

## SCHEDULE 2

### SCOTTISH PARLIAMENTARY ELECTION RULES

#### PART 3

#### CONTESTED ELECTIONS

##### General Provisions

##### *The Poll*

##### **Admission to polling station**

**41.**—(1) The presiding officer shall regulate the total number of voters and persons under the age of 16 years who accompany them to be admitted to the polling station at the same time, and shall exclude all other persons except—

- (a) the candidates;
- (b) the election agent of any candidate for return as a constituency member, or of any individual candidate for return as a regional member, or of any registered party standing nominated;
- (c) the polling agents appointed to attend at the polling station;
- (d) the clerks appointed to attend at the polling station;
- (e) the constables on duty;
- (f) the companions of voters with disabilities;
- (g) persons who are entitled to attend by virtue of any of sections 6A to 6D of the 2000 Political Parties Act<sup>(1)</sup> (representatives of the Electoral Commission and accredited observers); and
- (h) the CROs and RROs and members of their staff.

(2) Not more than one polling agent shall be admitted at the same time to a polling station on behalf of the same candidate or of the same registered party.

(3) Not more than one candidate on a registered party's regional list shall be admitted at the same time to a polling station.

(4) A constable or person employed by a CRO or RRO shall not be admitted to vote in person elsewhere than at the person's own polling station under the relevant provision of this Order, except on production and surrender of a certificate as to the person's employment, which shall be in the form P set out in the Appendix and signed by an officer of police of the rank of Inspector or above or by the returning officer in question, as the case may be.

(5) Any certificate surrendered under this rule shall forthwith be cancelled.

##### **Keeping of order in station**

**42.**—(1) It is the presiding officer's duty to keep order at the presiding officer's polling station.

(2) If a person misconducts himself or herself in a polling station, or fails to obey the presiding officer's lawful orders, the person may immediately, by the presiding officer's order, be removed from the polling station—

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(1) Sections 6A to 6D were inserted by the 2006 Act, section 29.

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- (a) by a constable in or near that station; or
  - (b) by any other person authorised in writing by the CRO to remove the person,
- and the person so removed shall not, without the presiding officer’s permission, again enter the polling station during the day.

(3) Any person so removed may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.

(4) The powers conferred by this rule shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

**Sealing of ballot boxes**

43. Immediately before the commencement of the poll, the presiding officer shall—

- (a) show each ballot box proposed to be used for the purposes of the poll empty to such persons, if any, as are present in the polling station, so that they may see that each box is empty;
- (b) place the presiding officer’s seal on it in such a manner as to prevent it being opened without breaking the seal;
- (c) place each box in the presiding officer’s view for the receipt of ballot papers; and
- (d) keep it so sealed.

**Questions to be put to voters**

44.—(1) At the time of the application for a ballot paper (but not afterwards), the questions specified in the second column of the following table—

- (a) may be put by the presiding officer to a person who is mentioned in the first column; and
- (b) in the case of the questions at entries 1 to 4, shall be put if the candidate or the election or polling agent of a candidate or of a registered party standing nominated requires the question to be put:

<i>Person applying for ballot paper</i>	<i>Questions</i>
1. A person applying as an elector.	<ul style="list-style-type: none"> <li>(a) “Are you the person registered in the register of local government electors for this election as follows (<i>readoutthewholeentryfromthepollingregister</i>)?”</li> <li>(b) “Have you already voted, here or elsewhere, at this election, otherwise than as proxy for some other person?”</li> </ul>
2. A person applying as proxy.	<ul style="list-style-type: none"> <li>(a) “Are you the person whose name appears as A.B. in the list of proxies for this election as entitled to vote as proxy on behalf of C.D.?”</li> <li>(b) “Have you already voted here or elsewhere at this election, as proxy on behalf of C.D.?”</li> </ul>

