provisions of this Ordinance as to the return or declarations as to election expenses, the court before making an order under the said section, 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 to make the return and declaration, or to deliver a statement of the particulars required to be contained in the return, as to the court seems just, within such time, to such person and in such manner as the court 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 section, the court may order him to pay a fine not exceeding £1,000.

## **152 Inspection of returns and declarations**

(1) This section applies to returns and declarations sent to the returning officer under sections 142, 146 and 147.

(2) The returning officer must arrange for the returns and documents to be kept in safe custody for at least two years after the election to which they relate.

(3) During the first two years-

- (a) the returns and declarations are open to inspection by members of the public;
- (b) the returning officer must make arrangements for them to be made available for inspection during normal working hours; and
- (c) the returning officer must make arrangements for copies of returns or declarations to be provided on request at a charge of 26 pence per sheet.

(4) After the first two years, the returning officer may arrange for returns or declarations to be destroyed.

*[S. 53/Ord. 8/11/w.e.f. 31/8/11.]*

### ***Provisions relating to campaign***

#### **152A Media coverage during campaign: power to make subsidiary legislation**

(1) The Governor may make subsidiary legislation relating to the coverage by the media of the campaign for an election or referendum (or of campaigns for elections, referenda or both generally).

(2) Subsection (3) applies to information or material relating to the campaign for an election or referendum (or to campaigns for elections, referenda or both generally).

(3) Subsidiary legislation made under subsection (1) may include-

- (a) provisions requiring the publication or broadcast of information or material to which this subsection applies;
- (b) provisions restricting (or regulating in some other way) the publication or broadcast of information or material to which this subsection applies; or
- (c) both of those sorts of provisions.

(4) Before making subsidiary legislation containing provisions covered by subsection (3), the Governor must consult those who would be-

- (a) required to publish or broadcast information or material; or
- (b) restricted or regulated in the publication or broadcast of information or material.

(5) Provisions covered by subsection (2) must still comply with the requirements of Part 1 of the Constitution (and, in particular, sections 1(c)(ii), 13, 14 and 16 of the Constitution).

*[S. 54/Ord. 8/11/w.e.f. 31/8/11.]*

### **153 Candidate's right to send election address post free**

(1) A candidate shall be entitled to send free of any charge for postage to each elector one postal communication containing matter relating to the election only and not exceeding 50 grammes in weight.

(2) He shall also, subject as aforesaid, be entitled to send free of any charge for postage to each person entered in the list of proxies for the election one such communication as aforesaid for each appointment in respect of which that person is so entered.

(3) A person shall not be deemed to be a candidate for the purposes of this section unless he is shown as standing nominated in the statement of persons nominated, but until the 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 section if he gives such security as may be required by the Financial Secretary for the payment of postage should he not be shown as standing nominated as aforesaid.

(4) For the purposes of this section the expression "elector" means a person who is registered as an elector in the constituency in the register to be used at the election.

### **154 Right to use certain schools and halls for meetings at elections**

(1) Subject to the provisions of this section a candidate at an election shall be entitled for the purpose of holding public meetings in furtherance of his candidature to the use at reasonable times between the receipt of the writ and the date of the poll of-

- (a) a suitable room in the premises of any school to which this section applies;
- (b) any meeting room to which this section applies.

(2) This section applies to schools owned by the Government, and does not apply to schools which are not so owned.

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

- (a) may be required to pay for the use of the room a charge not exceeding the amount of any actual and necessary expenses incurred in preparing, warming, lighting and cleaning the room to its usual condition after the meeting; and

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

(4) A candidate shall not be entitled to exercise the rights conferred by this section except on reasonable notice; and this section shall not authorize any interference with the hours during which a room in school premises is used for educational 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.

### **155 Disturbance at election meetings**

(1) Any person who at a lawful public meeting to which this section 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 commits an offence which constitutes an illegal practice.

(2) This section applies to a political meeting held in the Falkland Islands between the date of the issue of a writ for the return of a member of the Legislative Assembly for the constituency and the date at which a return to the writ is made.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) If any police officer reasonably suspects any person of committing an offence under subsection (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 commits an offence and is liable on summary conviction to a fine not exceeding £50, and if he refuses or fails so to declare his name and address or if the police officer reasonably suspects him of giving a false name and address, the police officer may without warrant arrest him.

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

If any returning officer at an election or any officer or clerk appointed under Part V of this Ordinance as the case may be, or any partner or clerk of any such person acts as an agent of a candidate in the conduct or management of the election, he shall be guilty of an offence under this Ordinance:

Provided that nothing in this section shall be taken as preventing a candidate from acting as his own agent.

### **157 Police officers not to canvass**

No member of the Falkland Islands 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, at any election and a person acting in contravention of this subsection commits an offence and is liable on summary conviction to a fine not exceeding £1,000:

Provided that nothing in this section shall subject a member of the police force to any penalty for anything done in the discharge of his duty as a member of the force.

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

(1) Any person who, or any director of any body or association corporate which before or during an election, shall, for the purpose of effecting the return of any candidate at the election, make or publish any false statement of fact in relation to the personal character or conduct of the candidate 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; but a candidate shall not be liable nor shall his election be avoided for any illegal practice under this subsection committed by his agent other than his election agent unless-

- (a) it can be shown that the candidate or his election agent has authorized 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
- (b) the Supreme 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.

