

## SCHEDULE 3

### REFERENDUM RULES

#### PART 5

##### The count

###### **Time of, and attendance at, the count**

**33.**—(1) The counting officer must —

- (a) make arrangements for counting the votes in the presence of any counting agents as soon as practicable after the close of the poll; and
- (b) give to the counting agents notice in writing —
  - (i) of the time and place at which the proceedings described in rule 34(1) will begin;
  - (ii) in the case where the power conferred by rule 34(2) is exercised, of the time and place at which the counting officer will count the votes following completion of proceedings under rule 34(1); and
  - (iii) in the case of a direction under paragraph (2), of the time and place at which the counting officer will count the votes following completion of proceedings under rule 34(1).

(2) The Chief Counting Officer may, in writing, direct each counting officer that the counting of votes (as provided for in rule 34(4)) must not begin before such time between the hours of 9 a.m. and noon on the day following the close of the poll as is specified in the direction.

(3) A direction under paragraph (2) must be given to each counting officer not later than the twenty-eighth day before the day of the poll.

(4) Where a direction is given under paragraph (2), then during the period beginning with the completion of the proceedings under rule 34(1) and ending with the time specified in the direction, the counting officer must —

- (a) place the ballot papers and other documents relating to the counting officer's area under the counting officer's own seal and the seals (if any) of such of the counting agents as desire to affix their seals, and
- (b) otherwise take reasonable precautions for the security of the papers and documents.

(5) No person other than —

- (a) the counting officer and the counting officer's staff;
- (b) the Chief Counting Officer, a Deputy Chief Counting Officer and the Chief Counting Officer's staff;
- (c) the referendum agents;
- (d) the counting agents; and
- (e) persons who are entitled to attend by virtue of sections 6A to 6D of the 2000 Act,

may be present at the proceedings under rule 34(1) or at the counting of the votes unless permitted by the counting officer.

(6) A person not entitled to attend at the proceedings under rule 34(1) or at the counting of the votes may be permitted to do so by the counting officer if the counting officer —

- (a) is satisfied that the efficient counting of the votes will not be impeded, and

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(b) has either consulted the referendum agents (if any) or thought it impracticable to do so.

(7) The counting officer must give the counting agents such reasonable facilities for overseeing the proceedings under rule 34(1) and the counting of the votes, and such information with respect to them, as the counting officer can give them consistent with the orderly conduct of those matters and the discharge of the counting officer's duties in connection with them.

(8) In particular, where the votes are counted by sorting the ballot papers according to the answer for which the vote is given and then counting the number of ballot papers for each answer, the counting agents are entitled to satisfy themselves that the ballot papers are correctly sorted.

### **The count**

**34.**—(1) The counting officer must —

- (a) in the presence of the counting agents (if any) open each ballot box and count and record the number of ballot papers in each box,
- (b) in the presence of the referendum agents (if any) verify each ballot paper account, and
- (c) count such of the postal ballot papers as have been duly returned and record separately the number counted.

(2) The counting officer may decide that the proceedings described in paragraph (1) may be undertaken at a different place (or at different places) than the place at which the votes given on ballot papers are counted.

(3) If the power in paragraph (2) is exercised then, during the period beginning with the completion of the proceedings under paragraph (1) and ending with the commencement of proceedings described in paragraph (4), the counting officer must —

- (a) place the ballot papers and other documents relating to the referendum under the counting officer's own seal and the seals (if any) of such counting agents as desire to affix their seals, and
- (b) otherwise take reasonable precautions for the security of the papers and documents.

(4) Subject to paragraphs (2) and (3) and any direction under rule 33(2) following completion of the proceedings described in paragraph (1), the counting officer must count the votes given on the ballot papers after —

- (a) in the case of duly returned postal ballot papers, they have been mixed with the ballot papers from at least one ballot box, and
- (b) in the case of the ballot papers from a ballot box, they have been mixed with the ballot papers from at least one other ballot box.

(5) A postal ballot paper is not to be taken to be duly returned unless —

- (a) before the close of the poll the postal ballot paper and the postal voting statement are—
  - (i) returned by hand or post and reach the counting officer; or
  - (ii) returned by hand and reach a polling station in the same voting area as that for which the counting officer is appointed; and
- (b) the postal voting statement has been duly signed and also states the date of birth of the elector or, as the case may be, the proxy; and
- (c) in a case where the counting officer, in accordance with paragraph 20 or, as the case may be, 21 of Schedule 2, takes steps to verify the date of birth or signature (or both) of the elector or, as the case may be, the proxy, the counting officer so verifies that date of birth or signature.

(6) The presiding officer of a polling station must deliver or cause to be delivered any postal ballot paper or postal voting statement returned to that polling station to the counting officer in the

same manner and at the same time as the presiding officer delivers, or causes to be delivered, the packets referred to in rule 32.

(7) The counting officer may collect, or cause to be collected, any postal ballot paper or postal voting statement which by virtue of paragraph (6) the presiding officer of a polling station would otherwise be required to deliver or cause to be delivered to the counting officer.

