1964 No. 1141 (S. 75)

COURT OF SESSION, SCOTLAND

Act of Sederunt (Rules of Court Amendment No. 2) 1964

Made - - - -	21*st July* 1964
Coming into Operation	21*st July* 1964

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a), section 160(3) of the Representation of the People Act 1949(b) and of all other powers competent to them in that behalf, do hereby enact as follows:—

1. The Rules of Court(c) shall be amended by deleting Rules 300 to 336 both inclusive and by substituting therefor the Rules set forth in Schedule 1 hereto.

2. The Forms appended to the Rules of Court(c) shall be amended by deleting forms 35 to 40 and substituting therefor the Forms set forth in Schedule 2 hereto.

3. This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 2) 1964, and shall come into operation on 21st July 1964.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

J. L. Clyde,
I.P.D.

Edinburgh.
21st July 1964.

SCHEDULE 1

300. Presentation of petition.—(*a*) The presentation of a parliamentary election petition shall be made by lodging it in the Petition Department together with a process and ten full copies of the petition.

(*b*) On receipt of said Petition a copy thereof shall be sent by the Deputy Principal Clerk of Session to the returning officer of the constituency to which said Petition relates.

301. Form of petition.—(*a*) A parliamentary election petition shall be as nearly as possible in the form shown in Form 35.

(*b*) A parliamentary election petition shall specify the names and designations of the petitioner or petitioners and of the person or persons referred to as,

(a) 23 & 24 Geo. 5. c. 41. (b) 12 & 13 Geo. 6. c. 68.
(c) S.I. 1948/1691 (1948 I, p. 3778).

or deemed to be, the respondent or respondents in terms of section 108(2) of the Representation of the People Act 1949, in this section called "the Act", and shall set forth articulately in numbered paragraphs:—

(i) The right of the petitioners within section 108(1) of the Act:

(ii) The proceedings at and the result of the election; and

(iii) The facts relied on in support of the prayer of the petition.

302. Notice of solicitor's name and address for notices.—(*a*) Along with the petition there shall be lodged in the Petition Department a writing signed by or on behalf of the petitioner giving the name of an enrolled solicitor whom he authorises to act on his behalf, or stating that he acts for himself, as the case may be, and in either case giving an address within three miles of the General Post Office, Edinburgh at which notices addressed to him may be delivered.

(*b*) The Deputy Principal Clerk of Session shall keep a book at his office, in which he shall enter all addresses and the names of solicitors given under the preceding paragraph of this Rule.

303. Caution for expenses.—In the event of the security to be given by the petitioners in terms of section 119 of the Act being in whole or in part by bond of caution, the bond of caution as required by the Act shall be as nearly as may be in the form shown in Form 37 and shall, within three days of presentation of the petition, be lodged with the Deputy Principal Clerk of Session.

304. Deposit in security.—In the event of the required security being in whole or in part by a deposit of money, such money shall be placed on deposit receipt with one of the joint stock Banks in Scotland in name of the Accountant of Court, and the deposit receipt therefor shall, within three days of presentation of the petition, be lodged in process and shall be retained as a security for the purpose for which security is required by the Act.

305. Sufficiency of caution.—When security is tendered in the form of a bond of caution lodged as aforesaid, the sufficiency thereof shall be attested to the satisfaction of the Deputy Principal Clerk of Session.

306. Service of petition.—The petitioner if he acts for himself or the solicitor for the petitioner shall within five days of the presentation of the petition serve on the respondent a notice of the presentation of the petition, a notice of the nature of the proposed security, and a copy of the petition and shall within five days thereafter lodge in process a copy of the petition with execution of service thereon in the form as nearly as may be *mutatis mutandis* of the form of execution of service of a summons, and with a copy of the notice of the presentation of the petition and of the nature of the proposed security appended thereto.

307. Objections to security.—(*a*) The time within which the respondent may object to any bond of caution in terms of section 119(4) of the Act shall be five days after service of the notice of the proposed security.

(*b*) The objection shall be lodged in the Petition Department, and shall set forth in writing the specific ground or grounds thereof.