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

(3) Any person who, before or during an election, knowingly publishes a false statement of the withdrawal of a candidate at the election for the purpose of promoting or procuring the election of another candidate shall be guilty of an illegal practice; but a candidate shall not be liable, nor shall his election be avoided, for any illegal practice under this subsection committed by his agent other than his election agent.

(4) The jurisdiction vested by subsection (2) in the Supreme Court shall be exercised by a judge, sitting either in court or chambers.

## **159 Corrupt withdrawal from candidature**

Any person who corruptly induces or procures any other person to withdraw from being a candidate at an 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.

## **160 Premises not to be used as committee rooms**

(1) If a person hires or uses any premises to which this section applies or any part thereof for a committee room for the purpose of promoting or procuring the election of a candidate, or lets any premises to which this section applies or any part thereof knowing that it was intended to use them or that part as a committee room, he shall be guilty of an illegal hiring.

(2) This section applies to any premises-

- (a) which are licensed for the sale of any intoxicating liquor for consumption on or off the premises or on which refreshment of any kind (whether food or drink) is ordinarily sold for consumption on or off the premises;

- (b) where any intoxicating liquor is supplied to members of a club, society or association, other than a permanent political club; and
- (c) to all schools owned by the Government.

### **161 Payment for exhibition of election notices**

(1) No payment or contract for payment shall for the purpose of promoting or procuring the election of a candidate at an election be made to an elector or proxy for an elector 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 it is the ordinary business of the elector or proxy as an advertising agent to exhibit for payment bills and advertisements and 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 subsection (1) either before, during or after an election, the person making the payment or contract, and if he knew it to be in contravention of this Ordinance, any person receiving the payment shall be guilty of an illegal practice.

### **162 Prohibition of paid canvassers**

If a person is, either before, during or after an election, for the purpose of promoting or procuring the election of a candidate, engaged or employed for payment or promise of payment as a canvasser, the person so engaging or employing him and the person so engaged or employed shall be guilty of illegal employment.

### **163 Providing money for illegal purpose**

Where a person knowingly provides money for any payment which is contrary to the provisions of this Ordinance, or for any expenses incurred in excess of the maximum allowed by this Ordinance, or 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 this Ordinance to be an exception, that person shall be guilty of an illegal payment.

## ***Bribery, treating and undue influence***

### **164 Bribery**

(1) The offence of bribery constitutes a corrupt practice.

(2) A person commits the offence of bribery if he directly or indirectly, by himself or by any person on his behalf-

- (a) gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting at an election or referendum;

[S. 55(2)(a)/Ord. 8/11/w.e.f. 31/8/11.]

- (b) corruptly does any such act as aforesaid on account of any voter having voted or having refrained from voting at an election or referendum;

*[S. 55(2)(b)/Ord. 8/11/w.e.f. 31/8/11.]*

- (c) makes any such gift or procurement as aforesaid to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter at an election or a referendum, or if upon or in consequence of any such gift or procurement as aforesaid he procures or engages, promises or endeavours to procure the return of any person at an election or the vote of any voter at an election or a referendum.

*[S. 55(2)(c)(i) and (ii)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) For the purposes of subsection (2)-

- (a) references to giving money shall include references to giving, tendering, agreeing to give or lend, offering, promising, or promising to procure any money or valuable consideration; and
- (b) references to procuring any office shall include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or 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 to the use of any other person with the intent that that money or any part thereof shall be expended in bribery at any election or referendum.

*[S. 55(3)/Ord. 8/11/w.e.f. 31/8/11.]*

(5) Subsections (1) to (4) inclusive 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 election or referendum.

*[S. 55(4)/Ord. 8/11/w.e.f. 31/8/11.]*

(6) A voter shall be guilty of bribery if before or during an election or referendum 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.

*[S. 55(5)/Ord. 8/11/w.e.f. 31/8/11.]*

(7) A person shall be guilty of bribery if after an election or referendum 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.

*[S. 55(6)/Ord. 8/11/w.e.f. 31/8/11.]*

(8) In this section "voter" includes any person who has or claims to have the right to vote.

## **165 Treating and undue influence**

(1) The offence of treating constitutes a corrupt practice.

(2) A person commits the offence of treating if he corruptly, by himself or by any other person, either before, during or after an election or referendum, directly or indirectly gives or provides,

or pays wholly or in part the expense of giving or providing, any meat, drink or 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;
- (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.

*[S. 56(2)/Ord. 8/11/w.e.f. 31/8/11.]*

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

(4) The offence of undue influence constitutes a corrupt practice.

(5) A person commits the offence 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 at an election or a referendum, or on account of that person having voted or refrained from voting at an election or referendum; or

*[S. 56(3)(a)(i) and (ii)/Ord. 8/11/w.e.f. 31/8/11.]*

- (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 thereby compels, induces or prevails upon an elector or a proxy for an elector either to vote or to refrain from voting at an election or referendum.

