

## SCHEDULE 2

### SCOTTISH PARLIAMENTARY ELECTION RULES

#### PART III

#### CONTESTED ELECTIONS

##### *General Provisions*

##### **Poll to be taken by ballot**

**25.**—(1) The votes at the poll for the return of a constituency member shall be given by ballot and the result shall be ascertained by counting the votes given to each candidate, and the candidate to whom the majority of votes has been given shall be declared to have been elected.

(2) The regional votes at a poll for the return of regional members shall be given by ballot, and the regional figure for each individual candidate and each registered party shall be ascertained by counting the regional votes given to each individual candidate and each registered party.

##### **The ballot paper: constituency candidates**

**26.**—(1) The ballot of every voter at a poll for the return of a constituency member shall consist of a ballot paper (referred to in these Rules as a “constituency ballot paper”).

(2) The persons shown in the statement required by rule 18 above and no others, shall be entitled to have their names inserted in the constituency ballot paper.

(3) Every constituency ballot paper shall be in the form N set out in the Appendix, and shall be printed in accordance with the directions in that form, and—

- (a) shall contain the names and other particulars of the candidates as shown in the statement required by rule 18 above;
- (b) shall be capable of being folded up;
- (c) shall have a number printed on the back; and
- (d) shall have attached a counterfoil with the same number printed on it.

(4) The order of the names in the constituency ballot paper shall be the same as in the statement required by rule 18 above.

(5) If a candidate who is the subject of a certificate under rule 7(1) above so requests, the ballot paper shall also contain, to the left of that candidate’s particulars, the party’s registered emblem (or, as the case may be, one of the party’s registered emblems).

(6) The request must—

- (a) be made in writing to the constituency returning officer; and
- (b) be received by him during the period for delivery of nomination papers set out in the Table in rule 1(1) above.

##### **The ballot paper: regional candidates**

**27.**—(1) The ballot of every voter at a poll for the return of regional members shall consist of a ballot paper (referred to in these Rules as a “regional ballot paper”).

(2) The only names, to be inserted in the regional ballot paper shall be the names of—

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- (a) the individual candidates shown in the statement required by rule 19 above; and
  - (b) the registered parties shown in that statement together with the names of the candidates included in each party's regional list as indicated in the statement made under rule 6(4) above.
- (3) Every regional ballot paper shall be in the form O set out in the Appendix, and shall be printed in accordance with the directions in that form, and shall contain—
- (a) the names and descriptions of the individual candidates as shown in the statement required by rule 19 above; and
  - (b) the names of the registered political parties referred to in paragraph (2)(b) above (being, in each case, the name by which that party wishes to be known for the purposes of the election) as shown in the statement required by rule 19 above together with the names of the candidates included in each party's regional list.
- (4) The order of the names of the registered parties, together with the candidates appearing on their regional lists, and of the individual candidates in the regional ballot paper shall be the same as in the statement required by rule 19 above.
- (5) If a request has been made to the regional returning officer under rule 6(6) above that a registered party's registered emblem (or, as the case may be, one of the party's registered emblems) be shown on the ballot paper against that party's name, the ballot paper shall also contain, to the left of the party's name, that emblem.

### **Colour of ballot papers**

**28.** The regional ballot paper shall be a different colour from the constituency ballot paper.

### **The official mark**

**29.—**(1) Every ballot paper shall be marked with an official mark, which shall perforate the ballot paper.

(2) The official mark shall be kept secret, and an interval of not less than seven years shall intervene before the same official mark may be used at a poll for a Scottish parliamentary election held in that constituency.

(3) The official mark used for ballot papers issued for the purpose of voting by post shall not be used at the same election for ballot papers issued for the purpose of voting in person.

### **Prohibition of disclosure of vote**

**30.** No person who has voted at a Scottish parliamentary election shall, in any legal proceeding to question the election or return, be required to state the candidate for whom, or the registered party for which, he voted.

### **Use of schools and public rooms**

**31.—**(1) At a Scottish parliamentary election the constituency returning officer may use, free of charge, for the purpose of taking the poll—

- (a) a room in a school to which this rule applies;
- (b) a room the expenses of maintaining which is payable out of any rate.

(2) This rule applies to a school other than an independent school within the meaning of the Education (Scotland) Act 1980.

(3) The constituency returning officer shall make good any damage done to, and defray any expense incurred by, the persons having control over any such room as mentioned above by reason of its being used for the purpose of taking the poll.