<i>Person applying for ballot paper</i>	<i>Questions</i>
	(c) “Are you the spouse, civil partner, parent, grandparent, brother/sister, child or grandchild of C.D.?”
3. A person applying as proxy for an elector with an anonymous entry (instead of the questions at entry 2 above).	(a) “Are you the person entitled to vote as proxy on behalf of the elector whose number on the register of local government electors is <i>(readoutthenumberfromthepolling register)?</i> ”  (b) “Have you already voted here or elsewhere as proxy on behalf of the elector whose number on the register of local government electors is <i>(readoutthenumberfromthepolling register)?</i> ”  (c) “Are you the spouse, civil partner, parent, grandparent, brother/sister, child or grandchild of the person whose number on the register of local government electors is <i>(read out the number from the polling register)?</i> ”
4. A person applying as proxy if the question at entry 2(c) or 3(c) is not answered in the affirmative.	“Have you at this election already voted in this constituency on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother/sister, child or grandchild?”
5. A person applying as an elector in relation to whom there is an entry in the postal voters list.	(a) “Did you apply to vote by post?” (b) “Why have you not voted by post?”
6. A person applying as proxy who is named in the proxy postal voters list.	(a) “Did you apply to vote by post as proxy?” (b) “Why have you not voted by post as proxy?”

(2) A ballot paper shall not be delivered to any person required to answer any of the above questions unless the person has answered each question satisfactorily.

(3) Except as authorised by this rule, no inquiry shall be permitted as to the right of any person to vote.

### Challenge of voter

45. A person shall not be prevented from voting by reason only that—

- (a) a candidate or the election or polling agent of a candidate or of a registered party standing nominated declares that that candidate or agent has reasonable cause to believe that the person has committed an offence of personation; or
- (b) the person is arrested on the grounds that the person is suspected of committing or about to commit such an offence.

## **Voting procedure**

46.—(1) At a Scottish parliamentary general election a voter may apply for a constituency ballot paper or a regional ballot paper or both, but at any such election, the presiding officer shall assume, in the absence of a clear indication to the contrary, that the voter's application is for a constituency ballot paper and a regional ballot paper.

(2) A ballot paper shall be delivered to a voter who applies for one, and immediately before delivery—

- (a) the number and (unless paragraph (3) applies) name of the elector as stated in the polling register shall be called out;
- (b) the number of the elector shall be marked on the corresponding number list mentioned in rule 38(3)(d) beside the number of the ballot paper to be issued to the elector;
- (c) a mark shall be placed in the polling register against the number of the elector to note that a ballot paper has been received but without showing the particular ballot paper which has been received;
- (d) in the case of a person applying for a ballot paper as proxy, a mark shall also be placed against the proxy's name in the list of proxies.

(3) In the case of an elector who has an anonymous entry, the elector must show the presiding officer the elector's official poll card and only the elector's number shall be called out in pursuance of sub-paragraph (2)(a).

(4) The voter, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station and there secretly mark the voter's paper, shall show to the presiding officer the back of the paper, so as to disclose the unique identifying number, and shall then put the ballot paper into the ballot box in the presiding officer's presence.

(5) The voter shall vote without undue delay, and shall leave the polling station as soon as the voter has put the voter's ballot paper into the ballot box.

(6) Where—

- (a) a voter attends the polling station before 10 pm; and
- (b) the voter is still waiting to vote at 10 pm,

the presiding officer must permit the voter to vote without delay after 10 pm and must close the poll immediately after the last such voter has voted.

(7) At a Scottish parliamentary general election the same copy of the polling register may be used under paragraph (2) for a constituency ballot paper and a regional ballot paper and one mark may be placed in that register under paragraph (2)(c) or in the list of proxies under paragraph (2)(d) to denote that each of the ballot papers has been received; and, where one mark is so placed in that register or, as the case may be, list, the mark shall, unless the contrary intention appears, be taken to denote that a constituency ballot paper and regional ballot paper have been received.

## **Votes marked by presiding officer**

47.—(1) The presiding officer on the application of a voter—

- (a) who is incapacitated by blindness or other disability from voting in a manner directed by these Rules; or
- (b) who declares orally that the voter is unable to read,

shall, in the presence of the polling agents, cause the voter's vote to be marked on a ballot paper in a manner directed by the voter, and the ballot paper to be placed in the ballot box.

(2) The name and number in the polling register of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, shall be entered on a list (in these Rules referred to as “the list of votes marked by the presiding officer”).

(3) In the case of a person voting as proxy for an elector, the number to be entered together with the voter’s name shall be the elector’s number.

