

## SCHEDULE 2

### SCOTTISH LOCAL GOVERNMENT ELECTIONS RULES RULES FOR CONDUCT OF A SCOTTISH LOCAL GOVERNMENT ELECTION WHERE THE POLL IS NOT TAKEN TOGETHER WITH THE POLL AT ANOTHER ELECTION

#### PART III

#### CONTESTED ELECTIONS

##### *Counting of votes*

###### *Attendance at counting of votes*

**37.**—(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 the returning officer will begin to count the votes.

(2) No person other than—

- (a) the returning officer and the returning officer's staff;
- (b) the candidates and one guest each;
- (c) the election agents; and
- (d) the counting agents,

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

(3) A person may only be permitted by the returning officer to attend at the counting of the votes if the returning officer—

- (a) is satisfied that the efficient counting of the votes will not be impeded; and
- (b) has either consulted the election agents or thought it impracticable to do so.

(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 the returning officer can give them consistently with the orderly conduct of the proceedings and the discharge of the returning officer's 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*

**38.**—(1) The returning officer shall—

- (a) in the presence of the counting agents open each ballot box and count and record the number of ballot papers in it, checking the number against the ballot paper account;
- (b) if required to do so by a candidate or an election agent, in the presence of the election agents verify each ballot paper account; and
- (c) count such of the postal ballot papers as have been duly returned and record the number counted.

(2) The returning officer shall not count the votes given on any ballot papers until—

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- (a) in the case of postal ballot papers, they have been mixed with the ballot papers from at least one ballot box, and
  - (b) in the case of ballot papers from a ballot box, they have been mixed with the ballot papers from at least one other ballot box.
- (3) A postal ballot paper shall not be deemed to be duly returned unless it is returned—
- (a) by hand to a polling station in the same electoral ward;
  - (b) by hand or post to the returning officer,
- before the close of the poll and is accompanied by the declaration of identity duly signed and authenticated.
- (4) The returning officer shall not count any tendered ballot paper.
- (5) The returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards and take all proper precautions for preventing any person from seeing the numbers printed on the back of the papers.
- (6) Where under paragraph (1)(b) above the returning officer is required to verify each ballot paper account, the returning officer shall do so by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the returning officer's possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list) and shall draw up a statement as to the result of the verification, which any election agent may copy.
- (7) The returning officer shall so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that the returning officer may, insofar as the returning officer and the agents agree, exclude any hours between 7 in the evening and 9 on the following morning and for the purposes of this exception the agreement of a candidate or such candidate's election agent shall be as effective as the agreement of such candidate's counting agents.
- (8) During the time so excluded the returning officer shall—
- (a) place the ballot papers and other documents relating to the election under the returning officer's own seal and the seals of such of the counting agents as desire to affix their seals; and
  - (b) otherwise take proper precautions for the security of the papers and documents.

#### *Re-count*

**39.**—(1) A candidate or such candidate's 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 the returning officer's 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 and election agents present at its completion have been given a reasonable opportunity to exercise the right conferred by this rule.

#### *Rejected ballot papers*

**40.**—(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;
- (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 such voter can be identified by it.

(3) The returning officer shall endorse the word “rejected” on any ballot paper which under this rule 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 such 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*

**41.** The decision of the returning officer on any question arising in respect of a ballot paper shall be final, but shall be subject to review on an election petition.

#### *Equality of votes*

**42.** Where, after the counting of the votes (including any re-count) is completed, an equality of votes is found to exist between the 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*

**43.** 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 council for which the election was held; 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.