*Action to be taken before the poll*

**Notice of poll**

**32.**—(1) The statement required by rule 18 above and the statement required by rule 19 above shall each include a notice of the poll, stating the day on which and the hours during which the poll will be taken and, in the case of a Scottish parliamentary general election, each such notice may contain such further information about that election as the returning officer who publishes that notice thinks fit.

(2) The constituency returning officer shall also give public notice (which may be combined with the statement required by rule 18 above) of—

- (a) the situation of each polling station;
- (b) the description of voters entitled to vote there,

and he shall as soon as practicable after giving such notice give a copy of it to each of the election agents.

**Postal ballot papers**

**33.**—(1) Subject to sub-paragraph (2), the constituency returning officer shall as soon as practicable send to those entitled to vote by post, at the address shown in the absent voters list or, in the case of a person entitled to vote by post as proxy, at the address shown in the list kept under article 11(9), a ballot paper and a declaration of identity in the form P set out in the Appendix together with an envelope for their return.

(2) In the case of a person who is entitled to give by post a vote for return of a constituency member and a regional vote, the reference in paragraph (1) above to “a ballot paper” shall be construed as a reference to a constituency ballot paper and a regional ballot paper.

**Provision of polling stations**

**34.**—(1) The constituency returning officer shall provide a sufficient number of polling stations and, subject to the following provisions of this paragraph, shall allot the electors to the polling stations in such manner as he thinks most convenient.

(2) One or more polling stations may be provided in the same room.

(3) The polling station allotted to electors from any polling district shall be in the polling place for that district.

(4) The constituency returning officer shall provide each polling station with such number of compartments as may be necessary in which the voters can mark their votes screened from observation.

**Appointment of presiding officers and clerks**

**35.**—(1) The constituency returning officer shall appoint and pay a presiding officer to attend at each polling station and such clerks as may be necessary, but he shall not appoint any person who has been employed by or on behalf of a candidate or a registered party in or about the election.

(2) The constituency returning officer may, if he thinks fit, preside at a polling station and the provisions of these Rules relating to a presiding officer shall apply to a constituency returning officer

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so presiding with the necessary modifications as to things to be done by the constituency returning officer to the presiding officer or by the presiding officer to the constituency returning officer.

(3) A presiding officer may do, by the clerks appointed to assist him, any act (including the asking of questions) which he is required or authorised by these Rules to do at a polling station except order the arrest, exclusion or removal of any person from the polling station.

### **Issue of official poll cards**

**36.**—(1) The constituency returning officer shall as soon as practicable send to electors and their proxies an official poll card, but a card need not be sent to any person—

- (i) as an elector if he is placed on the absent voters list for the election; or
- (ii) as a proxy if he is entitled to vote by post as proxy at the election.

(2) An elector's official poll card shall be sent or be delivered to his qualifying address, and a proxy's to his address as shown in the list of proxies.

(3) The official poll card shall be in the form Q or, in the case of a proxy's poll card, R set out in the Appendix and shall set out—

- (a) the name of the Scottish parliamentary constituency and (except in the case of an election to fill a vacancy in the seat of a constituency member) region for which the election is to be held;
- (b) the elector's name, qualifying address and number on the register;
- (c) the date and hours of the poll and the situation of the elector's polling station; and
- (d) such other information, not relating to any candidate or registered party, as the constituency returning officer considers appropriate.

(4) In this paragraph—

“elector” means a person—

- (a) who is registered as a local government elector in the register to be used at the election; or
- (b) who, pending the publication of a register mentioned in sub-paragraph (a) above, appears from the electors lists for that register as corrected by the registration officer to be entitled to be so registered,

and accordingly includes a person shown in the register or electors lists as below voting age if it appears from it that he will be of voting age on the day fixed for the poll, but not otherwise.

### **Equipment of polling stations**

**37.**—(1) The constituency returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as in the constituency returning officer's opinion may be necessary. At a Scottish parliamentary general election, separate ballot boxes will be provided for the constituency ballot papers and for the regional ballot papers.

(2) Every ballot box shall be so constructed that the ballot papers can be put in it, but cannot be withdrawn from it, without the box being opened.

