
STATUTORY INSTRUMENTS

2002 No. 2779 (S. 11)

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

The Scottish Parliament (Elections etc.) Order 2002

Made - - - - 6th November 2002

Coming into force in accordance with article 1

Whereas a draft of this Order has been laid before, and approved by, a resolution of each House of Parliament;

Now therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 12(1) and 113 of the Scotland Act 1998(1), and of all other powers enabling her in that behalf, and after consulting the Electoral Commission(2) hereby makes the following Order:

**PART I
GENERAL**

Citation and commencement

1. This Order may be cited as the Scottish Parliament (Elections etc.) Order 2002 and shall come into force 14 days after the day on which it is made, except for the purposes of any election where the last day for the publication of the notice of election in respect of that election precedes that date.

Revocations

- 2.—(1)** Subject to paragraph (2) below, the following Orders are hereby revoked:—
- (a) the Scottish Parliament (Elections etc.) Order 1999(3);
 - (b) the Scottish Parliament (Elections etc.) (Amendment) Order 2001(4);
 - (c) the Scottish Parliament (Elections etc.) (Amendment (No. 2) Order 2001(5);

(1) 1998 c. 46. Section 12 was amended by the Political Parties, Elections and Referendums Act 2000 (c. 41) (“the 2000 Political Parties Act”), Schedule 21, para 13.

(2) As required by section 7 of the 2000 Political Parties Act.

(3) S.I. 1999/787.

(4) S.I. 2001/1399.

(5) S.I. 2001/1748.

(d) the Scottish Parliament (Elections etc.) (Amendment) (No. 3) Order⁽⁶⁾,
as from the coming into force of this Order.

(2) Notwithstanding the revocation of the Scottish Parliament (Elections etc.) Order 1999, the modification of enactments contained in Schedule 8 to that Order shall continue to have effect.

Interpretation

3.—(1) In this Order, except where the context otherwise requires—

“the 1983 Act” means the Representation of the People Act 1983⁽⁷⁾;

“the 1985 Act” means the Representation of the People Act 1985⁽⁸⁾;

“the 1986 Regulations” means the Representation of the People (Scotland) Regulations 1986⁽⁹⁾;

“the 1998 Act” means the Scotland Act 1998;

“the 2000 Act” means the Representation of the People Act 2000⁽¹⁰⁾;

“the 2000 Political Parties Act” means the Political Parties, Elections and Referendums Act 2000⁽¹¹⁾;

“the 2001 Regulations” means the Representation of the People (Scotland) Regulations 2001⁽¹²⁾;

“appropriate returning officer” means—

- (a) in relation to a candidate for return as a constituency member (or to an election agent or sub agent for such a candidate) the constituency returning officer for that constituency; and
- (b) in relation to an individual candidate for return as a regional member or to a registered party submitting a regional list for a particular region, (or to an election agent or sub agent for such a candidate or such a registered party) the regional returning officer for that region;

a reference to a ballot paper shall, in relation to a general election for membership of the Scottish Parliament be construed as a reference to both the constituency ballot paper and the regional ballot paper;

a reference to a numbered article shall be construed as a reference to the article bearing that number in this Order;

“Citizen of the Union” shall be construed in accordance with article 8.1 of the Treaty establishing the European Community (as amended by Title II of the Treaty on European Union), and “relevant citizen of the Union” means such a citizen who is not a commonwealth citizen or a citizen of the Republic of Ireland;

“constituency returning officer” means the officer who, in accordance with article 15, is the constituency returning officer for a Scottish parliamentary election in a constituency;

“European Parliamentary Election” has the same meaning as in section 27(1) of the 1985 Act;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹³⁾;

(6) S.I. 2001/1750.
(7) 1983 c. 2.
(8) 1985 c. 50.
(9) S.I. 1986/111.
(10) 2000 c. 2.
(11) 2000 c. 41.
(12) S.I. 2001/497
(13) 1994 c. 39

“nominating officer” means the person registered under Part II of the 2000 Political Parties Act as the officer with responsibility for the matters referred to in section 24(3) of that Act in respect of a registered party;

“ordinary local government election” means an ordinary election of councillors for local government areas in Scotland;

“regional returning officer” means a regional returning officer for the purposes of the 1998 Act;

“register of electors” means the register of local government electors;

“registered emblem” means an emblem registered by a political party under Part II of the 2000 Political Parties Act;

“registered party” means a party registered under Part II of the 2000 Political Parties Act;

“registration officer” means an electoral registration officer within the meaning of the 1983 Act;

“service voter” means a person who has made a service declaration in accordance with section 15 of the 1983 Act and is registered or entitled to be registered in pursuance of it; and

“Scottish parliamentary election” means an election for membership of the Scottish Parliament and “Scottish parliamentary general election” shall be construed accordingly.

(2) For the purposes of this Order a person shall be deemed not to have attained a given age until commencement of the relevant anniversary of the day of his birth.

PART II

THE FRANCHISE AND ITS EXERCISE

Registers of electors etc

4.—(1) Subject to section 13B of the 1983 Act⁽¹⁴⁾ (alteration of registers, pending elections), an alteration made in a register of electors under section 13A or 56 of the 1983 Act⁽¹⁵⁾ (alteration of registers and registration appeals) after the last day on which the nomination papers at an election may be delivered to the constituency returning officer shall not have effect for the purposes of that election.

(2) Schedule 1 to this Order (which makes provision in connection with electors registers) has effect.

Registration appeals

5.—(1) An appeal lies to the sheriff from any decision under this Order of the registration officer disallowing a person’s application to vote—

- (a) by proxy or by post as elector; or
- (b) by post as proxy,

in any case where the application is not made for a particular Scottish parliamentary election only.

(2) An appeal lies on any point of law from any decision of the sheriff under this article to the court of three judges constituted under section 57(2) of the 1983 Act.

(3) An appeal made by virtue of this article or section 56 of the 1983 Act which is pending when notice of an election is given shall not prejudice the operation as respects that election of the

⁽¹⁴⁾ Sections 13A and 13B were added by the 2000 Act, Schedule 1, paragraph 6.

⁽¹⁵⁾ Section 56 is applied to Scotland by section 57 of the 1983 Act.

decision appealed against, and anything done in pursuance of the decision shall be as good as if no such appeal had been brought and shall not be affected by the decision of the appeal.

(4) Notice shall be sent to the registration officer by recorded delivery post of the decision of the sheriff or of the Court of three judges referred to in paragraph (2) above on any appeal by virtue of this article, and the registration officer shall make such alterations in the—

- (a) record kept under article 9(4); or
- (b) record kept under article 12(5),

as may be required to give effect to the decision.

(5) Subject to section 13B of the 1983 Act, where, as a result of the decision on an appeal under this article or section 56 of the 1983 Act, an alteration in the register is made on or before the last day for the delivery of nomination papers at an election paragraph (3) above does not apply to that appeal as respects that election.

(6) The registration officer shall on an appeal brought under this article be deemed to be a party to the proceedings, and the registration expenses payable to a registration officer shall include any expenses properly incurred by him by virtue of this paragraph.

Polling districts and places at elections

6.—(1) Every constituency shall be divided into polling districts and, subject to the provisions of this article, there shall be a polling place designated for each polling district.

(2) The polling districts and polling places designated under this article shall be the same as those used or designated for parliamentary elections, except where it appears to those responsible for the designation of parliamentary polling districts and polling places under section 18(3) of the 1983 Act⁽¹⁶⁾ that special circumstances make it desirable for some other polling district or polling place to be designated for the purpose of a Scottish parliamentary election.

- (3) An election shall not be questioned by reason of—
- (a) any non compliance with the provisions of this article; or
 - (b) any informality relating to polling districts or polling places.

Rules for Scottish parliamentary elections

7.—(1) The proceedings at Scottish parliamentary elections (including the return of members) shall be conducted in accordance with the Scottish Parliamentary Election Rules set out in Schedule 2 to this Order.

(2) It is the general duty of every returning officer at a Scottish parliamentary election to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by those Rules.

(3) No Scottish parliamentary election shall be declared invalid by reason of any act or omission by a returning officer or any other person in breach of his official duty in connection with the election or otherwise of those Rules if it appears to the tribunal having cognisance of the question that—

- (a) the election was so conducted as to be substantially in accordance with the law as to Scottish parliamentary elections; and
- (b) the act or omission did not affect the result.

(4) Schedule 2 to this Order (Scottish Parliamentary Election Rules) has effect.

⁽¹⁶⁾ Section 18(3) was amended by the Local Government etc. (Scotland) Act 1994 (c. 39), section 142 of Schedule 13, paragraph 130.

Manner of voting at Scottish parliamentary elections

8.—(1) This article applies to determine the manner of voting of a person entitled to vote as an elector at a Scottish parliamentary election.

(2) He may vote in person at the polling station allotted to him under this Order, unless he is entitled as an elector to an absent vote at the election.

(3) He may vote by post if he is entitled as an elector to vote by post at the election.

(4) If he is entitled to vote by proxy at the election, he may so vote unless, before a ballot paper has been issued for him to vote by proxy, he applies at the polling station allotted to him under this Order for a ballot paper for the purposes of voting in person, in which case he may vote in person there.

(5) If he is not entitled as an elector to an absent vote at the election but cannot reasonably be expected to go in person to the polling station allotted to him under this Order by reason of the particular circumstances of his employment, either as a constable or by a returning officer, on the date of the poll for a purpose connected with the election, he may vote in person at any polling station in the constituency.

(6) Nothing in the preceding provisions of this paragraph applies to—

(a) a person to whom section 7 of the 1983 Act⁽¹⁷⁾ (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, or

(b) a person to whom section 7A⁽¹⁸⁾ of that Act (persons remanded in custody) applies, whether he is registered by virtue of that provision or not; and such a person may only vote by post or by proxy (where he is entitled as an elector to vote by post or, as the case may be, by proxy at the election).

(7) For the purposes of the provisions of this Order a person entitled to vote as an elector at a Scottish parliamentary election is entitled as an elector to vote by post or entitled to vote by proxy at the election if he is shown in the absent voter list for the election as so entitled; and references in those provisions to entitlement as an elector to an absent vote at an election are references to an entitlement as an elector to vote by post or entitlement to vote by proxy at the election.

