

*Status: Point in time view as at 30/01/2020.*

*Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 2. (See end of Document for details)*

## SCHEDULE 2 (introduced by section 12)

### CONDUCT RULES

#### *Publication of notice of the referendum*

- 1 (1) The counting officer must publish notice of the referendum not later than the twenty-fifth day before the date of the referendum.
- (2) For the purposes of paragraph (1), the following days are to be disregarded—
  - (a) a Saturday or Sunday,
  - (b) Christmas Eve, Christmas Day or Easter Monday,
  - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
  - (d) a day appointed for public thanksgiving or mourning.
- (3) The notice must—
  - (a) be in the form prescribed, and
  - (b) set out—
    - (i) the date of the referendum,
    - (ii) the hours of polling,
    - (iii) a description of who is entitled to vote at each polling station, and
    - (iv) the situation of each polling station in the local government area.
- (4) The notice must also state the day by which—
  - (a) applications to register to vote,
  - (b) applications to vote by post or by proxy,
  - (c) other applications and notices about postal or proxy voting,must reach the registration officer in order that they may be effective for the referendum.
- (5) As soon as practicable after publishing the notice under paragraph (1), the counting officer must give a copy of it to each of the referendum agents appointed for the area.

#### *Hours of polling*

- 2 The hours of polling are between 7am and 10pm.

#### *The ballot*

- 3 (1) The votes at the referendum are to be given by ballot.
- (2) The ballot of every voter consists of a ballot paper.
- (3) The ballot paper is to be of the prescribed colour.

#### *Printing of ballot papers*

- 4 The counting officer must arrange for the printing of the ballot papers for the counting officer's area unless the Chief Counting Officer takes responsibility for doing so.

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*The corresponding number list*

- 5 (1) The counting officer must prepare a list (the “corresponding number list”) which complies with paragraph (2).
- (2) The corresponding number list must—
- (a) contain the unique identifying numbers of all ballot papers to be issued in accordance with rule 8(1) or provided in accordance with rule 13(1), and
  - (b) be in the form prescribed.

*Security marking*

- 6 (1) Every ballot paper must bear or contain—
- (a) an official mark on the front of the ballot paper, and
  - (b) a unique identifying number on the back of the ballot paper.
- (2) The counting officer may use a different official mark for ballot papers issued for the purpose of voting by post from the official mark used for ballot papers issued for the purpose of voting in person.
- (3) The counting officer may use a different official mark for different purposes.
- (4) The official mark must be kept secret.

*Use of schools and public rooms for polling and counting votes*

- 7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—
- (a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and
  - (b) any meeting room to which this rule applies in accordance with paragraph (3).
- (2) This rule applies to any school maintained by an education authority.
- (3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—
- (a) the Scottish Ministers or any other part of the Scottish Administration, or
  - (b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).
- (4) The counting officer—
- (a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and restoring the room to its usual condition after use for the referendum, and
  - (b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises by reason of its being used for the purposes of taking the poll or counting the votes.
- (5) For the purposes of this rule (except those of paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.
- (6) In this rule—

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“dwelling” includes any part of a building where that part is occupied separately as a dwelling,

“meeting room” means any room which it is the practice to let for public meetings,

“room” includes a hall, gallery or gymnasium.

#### *Postal ballot papers*

- 8 (1) The counting officer must issue to those entitled to vote by post—
- (a) a ballot paper,
  - (b) a postal voting statement in the form prescribed, and
  - (c) an envelope for their return.
- (2) The counting officer must also, as soon as practicable, issue to those entitled to vote by post information about how to obtain—
- (a) translations into languages other than English of any directions to or guidance for voters sent with the ballot paper,
  - (b) a translation into Braille of such directions or guidance,
  - (c) a graphical representation of such directions or guidance, and
  - (d) the directions or guidance in any other form (including in audible form).

#### *Provision of polling stations*

- 9 (1) The counting officer must—
- (a) provide a sufficient number of polling stations, and
  - (b) allot the voters to the polling stations.
- (2) One or more polling stations may be provided in the same room.
- (3) The counting officer must 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*

- 10 (1) The counting officer must appoint and pay—
- (a) a presiding officer to attend at each polling station, and
  - (b) such clerks as may be necessary for the purposes of the referendum.
- (2) The counting officer must not knowingly appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.
- (3) The counting officer may preside at a polling station and the provisions of these rules relating to a presiding officer apply to a counting officer who so presides with the necessary modifications as to things done by the counting officer to the presiding officer or by the presiding officer to the counting officer.
- (4) A presiding officer may authorise a clerk appointed under paragraph (1)(b) to do any act which the presiding officer is required or authorised by these rules to do at a polling station, except ordering the removal and exclusion of any person from the polling station.

