SCHEDULE 1

SCOTTISH LOCAL GOVERNMENT ELECTIONS RULES

PART III

CONTESTED ELECTIONS

Counting of votes

Attendance at counting of votes

41.—(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;

(d) the counting agents;

(e) persons performing duties under a contract for services entered into in connection with the conduct of or administration of the election; and

(f) a person who is entitled to attend by virtue of sections 6A to 6D of the Political Parties Elections and Referendums Act 2000 (representatives of the Electoral Commission and accredited observers),

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.

Counting of votes

42.—(1) Subject to paragraphs (3) and (4), the returning officer shall provide an electronic counting system and the count shall be conducted by means of such electronic counting system.

(2) For the purposes of enabling the count to be conducted using the electronic counting system the returning officer may carry out any functions or perform any procedure to be undertaken in connection with the count by electronic means and the references to ballot papers and parcels of ballot papers shall include references to such ballot papers or parcels in electronic form.

(3) If it proves impossible or impracticable to conduct the count, or some or all of the operations comprising the count, using the electronic counting system, the returning officer may make arrangements for the count, or such operations, as the case may be, to be conducted by other means.

(4) The returning officer may decide to conduct the count in respect of a by-election manually instead of using an electronic counting system.

The count

43.—(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) 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 local government area; or

 (b) by hand or post to the returning officer,

before the close of the poll and is accompanied by the postal voting statement duly completed.

(3) The returning officer shall not count any tendered ballot paper.

(4) The returning officer, while counting and recording the number of ballot papers and counting the votes, shall take all proper precautions for preventing any person from identifying the voter who cast the vote.

(5) Where under paragraph (1)(b) 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.

(6) 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 p.m. and 9 a.m. 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.

(7) 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.

Rejected ballot papers

44.—(1) Any ballot paper—

 (a) which does not bear a unique identifying mark in a form that is capable of being read by electronic means;

 (b) on which a number standing alone is not placed so as to indicate a first preference for some candidate;

 (c) on which the figure "1" standing alone indicating a first preference is set opposite the name of more than one candidate;

(d) on which anything is written or marked by which the voter can be identified except the printed number and other unique identifying mark on the back; or

(e) which is unmarked or void for uncertainty,

shall, subject to paragraph (2), be 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 figure indicating a first or subsequent preference; or

(c) by more than one mark,

shall not for such reason be deemed to be void by reason only of indicating a preference by the use of words (or any other mark) instead of figures, if in the opinion of the returning officer the word or mark clearly indicates a preference or preferences, 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 mark as rejected any ballot paper which under this rule is not to be counted, and shall add to that mark that the rejection is objected to if any counting agent objects to the rejection.

(4) The returning officer shall draw up a statement showing the number of ballot papers rejected under each of sub-paragraphs (a) to (e) of paragraph (1).

Decisions on ballot papers

45. The decision of the returning officer, whether express or implied, on any question arising in respect of a ballot paper, the exclusion of a candidate or the transfer of votes shall be final, but shall be subject to review on an election petition.

First stage

46.—(1) The returning officer shall sort the valid ballot papers into parcels according to the candidates for whom first preference votes are given.

(2) The returning officer shall then—

(a) count the number of ballot papers in each parcel;

(b) credit the candidate receiving the first preference vote with one vote for each ballot paper; and

(c) record those numbers.

(3) The returning officer shall also ascertain and record the total number of valid ballot papers.

The quota

47.—(1) The returning officer shall divide the total number of valid ballot papers for the electoral ward by a number exceeding by one the number of councillors to be elected at the election for that electoral ward.

(2) The result of the division under paragraph (1) (ignoring any decimal places), increased by one, is the number of votes sufficient to secure the return of a candidate as a councillor (in these rules referred to as the "quota").

Return of councillors

48.—(1) Where, at any stage of the count, the number of votes for a candidate equals or exceeds the quota, the candidate is deemed to be elected.

(2) A candidate is returned as a councillor when declared to be elected in accordance with rule 56(a).

Transfer of surplus votes

49.—(1) Where, at the end of any stage of the count, the number of votes credited to any candidate exceeds the quota and, subject to rules 50 and 53, one or more vacancies remain to be filled, the returning officer shall sort the ballot papers received by that candidate into further parcels so that they are grouped—

   (a) according to the next available preference given on those papers; and

   (b) where no such preference is given, as a parcel of non-transferable papers.

(2) The returning officer shall, in accordance with this rule and rule 50, transfer each parcel of ballot papers referred to in paragraph (1)(a) to the continuing candidate for whom the next available preference is given on those papers and shall credit such continuing candidates with an additional number of votes calculated in accordance with paragraph (3).