*[S. 56(3)(b)/Ord. 8/11/w.e.f. 31/8/11.]*

### *Supplementary*

#### **166 Persons declared to be a candidate by others**

(1) Subsection (2) applies if-

- (a) a person is declared by others to be a candidate at an election without that person's consent;
- (b) the person has not either-
  - (i) assented to the declaration; or
  - (ii) consented to nomination under section 65.

(2) If this subsection applies, nothing in this Part imposes any liability on the person.

*[S. 57/Ord. 8/11/w.e.f. 31/8/11.]*

## **166A Time off for voting**

(1) Subsection (2) applies if-

- (a) an employer gives electors or proxies for electors time off to vote at the election or referendum without making a deduction from their salaries or wages for a period of absence reasonably necessary to allow those persons to vote;
- (b) the following conditions are satisfied-
  - (i) permission is, as far as practicable without injury to the business of the employer, available to all that employer's employees on an equal basis;
  - (ii) permission is not given with a view to inducing a person either-
    - (aa) at an election, to vote for one or more particular candidates; or
    - (bb) in a referendum, to answer a question in a particular way; and
  - (iii) permission is not refused to preventing a person from either-
    - (aa) at an election, voting for one or more particular candidates; or
    - (bb) in a referendum, answering a question in a particular way; and

(2) If this subsection applies, nothing in this Part makes it illegal for the employer to give employees time off to vote.

*[S. 58/Ord. 8/11/w.e.f. 31/8/11.]*

## **167 Rights of creditors**

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 permitted by this Ordinance; or
- (c) the incurring of expenses not authorized by the election agent,

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

## **167A Result of referendum only to be questioned by judicial review (and time limit for judicial review proceedings)**

(1) This section applies to-

- (a) a referendum;
- (b) the conduct of a referendum;
- (c) a decision relating to the conduct of a referendum; and
- (d) the result of a referendum declared by a counting officer or Chief Counting Officer.

(2) The matters listed in subsection (1) may only be challenged by means of proceedings for judicial review.

(3) A court may not grant leave or permission for judicial review proceedings more than 21 days after the result of the referendum was declared (and has no power or jurisdiction to do so).

(4) A court may not in any other way permit an application for judicial review to be made more than 21 days after the result of the referendum was declared (and has no power or jurisdiction to do so).

(5) None of the matters listed in subsection (1) may be challenged or questioned in other proceedings.

*[S. 59/Ord. 8/11/w.e.f. 31/8/11.]*

**PART VII  
LEGAL PROCEEDINGS**

*Questioning of election*

**168 Method of questioning election**

(1) No election and no return to the Legislative Assembly shall be questioned except by a petition complaining of an undue election or undue return ("an election petition") presented in accordance with this Part.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) An election petition shall ask the Supreme Court to determine whether a person or persons has or have been validly elected as a member or members of the Legislative Assembly.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

**169 Presentation and service of election petition**

(1) An election petition may be presented by-

- (a) any person entitled to vote in the election to which it relates;
- (b) any person who was a candidate at that election; or
- (c) the Attorney General.

(2) If the Attorney General is not himself a petitioner, the Attorney General shall be a respondent to an election petition.

(3) There shall be as respondents to an election petition-

- (a) all persons who were candidates at the election save any candidate presenting the petition;
- (b) the returning officer, if the election petition complains of the conduct of the returning officer; and
- (c) any other person whom the Supreme Court may order to be a respondent to the election petition.

**170 Form of election petition**

(1) An election petition shall be in the prescribed form or a form to the like effect with such variations as the circumstances may require, and shall state-

- (a) in which of the capacities mentioned in section 169(1) the petitioner or each of the petitioners presents the petition;

- (b) the date and result of the election to which the petition relates;
- (c) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved,

and shall conclude with a prayer setting out the particulars of the relief claimed.

(2) The petition shall be presented by filing it and at the same time leaving three copies of it at the office of the Supreme Court.

(3) The Registrar of the Supreme Court shall forthwith cause a copy of the petition to be served on every person who by section 169(2) or (3) is required to be a respondent thereto and shall forthwith notify that Chief Justice of the filing of the petition.

### **171 Time for presentation of election petition**

(1) Subject to the provisions of this section, an election petition shall be presented within twenty-eight days after the date of first publication of the result of the election to which the petition relates.

(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 a candidate or on his account or with his privity since the date specified in subsection (1) in pursuance or in furtherance of the alleged corrupt practice it may be presented within twenty-eight days of the date of 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) not later than the expiration of twenty-eight days after the day specified in subsection (4);
- (b) if specifically alleging a payment of money or some other act to have been made or done since the day so specified by a member to whose election or an agent of his, or with the privity of that member or his election agent, in pursuance or in furtherance of the alleged illegal practice, within twenty-eight days after the date of payment or other act.

(4) The said day is the tenth day after the end of the time allowed for transmitting to the returning officer returns as to election expenses at the election or, if later-

- (a) that on which the returning officer receives the return and declarations as to election expenses by the said member and his election agent; or
- (b) where the return and declarations are received on different days; or
- (c) where there is an authorized 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 election petition presented within the time limited by subsections (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 Supreme Court within the time within which a petition questioning the election upon the allegation of that illegal practice could be presented under subsection (3).