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### *Issue of poll cards*

- 11 (1) The counting officer must, as soon as practicable after publishing the notice of the referendum under rule 1, send to voters whichever of the following is appropriate—
- (a) an official poll card,
  - (b) an official postal poll card,
  - (c) an official poll card issued to the proxy of a voter, or
  - (d) an official postal poll card issued to the proxy of a voter.
- (2) A voter's official poll card is to be sent or delivered to the voter's qualifying address.
- (3) A voter's official postal poll card is to be sent or delivered to the address to which the voter has stated that the ballot paper is to be sent.
- (4) A proxy's official poll card or official postal poll card is to be sent or delivered to the proxy's address as shown in the list of proxies.
- (5) The cards mentioned in paragraph (1) are to be in the form prescribed.
- (6) The cards must set out—
- (a) the voter's name, qualifying address and number in the register of local government electors (unless the voter has an anonymous entry),
  - (b) the date of the referendum,
  - (c) the hours of polling, and
  - (d) the situation of the polling station allotted to the voter under rule 9(1)(b) (in the case of the cards mentioned in paragraph (1)(a) and (c)).
- (7) Where a poll card is sent to a voter who has appointed a proxy, the card must also notify the voter of the appointment of the proxy.
- (8) In the case of a voter who has an anonymous entry, the card must be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry.

### *Loan of equipment for referendum*

- 12 (1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.
- (2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.
- (3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.

### *Equipment of polling stations*

- 13 (1) The counting officer must provide each presiding officer with such number of ballot boxes and ballot papers as the counting officer considers necessary.
- (2) Each ballot box is to be constructed so that the ballot papers can be put in, but cannot be withdrawn from it, without the box being opened.
- (3) The counting officer must provide each polling station with—
- (a) materials to enable voters to mark the ballot papers,

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- (b) copies of the register of local government electors or such part of it as contains the entries relating to the voters allotted to the station,
  - (c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the referendum corresponding to the register of local government electors or the part of it provided under sub-paragraph (b),
  - (d) copies of forms of declarations and other documents required for the purpose of the poll, and
  - (e) the part of the corresponding number list which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station.
- (4) The reference in paragraph (3)(b) to the copies of the register of local government electors includes a reference to copies of any notices issued under section 13B(3B) or (3D) of the 1983 Act in respect of alterations to the register of local government electors.
- (5) A notice giving directions for the guidance of voters in voting is to be displayed—
- (a) inside and outside every polling station, and
  - (b) in every compartment of every polling station.
- (6) The notice under paragraph (5) is to be in the form prescribed.
- (7) The counting officer must also provide each polling station with—
- (a) an enlarged hand-held sample copy of the ballot paper for the assistance of voters who are partially-sighted, and
  - (b) a device for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion.
- (8) The counting officer may cause to be displayed at every polling station an enlarged sample copy of the ballot paper and may include a translation of it into such other languages as the counting officer considers appropriate.
- (9) The sample copy mentioned in paragraphs (7)(a) and (8) must be clearly marked as a specimen provided only for the guidance of voters in voting.

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

- 14 (1) A referendum agent may appoint—
- (a) polling agents to attend at polling stations for the purpose of detecting personation,
  - (b) counting agents to attend at the counting of the votes.
- (2) The counting officer may limit the number of counting agents that may be appointed, so long as—
- (a) the number that may be appointed by each referendum agent is the same, and
  - (b) the number that may be appointed by each referendum agent is not less than the number obtained by dividing the number of clerks employed on the counting by the number of referendum agents.
- (3) For the purposes of paragraph (2)(b), a counting agent appointed by more than one referendum agent is to be treated as a separate agent for each of them.

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- (4) A referendum agent who appoints a polling or counting agent must give the counting officer notice of the appointment no later than the fifth day before the date of the referendum.
- (5) For the purposes of paragraph (4), the following days are to be disregarded—
  - (a) a Saturday or Sunday,
  - (b) Christmas Eve, Christmas Day or Easter Monday,
  - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
  - (d) a day appointed for public thanksgiving or mourning.
- (6) If a polling agent or counting agent dies or becomes unable to perform the agent's functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.
- (7) A notice under paragraph (4) or (6)—
  - (a) must be given in writing,
  - (b) must give the name and address of the person appointed,
  - (c) in the case of a polling agent, must set out which polling stations the agent may attend,
  - (d) in the case of a counting agent, must set out which counts the agent may attend.
- (8) In schedule 1 and these conduct rules, references to polling agents and counting agents are to agents appointed under paragraph (1) or (6)—
  - (a) whose appointments have been duly made and notified, and
  - (b) where the number of agents is restricted, who are within the permitted numbers.
- (9) Any notice required to be given to a counting agent by the counting officer may be delivered at, or sent by post to, the address stated in the notice under paragraph (4) or (6).
- (10) A referendum agent may do (or assist in doing) anything that a polling or counting agent appointed by that referendum agent is authorised to do.
- (11) Anything required or authorised by schedule 1 or these conduct rules to be done in the presence of polling or counting agents may be done instead in the presence of the referendum agent who appointed the polling or counting agents.
- (12) Where in schedule 1 or these conduct rules anything is required or authorised to be done in the presence of polling or counting agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