Absent vote at Scottish parliamentary elections for an indefinite or a particular period

9.—(1) Where a person applies to the registration officer to vote by post at Scottish parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in his application) the registration officer shall grant the application (subject to paragraph (6) below) if—

(a) he is satisfied that the applicant is or will be registered in the register of electors; and

(b) the application meets the requirements set out in Schedule 3 to this Order.

(2) Where a person applies to the registration officer to vote by proxy at Scottish Parliamentary elections or at local government and Scottish parliamentary elections (in either case, whether for an indefinite period or for a particular period specified in his application), the registration officer shall grant the application, (subject to paragraph (6) below) if—

(a) he is satisfied that the applicant is eligible to vote by proxy at elections to which the application relates,

(b) he is satisfied that the applicant is or will be registered in the register of electors, and

(c) the application meets the requirements set out in Schedule 3.

⁽¹⁷⁾ Section 7 was substituted by the 2000 Act, section 4.

⁽¹⁸⁾ Section 7A was inserted by the 2000 Act, section 5.

(3) For the purposes of this article, a person is eligible to vote by proxy at Scottish parliamentary elections—

- (a) if he is or will be registered as a service voter;
- (b) if he cannot reasonably be expected—
 - (i) to go in person to the polling station allotted or likely to be allotted to him under this Order; or
 - (ii) to vote unaided there,
 by reason of blindness or other physical incapacity;
- (c) if he cannot reasonably be expected to go in person to that polling station by reason of the general nature of his occupation, service or employment or that of his spouse or by reason of his attendance on a course provided by an educational institution or that of his spouse; or
- (d) if he cannot go in person from his qualifying address to that polling station without making a journey by air or sea.

(4) The registration officer shall keep a record of those whose applications under this article have been granted showing—

- (a) whether their applications were to vote by post or proxy for an indefinite or a particular period (specifying that period);
- (b) in the case of those who may vote by post, the addresses provided by them in their application as the addresses to which their ballot papers are to be sent; and
- (c) in the case of those who may vote by proxy, the names and addresses of those appointed as their proxies.

(5) The registration officer shall remove a person from the record kept under paragraph (4) above—

- (a) if he applies to the registration officer to be removed;
- (b) in the case of any registered person, if he ceases to be registered or registered at the same qualifying address or ceases to be, or becomes, registered in pursuance of—
 - (i) a service declaration, or
 - (ii) a declaration of local connection;
- (c) in the case of any person shown in the record as voting by proxy, if the registration officer gives notice that he has reason to believe there has been a material change of circumstances; or
- (d) in the case of a person who applied to vote by post or proxy for a particular period, once that period has expired.

(6) A person shown in the record kept under paragraph (4) above as voting by post or, as the case may be, voting by proxy (in either case, whether for an indefinite period or for a particular period specified in his application) may subsequently alter his choice on an application to the registration officer that meets the requirements set out in Schedule 3 and the registration officer shall amend the record accordingly.

Absent vote at a particular Scottish parliamentary election and absent voters' list

10.—(1) Where a person applies to the registration officer to vote by post, or to vote by proxy, at a particular Scottish parliamentary election, the registration officer shall grant the application (subject to paragraph (4) below) if—

- (a) he is satisfied in the case of an application to vote by proxy that the applicant's circumstances on the date of the poll will be or are likely to be such that he cannot

reasonably be expected to vote in person at the polling station allotted or likely to be allotted to him under this Order;

- (b) he is satisfied that the applicant is or will be registered in the register; and
- (c) the application meets the requirements set out in Schedule 3.

(2) Paragraph (1) above does not apply to a person who is included in the record kept under article 9 above but such a person may, in respect of a particular Scottish parliamentary election, apply to the registration officer—

- (a) for his ballot papers to be sent to a different address; or
- (b) to vote by proxy,

if he is shown in the record so kept as voting by post.

(3) The registration officer shall grant an application under paragraph (2) above if it meets the requirements set out in Schedule 3.

(4) Subject to paragraph (2) above, the registration officer shall, in respect of each Scottish parliamentary election, keep a special list (“the absent voters list”) consisting of—

- (a) a list of—
 - (i) those who are for the time being shown in the record kept under article 9 as voting by post (excluding those so shown whose applications under paragraph (2) above to vote by proxy at the election have been granted), together with the addresses provided by them in their applications under article 9 or, as the case may be, paragraph (2) above as the addresses to which their ballot papers are to be sent; and
 - (ii) those whose applications under paragraph (1) above to vote by post at the election have been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent; and
- (b) a list (“the list of proxies”) of those who are for the time being shown in the record kept under article 9 as voting by proxy or whose applications under this article to vote by proxy at the election have been granted, together with the names and addresses of those appointed as their proxies.

Proxies at Scottish parliamentary elections

11.—(1) Subject to the provisions of this article, any person is capable of being appointed proxy to vote for another (in this article and article 12 referred to as “the elector”) at any Scottish parliamentary election and may vote in pursuance of the appointment.

(2) The elector cannot have more than one person at a time appointed as proxy to vote for him at a Scottish parliamentary election.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at a Scottish parliamentary election—

- (a) if he is subject to any legal incapacity (age apart) to vote at that election as an elector; or
- (b) if he is neither a Commonwealth citizen nor a citizen of the Republic of Ireland nor a relevant citizen of the Union.

(4) A person is not capable of voting as proxy at a Scottish parliamentary election unless on the date of the poll he has attained the age of eighteen.

(5) A person is not entitled to vote as proxy in any constituency at the same Scottish parliamentary election on behalf of more than two electors of whom that person is not the husband, wife, parent, grandparent, brother, sister, child or grandchild.

(6) Where the elector applies to the registration officer for the appointment of a proxy to vote for him at Scottish parliamentary elections (whether for an indefinite period or for a particular period

specified in his application), the registration officer shall make the appointment if the application meets the requirements set out in Schedule 3 and he is satisfied that the elector is or will be—

- (a) registered in the register of electors for that election; and
- (b) shown in the record kept under article 9 as voting by proxy at such elections, and that the proxy is capable of being and willing to be appointed to vote as proxy at such elections.

(7) Where the elector applies to the registration officer for the appointment of a proxy to vote for him at a particular Scottish parliamentary election, the registration officer shall make the appointment if the application meets the requirements set out in Schedule 3 and he is satisfied that the elector is or will be—

- (a) registered in the register of electors for that election; and
- (b) entitled to vote by proxy at that election by virtue of an application under article 10,

and that the proxy is capable of being and willing to be appointed.

(8) The appointment of a proxy under this article is to be made by means of a proxy paper issued by the registration officer.

(9) The appointment may be cancelled by the elector by giving notice to the registration officer and shall also cease to be in force, where the appointment related to a Scottish parliamentary election or Scottish parliamentary elections, on the issue of a proxy paper appointing a different person to vote for him at a Scottish parliamentary election or Scottish parliamentary elections (whether in the same Scottish parliamentary constituency or elsewhere); and where the appointment was for a particular period, the appointment shall cease to be in force once that period expires.

(10) Subject to paragraph (9) above, the appointment shall remain in force—

- (a) in the case of an appointment for a particular election, for that election; and
- (b) in any other case, while the elector is shown as voting by proxy in the record kept under article 9 in pursuance of the same application under that article.

Voting as proxy

12.—(1) A person entitled to vote as proxy at a Scottish parliamentary election may do so in person at the polling station allotted to the elector under this Order unless he is entitled to vote by post as proxy for the elector at the election, in which case he may vote by post.

(2) Where a person is entitled to vote by post as proxy for the elector at any election, the elector may not apply for a ballot paper for the purpose of voting in person at the election.

(3) For the purposes of this Order, a person entitled to vote as proxy for another at a Scottish parliamentary election is entitled so to vote by post if he is included in the list kept under paragraph (7) below in respect of the election.

(4) Where a person applies to the registration officer to vote by post as proxy at Scottish parliamentary elections (whether for an indefinite period or for a particular period specified in his application), the registration officer shall grant the application if—

- (a) the registration officer is satisfied that the elector is or will be registered in the register of electors; and
- (b) there is in force an appointment of the applicant as the elector's proxy to vote for him

and the application meets the requirements set out in Schedule 3.

(5) The registration officer shall keep a record of those whose applications under paragraph (4) have been granted showing—

- (a) whether their applications were to vote by post as proxy for an indefinite or a particular period (specifying that period); and

(b) the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(6) Where, in the case of a particular election, a person included in the record kept under paragraph (5) above applies to the registration officer for his ballot papers to be sent to a different address, the registration officer shall grant the application if it meets the requirements set out in Schedule 3.

(7) The registration officer shall, in respect of each Scottish parliamentary election, keep a special list of—

- (a) those who are for the time being included in the record kept under paragraph (5) above, together with the addresses provided by them in their applications under paragraph (4) or, as the case may be, paragraph (6) above as the addresses to which their ballot papers are to be sent; and
- (b) those whose applications under paragraph (4) above have been granted in respect of the election concerned, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent,

and shall forthwith supply to the constituency returning officer a copy of that list on completion of the compilation of it.

(8) The registration officer shall remove a person from the record kept under paragraph (5) above—

- (a) if he applies to the registration officer to be removed;
- (b) in the case of a person who applied to vote by post as proxy for a particular period, once that period expires;
- (c) if the elector ceases to be registered in the register of electors; or
- (d) if the appointment of the person concerned as the elector's proxy ceases to be in force (whether or not he is re appointed).

Absent voting at elections: miscellaneous

13.—(1) Section 59 of the 1983 Act⁽¹⁹⁾ (supplemental provisions as to members of forces and service voters) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications:—

- (a) in subsection (3)(a), “this Act” shall be construed as including a reference to this Order in connection with the rights conferred by this Order on a person having a service qualification by virtue of section 14(1)(a) or (b) of that Act in relation to the making and cancellation of appointments of a proxy and in relation to voting by post; and
- (b) in subsection (3)(b), “this Act and any regulations made under it” shall be similarly construed.

