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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 561**

**The Scottish Local Government Elections Regulations 2002**

**Citation, commencement and extent**

1.—(1) These regulations may be cited as the Scottish Local Government Elections Regulations 2002.

(2) These regulations shall come into force on the day following that on which they are made except for the purposes of any election where the last day for publication of the notice of election in respect of that election precedes that date.

(3) These regulations shall extend to Scotland only.

**Interpretation**

2.—(1) For the purposes of these regulations—

“the 1985 Act” means the Representation of the People Act 1985(1);

“the 2000 Act” means the Representation of the People Act 2000(2);

“absent voters list” means the list kept under paragraph 5 of Schedule 4 to the 2000 Act;

“ballot paper envelope” and “covering envelope” mean the envelopes referred to in regulation 11;

“list of postal proxies” means the list kept under paragraph 7(8) of Schedule 4 to the 2000 Act;

“local authority” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994(3);

“local government area” means the area of a local authority;

“postal ballot box” means the ballot box referred to in regulation 18(1)(b);

“postal ballot paper” means a ballot paper issued to a postal voter;

“postal voter” means an elector or proxy who is entitled to vote by post;

“postal voters' ballot box” means the ballot box referred to in regulation 18(1)(a);

“receptacle for ballot paper envelopes”, and other references to specified receptacles, means the receptacles referred to in regulation 18;

“spoilt postal ballot paper” means a ballot paper referred to in regulation 14;

“universal postal service provider” has the meaning given in the Postal Services Act 2000(4) to a “universal service provider”; and

“valid declaration of identity” means a declaration of identity in relation to which the returning officer is satisfied as mentioned in regulation 22.

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(1) 1985 c. 50.

(2) 2000 c. 2.

(3) 1994 c. 39.

(4) 2000 c. 26.

(2) A reference in these regulations to a numbered rule shall be construed as a reference to the rule of that number in the Scottish Local Government Elections Rules 2002(5).

### **Combination of polls**

3. Where the polls at elections including a local government election are taken together under section 15(1) or (2) of the 1985 Act, the proceedings on the issue of postal ballot papers in respect of each election may be taken together, if the returning officers concerned so agree.

### **Persons entitled to be present at proceedings on issue of postal ballot papers**

4. No person may be present at the proceedings on the issue of postal ballot papers other than the returning officer and the returning officer's staff.

### **Persons entitled to be present at proceedings on receipt of postal ballot papers**

5. No person may be present at the proceedings on the receipt of postal ballot papers other than—
- (a) the returning officer and the returning officer's staff;
  - (b) a candidate;
  - (c) an election agent or any person appointed by a candidate to attend in such election agent's place; and
  - (d) any agents appointed under regulation 6.

### **Agents of candidates who may attend proceedings on receipt of postal ballot papers**

6.—(1) Each candidate may appoint one or more agents to attend the proceedings on the receipt of the postal ballot papers up to the number such candidate may be authorised by the returning officer to appoint and the number authorised shall be the same in the case of each candidate.

(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 before the time fixed for the opening of the postal voters' ballot box.

(3) Where postal ballot papers for more than one election are issued together under regulation 3, the returning officer to whom notice shall be given under paragraphs (2), (4) and (5) is the returning officer who issues the postal ballot papers.

(4) If an agent dies or becomes incapable of acting, the candidate may appoint another agent in such agent's 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) In these Regulations references to agents shall be taken as references to agents whose appointments have been duly made and notified and, in the case of agents appointed under paragraph (1), who are within the number authorised by the returning officer.

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

(8) Where in these Regulations any act or thing is required or authorised to be done in the presence of the candidates or their agents, the non-attendance of any such persons or person 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.

### **Notification of requirement of secrecy**

7. The returning officer shall make such arrangements as the returning officer thinks fit to ensure that every person attending the proceedings in connection with the issue or receipt of postal ballot papers has been given a copy in writing of the provisions of section 66(4) and (6) of the Representation of the People Act 1983(6).

### **Time when postal ballot papers are to be issued**

8.—(1) In the case of a person shown in the record kept under—

- (a) paragraph 3(4); or
- (b) paragraph 7(6),

of Schedule 4 to the 2000 Act (electors and proxies entitled to vote by post for an indefinite or particular period), no postal ballot paper (and declaration of identity) shall be issued until after 5.00 p.m. on the eleventh day before the date of the poll.