*Admission to polling station*

- 15 (1) No person other than the presiding officer and the persons mentioned in paragraph (2) may attend a polling station.
- (2) Those persons are—
  - (a) voters,
  - (b) persons under the age of 16 accompanying voters,

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- (c) the companions of voters with disabilities,
  - (d) the Member of Parliament for the constituency in which the polling station is situated,
  - (e) the member of the Scottish Parliament for the constituency in which the polling station is situated,
  - (f) members of the Scottish Parliament for the region in which the polling station is situated,
  - (g) members of the council for the electoral ward in which the polling station is situated,
  - (h) members of the European Parliament for the electoral region of Scotland,
  - (i) the clerks appointed to attend at the polling station,
  - (j) the Chief Counting Officer and members of the Chief Counting Officer's staff,
  - (k) the counting officer and members of the counting officer's staff,
  - (l) constables on duty,
  - (m) persons entitled to attend by virtue of section 20, 21 or 22,
  - (n) referendum agents,
  - (o) polling agents appointed to attend at the polling station, and
  - (p) any other person the presiding officer permits to attend.
- (3) In paragraph (2)(g), “electoral ward” has the meaning given by section 1 of the Local Governance (Scotland) Act 2004.
- (4) The presiding officer may regulate the total number of voters and persons under the age of 16 accompanying voters who may be admitted to the polling station at the same time.
- (5) Not more than one polling agent is to be admitted at the same time to a polling station on behalf of the same permitted participant.
- (6) A constable or a member of the counting officer's staff may only be admitted to vote in person elsewhere than at the polling station allotted under rule 9(1)(b), in accordance with paragraph 1(5) of schedule 1, on production of a certificate which satisfies the requirements set out in paragraph (7).
- (7) A certificate must—
- (a) be signed by—
    - (i) in the case of a constable, an officer of police of the rank of inspector or above, or
    - (ii) in the case of a member of the counting officer's staff, the counting officer, and
  - (b) be in the form prescribed.
- (8) A certificate produced under paragraph (6) must be immediately cancelled.

*Notification of requirement of secrecy*

- 16 (1) The counting officer must make such arrangements as are practicable to ensure that—
- (a) every person attending at a polling station has been given a copy of the provisions of sub-paragraphs (1), (3), (5), (8), (9) and (10) of paragraph 7 of schedule 6,

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(b) every person attending at the counting of the votes has been given a copy of sub-paragraphs (4), (9) and (10) of that paragraph.

- (2) Paragraph (1) does not require the provision of that information to—
- (a) a person attending the polling station for the purpose of voting,
  - (b) a person under the age of 16 accompanying a voter,
  - (c) a companion of a voter with disabilities, or
  - (d) a constable on duty at a polling station or at the count.

*Keeping of order at polling station*

- 17 (1) The presiding officer must keep order at the polling station.
- (2) If a person—
- (a) obstructs the operation of the polling station,
  - (b) obstructs any voter in polling, or
  - (c) does anything else which the presiding officer considers may adversely affect proceedings at the polling station,
- the presiding officer may order the person to be removed immediately from the polling station.
- (3) A person may be removed—
- (a) by a constable, or
  - (b) by the presiding officer.
- (4) A person removed under paragraph (2) must not enter the polling station again during that day without the presiding officer's permission.
- (5) A person removed under paragraph (2) 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.
- (6) The power to remove a person from the polling station is not to 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*

- 18 (1) Immediately before the commencement of the poll, the presiding officer must—
- (a) show each ballot box proposed to be used for the purposes of the poll to such persons (if any) who are present in the polling station so that they may see that each box is empty,
  - (b) place the presiding officer's seal on each box in such a manner as to prevent it being opened without breaking the seal,
  - (c) allow any referendum agent or polling agent present who wishes to affix the agent's seal to do so, and
  - (d) place each box in the presiding officer's view for the receipt of ballot papers.
- (2) The presiding officer must ensure that each box remains sealed until the close of the poll.