(*c*) When the petitioner has named a solicitor or given an address in terms of Rule 302, the respondent shall deliver a copy of the objection to the solicitor or send the same by post to the address given, so that it shall be received by the solicitor or delivered at the address on or before the date of lodging the objection.

308. Diet for hearing on objections to security.—As soon as possible after the lodging of the objection, the Deputy Principal Clerk of Session shall fix a diet for the hearing thereof and shall give notice of the time and place of the diet to the parties or their Solicitors.

309. Hearing on objections.—(*a*) At the diet for the hearing of the objection the Deputy Principal Clerk of Session shall hear the submissions of any parties who shall be present or represented by counsel or solicitors and shall forthwith allow or disallow the objection.

(*b*) If the objection shall be allowed, the Deputy Principal Clerk of Session shall, in his deliverance to that effect, state the amount of deposit or additional deposit required to make the security sufficient.

(*c*) the time within which the petitioner may remove the objection by a deposit of money shall be five days from the date of the deliverance of the Deputy Principal Clerk of Session; provided that within the said time the petitioner may mark an appeal to one of the judges on the rota for the trial of parliamentary election petitions, or to the Vacation Judge, in which case the said period shall run from the date of the deliverance of that judge.

310. List of election petitions.—(*a*) In preparing the list of parliamentary election petitions in terms of section 121(1) of the Act, the Deputy Principal Clerk of Session shall insert the names of the solicitors (if any) acting for the petitioners and respondents, and the addresses (if any) to which notices may be sent.

(*b*) The list of parliamentary election petitions may be inspected at the Petition Department at any time during office hours.

311. Time and place of trial.—The time and place of the trial of a parliamentary election petition shall be fixed by one of the judges on the rota for the trial of parliamentary election petitions or the Vacation Judge, and the Deputy Principal Clerk of Session shall intimate the diet of trial by post to the parties and to the returning officer, at least fifteen days before the day appointed for the trial; and the returning officer shall forthwith publish the same in the county, or burgh or burghs to which it relates.

312. Interlocutory matters.—All interlocutory questions and matters, except as otherwise provided in the Act or by these Rules, shall be made upon motion and intimated to the other party or parties.

313. Procedure where seat claimed.—(*a*) When a petitioner claims the seat for an unsuccessful candidate, alleging that he had a majority of lawful votes, the party complaining of and the party defending the election or return shall, at least six days before the day appointed for the trial, respectively lodge in process a list of the voters intended to be objected to, and of the objections to each such voter, and shall send a copy of that list to the other party or parties to the petition.

(*b*) No evidence shall be allowed to be given against any vote or in support of any objection which is not specified in the list, except by leave of the Election Court or, on motion heard before the date of the trial, of any of the judges, upon such terms as to amendment of the list, postponement of the enquiry, and payment of expenses as may be ordered.

314. Evidence of undue return under section 122(5) of the Act.—(*a*) On the trial of a petition complaining of an undue return, and claiming the seat for some person, when a respondent intends to give evidence to prove that the election of such person was undue, under authority of section 122(5) of the Act, such respondent shall, at least six days before the day appointed for the trial, lodge in process a list of the objections to the election upon which he intends to rely, and shall send a copy of that list to the other party or parties to the petition.

(*b*) No evidence shall be allowed to be given by or for a respondent in support of any objection to the election not specified in the list, except by leave of the Election Court or, on motion heard before the date of the trial, of any of the judges, upon such terms as to amendment of the list, postponement of the enquiry, and payment of expenses, as may be ordered.

315. Postponement of trial.—(*a*) It shall be competent for the Election Court or any of the judges on the rota for the trial of parliamentary election petitions, on special cause shown by a party to the petition or *ex proprio motu*, to postpone the trial of a petition to such day as he may name.

(*b*) Notice of such postponement shall be sent by the Deputy Principal Clerk of Session to the returning officer who shall forthwith publish the same within the constituency.