(2) Schedule 3 (which makes provision in connection with absent voting at Scottish parliamentary elections) has effect.

(3) Schedule 4 (which makes provision in connection with the issue and receipt of postal ballot papers) has effect.

Combination of polls

14.—(1) Where the polls at a Scottish parliamentary general election and an ordinary local government election are to be taken on the same date, they shall be taken together.

⁽¹⁹⁾ Section 59 was amended by the 2000 Act, Schedule 1, paragraph 16.

(2) Where the polls at a Scottish parliamentary election and another election for related areas are to be taken on the same date but are not required by paragraph (1) above to be taken together, they may nevertheless may be so taken if the returning officer for each election thinks fit.

(3) In paragraph (2) above the reference to another election means a local government election; and for the purposes of that paragraph two areas are related if one is coterminous with or situated wholly or partly within the other.

(4) Where the polls at a Scottish parliamentary election and a local government election are combined under this article the cost of taking the combined polls (excluding any cost solely attributable to one election) and any cost attributable to their combination shall be apportioned in such proportions as the Secretary of State may determine.

(5) Schedule 5 (which makes provision about the combination of polls) has effect.

Constituency returning officers

15.—(1) The constituency returning officer for a Scottish parliamentary election in a constituency other than the Orkney Islands and the Shetland Islands shall be the person who under section 25 of the 1983 Act (returning officers: Scotland) is the returning officer for parliamentary elections in that parliamentary constituency.

(2) The constituency returning officer for a Scottish parliamentary election in the Orkney Islands shall be the person who, under section 41 of the 1983 Act (local government elections in Scotland) is, or may discharge the functions of, the returning officer at elections of councillors for the Orkney Islands Council.

(3) The constituency returning officer for a Scottish parliamentary election in the Shetland Islands shall be the person who, under that section 41, is, or may discharge the functions of, the returning officer at elections of councillors for the Shetland Islands Council.

Officers of councils to be placed at disposal of returning officers

16.—(1) Every local authority in Scotland shall place at the disposal of the constituency returning officer for a constituency wholly or partly situated in their area, for the purpose of assisting the constituency returning officer in the discharge of any functions conferred on him in relation to a Scottish parliamentary election, the services of officers employed by the authority.

(2) Every local authority in Scotland shall place at the disposal of the regional returning officer for a region wholly or partly situated in their area, for the purpose of assisting the regional returning officer in the discharge of any function conferred on him in relation to a Scottish parliamentary election, the services of officers employed by the authority.

Returning officers: discharge of functions

17.—(1) A returning officer at a Scottish parliamentary election may, in writing, appoint one or more persons to discharge all or any of his functions.

(2) Except in the case of an election to fill a vacancy in the seat of a constituency member, it shall be the duty of each regional returning officer and each constituency returning officer for a Scottish parliamentary constituency within that region to co operate with each other in the discharge of their functions.

(3) The duty imposed by paragraph (2) above applies as between constituency returning officers in any region as well as between such officers and the regional returning officer for that region.

Returning officers: general

18.—(1) A Scottish parliamentary election is not liable to be questioned by reason of a defect in the title, or want of title, of the person presiding at or conducting the election, if that person was then in actual possession of, or acting in, the office giving the right to preside at or conduct the election.

(2) A person is not subject to any incapacity to vote at a Scottish parliamentary election by reason of being or acting as a constituency returning officer or a regional returning officer at that election.

Payments by and to returning officers

19. Section 29 of the 1983 Act⁽²⁰⁾ (payments by and to returning officers) shall apply for the purposes of a Scottish parliamentary election subject to the following modifications:—

- (a) any reference to a parliamentary election shall be construed as a reference to an election for membership of the Scottish Parliament;
- (b) any reference to a returning officer shall be construed as a reference to a constituency returning officer and a regional returning officer;
- (c) subsections (1) and (2) shall be disregarded;
- (d) the reference in subsection (5) to “section 30 below” shall be construed as a reference to article 20 below; and

as if in subsection (8), for “Regulations may” there were substituted “the Secretary of State may by regulations”;

and as if after subsection (8) there were inserted—

“(8A) Any order made under subsection (3) above and any regulations made under subsection (8) above may make different provision in relation to different cases or in relation to different classes of case.”.

Taxation of returning officer’s accounts

20.—(1) An application for the accounts of a constituency returning officer or a regional returning officer to be taxed shall be made to the Auditor of the Court of Session.

(2) On any such application the Auditor has jurisdiction to tax the account in such manner and at such time and place as he thinks fit, and finally to determine the amount payable to the constituency returning officer or, as the case may be, regional returning officer.

(3) On any such application the returning officer may apply to the Auditor to examine any claim made by any person against him in respect of matters charged in the account; and the Auditor, after notice given to the claimant and after giving him an opportunity to be heard and to tender any evidence, may allow or disallow or reduce the claim objected to with or without costs; and the determination of the Auditor shall be final for all purposes and against all persons.

Loan of equipment for Scottish parliamentary elections

21.—(1) Any ballot boxes, fittings and compartments provided for parliamentary elections out of money provided by Parliament, may, on request, be lent to a constituency returning officer at a Scottish parliamentary election on such terms and conditions as the Secretary of State may determine.

(2) Any ballot boxes, fittings and compartments provided by or belonging to a local authority shall, on request, and if not required for immediate use by that authority, be lent to a constituency returning officer at a Scottish parliamentary election on such terms and conditions as may be agreed.

⁽²⁰⁾ Section 29 is amended by the 2000 Political Parties Act, Schedule 21, para 6(3): the amendments are not yet in force.

Effect of registers

22.—(1) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, shall for any purpose of this Part relating to him as elector be conclusive that until the date given in the entry he is not of voting age nor entitled to be treated as an elector except for the purposes of a Scottish parliamentary election at which the date fixed for the poll is that or a later date.

(2) A person registered as a local government elector, or entered in the list of proxies, shall not be excluded from voting at a Scottish parliamentary election on any of the grounds set out in paragraph (3) below; but this shall not prevent the rejection of the vote on a scrutiny, or affect his liability to any penalty for voting.

(3) The grounds referred to in paragraph (2) above are—

- (a) that he is not of voting age;
- (b) that he is not, or, on the relevant date or the date of his appointment (as the case may be), was not—
 - (i) a Commonwealth citizen;
 - (ii) a citizen of the Republic of Ireland,
 - (iii) a relevant citizen of the Union;
- (c) that he is, or, on the relevant date or the date of his appointment (as the case may be), was, otherwise subject to any other legal incapacity to vote.

(4) In paragraph (3) above, the “relevant date” means—

- (a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act⁽²¹⁾, the 15th October immediately preceding the date of publication of the register;
- (b) in relation to any other person registered in the register, the relevant date for the purposes of section 4 of the 1983 Act⁽²²⁾.

Effect of misdescription

23. No misnomer or inaccurate description of any person or place named—

- (a) in the register of electors; or
- (b) in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Order,

affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Discharge of registration duties

24.—(1) A registration officer shall comply with any general or specific directions which may be given by the Secretary of State, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the 2000 Political Parties Act, with respect to the arrangements to be made by the registration officer in carrying out his functions under this Order.

(2) Any of the duties and powers of a registration officer under this Order may be performed and exercised by any deputy for the time being approved by the local authority which appointed the registration officer, and the provisions of this Order apply to any such deputy so far as respects any duties or powers to be performed or exercised by him as they apply to the registration officer.

⁽²¹⁾ Section 13 was substituted by the 2000 Act, Schedule 1, paragraph 6.

⁽²²⁾ Section 4 was substituted by the 2000 Act, section 1(2).

(3) It shall be the duty of each local authority to assign such officers to assist the registration officer appointed by that authority as may be required for carrying out his functions under this Order.

Payment of expenses of registration

25.—(1) Any expenses properly incurred by a registration officer in the performance of his functions under this Order (in this Order referred to as “registration expenses”) shall be paid by the local authority by whom the registration officer was appointed.

(2) Any fees paid to the registration officer under this Order shall be accounted for by him and paid to the local authority by whom he was appointed.

(3) On the request of a registration officer for an advance on account of registration expenses, the local authority by whom the registration officer was appointed may, if they think fit, make such an advance to him of such an amount and subject to such conditions as they may approve.

Personation

26.—(1) A person shall be guilty of a corrupt practice if he commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person shall be deemed to be guilty of personation at a Scottish parliamentary election if he—

- (a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person; or
- (b) votes in person or by post as proxy—
 - (i) for a person whom he knows or has reasonable grounds for supposing to be dead or to be a fictitious person; or
 - (ii) when he knows or has reasonable grounds for supposing that his appointment as proxy is no longer in force.

(3) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted.

Other voting offences

27.—(1) A person shall be guilty of an offence if—

- (a) he votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector at a Scottish parliamentary election, or at Scottish parliamentary elections, knowing that he is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
- (b) he applies for the appointment of a proxy to vote for him at any Scottish parliamentary election or at Scottish parliamentary elections knowing that he or the person to be appointed is subject to a legal incapacity to vote at the election or, as the case may be, at elections of that kind; or
- (c) he votes, whether in person or by post, as proxy for some other person at a Scottish parliamentary election, knowing that that person is subject to a legal incapacity to vote.

(2) For the purposes of paragraph (1) above, references to a person being subject to a legal incapacity to vote do not, in relation to things done before polling day at the election or first election at or for which they are done, include his being below voting age if he will be of voting age on that day.