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*Questions to be put to voters*

- 19 (1) At the time a voter applies for a ballot paper (but not afterwards), the presiding officer—
- (a) must put the questions mentioned in paragraph (2) to the voter if required to do so by a referendum agent or polling agent,
  - (b) may put the questions mentioned in paragraph (2) to the voter if the presiding officer considers it appropriate to do so.
- (2) The questions referred to in paragraph (1) are—

<i>Type of person applying for ballot paper</i>	<i>Questions</i>
1. A person applying as a voter	<p>(a) “Are you the person named in the register of local government electors as follows (<i>read the whole entry from the register of local government electors</i>)?”</p> <p>(b) “Have you already voted in this referendum otherwise than as proxy for some other person?”</p>
2. A person applying as proxy	<p>(a) “Are you the person whose name appears as A.B. in the list of proxies for this referendum as entitled to vote as proxy on behalf of C.D.?”</p> <p>(b) “Have you already voted in this referendum as proxy on behalf of C.D.?”</p> <p>(c) “Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?”</p>
3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2)	<p>(a) “Are you the person entitled to vote as proxy on behalf of the voter whose number on the register of local government electors is (<i>read out the number from the register of local government electors</i>)?”</p> <p>(b) “Have you already voted in this referendum as proxy on behalf of the voter whose number on the register of local government electors is (<i>read out the number from the register of local government electors</i>)?”</p> <p>(c) “Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the person whose number on the register of local government electors is (<i>read out the number from the register of local government electors</i>)?”</p>

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4. A person applying as proxy if the answer to the question at 2(c) or 3(c) is not “yes”	“Have you already voted in this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild?”
5. A person applying as a voter in relation to whom there is an entry in the postal voters list	(a) “Did you apply to vote by post?” (b) “Why have you not voted by post?”
6. A person applying as proxy who is named in the proxy postal voters list	(a) “Did you apply to vote by post as proxy?” (b) “Why have you not voted by post as proxy?”

- (3) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, the references in the questions in entries 1(a) and 3(a), (b) and (c) to the register of local government electors is to be read as a reference to the notice issued under that section.
- (4) A ballot paper must not be delivered to any person required to answer a question under this rule unless the person answers the question satisfactorily.
- (5) Except as authorised by this rule, no enquiry is permitted as to the right of any person to vote.

#### *Challenge of voter*

- 20 (1) A person is not to be prevented from voting by reason only that—
- (a) a referendum agent or polling agent—
    - (i) has reasonable cause to believe that the person has committed an offence of personation, and
    - (ii) the agent makes a declaration to that effect, or
  - (b) the person is arrested on the grounds of being suspected of committing or of being about to commit such an offence.
- (2) Paragraph (1) does not affect the person's liability to any penalty for voting.

#### *Voting procedure*

- 21 (1) Subject to rule 19(4), a ballot paper must be delivered to a voter who applies for one.
- (2) Immediately before delivering the ballot paper to the voter—
- (a) the number and (unless paragraph (3) applies) name of the voter as stated in the register of local government electors is to be called out,
  - (b) the number of the voter is to be marked on the list mentioned in rule 13(3) (e) beside the number of the ballot paper to be delivered to the voter,
  - (c) a mark is to be placed in the register of local government electors against the number of the voter to note that a ballot paper has been received but without showing the particular ballot paper which has been received, and
  - (d) in the case of a person applying for a ballot paper as proxy, a mark is also to be placed against that person's name in the list of proxies.

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- (3) In the case of a voter who has an anonymous entry, the voter's official poll card must be shown to the presiding officer and only the voter's number is to be called out in pursuance of paragraph (2)(a).
- (4) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) is modified as follows—
  - (a) in sub-paragraph (a), for “register of local government electors” substitute “copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act”,
  - (b) in sub-paragraph (c), for “in the register of local government electors” substitute “on the copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act”.
- (5) On receiving the ballot paper, the voter must without delay—
  - (a) proceed into a compartment in the polling station,
  - (b) there secretly mark the voter's ballot paper,
  - (c) show the unique identifying number on the ballot paper to the presiding officer, and
  - (d) put the ballot paper into the ballot box in the presiding officer's presence.
- (6) Where—
  - (a) a voter attends the polling station before 10pm, and
  - (b) the voter is still waiting to vote at 10pm,the presiding officer must permit the voter to vote without delay after 10pm and must close the poll immediately after the last such voter has voted.
- (7) The voter must leave the polling station as soon as the voter has put the ballot paper into the ballot box.

*Votes marked by presiding officer*

- 22
- (1) On the application of a voter—
    - (a) who is incapacitated by blindness or other disability from voting in the manner required by rule 21, or
    - (b) who declares orally an inability to read,the presiding officer must, in the presence of any polling agents, cause the voter's vote to be marked on a ballot paper in the manner directed by the voter and the ballot paper to be put into the ballot box.
  - (2) The name and number in the register of local government electors of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, is to be entered on a list (the “marked votes list”) and in the case of a person voting as proxy for a voter, the number to be entered is the voter's number.
  - (3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) applies as if for “in the register of local government electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act”.

