
DRAFT SCOTTISH STATUTORY INSTRUMENTS

2003 No.

The Cairngorms National Park Elections (Scotland) Order 2003

PART III

ISSUE AND RECEIPT OF BALLOT PAPERS

Interpretation of Part III

26. For the purposes of this Part of this Order—

“absent voters list” mean the list kept under article 20 above;

“agent” includes the counting agent referred to in article 28 below and any person appointed to attend in the counting agent’s place;

“covering envelope” means the envelope referred to in article 33 below;

“issue” includes the original and any subsequent issue;

“spoilt ballot paper” means a ballot paper referred to in article 35 below.

Issue of ballot papers

27. The returning officer shall as soon as practicable send to each elector—

(a) at the address in respect of which he or she will be registered; or

(b) at the address determined in accordance with article 20 above,

a ballot paper together with instructions for completing it in such form as the returning officer thinks fit, an envelope for its return and the postal communication referred to in article 11 above.

Appointment of counting agents

28.—(1) Each candidate may, before the commencement of the poll, appoint such number of counting agents as the returning officer considers appropriate to attend at the issue of ballot papers and the counting of the votes.

(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 not later than 3 weeks before the day of the poll.

Order for issuing ballot papers

29.—(1) The returning officer shall first issue ballot papers to those electors included as voting by post in the absent voters list for the election and shall place a mark in that list and in the register of electors against the number of the elector (which he or she shall also mark with the letter “A”) to denote that—

(a) the elector is an absent voter; and

- (b) a ballot paper has been issued to that elector but without showing the particular ballot paper issued.

(2) The returning officer shall secondly issue ballot papers to every elector in the register of electors against whose number no mark has been placed and shall then place a mark against the number of that elector to denote that a ballot paper has been issued but without showing the particular ballot paper issued.

Notification of requirement of secrecy

30. Every person attending the proceedings in connection with the issue or the receipt of ballot papers shall maintain and aid in maintaining the secrecy of the voting and shall not—

- (a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark; or
- (b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number on the back of the ballot paper sent to any person.

Notice of issue of ballot papers

31.—(1) The returning officer shall give each candidate not less than 48 hours' notice in writing of the time and place at which he or she will issue ballot papers and of the number of agents the candidate may appoint under article 28 above to attend that issue.

(2) Where any subsequent issue of ballot papers is made, the returning officer shall notify each candidate as soon as practicable of the time and place at which he or she will make such subsequent issue and of the number of agents the candidate may appoint under article 28 above to attend such issue.

Refusal to issue ballot paper

32. Where a returning officer is satisfied that two or more entries in the absent voters list or in the register relate to the same elector he or she shall not issue more than one ballot paper in respect of that elector in respect of any one election.

Envelopes

33. The envelope which the returning officer is required by article 27 above to send to a voter for the return of the ballot paper is referred to as a “covering envelope”.

Delivery of ballot papers

34.—(1) For the purposes of delivering ballot papers, the returning officer may use—

- (a) a universal postal service provider; or
- (b) a commercial delivery firm.

(2) Where the services of a universal postal service provider or commercial delivery firm are to be used, envelopes addressed to voters shall be counted and delivered by the returning officer with such form of receipt to be endorsed by that provider or firm as may be arranged.

(3) Delivery of all envelopes addressed to voters and all covering envelopes shall be pre-paid by the returning officer.

Spoilt ballot papers and covering envelopes

35.—(1) If a voter has inadvertently dealt with his or her ballot paper in such manner that it cannot be conveniently used as a ballot paper (referred to as “a spoilt ballot paper”) he or she may return (either by hand or by post) to the returning officer the spoilt ballot paper and the covering envelope.

(2) If a voter has inadvertently dealt with his or her covering envelope in such manner that it cannot be conveniently used as a covering envelope (referred to as “a spoilt covering envelope”) he or she may return (either by hand or post) to the returning officer the spoilt covering envelope.