(4) At a Scottish parliamentary general election the same list of votes marked by the presiding officer, required under paragraph (2), may be used for votes marked on constituency ballot papers and votes marked on regional ballot papers and where it is so used, an entry in that list shall, unless the contrary intention appears, be taken to mean that each such ballot paper was so marked.

### **Voting by persons with disabilities**

**48.**—(1) If a voter makes an application to the presiding officer to be allowed, on the ground of—

- (a) blindness or other disability; or
- (b) inability to read,

to vote with the assistance of another person by whom the voter is accompanied (in these Rules referred to as “the companion”), the presiding officer shall require the voter to declare, orally or in writing, whether the voter is so incapacitated by the voter’s blindness or other disability, or by the voter’s inability to read, as to be unable to vote without assistance.

(2) If the presiding officer—

- (a) is satisfied that the voter is so incapacitated; and
- (b) is also satisfied by a written declaration made in accordance with the requirements of paragraph (6) by the companion (in these Rules referred to as “the declaration made by the companion of a voter with disabilities”) that the companion—
  - (i) is a qualified person within the meaning of this rule; and
  - (ii) has not previously assisted more than one voter with disabilities to vote at the election,

the presiding officer shall grant the application, and then anything which is by these Rules required to be done to or by that voter in connection with the giving of the voter’s vote may be done to, or with the assistance of, the companion.

(3) For the purposes of this rule, a person shall be qualified to assist a voter with disabilities to vote, if that person is either—

- (a) a person who is entitled to vote as an elector at the election; or
- (b) the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities and has attained the age of 16 years.

(4) The name and number in the polling register of every voter whose vote is given in accordance with this rule and the name and address of the companion shall be entered on a list (in these Rules referred to as “the list of voters with disabilities assisted by companions”).

(5) For the purposes of paragraph (4), in the case of a person voting as proxy for an elector, the number to be entered together with the voter’s name shall be the elector’s number.

(6) The declaration made by the companion—

- (a) shall be in the form Q set out in the Appendix;
- (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.

(7) No fee or other payment shall be charged in respect of the declaration.

(8) At a Scottish parliamentary general election the same list of voters with disabilities assisted by companions, required under paragraph (4), may be used for votes marked on constituency ballot papers and votes marked on regional ballot papers and, where it is so used, an entry in that list shall, unless the contrary intention appears, be taken to mean that the votes of the elector in question were so given in relation to each such ballot paper.

### **Tendered ballot papers**

**49.**—(1) Paragraph (5) applies if a person represents to be—

- (a) a particular elector named in the polling register and not named in the postal voters list or list of proxies; or
- (b) a particular person named in the list of proxies as proxy for an elector and not entitled to vote by post as proxy,

and that person applies for a ballot paper after another person has voted in person either as the elector or the elector’s proxy.

(2) Paragraph (5) also applies if—

- (a) a person applies for a ballot paper by representing to be a particular elector named in the polling register;
- (b) the person is also named in the postal voters list; and
- (c) the person claims not to have made an application to vote by post at the election.

(3) Paragraph (5) also applies if—

- (a) a person applies for a ballot paper by representing to be a particular person named as a proxy in the list of proxies;
- (b) the person is also named in the proxy postal voters list; and
- (c) the person claims not to have made an application to vote by post as proxy.

(4) Paragraph (5) also applies if a person represents to be—

- (a) a particular elector named in the polling register and who is also named in the postal voters list; or
- (b) a particular person named as a proxy in the list of proxies and who is also named in the proxy postal voters list,

and claims to have lost or not to have received that person’s postal ballot paper.

(5) The person shall, on satisfactorily answering the questions permitted under rule 44 to be asked at the poll, be entitled, subject to the following provisions of this rule, to mark a ballot paper (in these rules referred to as a “tendered ballot paper”) in the same manner as any other voter.

(6) A tendered ballot paper shall—

- (a) be a different colour or colours from the other ballot papers;
- (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter’s number in the register of electors, and set aside in a separate packet.

(7) The name of the voter and the voter’s number in the polling register shall be entered on a list (in these Rules referred to as the “tendered votes list”) and the voter shall sign the list opposite the entry relating to the voter.

(8) In the case of a person voting as proxy for an elector, the number to be endorsed or entered together with the voter’s name shall be the number of that elector.