(6) Subsections (3), (4) and (5) apply notwithstanding that the act constituting the alleged illegal practice amounted to a corrupt practice and shall apply to a corrupt practice under section 142 as if it were an illegal practice.

(7) For the purposes of this section, an allegation that an election is avoided by reason of any offence committed shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.

### **172 Security for costs of an election petition**

(1) Where the petitioner on an election petition is the Attorney General or the petitioners on an election petition include the Attorney General, the Supreme Court shall not have power to order that any security for the costs of the petition be given to the respondents or any of them.

(2) Except as provided by subsection (1), the Supreme Court may, on the application of any respondent made to it at any time following the service upon him of an election petition, and shall if on application by the Attorney General, order that the petitioner, or in the case of a petition by more than one person, order that any petitioner give or all or any of joint petitioners do each give, security for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.

(3) Any security ordered by the Supreme Court under subsection (2) shall-

- (a) be of such amount;
- (b) be given within such time;
- (c) be given in such manner; and
- (d) be given to such person,

as the Supreme Court may in its discretion order and an order under this section may be made *ex parte*.

(4) The Supreme Court may on application by any party at any time vary in such manner as it thinks fit any order made by it under subsection (3), and may discharge any such order.

(5) If any petitioner shall fail to comply with any order made under one of the preceding provisions of this section, the Supreme Court may strike out the petition of that petitioner but, where the petition is made jointly with any other person, without prejudice to the petition of that other person.

### **173 Consolidation of petitions**

Where more petitions than one are presented relating to the same election in the same constituency, unless the Supreme Court otherwise orders, all those petitions shall be dealt with as one petition.

### **174 Trial of petition**

(1) An election petition shall be tried in open court, without a jury, and notice of the time and place of trial shall be given by the Registrar of the Supreme Court to the parties.

(2) The Supreme Court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicably consistent 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 election petition shall be proceeded with notwithstanding the acceptance by any respondent whose membership of the Legislative Assembly may be affected by the petition has been vacated by reason of any event or matter referred to in sections 29, 30 or 31 of the Constitution occurring after the date of presentation of the petition and notwithstanding the prorogation or dissolution of the Legislative Assembly under section 34 of the Constitution.

*[Ss. 4(1) and 60(a) and (b)/Ord. 8/11/w.e.f. 31/8/11.]*

(4) On the trial of an election petition, unless the Supreme Court otherwise directs, any charge of a corrupt practice or an illegal practice may be gone into and evidence in relation thereto received, before any proof has been given of agency on behalf of any candidate in respect thereof.

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

(6) If it appears that, in the election to which the election petition relates, there was an equality of votes between any candidates, and that the addition of a vote would entitle any of those candidates to be declared elected, then-

- (a) any decision under section 126 shall, in so far as it determines the question between those candidates, be effective also for the purposes of the election petition;
- (b) in so far as that question is not determined by such a decision, the Supreme Court shall decide between them by lot and proceed as if the one on whom the lot then falls had received an additional vote.

### **175 Witnesses**

(1) Witnesses shall be summoned and sworn in the same manner as nearly as circumstances admit as in a civil action tried by the Supreme Court.

(2) The Supreme Court may, of its own motion, as well as on the application of any party to the petition, require any person who appears to it to have been concerned in the election to attend as a witness.

(3) The Supreme Court may examine any person required under subsection (2) to attend or who is in court although he is not called and examined by any party to the petition, and any person so examined by the court may, after such examination, be cross-examined by any party to the petition.

(4) The Attorney General shall 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, unless he is given leave by the Supreme Court not to do so, he shall examine him as a witness.

(5) A person called as a witness respecting an election before the Supreme Court on the trial of an election petition shall not be excused from answering any question relating to any offence at or connected with the election, on the ground that the answer thereto may criminate or tend to criminate that person or any other person or on the ground of privilege; but-

- (a) a witness who answers truly all questions which he is required to answer shall be entitled to receive a certificate of indemnity under the hand of the trial judge stating that the witness has so answered; and
- (b) an answer by a person to a question put by or before the Supreme Court on the trial of an election petition shall not, except in the case of a criminal proceeding for perjury in respect of the evidence, be in any proceeding, civil or criminal, admissible in evidence against that person or his spouse.

(6) Where a person has received a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any alleged offence to which the certificate relates, the court having cognizance of the case shall on production of the certificate stay the proceeding and in its discretion award to the said person such costs as he may have been put to in the proceeding.

(7) Nothing in this section shall be deemed to relieve a person receiving a certificate of indemnity from any incapacity under this Ordinance or under the Constitution or from any proceedings to enforce that incapacity (other than a criminal prosecution).

## **176 Conclusion of trial of an election petition**

(1) At the conclusion of the trial of an election petition the Supreme Court shall determine whether the member whose election or return is complained of, or any and what other person, was duly returned or elected or whether the election was void, and shall forthwith certify in writing the determination and the determination so certified shall be final and no appeal shall lie from such determination.