(3) On receipt of the documents referred to in paragraphs (1) or (2) above, the returning officer shall issue another ballot paper or covering envelope, as the case may be, except where those documents are received too late for another ballot paper to be returned before the close of the poll.

Lost ballot papers

36.—(1) Where an elector has not received his or her ballot paper by the third day before the day of the poll, he or she may apply (whether or not in person) to the returning officer for a replacement ballot paper.

(2) Such an application shall include evidence of the elector’s identity.

(3) Where the application is received by the returning officer before 5.00 p.m. on the day before the day of the poll and the returning officer—

(a) is satisfied as to the elector’s identity; and

(b) has no reason to doubt that the elector did not receive the original ballot paper,

he or she shall issue another ballot paper;

(4) The returning officer shall enter in a list kept for the purpose (“the list of lost ballot papers”)—

(a) the name and number of the elector as stated in the register; and

(b) the number of the lost ballot paper and of its replacement issued under this article.

(5) Articles 19, 24 and 27 above shall apply to the issue of a replacement ballot paper under paragraph (3) above as they apply to any ballot paper.

(6) Where an elector applies in person, the returning officer may hand a replacement ballot paper to him or her instead of delivering it in accordance with articles 27 and 34 above.

Opening of ballot box

37.—(1) The returning officer shall provide one or more ballot boxes for the receipt of ballot papers.

(2) Every ballot box referred to in paragraph (1) above shall be marked “ballot papers” and with the electoral ward for which the election is held.

(3) Covering envelopes received by the returning officer until the close of the poll shall be placed in the ballot box or boxes.

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

(5) Every such ballot box shall be opened at the counting of the votes under article 40 of this Order.

Opening of covering envelopes

38.—(1) When a ballot box has been opened, the returning officer shall count and note the number of covering envelopes, and shall then open each covering envelope separately.

(2) Where a covering envelope does not contain a ballot paper the returning officer shall mark the covering envelope “rejected”, attach to it the contents (if any) of the covering envelope and place it in a separate receptacle (referred to as “the receptacle for rejected votes”).

(3) Where the covering envelope does contain a ballot paper, the returning officer shall place it in a different receptacle from the receptacle for rejected votes.

Attendance at counting of votes

39.—(1) The returning officer shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after 4.00 p.m. on the day of the poll and shall give to the counting agents notice in writing of the time and place at which he or she will begin to count the votes.

(2) No person other than—

- (a) the returning officer and his or her staff;
- (b) the candidates and their partners; and
- (c) the counting agents,

may be present at the counting of the votes, unless permitted by the returning officer to attend.

(3) A person not entitled to attend at the counting of the votes shall not be permitted to do so by the returning officer unless he or she is satisfied that the efficient counting of the votes will not be impeded.

(4) The returning officer shall give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as he or she can give them consistently with the orderly conduct of the proceedings and the discharge of his or her duties in connection with them.

(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.

The count

40.—(1) The returning officer shall count such of the ballot papers as have been duly returned for each ward and record the number counted.

(2) The returning officer shall so far as practicable proceed continuously with counting the votes, allowing only time for refreshment.

Re-count

41.—(1) A candidate 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 or her opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-count of votes until the candidates present at its completion have been given a reasonable opportunity to exercise the right conferred by this article.

Rejected ballot papers

42.—(1) Any ballot paper—

- (a) which does not bear the official mark;

- (b) on which votes are given for more than one candidate;
- (c) on which anything is written or marked by which the voter can be identified except the printed number on the back; or
- (d) which is unmarked or null and void for uncertainty,

shall, subject to paragraph (2) below, be null and void and not counted.

(2) A ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place;
- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

shall not for such reason be deemed to be null and void 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 itself identify the voter and it is not shown that he or she can be identified by it.

(3) The returning officer shall endorse the word “rejected” on any ballot paper which under this article is not to be counted, and shall add to the endorsement the words “rejection objected to” if any objection is made by a counting agent to his or her decision.