(3) A person shall be guilty of an offence if—

- (a) he votes as elector—

- (i) more than once in any constituency at a poll for the return of a constituency member;
or
 - (ii) more than once in any constituency at a poll for the return of regional members; or
 - (iii) in more than one constituency at a Scottish parliamentary general election;
 - (b) he votes as elector in person at a Scottish parliamentary election at which he is entitled to vote by post;
 - (c) he votes as elector in person at a Scottish parliamentary election, knowing that a person appointed to vote as his proxy at the election either has already voted in person at the election or is entitled to vote by post at the election; or
 - (d) he applies for a person to be appointed as his proxy to vote for him at Scottish parliamentary elections in any constituency without applying for the cancellation of a previous appointment of a third person then in force in respect of that or another constituency or without withdrawing a pending application for such an appointment in respect of that or another constituency.
- (4) A person shall be guilty of an offence if—
- (a) he votes as proxy for the same elector either—
 - (i) more than once in the same constituency at any Scottish parliamentary election; or
 - (ii) in more than one constituency at a Scottish parliamentary general election;
 - (b) he votes in person as proxy for an elector at a Scottish parliamentary election at which he is entitled to vote by post as proxy for that elector; or
 - (c) he votes in person as proxy for an elector at a Scottish parliamentary election knowing that the elector has already voted in person at the election.
- (5) A person shall also be guilty of an offence if he votes at a Scottish parliamentary election in any constituency as proxy for more than two persons of whom he is not the husband, wife, parent, grandparent, brother, sister, child or grandchild.
- (6) A person shall also be guilty of an offence if he knowingly induces or procures some other person to do an act which is, or but for that other person's want of knowledge would be, an offence by that other person under the foregoing paragraphs of this article.
- (7) For the purposes of this article a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, shall be deemed to have voted, but for the purpose of determining whether an application for a ballot paper constitutes an offence under paragraph (4) above, a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper shall, if he does not exercise that right, be disregarded.
- (8) An offence under this article shall be an illegal practice, but—
- (a) the court before whom a person is convicted of any such offence may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act (as applied by this Order)**(23)**; and
 - (b) a candidate shall not be liable, nor shall his election be avoided, for an illegal practice under this article of any agent of his other than an offence under paragraph (6) above.
- (9) Where a person is entitled to give two votes in an election (whether in person as elector or proxy, or by post as elector or proxy) and so exercises that right he shall, for the purposes of this article, be treated as voting once in relation to each poll for which his votes are given.

(23) By Schedule 6 to this Order.

Breach of official duty

28.—(1) If a person to whom this article applies is, without reasonable cause, guilty of any act or omission in breach of his official duty, he shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale.

(2) No person to whom this article applies shall be liable for breach of his official duty to any penalty at common law and no action for damages shall lie in respect of the breach by such a person of his official duty.

(3) The persons to whom this article applies are—

- (a) any sheriff clerk, registration officer, returning officer or presiding officer;
- (b) any official designated by a universal postal service provider (being a universal service provider as defined by section 4(3) of the Postal Services Act 2000); and
- (c) any deputy of a person mentioned in sub paragraph (a) or (b) or any person appointed to assist or in the course of his employment assisting a person so mentioned in connection with his official duties,

and “official duty” shall for the purpose of this article be construed accordingly, but shall not include duties imposed otherwise than by the law relating to Scottish parliamentary elections or the registration of local government electors.

Tampering with nomination papers, ballot papers etc

29.—(1) A person shall be guilty of an offence, if, at a Scottish parliamentary election, he—

- (a) fraudulently defaces or fraudulently destroys any nomination paper;
- (b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any declaration of identity or official envelope used in connection with voting by post;
- (c) without due authority supplies any ballot paper to any person;
- (d) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorised by law to put in;
- (e) fraudulently takes out of the polling station any ballot paper;
- (f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election; or
- (g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(2) A person shall be guilty of an offence if—

- (a) at a Scottish parliamentary election, he forges any nomination paper, delivers to a returning officer any nomination paper knowing it to be forged, or forges or counterfeits any ballot paper or the official mark on any ballot paper;
- (b) he signs any nomination paper as candidate or as nominating officer for any registered political party (or as a person authorised by such officer), or in any other capacity certifies the truth of any statement contained in it, knowing such statement to be false; or
- (c) he fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(3) If a returning officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers, is guilty of an offence under this article, he shall be liable—

- (a) on conviction on indictment to a fine, or to imprisonment for a term not exceeding two years, or to both;
 - (b) on summary conviction, to a fine not exceeding the amount specified as level 5 on the standard scale, or to imprisonment for a term not exceeding three months, or to both.
- (4) If any other person is guilty of an offence under this article he shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale, or to imprisonment for a term not exceeding three months, or to both.
- (5) In this article “nomination paper” includes a regional list of a registered party.

Requirement of secrecy

30.—(1) The following persons attending at a polling station, namely—

- (a) a returning officer or a member of his staff;
- (b) a presiding officer or clerk;
- (c) a candidate (including a candidate on a party’s regional list);
- (d) a nominating officer of a registered party which has submitted a regional list;
- (e) an election agent;
- (f) a polling agent,

shall maintain and aid in maintaining the secrecy of voting and shall not, except for some purpose authorised by law, communicate to any person before the poll is closed any information as to—

- (i) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station;
- (ii) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station; or
- (iii) the official mark.

(2) Every person attending at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not—

- (a) ascertain or attempt to ascertain at the counting of the votes the number on the back of any ballot paper;
 - (b) communicate any information obtained at the counting of the votes as to the candidate for whom or, as the case may be, registered political party for which, any vote is given on any particular ballot paper.
- (3) No person shall—
- (a) interfere with or attempt to interfere with a voter when recording his vote;
 - (b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom or, as the case may be, the registered political party for which, a voter in that station is about to vote or has voted;
 - (c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom or, as the case may be, the registered political party for which a voter in that station is about to vote or has voted, or as to the number on the back of a ballot paper given to a voter at that station; or
 - (d) directly or indirectly induce a voter to display a ballot paper after he has marked it so as to make known to any person the name of the candidate for whom or, as the case may be, the registered political party for which, he has or has not voted.

(4) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not—

- (a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark;
- (b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number on the back of any ballot paper sent to any person;
- (c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on the back of any ballot paper; or
- (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the name of the candidate for whom or, as the case may be, the registered political party for which, any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(5) No person having undertaken to assist a voter with disabilities to vote shall communicate at any time to any person any information as to the name of the candidate for whom or, as the case may be, the registered political party for which, that voter intends to vote or has voted, or as to the number on the back of a ballot paper given for the use of that voter.

(6) If a person acts in contravention of this article he shall be liable on summary conviction to a fine not exceeding the amount specified as level 5 on the standard scale or to imprisonment for a term not exceeding three months.

(7) In this article a voter with disabilities is a voter who has made a declaration under the Scottish Parliamentary Election Rules set out in Schedule 2 to this Order that he is so incapacitated by his blindness or other incapacity or by his inability to read, as to be unable to vote without assistance.

PART III

THE ELECTION CAMPAIGN

Appointment of election agent

31.—(1) Not later than the latest time for delivery of nomination papers for candidature for a Scottish parliamentary election, a person shall be named by, or on behalf of—

- (a) each candidate for return as a constituency member;
- (b) each individual candidate for return as a regional member; and
- (c) each registered party submitting a regional list,

as the election agent for that candidate or, as the case may be, registered party in relation to that list and that person's name and address shall be declared in writing by or on behalf of such a candidate or, in the case of a registered party, by the candidate who is highest in that party's regional list, to the appropriate returning officer.

(2) A candidate for return as a constituency member and any individual candidate for return as a regional member may name himself as election agent.

(3) A candidate included on a registered party's regional list may be named as election agent for that party in relation to that regional list.

(4) Where a candidate has been named or has named himself as an election agent he shall, so far as circumstances admit, be subject to the provisions of this Order both as a candidate and as an

election agent, and, except where the context otherwise requires, any reference in this Order to an election agent shall be construed to refer to the candidate acting in his capacity as election agent.

(5) One election agent only shall be appointed for—

- (a) each candidate for return as a constituency member;
- (b) each individual candidate for return as a regional member; and
- (c) each registered party in relation to each regional list submitted by that party,

but the appointment, whether the election agent appointed be a candidate himself or not, may be revoked.

(6) If, whether before, during or after the election the appointment (or deemed appointment) of an election agent is revoked or an election agent dies, another election agent shall be appointed forthwith and his name and address declared in writing to the appropriate returning officer.

(7) The declaration as an election agent of—

- (a) a candidate of a person other than that candidate; or
 - (b) a registered party submitting a regional list, of a person other than a candidate on that list,
- shall be of no effect under this article unless it is made and signed by that person or is accompanied by a written declaration of acceptance signed by him.

(8) Upon the name and address of an election agent being declared to the appropriate returning officer the appropriate returning officer shall forthwith give public notice of that name and address.

Nomination of sub agent

32.—(1) An election agent of a candidate for return as a constituency member may appoint to act in any part of the constituency one, but not more than one, deputy election agent.

(2) An election agent of an individual candidate for return as a regional member or registered party which has submitted a regional list may appoint to act in any part of the region one, but not more than one, deputy election agent.

(3) In this Order, any deputy election agent appointed under paragraph (1) or (2) above is referred to as a sub agent.

(4) As regards matters in a part of the constituency or, as the case may be, region, for which there is a sub agent the election agent may act by the sub agent and—

- (a) anything done for the purposes of this Order by or to the sub agent in his part of the constituency or, as the case may be, region shall be deemed to be done by or to the election agent;
- (b) any act or default of a sub agent which, if he were the election agent, would be an illegal practice or other offence against this Order shall be an illegal practice and offence against this Order committed by the sub agent, and the sub agent shall be liable to punishment accordingly; and
- (c) the candidate or, as the case may be, each candidate on the registered party's regional list shall suffer the like incapacity as if that act or default had been the election agent's act or default.

(5) Not later than the second day before the day of the poll the election agent shall declare in writing the name and address of every sub agent to the appropriate returning officer, and the appropriate returning officer shall forthwith give public notice of the name and address of every sub agent so declared.

(6) The appointment of a sub agent—

(a) shall not be vacated by the election agent who appointed him ceasing to be election agent; but

(b) may be revoked by whoever is for the time being the election agent,

and in the event of the revocation of the appointment or of the death of a sub agent another sub agent may be appointed, and his name and address shall be forthwith declared in writing to the appropriate returning officer, who shall forthwith give public notice of the name and address so declared.

(7) The declaration to be made to the appropriate returning officer, and such notice to be given by him, under paragraph (5) or (6) above shall specify the part of the constituency or, as the case may be, region within which any sub agent is appointed to act.