(2) The Supreme Court shall at the same time as it certifies its determination make a special report to the Governor as to matters arising in the course of the trial an account of which ought, in the opinion of the court, to be submitted to the Legislative Assembly.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) The Governor, on receiving a certificate under subsection (1) or a special report under subsection (2) shall-

- (a) give such direction for confirming or altering the return as may be necessary;

- (b) issue such writ for a new election as may be necessary;
- (c) issue such direction for carrying the determination into execution as may be necessary;  
and
- (d) cause the determination and special report (if any) to be laid before the Legislative Assembly at its next sitting.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

### **177 Withdrawal of an election petition**

- (1) An election petition by a person other than the Attorney General shall not be withdrawn except with the leave of the Attorney General or of the Supreme Court.
- (2) An election petition by the Attorney General may be withdrawn at any time before the determination thereof.
- (3) Leave to withdraw an election petition shall not be granted unless the Attorney General or, as the case may be, the Supreme Court, is satisfied that no agreement or terms of any kind whatsoever has or have been made, and no undertaking has been entered into, as to withdrawal of the petition, except such an agreement or undertaking in relation to costs or withdrawal of any allegation contained in the petition as may be lawful and that there are good and adequate grounds for the withdrawal of the election petition.

### **178 Punishment for corrupt withdrawal**

- (1) Any person who makes an agreement or agrees terms or enters into any undertaking as to the withdrawal of an election petition by him shall disclose the same to the Attorney General or, as the case may be, to the Supreme Court at the same time as he applies under section 177(1) for leave to withdraw the election petition.
- (2) Any person who, whether the agreement terms or undertaking in question was or were lawful or not, in contravention of subsection (1) fails to disclose it or them or any of them commits an offence and is liable on conviction to imprisonment for a term not exceeding twelve months or a fine not exceeding £1,000 or to both such imprisonment and fine.

### **179 Abatement of petition etc.**

- (1) Where the Attorney General is the petitioner or a petitioner on an election petition, the petition shall not be abated by any change in the person holding or acting in the office of Attorney General, and where the Attorney General is the respondent or a respondent to an election petition, it shall not be necessary to re-serve the petition merely because the person holding or acting in the office of Attorney General changes before the petition is determined.
- (2) Where a sole petitioner or the survivor of joint petitioners dies, the election petition shall not thereby be abated and the Attorney General shall be substituted as petitioner and shall cease to be a respondent thereto.

(3) Where by virtue of subsection (2) the Attorney General becomes a petitioner nothing in that subsection shall prevent him from withdrawing that petition, but subject to subsections (4) and (7).

(4) Upon the Attorney General becoming the petitioner under subsection (2), he shall cause notice of that fact and of the effect of subsections (5) and (6) to be published in the Gazette.

(5) Any person who might have been a petitioner in respect of the petition within fourteen days of the publication of the notice required by subsection (4) apply to the Supreme Court to be substituted as a petitioner in place of a deceased petitioner and the court may, if it thinks fit, substitute him accordingly.

(6) Section 172 applies in respect of a petitioner substituted under subsection (5) as it does to an original petitioner.

(7) The Attorney General may-

(a) withdraw a petition in respect of which he is the sole petitioner under subsection (2)-

(i) if no application is made under subsection (5) within the time limited thereby;

(ii) if all applications (if any) under subsection (5) are refused by the Supreme Court;

or

(b) give notice to all parties and to the court that he ceases to be a petitioner by virtue of subsection (2) if an application under subsection (5) is granted by the Supreme Court,

but where the Attorney General gives notice under paragraph (b) of this subsection he shall again be a respondent to the election petition.

### **180 Notice of intention not to oppose petition**

(1) A respondent to an election petition, other than the Attorney General and the returning officer (if a respondent) may give notice to the court, the petitioner and all other respondents that he does not intend to oppose the petition and, if he does so he shall not be allowed to appear or act as a party against the petition in any proceedings thereon, but he may nevertheless be ordered to pay the whole or any part of the costs of the petition and any proceedings attendant thereon if the court considers that by his act, default or neglect he has caused or contributed to the petition being brought.

(2) If the Supreme Court, on notice being given pursuant to subsection (1), considers that it would be just and expedient to give an opportunity to any person not presently a party to the proceedings an opportunity to be heard therein, it may make such order or orders as it thinks fit to make for that purpose.

### **181 Costs of petition**

(1) All costs of and incidental to the presentation of an election petition and the proceedings consequent thereon, except such as are by this Ordinance otherwise provided for, shall be defrayed by the parties to the petition and former parties to the petition in such proportions as the

Supreme Court may determine, except that no order for costs may be made against the Attorney General in his private capacity.

(2) Without prejudice to the generality of subsection (1), the Supreme Court may order any party who in its opinion by vexatious conduct, unfounded allegations or unfounded objections incurs or causes any needless expense to defray those costs whether or not he is on the whole successful.

(3) An order for costs made under this section may be enforced in the same manner as an order for costs in a civil action tried in the Supreme Court.

### *Consequences of finding of a corrupt or illegal practice*

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

(1) The report of the court under section 176 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 election, and the nature of the corrupt or illegal practice.