(3) The constituency returning officer shall provide each polling station with—

- (a) materials to enable voters to mark the ballot papers;
- (b) instruments for stamping on them the official mark;
- (c) copies of the register of electors or such part of it as contains the names of electors allotted to the station;

- (d) the parts of any special lists prepared for the election corresponding to the register of electors or the part of it provided under sub-paragraph (c) above.
- (4) A notice in the form S set out in the Appendix, giving directions for the guidance of the voters in voting, shall be printed in conspicuous characters and exhibited inside and outside every polling station.
- (5) At a Scottish parliamentary general election, a notice in the form T set out in the Appendix, giving further information to voters shall be printed and exhibited either inside or outside every polling station and may be exhibited both inside and outside any polling station.
- (6) In every compartment of every polling station there shall be exhibited the notice—  
“Vote once only on each ballot paper by marking a X. Put no other mark on each ballot paper issued or your vote may not be counted.”
- (7) In the case of a poll to fill a vacancy in the seat of a constituency member, the references in paragraph (6) above and in form S to “each ballot paper” shall be construed as references to “the ballot paper”.
- (8) The statements required by rules 18 and (except in the case of a poll to fill a vacancy in the seat of a constituency member) 19 above shall be printed in conspicuous characters and exhibited inside or outside every polling station and may be exhibited both inside and outside any polling station.

### **Appointment of polling and counting agents**

- 38.**—(1) Each candidate for return as a constituency member, each individual candidate for return as a regional member, and the election agent of each registered party standing nominated may before the commencement of the poll, appoint—
- (a) polling agents to attend at polling stations for the purpose of detecting personation; and
- (b) counting agents to attend at the counting of the votes.
- (2) The constituency returning officer may limit the number of counting agents for candidates for return as a constituency member, so that—
- (a) the number shall be the same in the case of each candidate; and
- (b) the number allowed for a candidate shall not (except in special circumstances) be less than the number obtained by dividing the number of clerks employed on the counting by the number of candidates for return as a constituency member.
- (3) The constituency returning officer may limit the number of counting agents for individual candidates for return as regional members and for registered parties standing nominated, so that—
- (a) the number shall be the same in the case of each individual candidate and registered party; and
- (b) the number allowed to an individual candidate or registered party shall not (except in special circumstances) be less than the number obtained by dividing the number of clerks employed on the counting by the total of the number of individual candidates and registered parties standing nominated.
- (4) Notice in writing of an appointment, stating the names and addresses of the persons appointed, shall be given by the person making the appointment to the constituency returning officer and shall be so given not later than the fifth day (computed like any period of time in the Table in rule 1(1) above) before the day of the poll.
- (5) If an agent dies, or becomes incapable of acting, the person who appointed him may appoint another agent in his place, and shall forthwith give to the constituency returning officer notice in writing of the name and address of the agent appointed.

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(6) The foregoing provisions of this rule shall be without prejudice to the requirements of article 34 as to the appointment of paid polling agents, and any appointment authorised by this rule may be made and the notice of appointment given to the constituency returning officer by the election agent instead of by the candidate.

(7) In the following provisions of these Rules references to polling and counting agents shall be taken as references to agents—

- (a) whose appointments have been duly made and notified; and
- (b) where the number of agents is restricted, who are within the permitted number.

(8) Any notice required to be given to a counting agent by the constituency returning officer may be delivered at or sent by post to the address stated in the notice of appointment.

(9) Any candidate (or, in the case of a registered party standing nominated, the election agent of that party) may himself do any act or thing which any polling or counting agent, if appointed by him or on his behalf, would have been authorised to do, or may assist such agent in doing such any such act or thing.

(10) An election agent for a candidate or registered party standing nominated may do or assist in doing anything which a polling or counting agent of that candidate or party is authorised to do; and anything required or authorised by these Rules to be done in the presence of the polling or counting agents may be done in the presence of such an election agent instead of such polling or counting agents.

(11) Where by these Rules any act or thing is required or authorised to be done in the presence of the polling or counting agents, the non-attendance of any agents or agent 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**

**39.** The constituency returning officer shall make such arrangements as he thinks fit to ensure that—

- (a) every person attending at a polling station (otherwise than for the purpose of voting or assisting a blind voter to vote or as a constable on duty there) has been given a copy in writing of the provisions of article 29; and
- (b) every person attending at the counting of the votes (other than any constable on duty at the counting) has been given a copy in writing of the provisions of article 29.