Office of election agent

33.—(1) Every election agent and every sub agent shall have an office to which all claims, notices, writs, summonses and documents may be sent, and the address of the office shall be—

(a) declared to the appropriate returning officer at the same time as the appointment of the agent or, as the case may be, sub agent, is declared to him; and

(b) stated in the public notice of the name of the agent or, as the case may be, sub agent.

(2) Any claim, notice, writ, summons or document delivered at the office of the election agent or sub agent and addressed to him, shall be deemed to have been served on him and every election agent or sub agent may, in respect of any matter connected with the election in which he is acting, be sued in any court having jurisdiction at the place where his office is situated.

Effect of default in election agent's appointment

34.—(1) If no person's name and address is given as required by article 31 above as the election agent of—

(a) a candidate who remains validly nominated; or

(b) a registered party submitting a regional list,

at the latest time for delivery of notices of withdrawal of candidature—

(i) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, the candidate shall be deemed at that time to have named himself as election agent and to have revoked any appointment of another person as his election agent; and

(ii) in the case of a registered party, the candidate who is highest in that party's regional list shall be deemed at that time to have named himself as election agent and to have revoked any appointment of another person as that party's election agent.

(2) This paragraph applies if—

(a) the person whose name and address have been so given as those of an election agent for a candidate (not being the candidate himself) or of a registered party dies; and

(b) a new appointment is not made on the day of the death or on the following day.

(3) Where paragraph (2) above applies—

(a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, he shall be deemed to have appointed himself as from the time of death; and

(b) in the case of the death of an election agent for a registered party—

(i) the candidate who is highest in that party's regional list shall be deemed to have appointed himself from the time of the death; or

- (ii) where paragraph (2) above applies through the death of such a candidate, the candidate whose name is next highest in that registered party's regional list shall be deemed to have been appointed from the time of the death.
- (4) If the appointment of an election agent is revoked without a new appointment being made—
 - (a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, the candidate himself shall be deemed to have been appointed (or re appointed) election agent; and
 - (b) in the case of a registered party, the candidate who is highest in that party's regional list shall be deemed to have been appointed (or re appointed) election agent.
- (5) The deemed appointment of an election agent may be revoked as if it were an actual appointment.
- (6) Where a candidate for return as a constituency member is by virtue of this article to be treated as an election agent he shall be deemed to have his office at his address as given in the statement of persons nominated as candidates for return as a constituency member.
- (7) Where an individual candidate for return as a regional member or a candidate on a registered party's regional list is by virtue of this article to be treated as an election agent he shall be deemed to have his office at the address given in the statement of persons and parties standing nominated.
- (8) The appropriate returning officer on being satisfied that a person is by virtue of this article to be treated as an election agent, shall forthwith proceed to give such like notice as if the name and address of the person and the address of his office had been duly given to him under article 31 above.

Expenses of constituency candidate

35. For the purpose of this Part of this Order, sums paid and expenses incurred by a candidate for return as a constituency member in respect of whom the constituency returning officer has received a certificate issued by a nominating officer of a registered party under rule 8 of the Scottish Parliamentary Election Rules are not to be regarded as having been made or incurred by that party.

Payment of expenses through election agent: constituency and individual candidates

- 36.—**(1) Subject to paragraph (5) below, no payment (of whatever nature) shall be made by—
- (a) a candidate for return as a constituency member or an individual candidate for return as a regional member; or
 - (b) any other person,
- in respect of election expenses incurred by or on behalf of the candidate for return as a constituency member or an individual candidate for return as a regional member unless it is made by or through the candidate's election agent.
- (2) Every payment made by an election agent in respect of any election expenses shall, except where less than £20, be vouched for by a bill stating the particulars or by a receipt.
 - (3) The references in the foregoing provisions of this article to an election agent shall be taken as references to the election agent acting by himself or a sub agent.
 - (4) This article does not apply to—
 - (a) any expenses which are, in accordance with article 37(1) or (2), 41(6) or 42(2) below, paid by the candidate;
 - (b) any expenses which are paid in accordance with article 37(4) below by a person authorised as mentioned in that provision;

(c) any expenses included in a declaration made by the election agent under article 38 below;
or

(d) any expenses which are to be regarded as incurred by or on behalf of the candidate by virtue of article 55 below.

(5) The foregoing provisions of this article shall not be deemed to apply to any sum disbursed by any person out of his own money for any small expense legally incurred by him if the sum is not repaid to him.

(6) A person who makes any payment (of whatever nature) in contravention of paragraph (1) above shall be guilty of an illegal practice.

Expenses which may be paid otherwise than by election agent

37.—(1) A candidate (including a candidate on a registered party's regional list) may pay any personal expenses incurred by him on account of or in connection with or incidental to the election, but the amount which a candidate may pay shall not exceed—

(a) £600 in the case of a candidate for return as a constituency member who is not also a candidate for return as a regional member; and

(b) £900 in the case of a candidate for return as a regional member (whether or not he is also a candidate for return as a constituency member),

and any further personal expenses incurred by him shall be paid by the election agent.

(2) A candidate at an election may also pay any election expenses (other than expenses falling within paragraph (1) above) which were incurred by him or on his behalf and in respect of which payment falls to be made before the date on which he appoints (or is deemed to have appointed) an election agent.

(3) A candidate shall send to the election agent within the time permitted by this Order for sending in claims, a written statement of the amount of personal expenses paid as mentioned in paragraph (1) or (2) above by the candidate; and, when that candidate is standing for return as a constituency member and for return as a regional member he shall send the statement to the election agent acting on his behalf in relation to his candidacy for return as a constituency member.

(4) Any person may, if so authorised in writing by an election agent, pay any necessary expenses of stationery, postage, facsimile communication (or any other similar means of communication) and other petty expenses, to a total amount not exceeding that named in the authority, but any excess above the total amount so named shall be paid by the election agent.

(5) A statement of the particulars of payments made by any person so authorised shall be sent to the election agent who authorised them within the time limited by this Order for sending in claims, and shall be vouched for by a bill containing that person's receipt.

(6) Articles 41 and 42 below do not apply to expenses which, in accordance with any provision of this article, are paid otherwise than by the candidate's election agent.

Expenses incurred otherwise than for election purposes

38.—(1) Neither article 37 above nor articles 41 and 42 below shall apply to election expenses—

(a) which are incurred by or on behalf of a candidate otherwise than for the purposes of the candidate's election, but

(b) which by virtue of article 55(1) below fall to be regarded as election expenses by reason of the property goods, services or facilities in respect of which they were incurred being used for the purposes of the candidate's election.

(2) The candidate's election agent shall make a declaration of the amount (determined in accordance with articles 55 and 56 below) of any election expenses falling within paragraph (1) above.

(3) In this article "for the purposes of the candidate's election" has the same meaning as in articles 55 to 57 below.

Prohibition of expenses not authorised by election agent: candidates for return as constituency members and individual candidates for return as regional members

39.—(1) No expenses, with a view to promoting or procuring the election of a candidate for return as a constituency member or an individual candidate for return as a regional member at a Scottish parliamentary election, shall be incurred at such an election by any person other than the candidate or his election agent and persons authorised in writing by the election agent on account—

- (a) of holding public meetings or organising any public display;
- (b) of issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors a candidate, or the views of such a candidate or the extent or nature of that candidate's backing or disparaging of another candidate or, in the case of an individual candidate for return as a regional member, of a registered party,

but sub paragraph (c) of this paragraph shall not—

- (i) restrict the publication of any matter relating to the election in a newspaper or any other periodical or in a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru or in a programme included in any service licensed under Part I or III of the Broadcasting Act 1990(24) or Part I or II of the Broadcasting Act 1996(25); or
- (ii) apply to any expenses, incurred by any person which do not exceed in the aggregate the sum of £500 (and are not incurred by that person as part of a concerted plan of action), or to expenses incurred by any person in travelling or in living away from home or similar personal expenses.

(2) For the purposes of paragraph (1)(ii) above, expenses shall be regarded as incurred by a person "as part of a concerted plan of action" if they are incurred by that person in pursuance of any plan or other arrangement whereby that person and one or more other persons are to incur, with a view to promoting or procuring the election of the same candidate, expenses which (disregarding paragraph (1)(ii)) fall within paragraph (1) above.

(3) Where a person incurs any expense required by this article to be authorised by the election agent—

- (a) that person shall within 21 days after the day on which the result of the election is declared deliver to the appropriate returning officer a return of the amount of those expenses stating the election at which and the candidate in whose support they were incurred; and
- (b) the return shall be accompanied by a declaration made by that person (or in the case of an association or body of persons by a director, general manager, secretary or other similar officer of the association or body) verifying the return and giving particulars of the matters for which the expenses were incurred,

but this paragraph does not apply to any person engaged or employed for payment or promise of payment by a candidate or his election agent.

(4) The return and declaration under the foregoing provisions of this article shall be respectively in the forms A and B set out in the Appendix and the authority received from the election agent shall be annexed to and deemed to be part of the return.

(5) If a person—

(24) 1990 c. 42.

(25) 1996 c. 55.

(a) incurs, or aids, abets, counsels or procures any other person to incur, any expenses in contravention of this article; or

(b) knowingly makes the declaration required by paragraph (3) above falsely,

he shall be guilty of a corrupt practice, and if a person fails to deliver or send any declaration or return or a copy of it as required by this article he shall be guilty of an illegal practice, but—

(i) the court before whom a person is convicted under this article may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act (as applied by this Order); and

(ii) a candidate shall not be liable, nor shall his election be avoided, for a corrupt or illegal practice under this article committed by an agent without his consent or connivance.

(6) Where any act or omission of an association or body of persons, corporate or unincorporate, is an offence declared to be a corrupt or illegal practice by this article, any person who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves—

(a) that the act or omission took place without his consent or connivance; and

(b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the other circumstances.

Limitation of election expenses: candidates

40.—(1) The election expenses incurred by or on behalf of—

(a) a candidate for return as a constituency members; or

(b) an individual candidate for return as a regional member,

at an election must not in the aggregate exceed the maximum amount specified in this article.