(2) In the case of any other person, the postal ballot paper (and declaration of identity) shall be issued by the returning officer as soon as practicable after the registration officer has granted the application to vote by post.

(3) In computing a period of days for the purpose of this regulation, Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, Easter Monday, a day appointed for public thanksgiving or mourning or a bank holiday shall be disregarded.

(4) In paragraph (3) above “bank holiday” means a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(7).

### **Procedure on issue of postal ballot paper**

9.—(1) Each postal ballot paper issued shall be stamped with the official mark.

(2) The number of the elector as stated in the register shall be marked on the counterfoil attached to the ballot paper.

(3) A mark shall be placed in the absent voters list or the list of postal proxies against the number of the elector to denote that a ballot paper has been issued to the elector or the elector’s proxy, but without showing the particular ballot paper issued.

(4) The number of a postal ballot paper shall be marked on the declaration of identity sent with that paper.

(5) Where postal ballot papers for more than one election are issued together under regulation 3—

- (a) one mark shall be placed in the absent voters list or the list of postal proxies under paragraph (3) to denote that ballot papers have been issued in respect of all those elections; except that, where ballot papers are not so issued, a different mark shall be placed in the absent voters list or list of postal proxies to identify the election in respect of which the ballot paper was issued; and
- (b) the number of each ballot paper shall be marked on the declaration of identity under paragraph (4).

(6) Where polls are taken together under section 15(1) or (2) of the 1985 Act but not the proceedings on the issue and receipt of postal ballot papers, the colour of the postal ballot paper shall also be marked on the declaration of identity sent with that paper.

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(6) Section 66(6) was amended by Schedule 3 to the Representation of the People Act 1985 (c. 50).

(7) 1971 c. 80.

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

10. Where a returning officer is satisfied that two or more entries in the absent voters list, or the list of postal proxies or in each of those lists relate to the same elector, the returning officer shall not issue more than one ballot paper in respect of that elector at any one election.

### **Envelopes**

11.—(1) Paragraphs (2) and (3) prescribe the envelopes which are to be issued to a postal voter in addition to the ballot paper and declaration of identity (which are issued under rule 18).

(2) There shall be issued an envelope for the return of the postal ballot paper or, as the case may be, ballot papers and the declaration of identity (referred to as a “covering envelope”) which shall be marked with the letter “B”.

(3) There shall also be issued a smaller envelope (referred to as a “ballot paper envelope”) which shall be marked with—

- (a) the letter “A”;
- (b) the words “ballot paper envelope”; and
- (c) the number of the ballot paper or, as the case may be, ballot papers.

(4) Where polls are taken together (under section 15(1) or (2) of the 1985 Act) but not the proceedings on the issue and receipt of postal ballot papers—

- (a) the envelope referred to in paragraph (2) shall also be marked “Covering envelope for the [*insert colour of ballot paper*] coloured ballot paper”; and
- (b) on the envelope referred to in paragraph (3), after the words “Ballot paper envelope” there shall be added the words “for the [*insert colour of ballot paper*] coloured ballot paper”.

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

12.—(1) As soon as practicable after the issue of each batch of postal ballot papers, the returning officer shall make up into a packet the counterfoils for those ballot papers which have been issued and shall seal such a packet.

(2) As soon as practicable after the last batch of postal ballot papers have been issued, the returning officer shall make up into a packet the marked copy of the absent voters list and the list of postal proxies and shall seal such a packet.

(3) Until the time referred to in paragraph (2), the returning officer shall take proper precautions for the security of the lists referred to in that paragraph.

### **Delivery of postal ballot papers**

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

- (a) a universal postal service provider;
- (b) a commercial delivery firm; or
- (c) persons appointed under rule 20(1).

(2) Where the services of a universal postal service provider or commercial delivery firm are to be used, envelopes addressed to postal 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) Postage shall be prepaid on envelopes addressed to the postal voters (except where paragraph (1)(c) applies).

(4) Return postage shall be prepaid on all covering envelopes where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.