#### *The Poll*

#### **Admission to polling station**

**40.—(1)** The presiding officer shall regulate the number of voters to be admitted to the polling station at the same time, and shall exclude all other persons except—

- (a) the candidates;
- (b) the election agent of any candidate for return as a constituency member, or of any individual candidate for return as a regional member, or of any registered party standing nominated;
- (c) the polling agents appointed to attend at the polling station;
- (d) the clerks appointed to attend at the polling station;
- (e) the constables on duty; and
- (f) the companions of blind voters.

(2) Not more than one polling agent shall be admitted at the same time to a polling station on behalf of the same candidate or of the same registered party.

(3) Not more than one candidate on a registered party's regional list shall be admitted at the same time to a polling station.

(4) A constable or person employed by a constituency or regional returning officer shall not be admitted to vote in person elsewhere than at his own polling station under the relevant provision of this Order, except on production and surrender of a certificate as to his employment, which shall be in the form U set out in the Appendix and signed by an officer of police of the rank of Inspector or above or by the returning officer in question, as the case may be.

(5) Any certificate surrendered under this rule shall forthwith be cancelled.

### **Keeping of order in station**

**41.**—(1) It is the presiding officer's duty to keep order at his polling station.

(2) If a person misconducts himself in a polling station, or fails to obey the presiding officer's lawful orders, he may immediately, by the presiding officer's order, be removed from the polling station—

- (a) by a constable in or near that station; or
- (b) by any other person authorised in writing by the constituency returning officer to remove him,

and the person so removed shall not, without the presiding officer's permission, again enter the polling station during the day.

(3) Any person so removed may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.

(4) The powers conferred by this rule shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

### **Sealing of ballot boxes**

**42.** Immediately before the commencement of the poll, the presiding officer shall—

- (a) show each ballot box proposed to be used for the purposes of the poll empty to such persons, if any, as are present in the polling station, so that they may see that each box is empty;
- (b) place his seal on it in such a manner as to prevent it being opened without breaking the seal;
- (c) place each box in his view for the receipt of ballot papers; and
- (d) keep it so sealed.

### **Questions to be put to voters**

**43.**—(1) The presiding officer may, and if required by a candidate or the election or polling agent of a candidate or of a registered party standing nominated shall, put to any person applying for a ballot paper at the time of his application, but not afterwards, the following questions, or either of them:—

- (a) in the case of a person applying as an elector—
  - (i) "Are you the person registered in the register of local government electors for this election as follows?" (*read the whole entry from the register.*);
  - (ii) "Have you already voted, here or elsewhere, at this election otherwise than as proxy for some other person?";

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(b) in the case of a person applying as proxy—

- (i) “Are you the person whose name appears as [A.B.] in the list of proxies for this election as entitled to vote as proxy on behalf of [C.D.]?”
- (ii) “Have you already voted here or elsewhere at this election as proxy on behalf of [C.D.]?”

(2) In the case of a person applying as proxy, the presiding officer may, and if required as mentioned above shall, put the following additional question—

“Are you the husband [wife], parent, grandparent, brother [sister], child or grandchild of [C.D.]?”

and if that question is not answered in the affirmative, the following question—

“Have you at this election already voted in this constituency on behalf of two persons of whom you are not the husband [wife], parent, grandparent, brother [sister], child or grandchild?”

(3) A ballot paper shall not be delivered to any person required to answer the above questions or any of them unless he has answered the questions or question satisfactorily.

(4) Save as by this rule authorised, no inquiry shall be permitted as to the right of any person to vote.

#### **Challenge of voter**

**44.**—(1) If at the time a person applies for a ballot paper at a Scottish parliamentary election for the purpose of voting in person, or after he has applied for a ballot paper for that purpose and before he has left the polling station, a candidate or the election or polling agent of a candidate or of a registered party standing nominated—

- (a) declares to the presiding officer that he has reasonable cause to believe that the applicant has committed an offence of personation; and
- (b) undertakes to substantiate the charge in a court of law,

the presiding officer may order a constable to arrest the applicant, and the order of the presiding officer shall be sufficient authority for the constable so to do.

(2) A person against whom a declaration is made under this paragraph shall not by reason of it be prevented from voting.

(3) A person arrested under the provisions of this paragraph shall be dealt with as a person taken into custody by a constable for an offence without a warrant.

#### **Voting procedure**

**45.**—(1) At a Scottish parliamentary general election, a voter may apply for a constituency ballot paper or a regional ballot paper or both. However at any such election, the presiding officer shall assume, in the absence of a clear indication to the contrary, that the voter’s application is for a constituency ballot paper and a regional ballot paper.