316. Statement of particulars.—Any party to the petition may, at least six days before the day appointed for the trial, lodge in process a statement of the matters upon which he intends to lead evidence; provided that a copy of such statement shall first have been sent to the other party or parties to the petition.

317. Evidence at trial.—No evidence shall be received at the trial except as to matters contained in the lists referred to Rules 313 and 314 and the statements referred to in Rule 316, if any, and tending to support or rebut the same, or matters which have already been sufficiently set forth in the petition, except by leave of the Court or one of the judges, and upon such conditions as to postponement of the trial, payment of expenses, and otherwise, as may be ordered; provided that the admissibility of any evidence sought to be led on the above matters shall be within the discretion of the Election Court.

318. Warrant to cite witnesses.—The warrant for the citation of witnesses to the trial of any election petition shall be issued on the motion of any party to the trial, and shall be as nearly as may be in the form shown in Form 38.

319. Expenses of witnesses.—The reasonable expenses of any witness shall be ascertained by the clerk of court, and upon a certificate under his hand allowing the same, the said expenses shall, in the first instance, be paid by the party adducing such witness.

320. Clerk of Court at trial.—At any Election Court held for the trial of a parliamentary election petition, an officer to be named by the Principal Clerk of Session with the sanction of the Court, shall attend and discharge the duties of clerk of court, in like manner and to the like effect as the clerks of the Circuit Courts of Justiciary, and shall, subject to the direction and orders of the presiding judge, keep a record of the proceedings at the trial, which shall be conducted in like manner as trials are conducted in the Circuit Courts of Justiciary; and the record of the proceedings at the trial shall be transmitted by that officer to the office of the Principal Clerk of Session.

321. Application to state special case.—(*a*) The application to state a special case, as provided in section 126(1) of the Act, shall be made by motion to either Division of the Inner House, or to the Vacation Judge.

(*b*) Parties shall be given an opportunity to be heard on the said motion, and the application shall be disposed of either by allowing adjustment of a special case or by refusal of the application.

322. Opinion of Court under section 126(2) of the Act.—If it shall appear to the Election Court to be expedient that the opinion of the Court should be obtained, as provided for by section 126(2) of the Act, the question or questions to be submitted to the Court shall be set forth in a case adjusted by the Election Court.

323. Notice of application for leave to withdraw.—(*a*) The notice of the intention to withdraw an election petition in terms of section 127 of the Act shall be as nearly as may be in the form shown in Form 40.

(*b*) A copy of the notice shall be sent by the petitioner to the respondent and to the returning officer who shall publish it in the county, or burgh or burghs to which it relates, and the petitioner shall advertise the notice in at least one newspaper circulating in the constituency.

324. Leave to withdraw petition.—The application for leave to withdraw a petition shall be as nearly as may be in the form shown in Form 39, shall state the ground on which the application for withdrawal is intended to be supported, shall be signed by the person making the application and by the consenters, if any, or by their respective solicitors, and shall be lodged in process.

325. Application to be substituted as petitioner on withdrawal.—Any person who might have been petitioner in respect of the election to which the petition relates may, within five days after notice of intention to withdraw is published by the returning officer, give notice in writing, signed by him or on his behalf,

to the Deputy Principal Clerk of Session of his intention to apply at the hearing to be substituted for the petitioner; provided that any informality in such notice shall not defeat such application if in fact made at the hearing, subject to such order as to postponement of the hearing and as to expenses as the Court shall think just.

326. Security of substituted petitioner.—(*a*) The time within which security shall be given on behalf of a substituted petitioner before he proceeds with his petition shall be five days after the order of substitution.

(*b*) The substituted petitioner shall lodge the writing referred to in Rule 302(*a*) within five days after the order of substitution.

327. Hearing of application for leave to withdraw.—The time and place for hearing the application shall be fixed by one of the judges, or by the Vacation Judge, who shall hear and determine the same, unless he shall deem it expedient that the same shall be heard and determined by one of the Divisions of the Inner House; provided that the time fixed for the hearing shall be not less than a week after any notice of intention to apply shall have been given to the Deputy Principal Clerk of Session in terms of Rule 325, and in the event of such notice having been given the Deputy Principal Clerk of Session shall inform the applicant to be substituted as petitioner, or his solicitor, of the time and place of the hearing.