### **Spoilt postal ballot papers**

**14.**—(1) If a postal voter has inadvertently dealt with a postal ballot paper in such manner that it cannot be conveniently used as a ballot paper (referred to as “a spoilt postal ballot paper”) such voter may return the spoilt postal ballot paper and the declaration of identity to the returning officer (either by hand or by post).

(2) Where postal ballot papers for more than one election have been issued together under regulation 3, the postal voter shall, if exercising the entitlement conferred by paragraph (1), return all of the ballot papers so issued, whether spoilt or not.

(3) On receipt of the documents referred to in paragraph (1) and, where applicable paragraph (2), the returning officer shall issue another postal ballot paper or, as the case may be, ballot papers except where those documents are received after 5.00 p.m. on the day before the day of the poll.

(4) Regulations 9 (except paragraph (3)), 11, 12, and, subject to paragraph (7) below, 13 shall apply in relation to a replacement postal ballot paper under paragraph (3) as they apply in relation to a postal ballot paper.

(5) The spoilt postal ballot paper, and any other postal ballot paper issued with it, and the declaration of identity shall be cancelled immediately.

(6) The returning officer, as soon as practicable after cancelling those documents, shall make up those documents in a separate packet and shall seal the packet; and if on any subsequent occasion documents are cancelled as mentioned above, the sealed packet shall be opened and the additional cancelled documents included in it and the packet shall again be made up and sealed.

(7) Where a postal voter applies in person, the returning officer may hand a replacement postal ballot paper to such voter instead of delivering it in accordance with regulation 13.

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

- (a) the name and number of the elector as stated in the register;
- (b) the number of the postal ballot paper (or papers) issued under this regulation; and
- (c) where the postal voter whose ballot paper is spoilt is a proxy, such voter’s name and address.

### **Lost postal ballot papers**

**15.**—(1) Where a postal voter has not received his postal ballot paper by the third day before the day of the poll, such voter 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 voter’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 voter’s identity; and
  - (b) has no reason to doubt that the postal voter did not receive the original postal ballot paper,
- the returning officer shall issue another postal ballot paper or, as the case may be, postal ballot papers.

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

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

(b) the number of the lost postal ballot paper and of its replacement issued under this regulation; and

(c) where the postal voter whose ballot paper is lost is a proxy, such voter's name and address.

(5) Regulation 9 (except paragraph (3)), 11, 12 and, subject to paragraph (6) below, 13 shall apply in relation to a replacement postal ballot paper under paragraph (3) as they apply in relation to a postal ballot paper.

(6) Where a postal ballot voter applies in person, the returning officer may hand a replacement ballot paper to such voter instead of delivering it in accordance with regulation 13.

(7) Where the returning officer issues another postal ballot paper, or, as the case may be, postal ballot papers under paragraph (3), the lost ballot paper shall be void and of no effect.

### **Alternative means of returning postal ballot paper or declaration of identity**

**16.**—(1) For the purposes of rule 38(3)—

(a) the manner in which a postal ballot paper or declaration of identity may be returned to a polling station in the same local government area is by hand;

(b) the manner in which such a paper or declaration may be returned to the returning officer is by post or by hand.

(2) The presiding officer of the polling station shall deliver, or cause to be delivered, any postal ballot paper or declaration of identity returned to that station to the returning officer in the same manner and at the same time as delivering or causing to be delivered, the packets referred to in rule 36(1).

### **Notice of opening of postal ballot paper envelopes**

**17.**—(1) The returning officer shall give to each candidate not less than 48 hours' notice in writing of each occasion on which a postal voters' ballot box and the envelopes contained in it are to be opened.

(2) Such notice shall specify—

(a) the time and place at which such an opening is to take place; and

(b) the number of agents a candidate may appoint under regulation 6(1) to attend each opening.

### **Postal ballot boxes and receptacles**

**18.**—(1) The returning officer shall provide a separate ballot box for the reception of—

(a) the covering envelopes when returned by the postal voters; and

(b) postal ballot papers.

(2) Each such ballot box shall be marked "postal voters' ballot box" or "postal ballot box", as the case may be, and with the name of the local government area or electoral ward for which the election or elections is or are held.

(3) The postal ballot box shall be shown to the agents present on the occasion of opening the first postal voters' ballot box as being empty.

(4) The returning officer shall then lock the ballot box and apply his seal in such manner as to prevent its being opened without breaking the seal. Any of the agents present who wish to add their seals may then do likewise.