(9) This rule applies to an elector who has an anonymous entry subject to the following modifications—

- (a) in paragraphs (6)(b) and (7) the references to the name of the voter must be ignored;
- (b) in paragraph (7) the reference to the voter being required to sign the tendered votes list must be ignored;
- (c) otherwise, a reference to a person named in the polling register or a list must be construed as a reference to a person whose number appears on the polling register or list (as the case may be).

(10) At a Scottish parliamentary general election, the same tendered votes list, required under paragraph (7), may be used in relation to all tendered votes in respect of that election and, where it is so used, an entry in that list in relation to a voter shall, unless the contrary intention appears, be taken to mean that tendered ballot papers were marked by that voter in relation to both of the voter's votes at that election.

### **Spoilt ballot papers**

**50.** A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving to the presiding officer's satisfaction the fact of the inadvertence, obtain another ballot paper in the place of the ballot paper so delivered (in these Rules referred to as "a spoilt ballot paper"), and the spoilt ballot paper shall be immediately cancelled.

### **Correction of errors on day of poll**

**51.** The presiding officer shall keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register of electors made by virtue of section 13B(3B) or (3D) of the 1983 Act<sup>(2)</sup> (notice of alteration in the register) which takes effect on the day of the poll.

### **Adjournment of poll in case of riot**

**52.—**(1) Where the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings till the following day and shall forthwith give notice to the CRO and, except in the case of an election to fill a vacancy in the seat of a constituency member, the RRO.

- (2) Where the poll is adjourned at any polling station—
  - (a) the hours of polling on the day to which it is adjourned shall be the same as for the original day; and
  - (b) references in this Order to the close of the poll shall be construed accordingly.

### **Procedure on close of poll**

**53.—**(1) As soon as practicable after the close of the poll, the presiding officer shall, in the presence of the polling agents, using the presiding officer's own seal and the seals of such polling agents as desire to affix their seals, seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers.

- (2) The presiding officer shall then make up into separate packets, sealed with the presiding officer's own seal and the seals of such polling agents as desire to affix their seals—
  - (a) the unused and spoilt ballot papers placed together;
  - (b) the tendered ballot papers;

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(2) Section 13B was substituted by the 2000 Act, Schedule 1, paragraph 6. Section 13B(3B) and (3D) were inserted by the 2006 Act, section 11(4).

- (c) the corresponding number lists prepared under rule 29, including the parts which were completed in accordance with rule 46(2)(b) (together referred to in these Rules as “the completed corresponding number lists”);
- (d) the certificates as to employment on duty on the day of the poll surrendered under rule 41(4);
- (e) the marked copies of the polling register and of the list of proxies;
- (f) the tendered votes list maintained under rule 49(7), the list of voters with disabilities assisted by companions maintained under rule 48(4), the list of votes marked by the presiding officer maintained under rule 47(2), a statement of the number of voters whose votes are so marked by the presiding officer under the heads ‘disability’ and ‘unable to read’, the list maintained under rule 51, the written declarations made by voters with disabilities under rule 48(1), and the declarations made by the companions of voters with disabilities under rule 48(2)(b);
- (g) the postal ballot papers and postal voting statements which have been returned by hand to the polling station (unless previously collected in accordance with paragraph 18(3) of Schedule 4),

and shall deliver the sealed ballot boxes and the packets, or cause them to be delivered, to the CRO to be taken charge of by the CRO; but if the boxes and packets are not delivered by the presiding officer personally to the CRO, the arrangements for their delivery shall require the CRO’s approval.

(3) The marked copies of the polling register and of the list of proxies shall be in one packet but shall not be in the same packet as the completed corresponding number lists or the certificates as to employment on duty on the day of the poll.

(4) The packets shall be accompanied by a statement (in these Rules referred to as “the ballot paper account”) made by the presiding officer showing the number of ballot papers entrusted to the presiding officer, and accounting for them under the heads of ballot papers issued and not otherwise accounted for, unused, spoilt and tendered ballot papers; and, except in the case of a poll to fill a vacancy in the seat of a constituency member, a separate ballot paper account shall be made for the constituency ballot papers and the regional ballot papers.