

SCHEDULE 2

SCOTTISH PARLIAMENTARY ELECTION RULES

PART III

CONTESTED ELECTIONS

Counting of votes

Attendance at counting of votes

52.—(1) The constituency 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 and the regional returning officer notice in writing of the time and place at which he will begin to count the votes.

(2) No person other than—

- (a) the constituency returning officer and his clerks;
- (b) the candidates;
- (c) the election agents;
- (d) the counting agents;
- (f) (except in the case of an election to fill a vacancy in the seat of a constituency member), the regional returning officer,

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

(3) A person not entitled to attend at the counting of the votes shall not be permitted to do so by the constituency returning officer unless he—

- (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 constituency returning officer shall give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as he can give them consistently with the orderly conduct of the proceedings and the discharge of his duties in connection with them.

(5) In particular, where the votes are counted by sorting the ballot papers according to—

- (a) a candidate for whom a vote is given in the case of a constituency ballot paper; or
- (b) an individual candidate or a registered party for which a vote is given in the case of a regional ballot paper,

and then counting the number of ballot papers for each such candidate or party, the counting agents shall be entitled to satisfy themselves that the ballot papers are correctly sorted.

The count

53.—(1) The constituency returning officer shall—

- (a) in the presence of the counting agents appointed for the purposes of the election open each ballot box and count and record separately the number of constituency ballot papers there are in each box and the number of regional ballot papers there are in each box;

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- (b) in the presence of the election agents appointed for the purposes of the election verify each ballot paper account; and
 - (c) count such of the postal ballot papers as have been duly returned and record separately the number of constituency postal ballot papers counted and the number of regional postal ballot papers counted.
- (2) The constituency returning officer shall not count the votes given on any ballot papers until—
- (a) in the case of constituency postal ballot papers, they have been mixed with constituency ballot papers from at least one ballot box;
 - (b) in the case of constituency ballot papers from a ballot box, they have been mixed with constituency ballot papers from at least one other ballot box;
 - (c) in the case of regional postal ballot papers, they have been mixed with regional ballot papers from at least one ballot box; and
 - (d) in the case of regional ballot papers from a ballot box, they have been mixed with regional 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 in the proper envelope so as to reach the constituency returning officer before the close of the poll and is accompanied by the declaration of identity duly signed and authenticated.
- (4) The constituency returning officer shall not count any tendered ballot paper.
- (5) The constituency 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) The constituency returning officer shall verify each ballot paper account by comparing it with the number of ballot papers recorded by him, and the unused and spoiled ballot papers in his possession and the tendered votes list (opening and resealing the packets containing the unused and spoiled ballot papers and the tendered votes list) and shall draw up a statement as to the result of the verification, which any election agent appointed for the purposes of that election may copy.
- (7) The constituency returning officer shall so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that he may, in so far as he and the agents appointed for the purpose of that election agree, exclude the hours between 7 in the evening and 9 on the following morning.

For the purposes of this exception the agreement of—

- (a) a candidate for return as a constituency member or his election agent; or
- (b) an individual candidate for return as a regional member or the election agent of such a candidate or the election agent of a registered party standing nominated,

shall be as effective as the agreement of the counting agent of that candidate or, as the case may be, registered party.

- (8) During the time so excluded the constituency returning officer shall—
- (a) place the ballot papers and other documents relating to the election under his 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: constituency election

54.—(1) A candidate for return as a constituency member or his election agent may, if present when the counting or any re-count of the votes given in the constituency ballot papers is completed, require the constituency returning officer to have these votes re-counted or again re-counted but the constituency returning officer may refuse to do so if in his opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-count of votes given in the constituency ballot papers until the candidates and election agents present at its completion have been given a reasonable opportunity to exercise the right conferred by this rule.