(2) For the purposes of sections 183 and 184 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 if it is reported that an illegal practice was committed with the knowledge and consent of a candidate at an 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 been guilty by his agents of any corrupt or illegal practice in reference 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; and
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election; and
- (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 section 183 as having been reported guilty by his agents of the offences mentioned in the report.

### **183 Avoidance of election and incapacity of candidate reported guilty of a corrupt or illegal practice**

(1) If a candidate who has been elected is reported by the Supreme Court personally guilty or guilty by his agents of any corrupt or illegal practice his election shall be void.

(2) A candidate at an election shall also be incapable from the date of the report of being elected to and sitting in the Legislative Assembly-

- (a) if reported personally guilty of a corrupt practice, for ten years;
- (b) if reported guilty by his agents of a corrupt practice or personally guilty of an illegal practice, for seven years;
- (c) if reported guilty by his agents of an illegal practice, until the Legislative Assembly is next dissolved.

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

### **184 Provisions applying to all persons reported personally guilty of a corrupt or illegal practice**

(1) The report of the Supreme Court under section 176 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 a person who is not a party to the petition nor a candidate on behalf of whom the seat is claimed by the petition, the Supreme 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 himself and of calling evidence in his defence to show why he should not be so reported.

(2) The report shall be transmitted to the Attorney General who may, if he considers that any person in respect of whom a certificate of indemnity has not been given may properly be prosecuted for an offence disclosed by the report, direct or institute a prosecution of any such person.

(3) Subject to section 193, a candidate or other person reported by the Supreme 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;
- (b) of holding any public or judicial office.

(4) Subject to the provisions of section 193, a candidate or other person reported by the Supreme Court personally guilty of an illegal practice shall for five years from the date of the report be incapable of being registered as an elector or voting at any election.

### ***Further provisions as to avoidance of elections and striking off votes***

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

(1) Where on an election petition it is shown that corrupt or illegal practices or illegal payments, employments or hirings committed in reference to the election for the purpose of promoting or

procuring the election of any person thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void and he shall be incapable of being elected to fill the vacancy or any of the vacancies for which the election was held.

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

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

(1) Where, on an 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 the election there shall, on a scrutiny, be struck off from the number of votes appearing to have been given to the 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 election votes at the election, his vote shall be void.

(3) If any person who is by virtue of any provision of this Ordinance subject to an incapacity to vote at an election votes at that election, his vote shall be void.

### *Power to except innocent act from being illegal practice, etc.*

### **187 Power to except innocent act from being illegal practice, payment, employment or hiring**

(1) An application for relief under this section may be made to the Supreme Court or to the Senior Magistrate.

(2) 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 section by reason of being in contravention of his Ordinance 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 as to the court seems fit,

and under the circumstances it seems to this court to be just that either that or any other person should not be subject to any of the consequences under this Ordinance 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 Ordinance making it an illegal practice, payment, employment or hiring and thereupon no person shall be subject to any of the consequences under this Ordinance or the said act or omission.

(3) The jurisdiction vested by subsection (1) in the Supreme Court may be exercised only by a judge, but may be exercised by him in open court or in chambers.

(4) The jurisdiction vested by subsection (1) in the Senior Magistrate is not exercisable at all if an election petition has been filed in respect of the election but otherwise may be exercised otherwise than in open court.

(5) An appeal lies to the Supreme Court from any order of the Senior Magistrate under this section.

### *Prosecution for corrupt or illegal practices*

#### **188 Authority of Attorney General required for prosecution**

No prosecution for a corrupt or illegal practice shall be commenced except by or with the written authority of the Attorney General.

#### **189 Prosecutions for corrupt practice**

(1) A corrupt practice shall only be triable on indictment before the Supreme Court.

(2) A person who commits an offence which constitutes a corrupt practice, other than personation or aiding or abetting, counselling or procuring the commission of the offence of personation is liable on conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding £5,000 or to both such imprisonment and fine.

(3) A person who commits the offence of personation or of aiding, abetting or procuring the commission of the offence of personation is liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding £7,000 or to both such imprisonment and fine.

(4) A person shall not be convicted of personation on the uncorroborated evidence of one witness.

#### **190 Prosecutions for illegal practice**

(1) A charge or information alleging an illegal practice shall be triable summarily by the Senior Magistrate.

(2) A person who commits an offence which constitutes an illegal practice is liable on conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £1,000 or to both such imprisonment and fine.

#### **191 Conviction of illegal practice or charge of corrupt practice, etc.**

A person tried by the Supreme Court on an indictment alleging a corrupt practice may, if the circumstances warrant such finding, be convicted of an illegal practice (which for that purpose shall be an indictable offence), and any person tried by the Senior Magistrate on any charge or information alleging an illegal practice may be convicted of that offence notwithstanding that the act or acts alleged amounted to a corrupt practice.

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

Subject to the provisions of section 193, but in addition to any punishment imposed as provided by the foregoing provisions-

- (a) a person convicted of a corrupt practice shall be subject to the incapacities imposed by section 184(3) as if at the date of the conviction he had been reported personally guilty of a corrupt practice; and
- (b) a person convicted of an illegal practice shall be subject to the incapacities imposed by section 184(4) as if at the date of the conviction he had been reported personally guilty of that illegal practice.

