

These notes refer to the Parliamentary Voting System and Constituencies Act 2011 (c.1) which received Royal Assent on 16 February 2011

PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 10: The alternative vote system: further amendments

128. *Schedule 10* sets out further amendments required to be made to the 1983 Act and other primary legislation in order to replace the first past the post system with the alternative vote system.

Part 1: Amendments of the Parliamentary Elections Rules

129. *Paragraph 2* substitutes rule 18 (poll to be taken by ballot) of the Parliamentary Elections Rules as set out in Schedule 1 to the 1983 Act to provide that votes must be given by ballot in accordance with new rule 37A which sets out how votes are given and the results determined in accordance with new rule 45A which sets out how the votes are to be counted. New rules 37A and 45A are inserted into the Parliamentary Elections Rules by section 9.
130. *Paragraph 3* amends rule 29(5) of the Parliamentary Elections Rules to prescribe new wording for the notice that is required to be displayed in polling station compartments in order to explain how to vote.
131. *Paragraph 5(1)* amends rule 46 of the Parliamentary Elections Rules to provide that a candidate or candidate's election agent may, at the time when any stage of the counting or re-counting of the votes is completed, request the returning officer to have the votes re-counted or again re-counted in relation to any or all of the stages that have been completed so far. The returning officer may refuse to comply with a request under these provisions if in the officer's opinion it is unreasonable.
132. *Paragraph 5(3)* also amends rule 46 of the Parliamentary Elections Rules to provide that at any time before the declaration of the result, the returning officer may, if the officer thinks fit, have the votes re-counted in respect of any or all of the counting stages (whether or not there have been any previous re-counts). This puts on a statutory footing existing practices and is intended to address the situation where the result is very close (but this had not been apparent from earlier counting stages) and the returning officer thinks it necessary to re-count the votes from the earlier counting stages.
133. *Paragraph 6* amends rule 47 so that it sets out the circumstances in which a ballot paper under the alternative vote system shall be deemed to be rejected or not reallocated. Under the revised rule 47, a distinction is made between:
- ballot papers that are rejected at the outset and will play no part at all in the count, and

These notes refer to the Parliamentary Voting System and Constituencies Act 2011 (c.1) which received Royal Assent on 16 February 2011

- ballot papers that are included in the count initially but are not reallocated at a later stage of the count, due to the order of preferences on the ballot paper becoming unclear, and are therefore removed at that stage.
134. *Paragraph 6(2)* amends rule 47(1) of the Parliamentary Elections Rules. It retains the current provisions, whereby a ballot paper that does not bear the official mark or has anything written or marked on it by which the voter can be identified is rejected and will play no part at all in the count. Additionally,
- if a number 1 has not been marked against the name of any of the candidates or if a voter marks the number 1 against the name of more than one candidate; or
 - if the ballot paper is unmarked or is marked in a way that does not indicate a clear choice as to the voter's first (or only) preference,
- then the ballot paper will be rejected as void and not counted at any stage. By virtue of rule 47(4) (as amended by *paragraph 6(5)*), the returning officer is required to draw up a statement showing the number of rejected ballot papers under each of these heads.
135. *Paragraph 6(3)* substitutes new provisions for paragraph (2) of rule 47 of the Parliamentary Elections Rules. These set out circumstances where notwithstanding the provisions at rule 47(1) a ballot paper may be deemed valid by the returning officer, where the voter's voting intention is clear, and the way the ballot paper is marked does not itself identify the voter. For example, this would cover where a voter marks the ballot paper with a mark that is not a number but nevertheless the mark expresses a clear preference for a particular candidate.
136. In addition, inserted paragraphs (2A) and (2B) provide that if the first preference is clear, this and all other preferences may be deemed valid, until the order of preferences on the ballot paper becomes unclear. At that point, the other mark(s) on the ballot paper are ignored and the ballot paper is removed from the count. Paragraphs (3A) and (3B) (inserted by *paragraph (4)*) provide that where this occurs the returning officer is required to endorse the words "not reallocated" on the ballot paper and an indication of the stage at which the mark(s) were ignored. The returning officer shall add to the endorsement the words "decision objected to" if an objection is made by a counting agent to his decision. The reason for endorsing the ballot papers in this way is so that if there is a re-count, returning officers will know at what stage the ballot papers were not reallocated by reason of rule 47(3A) and so will not have to take these decisions afresh. The requirement to endorse the ballot paper does not apply to ballot papers where the voter's order of preferences are clear but the ballot paper is not reallocated at a counting stage due to the ballot paper not showing a preference for any candidates remaining in the count and where this fact is clear.
137. *Paragraph 7* concerns equality of votes, where:
- there are two or more candidates with fewer votes than the other candidates but who have the same number of votes as each other, or
 - there are three or more candidates, or remaining candidates, and they all have the same number of votes as each other, or
 - there are two remaining candidates and they have the same number of votes as each other, or
 - there are only two candidates contesting an election and they have the same number of votes.
138. Under the present first past the post system, a tie between candidates is resolved by the drawing of lots. However, under the alternative vote system, the candidate would be either eliminated or elected, as appropriate, with reference to the number of voters' first preferences received by each candidate, or if that fails to resolve the tie, with reference

These notes refer to the Parliamentary Voting System and Constituencies Act 2011 (c.1) which received Royal Assent on 16 February 2011

to the number of votes allocated to each candidate at the next counting stage (if any). Where this does not resolve the tie or there have been no previous eliminations, the returning officer will decide by lot which of the candidates is to be eliminated or elected. For example this will apply where only two candidates are contesting the election and they receive an equal number of votes.