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*Voting by persons with disabilities*

- 23 (1) If a voter applies to the presiding officer to be allowed to vote with the assistance of another person by whom the voter is accompanied (the “companion”), on the ground of—
- (a) blindness or other physical disability, or
  - (b) inability to read,
- the presiding officer must require the voter to declare (orally or in writing) whether the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance.
- (2) The presiding officer must grant the application if the presiding officer—
- (a) is satisfied that the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance, and
  - (b) is also satisfied, by a declaration made by the companion (a “companion declaration”) which complies with paragraph (3), that the companion—
    - (i) meets the requirements set out in paragraph (3)(c)(i) or (ii), and
    - (ii) has not previously assisted more than one voter with disabilities to vote at the referendum.
- (3) A companion declaration must—
- (a) be in the form prescribed,
  - (b) be made before the presiding officer at the time when the voter applies to vote with the assistance of the companion, and
  - (c) state that the companion—
    - (i) is a person who is entitled to vote as a voter at the referendum, or
    - (ii) is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities, and has attained the age of 16.
- (4) The presiding officer must sign the companion declaration and keep it.
- (5) No fee or other payment may be charged in respect of the declaration.
- (6) A person is a “voter with disabilities” for the purposes of paragraph (2)(b)(ii) if the person has made a declaration mentioned in paragraph (1).
- (7) Where an application is granted under paragraph (2), anything which is required by these rules to be done to or by the voter in connection with the giving of that voter’s vote may be done to, by, or with the assistance of, the companion.
- (8) The name and number in the register of local government electors of every voter whose vote is given in accordance with this rule and the name and address of the companion is to be entered on a list (the “assisted voters list”) and, in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.
- (9) Where the voter being assisted by a companion has an anonymous entry, only the voter’s number in the register of local government electors is to be entered on the assisted voters list.
- (10) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (8) applies as if for “in the register of local government electors of every voter” there were substituted “relating

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to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act”.

*Tendered ballot papers*

- 24 (1) Paragraph (6) applies if any of situations A to D exist.
- (2) Situation A exists if a person, claiming to be—
- (a) a particular voter named on the register of local government electors and not named in the postal voters list or the list of proxies, or
  - (b) a particular person named in the list of proxies as proxy for a voter and not entitled to vote by post as proxy,
- applies for a ballot paper after another person has voted in person either as the voter or the voter's proxy.
- (3) Situation B exists if—
- (a) a person applies for a ballot paper claiming that the person is a particular voter named on the register of local government electors,
  - (b) the person is also named in the postal voters list, and
  - (c) the person claims that—
    - (i) no application to vote by post in the referendum was made by that person, or
    - (ii) the person is not an existing postal voter within the meaning of paragraph 2(2) of schedule 1.
- (4) Situation C exists if—
- (a) a person applies for a ballot paper claiming that the person is a particular person named as a proxy in the list of proxies,
  - (b) the person is also named in the proxy postal voters list, and
  - (c) the person claims that—
    - (i) no application to vote by post as proxy was made by that person, or
    - (ii) the person is not an existing proxy to whom paragraph 6(4) of schedule 1 applies.
- (5) Situation D exists if, before the close of the poll but after the last time at which a person may apply for a replacement postal ballot paper—
- (a) a person claims that the person is—
    - (i) a particular voter named on the register of local government electors who is also named in the postal voters list, or
    - (ii) a particular person named as proxy in the list of proxies who is also named in the proxy postal voters list, and
  - (b) the person claims that the person has lost or has not received a postal ballot paper.
- (6) Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 19 to be asked at the poll, to mark a tendered ballot paper in the same manner as any other voter.
- (7) A tendered ballot paper must—
- (a) be of a prescribed colour differing from that of the ballot paper issued in accordance with rule 8(1) or provided in accordance with rule 13(1),

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- (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter's number in the register of local government electors, and
  - (c) be set aside in a separate packet.
- (8) The name of the voter and the voter's number in the register of local government electors is to be entered on a list (the “tendered votes list”).
- (9) In the case of a person voting as proxy for a voter, the number to be endorsed or entered is to be the voter's number.
- (10) This rule applies to a voter who has an anonymous entry subject to the following modifications—
- (a) in paragraphs (7)(b) and (8), the references to the voter's name are to be ignored, and
  - (b) otherwise, a reference to a person named on the register of local government electors or other list is to be construed as a reference to a person whose number appears on the register of local government electors or other list (as the case may be).
- (11) This rule applies in the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act as if—
- (a) in paragraphs (2)(a), (3)(a) or (5)(a)(i), for “named on the register of local government electors” there were substituted “ in respect of whom a notice under section 13B(3B) or (3D) of the 1983 Act has been issued ”, and
  - (b) in paragraphs (7)(b) and (8), for “the voter's number in the register of local government electors” there were substituted “ the number relating to that person on a notice issued under section 13B(3B) or (3D) of the 1983 Act ”.