### *Mitigation of penalties*

## **193 Mitigation of penalties**

- (1) Where any person is subject to any incapacity by virtue of the report of the Supreme Court, and 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 before whom he is tried 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 aforesaid is on a prosecution convicted of any such matters as aforesaid, 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 section 183 or 184 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 subsections (1) and (2) of this section, 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 the said 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 thereof by an election court, no further incapacity shall be imposed on him under section 184 by the reason of the report.
- (5) Where any person is subject to any incapacity by virtue of a conviction or of the report of the Supreme 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 Supreme 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.
- (6) The jurisdiction vested in the Supreme Court by subsection (5) shall be exercised by a judge in open court.

## *Illegal payments, employments or hirings*

### **194 Illegal payments, employments or hirings**

(1) A person who commits an offence of illegal payment, employment or hiring is liable on summary conviction to a fine not exceeding £500; and on a prosecution for such an offence it shall be sufficient to allege that the person charged was guilty of an illegal payment, employment or hiring as the case may be.

(2) A candidate or election agent who is personally guilty of an offence of illegal payment, employment or hiring shall be guilty of an illegal practice.

(3) Any person charged with an offence of illegal payment, employment or hiring may be found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

## *General provisions as to prosecutions*

### **195 Time limit for prosecutions**

(1) A proceeding against a person in respect of any offence to which this section applies shall be commenced within one year after the offence was committed, and the time so limited by this section shall, in the case of any proceedings where by another enactment a different time limitation would apply, the provisions of this subsection shall apply in relation to that proceeding.

(2) For the purpose of this section the issue of a summons, warrant or other process shall be deemed to be a commencement of a proceeding, where the service or execution of the same on or against the alleged offender is prevented by the absconding or concealment or act of the alleged offender, but save as aforesaid service or execution of the same on or against the alleged offender, and not the issue thereof, shall be deemed to be the commencement of the proceeding.

(3) This section applies to any corrupt or illegal practice, any illegal payment, employment or hiring and any offence under sections 156 or 178.

### **196 Offences by corporations**

Where any corrupt or illegal practice or any illegal payment, employment or hiring 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 are liable to any fine or punishment imposed for that offence by this Ordinance.

### **197 Evidence by certificate of holding of election**

On any prosecution for a corrupt or illegal practice or for any illegal payment, employment or hiring the certificate of the Attorney General that the election mentioned in the certificate was duly held and that the person named in the certificate was a candidate at the election shall be sufficient evidence of the facts therein stated.

## *Supplemental*

### **198 Rules of procedure**

The Chief Justice may make rules of court for the purposes of Part VIII and this Part.

### **199 Costs**

The rules and regulations of the Supreme Court with respect to costs to be allowed in actions, causes and matters in the Supreme Court shall in principle and so far as practicable apply to the costs of petitions and other proceedings under Part VIII and this Part, and whether the proceedings took place in the Supreme Court or before the Senior Magistrate.

### **200 Service of notices**

(1) Any summons, notice or document required to be served on any person with reference to any proceeding respecting an election for the purpose of requiring him to appear before the Supreme Court or the Senior Magistrate or otherwise or of giving him an opportunity of making a statement, or showing cause or being heard by himself by 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 to his last known place of abode in the Falkland Islands; 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 section it shall be sufficient to prove that the letter was posted prepaid and properly addressed.

## **PART VIII DETERMINATIONS BY SUPREME COURT AS TO WHETHER PERSON HAS CEASED TO BE A MEMBER OF THE LEGISLATIVE ASSEMBLY**

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

### **201 Vacation petitions and cesser petitions**

(1) The question as to whether a member of the Legislative Assembly has vacated his seat therein ("a vacation petition") or is required under section 31(1) of the Constitution to cease to perform his functions as such may be referred to the Supreme Court only by a petition presented in accordance with this Part.

*[Ss. 4(1) and 61(2)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) A vacation petition shall ask the Supreme Court to determine whether the member of the Legislative Assembly specified therein has vacated his seat in the Legislative Assembly.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(3) A cesser petition shall ask the Supreme Court to determine whether the member of the Legislative Assembly specified therein is required under section 31(1) of the Constitution to cease to perform his functions as a member of the Legislative Assembly.

*[Ss. 4(1) and 61(3)/Ord. 8/11/w.e.f. 31/8/11.]*

## **202 Presentation of vacation petitions and cesser petitions**

(1) A vacation petition or a cesser petition may be presented-

- (a) in the case of an elected member of the Legislative Assembly by any person registered as a voter in the constituency for which the member concerned was elected; and

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (b) in the case of any member of the Legislative Assembly, elector or otherwise-

- (i) by any elected member of the Legislative Assembly; or

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (ii) by the Attorney General.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) If the Attorney General is not himself a petitioner, the Attorney General shall be a respondent to the petition.

(3) There shall be as respondents to a petition under this Part-

- (a) the member whose seat in the Legislative Assembly is the subject of the petition; and

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (b) any other person whom the Supreme Court may order to be a respondent to the petition.