(5) The returning officer shall provide the following receptacles—

(a) the receptacle for rejected votes;

- (b) the receptacle for declarations of identity;
- (c) the receptacle for ballot paper envelopes; and
- (d) the receptacle for rejected ballot paper envelopes.

(6) The returning officer shall take proper precautions for the safe custody of every ballot box and receptacle referred to in this regulation.

#### **Receipt of covering envelope**

**19.**—(1) The returning officer shall, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters' ballot box.

(2) Where an envelope, other than a covering envelope issued by the returning officer—

- (a) has been opened; and
- (b) contains a ballot paper envelope, declaration of identity or ballot paper,

the first mentioned envelope, together with its contents, shall be placed in a postal voters' ballot box.

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

**20.**—(1) Each postal voters' ballot box shall be opened by the returning officer in the presence of any agents, if in attendance.

(2) So long as the returning officer ensures that there is at least one sealed 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 the returning officer.

(3) The last postal voters' ballot box and the postal ballot box shall be opened at the counting of the votes under rule 38.

#### **Opening of covering envelopes**

**21.**—(1) When a postal voters' ballot box is opened, the returning officer shall count and record the number of covering envelopes (including any envelope to which regulation 19(2) applies), and shall then open each covering envelope separately.

(2) The procedure in regulation 22 applies where a covering envelope (including an envelope to which regulation 19(2) applies) contains both—

- (a) a declaration of identity; and
- (b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper (or ballot papers).

(3) Where the covering envelope does not contain the declaration of identity separately, the returning officer shall open the ballot paper envelope to ascertain whether the declaration of identity is inside.

(4) Where a covering envelope does not contain both—

- (a) a declaration of identity (whether separately or not); and
- (b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper (or ballot papers),

the returning officer shall mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.

### **Procedure in relation to declarations of identity**

**22.**—(1) The returning officer shall take measures to be satisfied that the declaration of identity has been duly signed by the voter and authenticated by a witness who has signed the declaration and given the witness's address.

(2) Where the returning officer is not so satisfied, the returning officer shall mark the declaration "rejected", attach to it the ballot paper envelope, or if there is no such envelope, the ballot paper (or ballot papers), and, subject to paragraph (3), place it in the receptacle for rejected votes.

(3) Before placing the declaration in the receptacle for rejected votes, the returning officer shall show it to the agents and, if any of them object to the returning officer's decision, shall add the words "rejection objected to".

(4) The returning officer shall then examine the number (or numbers) on the declaration of identity against the number (or numbers) on the ballot paper envelope and, where they are the same, shall place the declaration and the ballot paper envelope respectively in the receptacle for declarations of identity and the receptacle for ballot paper envelopes.

(5) Where—

- (a) the number (or numbers) on a valid declaration of identity is (or are) not the same as the number (or numbers) on the ballot paper envelope, or
- (b) that envelope has no number on it (or only one number when the declaration of identity has more than one),

the returning officer shall open the envelope.

(6) Paragraph (7) applies where—

- (a) there is a valid declaration of identity but no ballot paper envelope, or
- (b) the ballot paper envelope has been opened under regulation 21(3) or paragraph (5).

(7) In the circumstances described in paragraph (6), the returning officer shall place—

- (a) in the postal ballot box, any ballot paper the number on which is the same as the number (or one of the numbers) on the valid declaration of identity;
- (b) in the receptacle for rejected votes, any other ballot paper, with the valid declaration of identity attached and marked "provisionally rejected";
- (c) in the receptacle for rejected votes, any valid declaration of identity marked "provisionally rejected" where—
  - (i) there is no ballot paper, or
  - (ii) in the case of a declaration on which the number of more than one ballot paper appears, there is not a sufficient number of ballot papers, and in such cases, shall mark the declarations to indicate which ballot paper is missing;
- (d) in the receptacle for declarations of identity, any valid declaration not disposed of under sub-paragraph (b) or (c).