328. Death of petitioner.—In the event of the death of the petitioner or the surviving petitioner, notice thereof under section 133(3) of the Act shall be given and advertised by the solicitor (if any) formerly acting for the petitioner, or by the respondent or returning officer or other person interested to whose knowledge the death of the petitioner shall come, in like manner *mutatis mutandis* as notice of intention to withdraw a petition, and shall be published in the manner provided in Rule 323.

329. Application to be substituted on death of petitioner.—Any application to be substituted as a petitioner in the event of the death of the petitioner or the surviving petitioner shall be made within one calendar month of the notice given in terms of the last foregoing Rule, and shall be made by motion.

330. Notice that respondent does not oppose.—A respondent other than a returning officer may give notice that he does not intend to oppose the petition in terms of section 134(1)(*a*) of the Act by lodging in process not less than six days before the day appointed for the trial, a notice thereof signed by that respondent: and upon leaving such notice he shall forthwith send a copy thereof by post to the petitioner or his solicitor, and to the returning officer, who shall cause the same to be published in the county, or burgh or burghs to which it relates, and the trial of the petition shall thereupon be postponed.

331. Death of respondent.—If the respondent dies, or is summoned to Parliament as a peer of Great Britain, or if the House of Commons have resolved that his seat is vacant, any person entitled to be a petitioner under the Act in respect of the election to which the petition relates, may, under section 134 of the Act, give notice of the fact in the county, or burgh or burghs to which it relates, by causing such notice to be published in at least one newspaper circulating therein, and by sending a copy of such notice, signed by him or on his behalf, to the returning officer and a like copy to the Deputy Principal Clerk of Session.

332. Application to be admitted as respondent.—The time within which a person may apply to be admitted as a respondent in terms of section 134 of the Act shall be ten days after notice is given under Rule 331, or such further time as the Court may allow.

333. Expenses in proceedings under the Act.—When any expenses are awarded in the course of proceedings under the Act, the award of the same shall be deemed equivalent to a finding of expenses in the Court of Session; and the account thereof, when lodged, shall be taxed by the Auditor of Court and the taxed amount shall be decerned for by the Election Court or one of the judges.

334. Proceedings not vitiated by objection of form.—No proceeding under the Act shall be affected or defeated by any objection of mere form.

SCHEDULE 2

FORM 35

Form of Parliamentary Election Petition

Representation of the People Act 1949

Election for (*state place*) held on the day of 19 .

Petition

of

A. (*name and designation*) or A., B., and C. (*names and designations*) whose name is (*or* names are) subscribed hereto,

against

D. (*name and designation*), as the member whose election or return is complained of, (and E. as the returning officer, *as the case may be*), Respondent(s).

Humbly sheweth,—

1. That the first named petitioner voted (*or* had a right to vote, *as the case may be*) as an elector at the above election (*or* claims to have had a right to be elected or returned at the above election, or was a candidate at the above election, *as the case may be*). The second named petitioner (*here state in like manner the right of each petitioner*).

2. That the said election was held on the day of 19 , when A.B. and C.D. (*name them*) were candidates, and the Returning Officer has returned A.B. (*name*) as being duly elected.

3. That (*state the facts on which the petitioners rely*). May it Therefore please the Court to determine that the said A.B. was not duly elected or returned, and that the election was void (*or* that the said C.D. was duly elected and ought to have been returned, *as the case may be*).

According To Justice, &c.