(8) Where the counting officer collects, or causes to be collected, any postal ballot paper or postal voting statement in accordance with paragraph (7) the presiding officer must first make it (or them) up into a packet (or packets) sealed with the presiding officer's own seal and the seals (if any) of such counting agents as desire to affix their seals.

(9) The counting officer must not count any tendered ballot paper.

(10) The counting officer, while counting and recording the number of ballot papers and counting the votes, must keep the ballot papers with their faces upwards and take all reasonable precautions for preventing any person from seeing the numbers or other unique identifying marks printed on the back of the papers.

(11) The counting officer must verify each ballot paper account by comparing it with the number of ballot papers recorded by the counting officer, and the unused and spoiled ballot papers in the counting officer's possession and the tendered votes list (opening and resealing the packets containing the unused and spoiled ballot papers and the tendered votes list) and must draw up a statement as to the result of the verification, which any counting agent present at the verification may copy; but where the power conferred by paragraph (2) is exercised in respect of more than one place a statement must be drawn up in respect of each such place.

(12) The counting officer must so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that the counting officer may, with the agreement of the counting agents, exclude the whole or any part of the period between 7 p.m. and 9 a.m. on the next day.

(13) For the purposes of paragraph (12), the agreement of a referendum agent is as effective as the agreement of that referendum agent's counting agents.

(14) During the time so excluded the counting officer must —

- (a) place the ballot papers and other documents relating to the referendum under the counting officer's own seal and the seals (if any) of such counting agents as desire to affix their seals; and
- (b) otherwise take reasonable precautions for the security of the papers and documents.

(15) As soon as practicable after completion of the statement (or as the case may be each statement) under paragraph (11), the counting officer must inform the Chief Counting Officer of its contents.

### **Rejected ballot papers**

**35.**—(1) Any ballot paper —

- (a) which does not bear the official mark; or
- (b) on which a vote is given for both answers to the question asked in the referendum; or
- (c) 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
- (d) which is unmarked or void for uncertainty,

is, subject to the provisions of paragraph (2), void and not to be counted.

(2) A ballot paper on which the vote is marked —

- (a) elsewhere than in the proper place; or

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (b) otherwise than by means of a cross; or
- (c) by more than one mark,

is not for such a reason to be deemed void if an intention that the vote is for one or the other of the answers clearly appears, and the way the paper is marked does not of itself identify the voter and it is not shown that the voter can be identified by it.

(3) The counting officer must endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and must add to the endorsement the words “rejection objected to” if an objection is made by a counting agent to the counting officer’s decision.

(4) The counting officer must draw up a statement showing the number of ballot papers rejected under the several heads of —

- (a) want of official mark;
- (b) voting for both answers;
- (c) writing or mark by which the voter could be identified; and
- (d) unmarked or void for uncertainty.

(5) As soon as practicable after completion of the statement under paragraph (4), the counting officer must inform the Chief Counting Officer of its contents.

#### **Decisions on ballot papers**

**36.** The decision of the counting officer on any question arising in respect of a ballot paper is, subject to review in accordance with paragraph 12 of Schedule 6 to the 2006 Act, final.

#### **Counting officer’s re-count**

**37.—(1)** A person within paragraph (2) who is present at the completion of the counting (including any re-count) of the votes in a voting area may require the counting officer to have the votes re-counted (including again re-counted), but the counting officer may refuse to do so if in the counting officer’s opinion the request is unreasonable.

(2) The persons within this paragraph are —

- (a) referendum agents; and
- (b) designated counting agents.

(3) No step is to be taken on the completion of the counting (including any re-count) of votes until the persons within paragraph (2) present at its completion have been given a reasonable opportunity to exercise the right conferred by this rule.

(4) A counting officer must not conduct a re-count under this rule once a direction has been given by the Chief Counting Officer under rule 39(1).

#### **Chief Counting Officer’s re-count**

**38.—(1)** As soon as practicable after the conclusion of the count (which includes any re-count under rule 37 or any re-count directed under this rule), the counting officer must draw up a statement showing —

- (a) the total number of ballot papers counted by the counting officer; and
- (b) the number of votes cast in favour of each answer to the question asked in the referendum.

(2) As soon as practicable after completion of that statement, the counting officer must inform the Chief Counting Officer of its contents.

(3) Once the Chief Counting Officer has received the report of a counting officer on the contents of the statements prepared by that counting officer under —

- (a) paragraph (1);
- (b) rule 34(11); and
- (c) rule 35(4),

the Chief Counting Officer may direct that counting officer to re-count (or again re-count) the votes.

(4) The Chief Counting Officer may only give a direction under paragraph (3) if the Chief Counting Officer thinks that there is reason to doubt the accuracy of the counting of the votes in the counting officer's area.

(5) A counting officer must proceed with a re-count as soon as practicable after receipt of the Chief Counting Officer's direction, and if not proceeding immediately, must notify the counting agents entitled to be present at the re-count of the time and place at which the counting officer will begin to re-count the votes.