Re-count: regional votes in a constituency

55.—(1) An individual candidate for return as a regional member or his election agent, or the election agent for a registered party standing nominated (or any person authorised in writing by that agent) may prior to the publication of the statement required by rule 59 below, if present when the counting or any re-count of the votes given in the regional ballot papers is completed in a constituency, require the constituency returning officer to have the votes re-counted or again re-counted but the constituency returning officer may refuse to do so if in his 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 individual 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

56.—(1) Any ballot paper—

- (a) which does not bear the official mark;
- (b) in the case of a constituency ballot paper, on which votes are given for more than one candidate;
- (c) in the case of a regional ballot paper, on which votes are given for more than one registered party or individual candidate, or for a registered party and an individual candidate;
- (d) on which anything is written or marked by which the voter can be identified except the printed number on the back; or
- (e) which is unmarked or void for uncertainty,

shall, subject to the provisions of sub-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 cross; or
- (c) by more than one mark,

shall not for such reason be deemed to be void if an intention that the vote shall be for one of the candidates (or in the case of a regional ballot paper, registered parties) clearly appears, and the way the paper is marked does not of itself identify the voter and it is not shown that he can be identified by it.

(3) A regional ballot paper on which a vote is marked for a particular candidate on a registered party's regional list shall, if otherwise valid, be treated as a vote for that party, whether or not there is also a vote marked for that party.

(4) The constituency returning officer shall endorse the word "rejected" on any ballot paper which under this paragraph is not to be counted, and shall add to the endorsement the words "rejection objected to" if an objection is made by a counting agent to his decision.

(5) The constituency 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) in the case of a constituency ballot paper, voting for more than one candidate;

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- (c) in the case of a regional ballot paper, voting for more than one party's regional list or individual candidate, or for a registered party and an individual candidate;
- (d) writing or mark by which voter could be identified; and
- (e) unmarked or void for uncertainty.

Decisions on ballot papers

57. The decision of the constituency 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: election for return of constituency members

58. Where, after the counting of the votes (including any re-count) given in a poll for the return of a constituency member is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the constituency 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.

Conveying results of count etc. to regional returning officer

59.—(1) As soon as practicable after the conclusion of the counting of the votes (including any re-count) given in a constituency in a poll for return of regional members, the constituency returning officer shall, in accordance with any directions given by the regional returning officer, draw up a statement showing the number of votes given for each registered party and each individual candidate (excluding any votes given on any rejected ballot papers).

(2) The constituency returning officer shall forthwith inform the regional returning officer of the contents of that statement.

(3) The constituency returning officer shall give public notice of the statement prepared under paragraph (1) above as soon as practicable after he has informed the regional returning officer.

Declaration of result: constituency members

60.—(1) In a contested election for return of a constituency member, when the result of the poll for the return of a constituency member has been ascertained, the constituency returning officer shall forthwith—

- (a) declare to be elected the candidate to whom the majority of votes has been given;
- (b) return his name and, if a certificate has been received by the constituency returning officer issued by or on behalf of the nominating officer of a registered party under rule 7(1) above in respect of that candidate, the name of that party; and
- (c) give public notice of—
 - (i) his name and, if applicable, the name of the registered party referred to in paragraph (1)(b) above; and
 - (ii) the total number of votes given for each candidate together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.

(2) In an uncontested election, the statement of persons nominated for return as a constituency member, in addition to showing the person standing nominated, shall also declare that person elected, and the constituency returning officer shall forthwith return his name and, if a certificate has been received by the constituency returning officer issued by or on behalf of the nominating offer of a

registered party under rule 7(1) above in respect of that candidate, the name of that party to the Clerk of the Parliament.

(3) In any case to which paragraph (1) or (2) above applies (except in an election to fill a vacancy in the seat of a constituency member) the constituency returning officer shall forthwith also notify the regional returning officer of the candidate who has been returned and, if applicable, the name of the registered political party referred to in paragraph (1)(b) or, as the case may be, (2) above.

(4) For the purposes of sub-paragraph (1)(b) and (2) above the constituency returning officer shall return those names required to be returned by—

- (a) completing a certificate in the form X set out in the Appendix; and
- (b) delivering it, or causing it to be delivered, to the Clerk of the Parliament.