(2) The maximum amount is (in a case other than that to which paragraph (3) below applies)—

(a) for a candidate for return as a constituency member in a constituency which is coterminous with a parliamentary constituency which is a county constituency £5,761 together with an additional 6.5p for every entry in the register of electors;

(b) for a candidate for return as a constituency member for a constituency which is coterminous with a parliamentary constituency which is a burgh constituency, £5,761 together with an additional 4.8p for every entry in the register of electors;

(c) for a candidate for return as a constituency member for the constituency of the Orkney Islands or the Shetland Islands, £5,761 together with an additional 6.5p for every entry in the register of electors ; and

(d) for an individual candidate for return as a regional member, a sum calculated by adding together the maximum amounts (calculated in accordance with sub paragraphs (a) to (c) above) for a single candidate for return as a constituency member in each constituency included in the region.

(3) The maximum amount at an election to fill a vacancy, for a candidate—

(a) for return as a constituency member in a constituency which is coterminous with a parliamentary constituency which is a county constituency, £100,000;

(b) for return as a constituency member for a constituency which is coterminous with a parliamentary constituency which is a burgh constituency, £100,000;

(c) for return as a constituency member for the constituency of the Orkney Islands or the Shetland Islands, £100,000.

(4) Where any election expenses are incurred in excess of the maximum amount specified in paragraph (2) or, as the case may be, paragraph (3) above, any candidate or election agent who—

- (a) incurred, or authorised the incurring of, the election expenses, and
- (b) knew or ought reasonably to have known that the expenses would be incurred in excess of that maximum amount,

shall be guilty of an illegal practice.

(5) In paragraph (2) above “the register of electors” means the register of local government electors, for the area in question as it has effect on the last day for publication of notice of the election.

(6) The maximum amount specified in paragraph (2) or (3) above for a candidate is not required to cover personal expenses of that candidate.

(7) Where a poll for the return of a constituency member is countermanded or abandoned by reason of a candidate’s death, the maximum amount of election expenses shall, for any of the other candidates who then remain validly nominated, be twice, or if there has been a previous increase under this paragraph, three times what it would have been but for any increase under this paragraph.

(8) The maximum amount specified in paragraph (2) or (3) above for a candidate shall not be affected by the change in the timing of a Scottish parliamentary election or of any step in the proceedings at such an election.

Time for sending in and paying claims

41.—(1) Every claim against—

- (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 his election agent,

in respect of election expenses which is not sent in to the election agent not later than 21 days after the day on which the result of the election is declared shall be barred and not paid.

(2) All election expenses shall be paid not later than 28 days after that date.

(3) Subject to paragraph (4) or (5) below, a person who pays a claim in contravention of paragraph (1) above or makes a payment in contravention of paragraph (2) above shall be guilty of an illegal practice.

(4) Where the election court reports that it has been proved to the court that any payment made was by an election agent without the sanction or connivance of a candidate—

- (a) the candidate’s election shall not be void; nor
- (b) shall he be subject to any incapacity under this Order by reason only of that payment having been made in contravention of this article.

(5) The following person or persons, namely—

- (a) a claimant;
- (b) a candidate for return as a constituency member or his election agent; or
- (c) an individual candidate for return as a regional member or his election agent,

may apply to the Court of Session or to the sheriff for leave to pay a claim for any election expenses although sent in after the period of 21 days or although sent in to a candidate and not the election agent and the court on cause shown to their satisfaction may by order grant leave.

(6) Any sum specified in the order of leave may be paid in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, by such candidate or his election agent and the amount paid in pursuance of the judgement or order shall not be deemed to be in contravention of paragraph (2) above.

(7) The jurisdiction vested by paragraph (5) above in the sheriff may be exercised otherwise than in open court.

(8) An appeal lies to the Court of Session from any order of the sheriff made by virtue of paragraph (5) above.

Disputed claims

42.—(1) If an election agent disputes any claim sent to him within the period of 21 days mentioned in article 41 above or refuses or fails to pay the claim within the period of 28 days so mentioned, the claim shall be deemed to be a disputed claim.

(2) The claimant may, if he thinks fit, bring an action for a disputed claim in any competent court and any sum paid by a candidate or his election agent in pursuance of the judgement or order of the court shall not be deemed to be in contravention of article 36(1), 37(1) or (2) or 41(2) above.

(3) If the defender in the action admits his liability but disputes the amount of the claim, that amount shall, unless the court on the pursuer's application otherwise directs, be forthwith referred for taxation to the auditor of the Court of Session or, as the case may be, the sheriff court and the amount found due on the taxation shall be the amount to be recovered in the action in respect of the claim.

(4) Article 41(6) to (8) above applies in relation to a disputed claim as it applies in relation to a claim for election expenses sent in after the period of 21 days.

Election agent's claim

43. So far as circumstances admit, this Order applies to an election agent's claim for his remuneration and to its payment in like manner as if he were any other creditor, and if any difference arises about the amount of the claim, the claim shall be a disputed claim within the meaning of this Order and shall be dealt with accordingly.

Return as to election expenses: candidates for return as constituency members and individual candidates for return as regional members

44.—(1) Within 35 days after the day on which the result of a Scottish parliamentary election is declared the election agent of every—

- (a) candidate for return as a constituency member; and
- (b) individual candidate for return as a regional member,

at the election shall deliver to the appropriate returning officer a true return in the form set out in the Appendix to this Order, containing as respects that candidate—

- (i) a statement of all election expenses incurred by or on behalf of the candidate; and
- (ii) a statement of all payments made by the election agent together with all bills or receipts relating to the payments.

(2) A return under this article must—

- (a) specify the poll by virtue of which the return is required;
- (b) specify the name of the candidate to whom the return relates and of the candidate's election agent; and
- (c) deal under a separate heading with any expenses in respect of which a return is required by virtue of article 39(3) above.

(3) The return shall also contain as respects that candidate—

- (a) a statement of all payments made—
 - (i) by the candidate in accordance with article 37(1) or (2) above, or

- (ii) by any other person in accordance with article 37(4) above, together with all bills or receipts relating to any such payments made in accordance with article 37(2) or (4) above;
- (b) a statement of all disputed claims of which the election agent is aware;
- (c) a statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the Court of Session or the sheriff;
- (d) any declarations of value falling to be made by the candidate's election agent by virtue of article 38(2) above or 57(2) below;
- (e) a declaration of the amount of expenses which are to be regarded as election expenses incurred by or on behalf of the candidate by virtue of article 55(5)(b) below;
- (f) a statement of donations made to the candidate or his election agent which complies with the requirements of paragraphs 11 and 12 of Schedule 2A to the 2000 Political Parties Act; and
- (g) a statement of the amount, if any, of money provided by the candidate from his own resources for the purpose of meeting election expenses incurred by him or on his behalf.

(4) Where after the date at which the return as to election expenses is delivered leave is given by the court under article 41(5) above for any claims to be paid, the candidate or his election agent shall, within seven days after its payment, deliver to the appropriate returning officer a return of the sums paid in pursuance of the leave accompanied by a copy of the order of the court giving the leave and in default he shall be deemed to have failed to comply with the requirements of this article without such authorised excuse as is mentioned in article 50 below.

Declarations as to election expenses: candidates for return as constituency members and individual candidates for return as regional members

45.—(1) Each return delivered under article 44 above shall be accompanied by a declaration made by the election agent in the form D set out in the Appendix.

- (2) At the same time as the election agent delivers that return, or within seven days thereafter—
 - (a) each candidate for return as a constituency member; and
 - (b) each individual candidate for return as a regional member,

shall deliver to the appropriate returning officer a declaration made by him in the form D set out in the Appendix.

- (3) Where a candidate is out of the United Kingdom when the return is so delivered—
 - (a) the declaration required by paragraph (2) above may be made by him within 14 days after his return to the United Kingdom; and
 - (b) in that case, the declaration shall be forthwith delivered to the appropriate returning officer,

but the delay authorised by this provision in making the declaration shall not exonerate the election agent from complying with the provisions of this Order relating to the return and declaration as to election expenses.

- (4) Where—
 - (a) a candidate for return as a constituency member is his own election agent; or
 - (b) an individual candidate for return as a regional member is his own election agent,

the declaration by the election agent as to the election expenses need not be made and the declaration by the candidate as to election expenses shall be modified as specified in the form D set out in the Appendix.

(5) If a candidate or election agent knowingly makes the declaration required by this article falsely, he shall be guilty of a corrupt practice.

Declarations as to election expenses: candidates on a registered party's regional list

46.—(1) Within 35 days after the day on which the result of a Scottish parliamentary election is declared, each candidate on a registered party's regional list shall deliver to the appropriate returning officer a declaration in the form E set out in the Appendix.

(2) Where a candidate is out of the United Kingdom when the declaration is due to be so delivered—

- (a) the declaration required by paragraph (1) above may be made by him within 14 days after his return to the United Kingdom; and
- (b) in that case, the declaration shall forthwith be delivered to the appropriate returning officer.

(3) If a person knowingly makes the declaration required by this article falsely, he shall be guilty of a corrupt practice.

Where no return and declaration is needed

47. Notwithstanding anything in article 44 above, no return or declaration as to election expenses shall be required in the case of a person—

- (a) who is a candidate, but is so only because he has been declared by others to be a candidate; and
- (b) who has not consented to the declaration or taken any part as a candidate at the election.

Penalty for failure as respects return of declarations

48. Subject to the provisions of article 50 below, if any candidate, nominating officer or election agent fails to comply with the requirements of articles 44, 45 and 46 above he shall be guilty of an illegal practice.

Penalty for sitting or voting where no return and declaration is transmitted

49.—(1) If—

- (a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, the return and declarations as to election expenses; or
- (b) in the case of a candidate included on a registered party's regional list, his declaration as to elections expenses,

are not delivered before the expiry of the time limited for the purpose the candidate shall not, after the expiry of the time, sit or vote in the Parliament as a member for the constituency or, as the case may be, region until—

- (i) where sub paragraph (a) above applies, that return and those declarations have been delivered;
- (ii) where sub paragraph (b) applies, that declaration has been delivered; or
- (iii) the date of the allowance of an authorised excuse for the failure to deliver the return and declaration,

and if he sits or votes in contravention of this article he shall forfeit £100 for every day on which he so sits or votes.