FORM 36

Form of Notice of the presentation of an Election Petition and of the nature of the proposed security

Representation of the People Act 1949

Take notice that under the Representation of the People Act 1949 and the Rules of Court, a Petition has been presented to the Petition Department of the Court of Session touching the election of a member of Parliament for the (*place*), of which petition the foregoing is a full copy, and that you are named therein as a respondent: and Take notice that the security which has been given in terms of section 119 of the above Act is in the form of a bond of caution to the amount of £1,000 (*or as the case may be*) granted by A.B. and C.D. (*names and designations*) *or* by a deposit of £ in the (*state name of Bank*). If you desire to object to the above bond of caution in terms of section 119(4) of the above Act, you may do so within five days of the date hereof by lodging the objection in writing in the Petition Department of the Court of Session and sending or delivering a full copy of the same to me at the following address (*address within 3 miles of the General Post Office, Edinburgh*). (*Delete the last foregoing sentence if the deposit is wholly by deposit of money*).

FORM 37

Form of Bond of Caution in Election Petition

Representation of the People Act 1949

We, A.B. and C.D. (*names and designations*), considering that a petition has been presented by E.F., complaining of an undue return (*or* undue election *as the case may be*) of G.H. as a member to serve in Parliament for the county of (*or* burgh of) (*or* district of burghs) upon the day of 19 , and that by section 119 of the Representation of the People

Act 1949 it is provided that security for the payment of all costs, charges, and expenses that may become payable by the petitioner in terms of the said Act, shall, on presentation of such petition, be given on behalf of the petitioners to the amount of £1,000; and that by the rules of the Court of Session for the trial of election petitions under the said Act, it is prescribed that the security so to be given on behalf of the petitioners may be by lodging a bond of caution, in terms of the said Act; and seeing that we, the said parties, are willing to grant such bond, therefore we, the said parties, as cautioners, sureties, and full debtors for and with the said E.F., petitioner, do hereby bind and oblige ourselves, conjunctly and severally, and our respective heirs, executors and successors whomsoever, that the said E.F., petitioner shall make payment of all costs, charges and expenses that may become payable by him to any person or persons, by virtue of any decree to be pronounced in the said petition; and that to the amount of £1,000 sterling, with one-fifth part more of liquidate penalty in case of failure; and we consent to the registration hereof for execution. In witness whereof, etc.

FORM 38

Form of Warrant to cite witnesses in Election Petition

Representation of the People Act 1949

(*Place and date*)

Having considered the motion for the Petitioner (or Respondent), grants warrant to all officers of the law for citing (*name them*) to attend the Court, for the trial of the election petition to be held at within (*name court-house*) on the day of 19 , at o'clock forenoon (or forthwith, *as the case may be*), to be severally examined as witnesses in the manner of the said petition, and to attend the said Court until their examination shall have been completed.

(Signed)

Judge of the said Court.

FORM 39

Form of Application for leave to withdraw Election Petition

Representation of the People Act 1949

County (*or burgh or district of burghs*) of Petition of presented on the day of 19 .

The petitioners (or the petitioner A.B. (*name*)) with the consent of the petitioners C.D. and E.F. (*names*) (*or as the case may be*) apply for leave to withdraw their petition on the following grounds (*state grounds*), and pray that a day may be appointed for hearing their application.

Dated the day of 19 .

(*To be signed by the applicants and consenters, if any or their respective solicitors, who shall each append to their signature a statement of whether they sign as or on behalf of an applicant or a consenter.*)

FORM 40

Form of Notice of proposed withdrawal of Election Petition

Representation of the People Act 1949

In the election petition for in which petitioner and is respondent.

Notice is hereby given that the above petitioner has, on the day of 19 , lodged at the office of the Deputy Principal Clerk of Session notice of application to withdraw his petition, of which the following is a copy:—(Set it out). And take notice, that by the Act and Rules of Court, any person who might have been a petitioner, in respect of the said election, may, within five days after the said notice, give notice in writing of his intention on the hearing, to apply for leave to be substituted as a petitioner.

(Signed by the Petitioner or his Solicitor.)

EXPLANATORY NOTE

(This Note is not part of the Act of Sederunt, but is intended to indicate its general purport.)

This Act of Sederunt amends the Rules of Court by deleting the Rules which sometime related to proceedings under the Parliamentary Elections Act 1868, and by substituting therefor Rules relating to proceedings under Part III of the Representation of the People Act 1949. It also provides new forms relating to Election Petitions.