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

**23.**—(1) The returning officer shall open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

(2) The returning officer shall place—

- (a) in the postal ballot box, any ballot paper the number on which is the same as the number (or one of the numbers) on the ballot paper envelope;
- (b) in the receptacle for rejected votes, any other ballot paper, which shall be marked "provisionally rejected" and to which shall be attached the ballot paper envelope; and



- (c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope which shall be marked “provisionally rejected” because it does not contain either a ballot paper or, where more than one number appears on the ballot paper envelope, a sufficient number of ballot papers (and indicating, in such a case, the missing ballot paper).

### **Lists of rejected postal ballot papers**

**24.**—(1) In respect of any election, the returning officer shall keep two separate lists of rejected postal ballot papers.

(2) In the first such list, the returning officer shall record the ballot paper number of any postal ballot paper for which no valid declaration of identity was received with it.

(3) In the second such list, the returning officer shall record the ballot paper number of any postal ballot paper which is entered on a valid declaration of identity where that ballot paper is not received with the declaration of identity.

### **Checking of lists kept under regulation 24**

**25.**—(1) Where the returning officer receives a valid declaration of identity without the postal ballot paper (or papers or, as the case may be, all of the papers) to which it relates, the returning officer may, at any time prior to the close of the poll, check the list kept under regulation 24(2) to see whether the number (or numbers) of any postal ballot paper to which the declaration relates is entered in that list.

(2) Where the returning officer receives a postal ballot paper without the declaration of identity to which it relates, the returning officer may, at any time prior to the close of the poll, check the list kept under regulation 24(3) to see whether the number of that ballot paper is entered in that list.

(3) The returning officer shall conduct the checks required by paragraphs (1) and (2) as soon as practicable after the receipt, under rule 36(1), of packets from every polling station in the local government area for which the election (or elections) was (or were) held.

(4) Where the ballot paper number in the list matches that number on a valid declaration of identity or, as the case may be, the postal ballot paper, the returning officer shall retrieve that declaration or paper.

(5) The returning officer shall then take the appropriate steps under these Regulations as though any document earlier marked “provisionally rejected” had not been so marked and shall amend the document accordingly.

### **Sealing of receptacles**

**26.**—(1) As soon as practicable after the completion of the procedure under regulation 25(3) and (4), the returning officer shall make up into separate packets the contents of—

- (a) the receptacle for rejected votes;
- (b) the receptacle for declarations of identity;
- (c) the receptacle for rejected ballot paper envelopes; and
- (d) the lists of spoilt and lost postal ballot papers,

and shall seal up such packets.

(2) Any document in those packets marked “provisionally rejected” shall be deemed to be marked “rejected”.

### **Abandoned poll**

27.—(1) Where a poll is, by reason of the death of a candidate, abandoned or countermanded after postal ballot papers have been issued, the returning officer—

- (a) shall not take any step or further step to open covering envelopes or deal with the contents in accordance with the provisions of these Regulations; and
- (b) shall, notwithstanding regulations 21 to 23, treat all unopened covering envelopes and the contents of those that have been opened as if they were counted ballot papers.

(2) Paragraph (1) shall not apply where postal ballot papers for more than one election have been issued together under regulation 3.

### **Forwarding of documents**

28.—(1) The returning officer shall, at the same time as forwarding the documents mentioned in rule 45, forward to the proper officer of the Council for which the election was held—

- (a) any packets referred to in regulations 12, 14(6) and 26, subject to regulation 27, endorsing on each packet a description of its contents, the date of the election to which it relates and the name of the local government area or electoral ward for which the election (or elections) was (or were) held; and
- (b) a completed statement in relation to postal ballot papers in the form set out in the Schedule to these Regulations.

(2) Where—

- (a) any covering envelopes are received by the returning officer after the close of the poll (apart from those delivered in accordance with the provisions of regulation 16(2));
- (b) any envelopes addressed to postal voters are returned as undelivered too late to be re-addressed; or
- (c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued,

the returning officer shall put them unopened in a separate packet, seal up such packet and endorse and forward it at a subsequent date in the manner described in paragraph (1).

(4) Rules 46 and 47 shall apply to any packet or document forwarded under this regulation as they apply for the purposes of the documents referred to in those rules.

(5) A copy of the statement referred to in paragraph (1)(b) shall be provided by the returning officer to the Scottish Ministers.

St Andrew's House,  
Edinburgh  
19th December 2002

*PETER J PEACOCK*  
Authorised to sign by the Scottish Ministers