Authorised excuses for failure as to return and declarations

50.—(1) A candidate, a party’s nominating officer or an election agent may apply for relief under this article to—

- (a) the Court of Session;
- (b) an election court; or
- (c) the sheriff.

(2) Where an application is made under this article the person or persons making the application shall notify the Lord Advocate of the application and the Lord Advocate may attend or be represented at the hearing of the application and make representations at the hearing in respect of it.

(3) Relief under this article may be granted—

- (a) to a candidate for return as a constituency member, and to an individual candidate for return as a regional member, in respect of any failure to deliver the return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them;
- (b) to a candidate on a registered party’s regional list, in respect of any failure to deliver the declaration as to election expenses, or any part of it, or in respect of any error or false statement in it;
- (c) to a registered party’s nominating officer, in respect of any failure to deliver a return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them; or
- (d) to an election agent, in respect of any failure to deliver the return and declaration as to election expenses, or any part of them, or in respect of any error or false statement in them.

(4) The application for relief may be made on the ground that the failure, error or false statement arose—

- (a) by reason of the applicant’s illness;
- (b) where the applicant is a candidate, by reason of the absence, death, illness or misconduct—
 - (i) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, of his election agent or sub agent (or any clerk or officer of such agent); or
 - (ii) in the case of a candidate included in a registered party’s regional list, of any person;
- (c) where the applicant is an election agent, by reason of the death or illness—
 - (i) of any prior election agent;
 - (ii) where he is an election agent for a candidate, of the candidate; or
 - (iii) where he is an election agent for a registered party submitting a regional list, of any candidate included in that list;
- (d) where the applicant is an election agent, by reason of the absence, death, illness or misconduct of any sub agent, clerk or officer of any election agent;
- (e) where the applicant is a registered party’s nominating officer, by reason of the death, absence, misconduct or illness—
 - (i) of any election agent of that party or clerk or officer of such agent;
 - (ii) of any candidate included in a regional list submitted by that party; or
 - (iii) of any person having the authority to act in accordance with arrangements for which the nominating officer is responsible; or
- (f) by reason of inadvertence or any reasonable cause of a like nature,

and not by reason of any want of good faith on the applicant’s part.

(5) The court may—

- (a) after such notice of the application in the constituency or region in relation to which the election was held, as it considers fit; and
- (b) on production of such evidence of the grounds stated in the application and of the good faith of the application, and otherwise, as it considers fit,

make such order for allowing an authorised excuse for the failure, error or false statement as it considers just.

(6) Where it is proved to the court by a candidate—

- (a) that any act or omission of the election agent of that candidate (or, in the case of a candidate on a party's regional list, the party's nominating officer) in relation to the return or declarations was without the sanction or connivance of the candidate; and
- (b) that the candidate took all reasonable means for preventing the act or omission,

the court shall relieve the candidate from the consequences of the act or omission of the election agent or, as the case may be, nominating officer.

(7) An order under paragraph (5) above may make the allowance conditional on the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the court seem best calculated for carrying into effect the objects of this Part of this Order.

(8) An order under paragraph (5) above shall relieve the applicant for the order from any liability or consequences under this Order in respect of the matter excused by the order.

(9) The date of the order, or if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Order as the date of the allowance of the excuse.

(10) The jurisdiction vested by this article in the sheriff may be exercised other than in open court.

(11) An appeal lies to the Court of Session from any order of the sheriff made by virtue of this article.

Court's power to require information from election agent or sub agent

51.—(1) Where on an application under article 50 above it appears to the court that any person who is or has been an election agent or sub agent or nominating officer has refused or failed to make such return, or to supply such particulars, as will enable a person to comply with the provisions of this Order as to the return or declaration as to election expenses the court before making an order under that article, shall order that person to attend before the court.

(2) The court shall on the attendance of that person, unless he shows cause to the contrary, order him—

- (a) to make the return and declaration; or
- (b) to deliver a statement of the particulars required to be contained in the return,

as the court considers just, within such time, to such person and in such manner as it may direct, or may order him to be examined with respect to the particulars.

(3) If a person fails to comply with any order of the court under this article, the court may order him to pay a fine not exceeding the amount specified as level 5 on the standard scale.

Duty of appropriate returning officer to forward returns and declarations to Electoral Commission

52. Where the appropriate returning officer receives any return or declaration under article 44, 45 or 46 above in respect of an election to the Scottish Parliament, he shall as soon as reasonably practicable after receiving the return or declaration deliver a copy of it to the Electoral Commission and, if so requested by the Commission, he shall also deliver to them a copy of any accompanying documents.

Publication of time and place of inspection of returns and declarations

53.—(1) At a Scottish parliamentary election, the appropriate returning officer, within 10 days after the end of the time allowed for delivering to him returns as to election expenses, shall—

- (a) publish—
 - (i) in the case of a constituency returning officer, in not less than two newspapers circulating in the constituency; and
 - (ii) in the case of a regional returning officer, in not less than three newspapers circulating in the region; and
- (b) send—
 - (i) in the case of a constituency returning officer, to each of the election agents; and
 - (ii) in the case of a regional returning officer, to the election agents and the nominating officers for each registered party submitting a regional list in relation to that region, a notice of the time and place at which the returns and declarations (including the accompanying documents) can be inspected.

(2) But if any return or declaration has not been received by the appropriate returning officer before the notice is dispatched for publication, the notice shall so state and the like notice about that return and declaration, if afterwards received, shall within 10 days after the receipt be published in like manner and sent to each of the election agents and each nominating officer for a registered party submitting a regional list other than—

- (a) an agent who is in fault or is agent for the candidate in fault; or
- (b) a nominating officer who is in fault or who is the nominating officer for a registered party submitting a regional list on which there is included a candidate who is in fault.

Inspection of returns and declarations: candidates

54.—(1) Where the appropriate officer receives any return or declaration under article 44, 45 or 46 above he shall—

- (a) as soon as reasonably practicable after receiving the return or declaration make a copy of it, and any accompanying documents, available for inspection at his office, or some other convenient place chosen by him, for a period of two years beginning with the date when the return is received by him;
- (b) if requested to do so by any person, and on payment of the fee set out in paragraph (3) below supply that person with a copy of the return or declaration and any accompanying documents.

(2) If any such return contains a statement of donations in accordance with article 44(3)(f) above, the appropriate officer shall secure that the copy of the statement made available for public inspection under paragraph (1)(a) above or (as the case may be) supplied under paragraph (1)(b) above does not include, in the case of any donation by an individual, the donor's address.

(3) The fee payable for a copy of any such return, declaration or any accompanying document, shall be at the rate of 20p for each side of each page.

(4) After the expiry of the period of two years mentioned at paragraph (1) above the appropriate returning officer—

- (a) may cause those returns and declarations (including any accompanying documents) to be destroyed; or
- (b) if the candidate or his election agent so require shall return them to the candidate.

(5) Any returns or declarations delivered under article 39 above shall be returned not to a candidate (if he or his election agents require) but to the person delivering them, if he so requires.

Meaning of Election Expenses

55.—(1) In this part of this Order “election expenses” in relation to a candidate at an election, means (subject to paragraphs (2) and (3) and articles 56 and 57 below) any expenses incurred in respect of—

- (a) the acquisition or use of any property, or
- (b) the provision by any person of any goods, services or facilities,

which is or are used for the purposes of the candidate’s election after the date when he becomes a candidate at the election.

(2) Paragraph (1) above applies whether the expenses are incurred before or after that date.

(3) No election expenses shall be regarded as incurred, by virtue of paragraph (1) or (2) above or articles 56 and 57 below, in respect of—

- (a) the payment of any deposit required by rule 11 of the Scottish Parliamentary Election Rules set out in Schedule 2 to this Order;
- (b) the publication of any matter, other than an advertisement, relating to the election in—
 - (i) a newspaper or periodical,
 - (ii) a broadcast made by the British Broadcasting Corporation or by Sianel Pedwar Cymru, or
 - (iii) a programme included in any service licensed under Part I or III of the Broadcasting Act 1990 or Part I or II of the Broadcasting Act 1996;
- (c) the provision of any facilities provided in pursuance of any right conferred on candidates at an election by this Order other than facilities in respect of which expenses fall to be defrayed by virtue of articles 63 and 64 below;
- (d) the provision by any individual of his own services which he provides voluntarily in his own time and free of charge.

(4) In this article and in articles 56 and 57 below “for the purposes of the candidate’s election” means with a view to, or otherwise in connection with, promoting or procuring the candidate’s election at the election.

(5) For the purposes of this Order—

- (a) election expenses are incurred by or on behalf of a candidate at an election if they are incurred—
 - (i) by the candidate or his election agent, or
 - (ii) by any person authorised by the candidate or his election agent to incur the expenses;and
- (b) any reference to election expenses incurred by or on behalf of a candidate at an election includes expenses which are incurred as mentioned in sub-paragraph (a)(i) or (ii) above

before the date when he becomes a candidate at the election but which by virtue of paragraphs (1) and (2) above fall to be regarded as election expenses.

(6) In this Order, any reference (in whatever terms) to promoting or procuring a candidate's election at an election includes doing so by prejudicing the electoral prospects of another candidate at the election.

Incurring of election expenses for purposes of article 55

56.—(1) The election expenses which are to be regarded as incurred for the purposes of article 55(1) above shall (subject to paragraph (2) and article 57 below) be the actual expenses incurred in respect of the acquisition or use of the property, or (as the case may be) the provision of the goods, services or facilities mentioned in article 57(1).

(2) Where the property, goods, services or facilities mentioned in paragraph (1) above is not or are not used exclusively for the purposes of the candidate's election, the election expenses to be regarded as incurred for the purposes of article 55(1) above shall be such proportion of the expenses incurred in respect of their acquisition, use or provision (as the case may be) as is reasonably attributable to the use of the property or (as the case may be) the goods, services or facilities for the purposes of the candidate's election.

Property, goods, services etc provided free of charge or at a discount

57.—(1) This article applies where, in the case of a candidate at an election—

(a) either—

(i) property or goods is or are transferred to the candidate or his election agent free of charge or at a discount of more than 10 per cent of the market value of the property or goods; or

(ii) property, goods, services or facilities is or are provided for the use or benefit of the candidates free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the goods, services or facilities; and

(b) the property, goods, services or facilities is or are made up of by or on behalf of the candidate in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the candidate in respect of that use, they would be (or are) election expenses incurred by or on behalf of the candidate.