(2) A ballot paper shall be delivered to a voter who applies for one, and immediately before delivery—

- (a) the ballot paper shall be stamped with the official mark;
- (b) the number and name of the elector as stated in the copy of the register of electors shall be called out;
- (c) the number of the elector shall be marked on the counterfoil;



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- (d) a mark shall be placed in the register of electors against the number of the elector to denote that a ballot paper has been received but without showing the particular ballot paper which has been received; and
- (e) in the case of a person applying for a ballot paper as proxy, a mark shall also be placed against his name in the list of proxies.

(3) The voter, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station and there secretly mark his paper and fold it up so as to conceal his vote, and shall then show to the presiding officer the back of the paper, so as to disclose the official mark, and put the ballot paper so folded up into the ballot box provided for that purpose in the presiding officer's presence.

(4) The voter shall vote without undue delay, and shall leave the polling station as soon as he has put his ballot paper into the ballot box.

(5) At a Scottish parliamentary general election the same copy of the register of electors may be used under paragraph (2) above for a constituency ballot paper and a regional ballot paper and one mark may be placed in that register under paragraph (2)(d) above or in the list of proxies under paragraph (2)(e) above to denote that each of the ballot papers has been received; and, where one mark is so placed in that register or, as the case may be, list, the mark shall, unless the contrary intention appears, be taken to denote that a constituency ballot paper and regional ballot paper have been received.

#### **Votes marked by presiding officer**

**46.—**(1) The presiding officer on the application of a voter—

- (a) who is incapacitated by blindness or other physical cause from voting in a manner directed by these Rules; or
- (b) who declares orally that he is unable to read,

shall, in the presence of the polling agents, cause the voter's vote to be marked on a ballot paper in a manner directed by the voter, and the ballot paper to be placed in the ballot box.

(2) The name and number on the register of electors of every voter whose vote is marked in pursuance of this paragraph, and the reason why it is so marked, shall be entered on a list (in this Schedule called "the list of votes marked by the presiding officer").

(3) In the case of a person voting as proxy for an elector, the number to be entered together with the voter's name shall be the elector's number.

(4) At a Scottish parliamentary general election, the same list of votes marked by the presiding officer may be used for votes marked on constituency ballot papers and votes marked on regional ballot papers and where it is so used, an entry in that list shall, unless the contrary intention appears, be taken to mean that each such ballot paper was so marked.

#### **Voting by blind persons**

**47.—**(1) If a voter makes an application to the presiding officer to be allowed on the ground of blindness to vote with the assistance of another person by whom he is accompanied (in this Schedule referred to as "the companion"), the presiding officer shall require the voter to declare orally whether he is so incapacitated by his blindness as to be unable to vote without assistance.

(2) If the presiding officer—

- (a) is satisfied that the voter is so incapacitated; and
- (b) is also satisfied by a written declaration made by the companion (in this Schedule referred to as "the declaration made by the companion of a blind voter") that the companion—

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- (i) is a qualified person within the meaning of this paragraph; and
  - (ii) has not previously assisted more than one blind person to vote at the election,
- the presiding officer shall grant the application, and then anything which is by these Rules required to be done to or by that voter in connection with the giving of his vote may be done to, or with the assistance of, the companion.
- (3) For the purposes of this paragraph, a person shall be qualified to assist a blind voter to vote, if that person is either—
- (a) a person who is entitled to vote as an elector at the election; or
  - (b) the father, mother, brother, sister, husband, wife, son or daughter of the blind voter and has attained the age of 18 years.
- (4) The name and number in the register of electors of every voter whose vote is given in accordance with this paragraph and the name and address of the companion shall be entered on a list (in this Schedule referred to as “the list of blind voters assisted by companions”).
- (5) For the purposes of paragraph (4) above, in the case of a person voting as proxy for an elector, the number to be entered together with the voter’s name shall be the elector’s number.
- (6) The declaration made by the companion—
- (a) shall be in the form V set out in the Appendix;
  - (b) shall be made before the presiding officer at the time when the voter applies to vote with the assistance of a companion and shall forthwith be given to the presiding officer who shall attest and retain it.
- (7) No fee or other payment shall be charged in respect of the declaration.
- (8) At a Scottish parliamentary general election, the same list of blind voters assisted by companions may be used for votes marked on constituency ballot papers and votes marked on regional ballot papers and, where it is so used, an entry in that list shall unless the contrary intention appears be taken to mean that the votes of the elector in question were so given in relation to each such ballot paper.