139. *Paragraph 8* sets out provisions concerning the declaration of the result. It amends the list of information in rule 50 of the Parliamentary Elections Rules that the returning officer is required to declare and to give public notice of once the result of the poll has been ascertained in a contested election.
140. *Paragraph 9* concerns the return or forfeiture of a candidate's deposit and provides that a candidate's deposit shall be forfeited if the number of first preference votes obtained by the candidate is not more than one twentieth of the total number of votes allocated to candidates in accordance with voters' first preferences.
141. *Paragraphs 10 and 11* amend rules 61 and 62 of the Parliamentary Elections Rules concerning the death of an independent candidate at a parliamentary election so that these rules work under the alternative vote system.
142. *Paragraph 12* amends wording on certain forms in the Appendix of Forms in the Parliamentary Elections Rules: the Form of Front of Ballot Paper, Directions as to printing the ballot paper, and Form of directions for the Guidance of the Voters in voting. The changes to these Forms are consequential to parliamentary elections being held under the alternative vote system. Given that voters would be voting under a new voting system, the amendments are designed to provide clear guidance on how to cast a vote under the system and to make it clear that voters may express a preference for more than one candidate if they wish.
143. *Paragraph 12(2)(b) and (3)* removes the pre-printed numbering of candidates on the left-hand side of ballot papers. Under the current requirements for ballot papers, candidates are listed in alphabetical order by surname and put into rows that are numbered. The amendment is intended to address the concern that, under the alternative vote system, pre-printed numbering on ballot papers could be a cause of confusion for voters and that voters could seek to use the numbers in some way in making their preferences and therefore lead to uncertainty about their intentions.

Part 2: Amendments of other provisions of the 1983 Act

144. *Paragraphs 14 to 22* make consequential amendments to other provisions in the 1983 Act. The amendments ensure that the various provisions are consistent with the alternative vote system.
145. *Paragraph 14* amends section 66 of the 1983 Act which concerns the secrecy of the ballot. Anyone attending at a polling station, the count or any other procedure at the elections in an official capacity or as an observer must maintain and aid in maintaining the secrecy of voting. The section has been amended so that the secrecy of the ballot requirements will cover information about how a voter has voted and so will include preferences expressed by a voter.
146. *Paragraphs 15 to 17* amend sections 113, 114 and 115 of the 1983 Act which contain the offences of bribery, treating and undue influence respectively. Whilst the nature of these offences and the penalties remain the same, the sections have been amended to clarify that references to "voting or refraining from voting" in the case of a parliamentary election includes a reference to marking (or refraining from marking) choices on the ballot paper. There is a similar clarifying provision in relation to references to "the vote of any voter" contained in these sections.
147. *Paragraph 19* inserts subsection (6A) into section 139 of the 1983 Act, which concerns the situation where an election court is considering an election petition and it appears that there is an equality of votes between any candidates at the election. Under the

These notes refer to the Parliamentary Voting System and Constituencies Act 2011 (c.1) which received Royal Assent on 16 February 2011

amendments, for parliamentary elections under the alternative vote, the court would resolve the tie by applying the same principles to ties as set out in revised rules 49, 49A and 62 which apply where there is an equality of votes.

148. *Paragraphs 20 and 21* amend section 165 and section 166 of the 1983 Act respectively. These sections provide for votes for a candidate in certain circumstances to be thrown away or disregarded. Under the amendments only the preferences obtained or given illegally would be thrown away/disregarded; the preferences that are validly given would continue to be used in the count. This reflects the fact that under the alternative vote system a ballot paper may show a preference for more than one candidate.
149. *Paragraph 22* amends section 199B of the 1983 Act which concerns the translations of certain documents. The amendments revise the wording on the enlarged sample copy of the ballot paper that must be displayed at every polling station. The revised wording is in line with that made to other notices in Schedule 10 and reflects that voters would be voting under a new voting system.

Part 3: Amendments of other enactments

150. *Paragraph 23* makes a consequential amendment to the definition of “qualifying party” which is used in the provisions inserted in the Parliamentary Constituencies Act 1986 by section 12 of and Schedule 11 to the Parliamentary Voting System and Constituencies Act 2011. Those provisions provide for public hearings about Boundary Commission proposals. The amendment specifies that in the event that the alternative vote system is implemented, where share of the vote in the most recent parliamentary general election is used to determine whether a party is a ‘qualifying party’, this would be done with reference to the percentage of first preference votes received by the party at that election.
151. *Paragraph 24* amends section 3A of the 2000 Act concerning the four Electoral Commissioners put forward by registered parties and makes provision for determining the size of two registered parties with the same number of MPs under the alternative vote system. Currently, the relative size of any two or more parties is determined by the number of MPs each party has – if they each have the same number, the party that secured the most votes at the most recent general election is deemed to be the larger party. The amendment provides that this will be determined in accordance with the total number of first preference votes cast for candidates standing for the party at the most recent general election.