#### *Spoilt ballot papers*

- 25 (1) A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may—
- (a) by returning it to the presiding officer, and
  - (b) proving to the presiding officer's satisfaction the fact of the inadvertence, obtain another ballot paper in the place of the returned ballot paper (the “spoilt ballot paper”).
- (2) The spoilt ballot paper must be immediately cancelled.

#### *Correction of errors on polling day*

- 26 (1) The presiding officer must keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) of the 1983 Act which takes effect on the date of the referendum.
- (2) The list kept under paragraph (1) is referred to as the “polling day alterations list”.

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

- 27 (1) Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer must—
- (a) adjourn the proceedings until the following day, and

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- (b) inform the counting officer without delay.
- (2) If the counting officer is informed under paragraph (1)(b), the counting officer must inform the Chief Counting Officer without delay.
- (3) Where the poll is adjourned at any polling station—
  - (a) the hours of polling on the day to which it is adjourned are to be the same as for the original day, and
  - (b) references in these rules to the close of the poll are to be construed accordingly.

#### *Procedure on close of poll*

- 28 (1) As soon as practicable after the close of the poll, the presiding officer must—
- (a) in the presence of any referendum agents or polling agents, seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers,
  - (b) allow any of those agents present who wishes to affix the agent's seal to do so,
  - (c) separate and make up into separate sealed packets the papers mentioned in paragraph (2), and
  - (d) deliver the sealed ballot boxes and packets (or arrange for them to be delivered) to the counting officer to be taken charge of by the counting officer.
- (2) The papers referred to in paragraph (1) are—
- (a) the unused and spoilt ballot papers (as a single packet),
  - (b) the tendered ballot papers,
  - (c) the marked copies of the register of local government electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the list of proxies (as a single packet),
  - (d) any certificates produced under rule 15(6),
  - (e) the corresponding number list completed in accordance with rule 21(2)(b) (the “completed corresponding number list”),
  - (f) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations list and the companion declarations (as a single packet),
  - (g) any postal ballot papers or postal voting statements returned to the station.
- (3) The marked copies of the register of local government electors and of the list of proxies are to be in one packet but must not be in the same packet as the certificates mentioned in paragraph (2)(d) or the lists mentioned in paragraph (2)(e).
- (4) The packets must be accompanied by a statement (the “ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to the presiding officer and accounting for them under the following heads—
- (a) ballot papers issued and not otherwise accounted for,
  - (b) unused ballot papers,
  - (c) spoilt ballot papers, and
  - (d) tendered ballot papers.

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- (5) If the sealed ballot boxes and packets are not delivered to the counting officer by the presiding officer personally, the arrangements for their delivery require the counting officer's approval.

*Attendance at counting of votes*

- 29 (1) The counting officer must make arrangements for counting of the votes as soon as practicable after the close of the poll.
- (2) In making arrangements, the counting officer must not knowingly appoint or employ any person who has been involved in campaigning for a particular outcome in the referendum.
- (3) The counting officer must give notice in writing to the Chief Counting Officer, each of the referendum agents appointed for the area and any counting agents appointed to attend at the count of the time and place at which the counting officer will begin to count the votes.
- (4) The counting officer need not begin the counting of the votes in the period from the close of the poll until 9am on the following morning if the officer considers that it would be unreasonable to do so having regard to the time at which the poll closed.
- (5) Paragraph (4) is subject to any direction given by the Chief Counting Officer under section 9(6).
- (6) The counting officer must take proper precautions for the security of the ballot boxes and packets in the period between taking charge of them and the beginning of the count.
- (7) No person other than the persons mentioned in paragraph (8) may attend the counting of the votes.
- (8) Those persons are—
- (a) the Member of Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,
  - (b) the member of the Scottish Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,
  - (c) members of the Scottish Parliament for any region which contains all or part of the area in which the votes being counted have been cast,
  - (d) members of the council for any local government area which contains all or part of the area in which the votes being counted have been cast,
  - (e) members of the European Parliament for the electoral region of Scotland,
  - (f) the Chief Counting Officer and members of the Chief Counting Officer's staff,
  - (g) a counting officer and members of a counting officer's staff,
  - (h) constables on duty,
  - (i) persons entitled to attend by virtue of section 20,
  - (j) persons entitled to attend by virtue of section 21 or 22,
  - (k) referendum agents,
  - (l) counting agents appointed to attend at the count, and
  - (m) any other person the counting officer permits to attend.