## **203 Form of vacation petitions and cesser petitions**

(1) A vacation petition and a cesser petition shall be in the prescribed form or a form to the like effect and shall state-

- (a) in which of the capacities mentioned in section 202(1) the petitioner or each of the petitioners presents the petition;

- (b) the name of the member to whom the petition relates and-

- (i) a statement as to whether or not he is an elected member of the Legislative Assembly;

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (ii) if it is stated that the member is an elected member of the Legislative Assembly, the constituency in respect of which he is such member;

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (iii) if it is stated that the member is not an elected member of the Legislative Assembly, the public office he holds by reason of which he became a member of the Legislative Assembly;

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (c) the grounds on which relief is sought, setting out with sufficient particularity the facts relied on but not the evidence by which they are to be proved.

(2) The petition shall be presented by filing it and at the same time leaving three copies of it at the office of the Supreme Court.

(3) The registrar of the Supreme Court shall forthwith cause a copy of the petition to be served on every person who by section 202(3) is required to be a respondent thereto and shall forthwith notify the Chief Justice of the filing of the petition.

#### **204 Certificates as evidence**

(1) Subsection (3) applies to a certificate signed by the Attorney General that, on the date specified in the certificate, a person named in the certificate was-

- (a) member of the Legislative Assembly; and
- (b) either-
  - (i) an elected member of the Legislative Assembly for the constituency specified in the certificate; or
  - (ii) an *ex officio* member of the Legislative Assembly by virtue of holding the public office specified in the certificate.

(2) Subsection (3) also applies to a certificate signed by the Governor that, on the date specified in the certificate, a person named in the certificate was sentenced by a court in an overseas country (which must be specified in the certificate) to imprisonment (by whatever name called) for a term of at least 12 months.

(3) A certificate to which this subsection applies is conclusive evidence of the facts stated in the certificate.

[S. 62/Ord. 8/11/w.e.f. 31/8/11.]

#### **205 Application of certain provisions of Part VII**

Sections 175, 179 to 181 inclusive and 198 shall apply in a respect of a petition under any provision of this Part as they do to a petition under Part VII above.

#### **206 Powers of Supreme Court on determination of petition under this Part**

(1) On determination of a vacation petition the Supreme Court may declare that the seat of the member of the Legislative Assembly is vacant.

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

(2) On determination of a cesser petition the Supreme Court may order the member of the Legislative Assembly to cease to perform his functions.

[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]

(3) The Supreme Court shall forthwith upon determining a petition under this Part transmit to the Governor a copy of an order in writing under the seal of the Court incorporating the terms of the determination of the Court.

## **207 Powers of Governor in certain cases**

(1) Where the Supreme Court has ordered on a petition under this Part that a member of the Legislative Assembly shall cease to perform his functions as such and the person is a member of the Legislative Assembly by virtue of his holding some office in the public service, the Governor acting in his discretion may remove that person from that office forthwith and appoint another person in his place and notwithstanding that the person the subject of the petition may be pursuing an appeal against the conviction or sentence which gave rise to the order of the Supreme Court.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

(2) Nothing in subsection (1) shall be construed as in any way-

- (a) preventing the Governor acting in his discretion from removing a public officer who by virtue of his office is a member of the Legislative Assembly from that office otherwise than in exercise of his powers under that subsection; or

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

- (b) preventing the Governor from re-appointing the person concerned if, at any future time, section 31(1) of the Constitution no longer requires him to cease to perform functions as a member of the Legislative Assembly.

*[Ss. 4(1) and 63/Ord. 8/11/w.e.f. 31/8/11.]*

## **208 Supplementary to section 206**

Nothing in any order under section 206 shall itself impose any disqualification from election as a member of the Legislative Assembly, but a person who is the subject of such an order is disqualified from election as a member of the Legislative Assembly if he would otherwise be so disqualified.

*[S. 4(1)/Ord. 8/11/w.e.f. 31/8/11.]*

## **PART IX GENERAL**

### *Transitional provisions*

## **209 Existing registers**

Until registers first come into force under the provisions of this Ordinance, the registers and lists last in force immediately before the enactment of this Ordinance shall remain in force and shall be used for the purposes of any election held before the registers first came into force under this Ordinance.

## *Regulations*

### **210 Regulations**

The Governor may make regulations-

- (a) prescribing fees to be paid in connection with anything done under this Ordinance;
- (b) prescribing forms to be used for the purposes of this Ordinance; and
- (c) prescribing any other matter necessary or convenient for the purposes of this Ordinance.

### **210A Matters not prescribed under section 210**

(1) Subsection (2) applies if something is to be done in a prescribed way but regulations prescribing the way in which that thing is to be done have not been made under section 210.

(2) If this subsection applies, the thing is to be treated as having been done in the prescribed way if it is done in a way that is reasonable in all of the circumstances.

*[S. 64/Ord. 8/11/w.e.f. 31/8/11.]*

## *Miscellaneous*

### **211 Penalty for certain offences**

In respect of any offence under any provision of this Ordinance in relation to which no other penalty is prescribed, a person committing that offence is liable on conviction to a fine not exceeding £250.

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<sup>i</sup> Section 47(5) provides for an amendment to subsection (6). However, it is clear that subsection (6A) is intended. The author has therefore amended this subsection.