### **Tendered ballot papers**

- 48.**—(1) If a person, representing himself to be—
- (a) a particular elector named in the register and not named in the absent voters list; or
  - (b) a particular person named in the list of proxies as proxy for an elector and not entitled to vote by post as proxy,

applies for a ballot paper after another person has voted in person either as the elector or his proxy, the applicant shall, on satisfactorily answering the questions permitted by law to be asked at the poll, be entitled, subject to the following provisions of this paragraph, to mark a ballot paper (in this Schedule referred to as “a tendered ballot paper”) in the same manner as any other voter.

- (2) A tendered ballot paper shall—
- (a) be a colour different from the other ballot papers;
  - (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by him with the name of the voter and his number in the register of electors, and set aside in a separate packet.

(3) In these Rules, a tendered ballot paper marked by a person applying for a constituency ballot paper is referred to as a “tendered constituency ballot paper” and a tendered ballot paper marked by a person applying for a regional ballot paper is referred to as a “tendered regional ballot paper”.

(4) The name of the voter and his number on the register of electors shall be entered on a list (in this Schedule referred to as the “tendered votes list”).

(5) In the case of a person voting as proxy for an elector, the number to be endorsed or entered together with the voter’s name shall be the number of that elector.

(6) At a Scottish parliamentary general election, the same tendered votes list may be used in relation to all tendered votes in respect of that election and, where it is so used, an entry in that list in relation to a voter shall unless the contrary intention appears, be taken to mean that tendered ballot papers were marked by that voter in relation to both of his votes at that election.

### **Spoilt ballot papers**

**49.** A voter who has inadvertently dealt with a ballot paper of his in such manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving to his satisfaction the fact of the inadvertence, obtain another ballot paper in the place of the ballot paper so delivered (in these Rules referred to as “a spoilt ballot paper”), and the spoilt ballot paper shall be immediately cancelled.

### **Adjournment of poll in case of riot**

**50.—**(1) Where the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings till the following day and shall forthwith give notice to the constituency returning officer and, except in the case of an election to fill a vacancy in the seat of a constituency member, the regional returning officer.

(2) Where the poll is adjourned at any polling station—

- (a) the hours of polling on the day to which it is adjourned shall be the same as for the original day; and
- (b) references in this Order to the close of the poll shall be construed accordingly.

### **Procedure on close of poll**

**51.—**(1) As soon as practicable after the close of the poll, the presiding officer shall, in the presence of the polling agents, make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals—

- (a) each ballot box in use at the station, sealed so as to prevent the introduction of additional ballot papers and unopened;
- (b) the unused and spoilt constituency ballot papers placed together;
- (c) the tendered constituency ballot papers;
- (d) the unused and spoilt regional ballot papers placed together;
- (e) the tendered regional ballot papers;
- (f) the marked copies of the register of electors and of the list of proxies;
- (g) the counterfoils of the used constituency ballot papers and the certificates as to employment on duty on the day of the poll;
- (h) the counterfoils of the used regional ballot papers;
- (i) the tendered votes list, the list of blind voters assisted by companions, the list of votes marked by the presiding officer, a statement of the number of voters whose votes are so marked by the presiding officer under the heads ‘physical incapacity’ and ‘unable to read’, and the declarations made by the companions of blind voters,

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and shall deliver the packets or cause them to be delivered to the constituency returning officer to be taken charge of by him; but if the packets are not delivered by the presiding officer personally to the constituency returning officer, the arrangements for their delivery shall require the constituency returning officer's approval.

(2) Sub-paragraphs (d), (e) and (h) of paragraph (1) above shall not apply in the case of a poll to fill a vacancy in the seat of a constituency member.

(3) The marked copies of the register of electors and of the list of proxies shall be in one packet but shall not be in the same packet as the counterfoils of the used constituency ballot papers or in the same packet as the counterfoils of the used regional ballot papers.

(4) The packets shall be accompanied by a statement (in this Schedule referred to as "the ballot paper account") made by the presiding officer showing the number of ballot papers entrusted to him, and accounting for them under the heads of ballot papers issued and not otherwise accounted for, unused, spoilt and tendered ballot papers; and, except in the case of a poll to fill a vacancy in the seat of a constituency member, a separate ballot paper account shall be made for the constituency ballot papers and the regional ballot papers.

### *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;
- (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 spoilt ballot papers in his 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 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—

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- (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.

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(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;
- (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

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(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.