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- (9) The counting officer may exclude a person from the counting of the votes if the counting officer considers that the efficient counting of the votes would be impeded by that person attending the counting of the votes.
- (10) Paragraph (9) does not permit the counting officer to exclude the persons mentioned in paragraph (8)(f) or (i).
- (11) The counting officer may limit the number of counting agents who are permitted to be present at the counting of the votes on behalf of a permitted participant, but the same limit is to apply to each permitted participant.
- (12) The counting officer must give any counting agents such reasonable facilities for overseeing the proceedings and such information with respect to the proceedings as the counting officer can give consistently with the orderly conduct of the proceedings and the carrying out of the counting officer's functions in connection with them.
- (13) 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*

- 30 (1) The counting officer must—
- (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) verify each ballot paper account in the presence of any referendum agents, and
  - (c) count such of the postal ballot papers as have been duly returned and record the number counted.
- (2) For the purposes of paragraph (1)(b), a counting officer must—
- (a) verify the ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the counting 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
  - (b) prepare a statement as to the result of the verification (the “verification statement”).
- (3) The counting officer must, on the request of any counting agent present at the verification, supply a copy of the verification statement to the counting agent.
- (4) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—
- (a) is returned—
    - (i) by hand to a polling station in the same local government area, or
    - (ii) by hand or post to the counting officer,before the close of the poll, and
  - (b) is accompanied by a postal voting statement which—

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- (i) is duly signed (unless the requirement for signature has been dispensed with in accordance with paragraph 7(6) of schedule 1), and
  - (ii) states the date of birth of the voter or the voter's proxy.
- (5) The counting officer must not count the votes given on any ballot papers until—
- (a) in the case of postal ballot papers, they have been mixed with ballot papers from at least one ballot box, and
  - (b) in the case of ballot papers from a ballot box, they have been mixed with ballot papers from at least one other ballot box.
- (6) The counting officer must not count any tendered ballot paper.
- (7) The counting officer must not count any postal ballot paper if, having taken steps to verify the signature and date of birth of the voter or the voter's proxy, the counting officer is not satisfied that the postal voting statement has been properly completed.
- (8) The counting officer, while counting and recording the number of ballot papers and counting the votes, must take all proper precautions for preventing any person from identifying the voter who cast the vote.
- (9) The counting officer must, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, but the counting officer may suspend counting between 7pm on any day following the date of the referendum and 9am on the following morning.
- (10) During any period when counting is suspended, the counting officer must take proper precautions for the security of the papers.

#### *Rejected ballot papers*

- 31 (1) Any ballot paper to which paragraph (2) applies is void and is not to be counted, subject to paragraph (3).
- (2) This paragraph applies to a ballot paper—
- (a) which does not bear the official mark,
  - (b) which indicates votes in favour of more answers than are permitted,
  - (c) on which anything is written or marked by which the voter can be identified (other than by the unique identifying number), or
  - (d) which is unmarked or void for uncertainty.
- (3) 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 marks than are permitted,
- is not for such reason to be considered to be void by reason only of indicating a vote by means of figures or words (or any other mark) instead of a cross if, in the counting officer's opinion, the mark clearly indicates the voter's intention.
- (4) Paragraph (3) does not apply if—
- (a) the way in which the ballot paper is marked identifies the voter, or
  - (b) it can be shown that the voter can be identified from it.
- (5) The counting officer must—

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- (a) endorse the word “rejected” on any ballot paper which falls not to be counted under this rule, and
  - (b) if any counting agent objects to the counting officer's decision, add to the endorsement the words “rejection objected to”.
- (6) The counting officer must prepare a statement showing the number of ballot papers rejected under each of sub-paragraphs (a) to (d) of paragraph (2).

#### *Counting the votes*

- 32 The counting officer must count the votes in favour of each answer to the referendum question.

#### *Decisions on ballot papers*

- 33 The decision of the counting officer on any question arising in respect of a ballot paper is final, subject to any judicial review in accordance with section 39.

#### *Re-counts*

- 34 (1) The counting officer may have the votes re-counted (or again re-counted) if the counting officer considers it appropriate to do so.
- (2) The Chief Counting Officer may require the counting officer to have the votes re-counted (or again re-counted).

#### *Declaration of result*

- 35 (1) After making the certification under section 9(2)(b) (results for the counting officer's area), the counting officer must, without delay, give to the Chief Counting Officer—
- (a) notice of the matters certified,
  - (b) details of the information contained in the verification statements prepared under rule 30, and
  - (c) notice of the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 31.
- (2) When authorised to do so by the Chief Counting Officer, the counting officer must—
- (a) make a declaration of the matters certified under section 9(2)(b), and
  - (b) as soon as practicable, give public notice of those matters together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.
- (3) After making the certification under section 9(4) (results for the whole of Scotland), the Chief Counting Officer must—
- (a) make a declaration of the matters certified, and
  - (b) as soon as practicable, give public notice of those matters together with the total number of rejected ballot papers for the whole of Scotland under each head shown in the statements of rejected ballot papers.