(4) The returning officer shall draw up a statement showing the number of ballot papers rejected, under the several heads of—

- (a) want of official mark;
- (b) voting for more than one candidate;
- (c) writing or mark by which voter could be identified;
- (d) unmarked or null and void for uncertainty.

Decisions on ballot papers

43. The decision of the returning officer on any question arising in respect of a ballot paper shall be final.

Equality of votes

44. Where, after the counting of the votes (including any re-count) is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Declaration of result

45.—(1) In a contested election, when the result of the poll has been ascertained, the returning officer shall forthwith—

- (a) declare to be elected the candidate to whom the majority of votes has been given;
- (b) give notice of the name of the candidate elected to the proper officer of the Authority; and
- (c) give public notice of the name of the candidate elected and of the total number of votes given for 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) Where notice of an uncontested election has been given under article 17 above the returning officer shall—

- (a) not later than 11.00 a.m. on the day of election declare to be elected the validly nominated candidate referred to in the said notice of uncontested election;
- (b) give notice of the name of the person to whom sub-paragraph (a) above applies to the proper officer of the Authority; and
- (c) give public notice of the name of such person.

Sealing up of ballot papers

46. 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.

Delivery of documents

47. The returning officer shall then forward to the proper officer of the Authority, the following documents:—

- (i) the packets of ballot papers in his or her possession;
- (ii) the statement of rejected ballot papers; and
- (iii) such other documents, including, without prejudice to the foregoing generality, marked registers and marked absent voters lists, as may be necessary to verify the validity of the election,

endorsing on each packet a description of its contents, the date of the election to which they relate and the name of the ward for which the election was held.

Orders for production of documents

48.—(1) An order—

- (a) for the inspection or production of any rejected ballot papers in the custody of the proper officer of the Authority; or
- (b) for the inspection of any counted ballot papers in the custody of the proper officer of the Authority,

may be made by the sheriff principal having jurisdiction in the National Park, and, where more than one sheriff principal has jurisdiction in the said area, by any such sheriff principal, on being 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 civil proceedings.

(2) An order under this article may be made subject to such conditions as to—

- (a) persons;
- (b) time;
- (c) place and mode of inspection;
- (d) production or opening,

as the sheriff principal making the order may think expedient; but in making and carrying into effect an order for the inspection of counted ballot papers, care shall be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it has been proved that the vote was given and that the vote has been declared by a competent court to be invalid.

(3) An appeal lies to the Court of Session from any order of a sheriff principal under this article.

(4) Any power given under this article to a sheriff principal may be exercised otherwise than in open court.

(5) Where an order is made for the production by the proper officer of the Authority of any document in his or her possession relating to any specified election—

- (a) the production by him or her or his or her 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
- (b) 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.

Retention and public inspection of documents

49.—(1) The proper officer of the Authority shall retain for six months all ballot papers, statements of rejected ballot papers, marked registers and marked absent voters lists relating to an election forwarded to him or her in pursuance of this Order by a returning officer, and then, unless otherwise directed by an order of a sheriff principal, shall cause them to be destroyed.

(2) Those documents, except ballot papers, shall be open to public inspection at such time and in such manner as the proper officer of the Authority may determine.

(3) The proper officer of the Authority shall, on request, supply copies of or extracts from the documents open to public inspection on payment of such fees and subject to such conditions as he or she may determine.

Countermand or abandonment of poll on death of candidate

50.—(1) If at a contested election proof is given to the returning officer's satisfaction 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 ballot papers have been issued, direct that the poll be abandoned, and the provisions of article 8 of this Order apply in respect of filling any such vacancy as then exists.

(2) The provisions of this Order as to the inspection, production, retention and destruction of ballot papers and other documents relating to a poll at an election apply to any such documents relating to a poll abandoned by reason of a candidate's death, 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 unless the order is made by a court with reference to a prosecution.