(3) The vote on each ballot paper transferred under paragraph (2) shall have a value ("the transfer value") calculated as follows—

A divided by B

Where

   A = the value which is calculated by multiplying the surplus of the transferring candidate by the value of the ballot paper when received by that candidate; and

   B = the total number of votes credited to that candidate,

the calculation being made to five decimal places (any remainder being ignored).

(4) For the purposes of paragraph (3)—

   (a) "transferring candidate" means the candidate from whom the ballot paper is being transferred; and

   (b) "the value of the ballot paper" means—

      (i) for a ballot paper on which a first preference vote is given for the transferring candidate, one; and

      (ii) in all other cases, the transfer value of the ballot paper when received by the transferring candidate.

Transfer of surplus votes – supplementary provisions

50.—(1) If, at the end of any stage of the count, the number of votes credited to two or more candidates exceeds the quota the returning officer shall—

   (a) first sort the ballot papers of the candidate with the highest surplus; and

   (b) then transfer the transferable papers of that candidate.

(2) If the surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest number of votes at the end of the most recent preceding stage at which they had unequal numbers of votes shall be transferred first.

(3) If the numbers of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide, by lot, which candidate's transferable papers are to be transferred first.

Exclusion of candidates

51.—(1) If, one or more vacancies remain to be filled and—

(a) the returning officer has transferred all ballot papers which are required by rule 49 or this rule to be transferred; or

(b) there are no ballot papers to be transferred under rule 49 or this rule,

the returning officer shall exclude from the election at that stage the candidate with the then lowest number of votes.

(2) The returning officer shall sort the ballot papers for the candidate excluded under paragraph (1) into parcels so that they are grouped—

(a) according to the next available preference given on those papers; and

(b) where no such preference is given, as a parcel of non-transferable papers.

(3) The returning officer shall, in accordance with this rule, transfer each parcel of ballot papers referred to in paragraph (2)(a) to the continuing candidate for whom the next available preference is given on those papers and shall credit such continuing candidates with an additional number of votes calculated in accordance with paragraph (4).

(4) The vote on each ballot paper transferred under paragraph (3) shall have a transfer value of one unless the vote was transferred to the excluded candidate in which case it shall have the same transfer value as when transferred to the candidate excluded under paragraph (1).

(5) This rule is subject to rule 53.

Exclusion of candidates – supplementary provisions

52.—(1) If, when a candidate has to be excluded under rule 51—

(a) two or more candidates each have the same number of votes; and

(b) no other candidate has fewer votes,

paragraph (2) applies.

(2) Where this paragraph applies—

(a) regard shall be had to the total number of votes credited to those candidates at the end of the most recently preceding stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and

(b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide, by lot, which of those candidates is to be excluded.

Filling of last vacancies

53.—(1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled, the continuing candidates are deemed to be elected.

(2) Where the last vacancies can be filled under this rule, no further transfer shall be made.

Re-count

54.—(1) A candidate or such candidate's election agent may, if present when the counting or re-counting 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-counting 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.

Counting of votes by means other than electronic counting

55. Where in accordance with rule 42(3) or (4) the returning officer makes arrangements for the count to be conducted other than by means of an electronic counting system these rules shall apply with the following modifications—

(a) in rule 43—

(i) after paragraph (1) insert—

"(1A) The returning officer shall not count the votes given on any ballot papers until the ballot papers from a ballot box have been mixed with at least one other ballot box.";

(ii) for paragraph (4) substitute—

"(4) The returning officer, while counting and recording the number of ballot papers and confirming the votes, shall keep the ballot papers with their faces upwards and take all proper precautions for preventing any person from seeing the numbers or other unique identifying marks printed on the back of the papers.";

(b) in rule 44 for paragraph (1)(a) substitute, "(a) which does not bear or contain an official mark;";

(c) in rule 53 after paragraph (1) insert—

"(1A) Where only one vacancy remains unfilled and the number of votes then credited to any one continuing candidate ("the highest continuing candidate") is equal to or greater than the total number of votes then credited to all the other continuing candidates, the highest continuing candidate is deemed to be elected."; and

(d) in rule 57—

(i) for paragraph (1) substitute—

"(1) 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."; and

(ii) omit paragraphs (3) and (4).

Declaration of result

56. In a contested election, when the result of the poll has been ascertained, the returning officer shall—

(a) declare to be elected the candidates who have been deemed to be elected as councillors under this Part;

(b) give notice of the names of the candidates elected to the proper officer of the council for which the election was held; and

(c) give public notice of—

(i) the name of the candidates elected;

(ii) the number of first and subsequent preferences for each candidate;

(iii) the numbers of ballot papers transferred and their transfer values at each stage of the count;

(iv) the number of votes credited to each candidate at each stage of the count;

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(v) the number of non-transferable ballot papers and the number of non-transferable votes at each stage of the count; and

(vi) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.