#### *Sealing up of ballot papers*

- 36 (1) On the completion of the counting, the counting officer must seal up in separate packets—

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- (a) the counted ballot papers, and
  - (b) the rejected ballot papers.
- (2) The counting officer must not open the sealed packets of—
- (a) tendered ballot papers,
  - (b) the completed corresponding number lists,
  - (c) the certificates mentioned in rule 15(6), or
  - (d) marked copies of the register of local government electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and lists of proxies.

#### *Delivery of papers*

- 37 (1) After sealing the papers in accordance with rule 36, the counting officer must send the papers mentioned in paragraph (2) to the proper officer of the council for the local government area in which the votes being counted have been cast, endorsing on each packet a description of its contents and the date of the referendum.
- (2) Those papers are—
- (a) the packets of ballot papers in the counting officer's possession,
  - (b) the ballot paper accounts, the statements of rejected ballot papers and the verification statements,
  - (c) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations lists and the companion declarations,
  - (d) the packets of the completed corresponding numbers lists,
  - (e) the packets of the certificates mentioned in rule 15(6), and
  - (f) the packets containing marked copies of the register of local government electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the postal voters list, of lists of proxies and of the proxy postal voters list.

#### *Retention and public inspection of papers*

- 38 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 37.
- (2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 15(6), are to be made available for public inspection at such times and in such manner as the proper officer may determine.
- (3) A person inspecting marked copies of the register of local government electors may not—
- (a) make copies of any part of them, or
  - (b) record any particulars included in them,
- otherwise than by means of hand-written notes.
- (4) A person who makes a copy of marked copies of the register of local government electors, or records any particulars included in them, otherwise than by means of hand-written notes commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (5) After the expiry of one year, the proper officer must ensure that the papers are securely destroyed, unless otherwise directed by an order of the Court of Session or a sheriff principal.

*Retention and public inspection of certifications*

- 39 (1) The Chief Counting Officer must retain for one year—
- (a) certifications made by counting officers under section 9(2)(b), and
  - (b) certifications made by the Chief Counting Officer under section 9(4).
- (2) Those certifications are to be made available for public inspection at such times and in such manner as the Chief Counting Officer may determine.

*Orders for production of documents*

- 40 (1) The Court of Session or a sheriff principal may make an order mentioned in paragraph (2) if the Court or the sheriff principal is satisfied by evidence on oath that the order is required for the purpose of—
- (a) instituting or maintaining a prosecution for an offence in relation to ballot papers, or
  - (b) proceedings brought as mentioned in section 39.
- (2) An order referred to in paragraph (1) is an order for—
- (a) the inspection or production of any rejected ballot papers in the custody of a proper officer,
  - (b) the opening of a sealed packet of the completed corresponding number lists or of the certificates mentioned in rule 15(6), or
  - (c) the inspection of any counted ballot papers in the proper officer's custody.
- (3) An order under this rule may be made subject to such conditions as to—
- (a) persons,
  - (b) time,
  - (c) place and mode of inspection, and
  - (d) production or opening,
- as the Court or the sheriff principal considers expedient.
- (4) In making and carrying out an order mentioned in paragraph (2)(b) or (c), care must be taken to ensure that the way in which the vote of any particular voter has been given will not be disclosed until it is proved—
- (a) that such vote was given, and
  - (b) that such vote has been declared by a competent court to be invalid.
- (5) Any power given to the Court of Session or a sheriff principal under this rule may be exercised by any judge of the Court, or by the sheriff principal, otherwise than in open court.
- (6) An appeal lies to the Court of Session from any order of a sheriff principal under this rule.
- (7) Where an order is made for the production by a proper officer of any document in that officer's custody relating to the referendum—

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- (a) the production by such officer or the officer's agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the referendum, and
- (b) any endorsement on any packet of ballot papers so produced is prima facie evidence that the ballot papers are what they are stated to be by the endorsement.

(8) The production from the proper officer's custody of—

- (a) a ballot paper purporting to have been used at the referendum, and
- (b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,

is prima facie evidence that the voter whose vote was given by that ballot paper was the person whose entry in the register of local government electors (or on a notice issued under section 13B(3B) or (3D) of the 1983 Act) at the time of the referendum contained the same number as the number marked as mentioned in sub-paragraph (b).

(9) Except as provided by this rule, no person is to be allowed to—

- (a) inspect any rejected or counted ballot papers in the custody of the proper officer, or
- (b) open any sealed packet of the completed corresponding number list or of the certificates mentioned in rule 15(6).

*Power of Chief Counting Officer to prescribe*

- 41 (1) In this schedule, “prescribed” means prescribed by the Chief Counting Officer.
- (2) Where a form is prescribed under paragraph (1), the form may be used with such variations as the circumstances may require.

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