(2) Where this article applies—

(a) an amount of election expenses determined in accordance with this article (“the appropriate amount”) shall be treated, for the purposes of this article, as incurred by the candidate, and

(b) the candidate's election agent shall make a declaration of that amount, unless that amount is not more than £50.

This paragraph has effect subject to article 55(3) above.

(3) Where paragraph (1)(a)(i) above applies, the appropriate amount is such proportion of either—

(a) the market value of the property or goods (where the property or goods is or are transferred free of charge); or

(b) the difference between the market value of the property or goods and the amount of expenses actually incurred by or on behalf of the candidate in respect of the property or goods (where the property or goods is or are transferred at a discount),

as is reasonably attributable to the use made of the property or goods as mentioned in paragraph (1) (b) above.

- (4) Where paragraph (1)(a)(ii) above applies, the appropriate amount is such proportion of either—
- (a) the commercial rate for the use of the property or the provision of the goods, services or facilities (where the property, goods, services or facilities is or are provided free of charge); or
 - (b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the candidate in respect of the use of the property or the provision of the services or facilities (where the property, goods, services or facilities is or are provided at a discount),

as is reasonably attributable to the use made of the property, goods, services or facilities as mentioned in paragraph (1)(b) above.

(5) Where the services of an employee are made available by his employer for the use or benefit of a candidate, then for the purposes of this article the commercial rate for the provision of those services shall be the amount of the remuneration and allowances payable to the employee by his employer in respect of the period for which his services are so made available (but shall not include any amount in respect of any contributions or other payments for which the employer is liable in respect of the employee).

(6) In this article, “market value”, in relation to any property or goods, means the price which might reasonably be expected to be paid for the property or goods on a sale in the open market; and paragraph 2(6)(a) of Schedule 2A to the 1983 Act⁽²⁶⁾ shall apply with any necessary modifications for the purpose of determining, for the purposes of paragraph (1) above, whether property or goods is or are transferred to a candidate or his election agent.

Right to send election address post free

58.—(1) At a Scottish parliamentary election—

- (a) each candidate, for return as a constituency member;
- (b) each individual candidate for return as a regional member;
- (c) the nominating officer of each registered political party which has submitted a regional list,

is entitled, to send free of any charge for postage which would otherwise be made by a universal service provider either—

- (i) one unaddressed postal communication, containing matter relating to the election only and not exceeding 60 grams in weight, to each place in the constituency or, in the case of an individual candidate for return as a regional member or a nominating officer of a registered party submitting a regional list for a particular region, each place in the region, which, in accordance with such reasonable terms and conditions as the universal postal service provider constitutes a delivery point for the purposes of this article; or
- (ii) one such postal communication addressed to each elector.

(2) Any such candidate or, as the case may be, party’s nominating officer is also, subject as mentioned in paragraph (1) above, entitled to send free of any such charge for postage as mentioned above to each person entered in the list of proxies for the election one such communication as mentioned in paragraph (1) above for each appointment in respect of which that person is so entered.

(3) A person shall not be deemed to be a candidate for return as a constituency member or to be an individual candidate for return as a regional member for the purposes of this article unless he is shown as standing nominated in the statement of persons nominated but until publication of that

(26) Schedule 2A was added to the 1983 Act by the 2000 Political Parties Act, Schedule 16.

statement any person who declares himself to be such a candidate shall be entitled to exercise the right of free postage conferred by this article if he gives such security as may be required by the universal service provider concerned for the payment of postage should he not be shown as standing nominated as mentioned above.

(4) A registered party shall not be deemed to have submitted a regional list for the purposes of this article unless that party is shown as standing nominated in the statement published under rule 20 of the Scottish Parliamentary Election Rules but until the publication of that statement the nominating officer of a party which has submitted a regional list shall be entitled to exercise the right of free postage conferred by this article if he gives such security as may be required by the universal service provider should the party not be shown as standing nominated as mentioned above.

(5) For the purposes of this article, “elector” means a person—

- (a) who is registered in the register of electors for the constituency or region on the last day for publication of notice of the election; and
- (b) includes a person then shown in that register as below voting age if (but only if) it appears from the register that he will be of voting age on the day fixed for the poll,

(6) In this article “universal service provider” has the same meaning as in the Postal Services Act 2000(27).

(7) If the area of a regional returning officer is situated in the area of more than one official designated by a universal postal service provider, the controlling designated official shall be determined by that regional returning officer.

Remuneration for free postal services provided

59.—(1) This article applies where any postal services are provided without charge by a universal service provider in pursuance of this Order.

(2) The universal service provider shall be entitled to be remunerated for having provided the services at the rate fixed in relation to them by virtue of a scheme under section 89 of the Postal Services Act 2000.

(3) A sum which a universal service provider is entitled to receive by virtue of this section shall be charged on, and issued out of, the Consolidated Fund.

(4) In this article “postal services” and “universal service provider” have the same meanings as in the Postal Services Act 2000.

Broadcasting from outside United Kingdom

60.—(1) No person shall, with intent to influence persons to give or refrain from giving their votes at a Scottish parliamentary election, include, or aid, abet, counsel or procure the inclusion of, any matter relating to the election in any programme service (within the meaning of the Broadcasting Act 1990(28)) provided from a place outside the United Kingdom otherwise than in pursuance of arrangements made with—

- (a) the British Broadcasting Corporation;
- (b) Sianel Pedwar Cymru; or
- (c) the holder of any licence granted by the Independent Television Commission or the Radio Authority,

for the reception and re transmission of that matter by that body or the holder of that licence.

(27) 2000 c. 26.

(28) 1990 c. 42.

(2) An offence under this article shall be an illegal practice, but the court before whom a person is convicted of an offence under this article may, if they think it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act as applied by this Order(29).

(3) Where any act or omission of an association or body of persons, corporate or unincorporate, is an illegal practice under this article, any person who at the time of the act or omission was a director, general manager, secretary or other similar officer of the association or body, or was purporting to act in any such capacity, shall be deemed to be guilty of the illegal practice, unless he proves—

- (a) that the act or omission took place without his consent or connivance; and
- (b) that he exercised all such diligence to prevent the commission of the illegal practice as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances.

Broadcasting of local items during election period

61.—(1) Each broadcasting authority shall adopt a code of practice with respect to the participation of candidates at a Scottish parliamentary election in items about the constituency or electoral areas in question which are included in relevant services during the election period.

(2) The code for the time being adopted by a broadcasting authority under this section shall be either—

- (a) a code drawn up by that authority, whether on their own or jointly with one or more other broadcasting authorities; or
- (b) a code drawn up by one or more other such authorities,

and a broadcasting authority shall from time to time consider whether the code for the time being so adopted by them should be replaced by a further code falling within paragraph (a) or (b).

(3) Before drawing up a code under this article a broadcasting authority shall have regard to any views expressed by the Electoral Commission and any such code may make different provision for different cases.

(4) The Independent Television Commission and the Radio Authority shall each do all that they can to secure that the code for the time being adopted by them under this article is observed in the provision of relevant services; and the British Broadcasting Corporation and Sianel Pedwar Cymru shall each observe in the provision of relevant services the code so adopted by them.

(5) For the purposes of paragraph (1) above “the election period”, in relation to an election, means the period beginning—

- (a) (if an ordinary general election) with the date of the dissolution of the Scottish Parliament;
- (b) (if an extraordinary general election) with the date of Her Majesty’s proclamation dissolving the Scottish Parliament; or
- (c) (if an election to fill a constituency vacancy) with the date of the occurrence of the vacancy in the constituency,

and ending with the close of the poll.

(6) In this section—

“broadcasting authority” means the British Broadcasting Corporation, the Independent Television Commission, the Radio Authority or Sianel Pedwar Cymru;

“candidate”, in relation to an election, means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it;

“relevant services”–

- (a) in relation to the British Broadcasting Corporation or Sianel Pedwar Cymru, means services broadcast by that body;
- (b) in relation to the Independent Television Commission, means services licensed under Part I of the Broadcasting Act 1990⁽³⁰⁾ or Part I of the Broadcasting Act 1996⁽³¹⁾; and
- (c) in relation to the Radio Authority means services licensed under Part III of the Broadcasting Act 1990 or Part II of the Broadcasting Act 1996.

Imitation poll cards and notifications

62. No person shall for the purpose of promoting or procuring a particular result at a Scottish parliamentary election issue any poll card or notification or other document so closely resembling an official poll card or notification as to be calculated to deceive, and paragraphs (2) and (3) of article 60 above apply as if an offence under this article were an offence under that article.

Schools and rooms for Scottish parliamentary election meetings: candidates for return as constituency members

63.—(1) Subject to the provisions of this article, a candidate for return as a constituency member at a Scottish parliamentary election is entitled for the purpose of holding public meetings in furtherance of his candidature to the use free of charge at reasonable times between the last day on which notice of the election may be published in accordance with the Scottish Parliamentary Election Rules and the day preceding the date of the poll of–

- (a) a suitable room in the premises of a school to which this article applies;
- (b) any meeting room to which this article applies.

(2) This article applies to any school of which the premises are situated in the constituency or an adjoining constituency, not being an independent school within the meaning of the Education (Scotland) Act 1980⁽³²⁾, but a candidate is not entitled under this article to the use of a room in school premises outside the constituency if there is a suitable room in other premises in the constituency which are reasonably accessible from the same parts of the constituency as those outside and are premises of a school to which this article applies.

(3) This article applies to meeting rooms situated in the constituency, the expense of maintaining which is payable wholly or mainly out of public funds or out of any rate, or by a body whose expenses are so payable.

(4) Where a room is used for a meeting in pursuance of the rights conferred by this article, the person by whom or on whose behalf the meeting is convened–

- (a) shall defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting; and
- (b) shall defray 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.

(5) A candidate is not entitled to exercise the rights conferred by this article except on reasonable notice; and this article does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

⁽³⁰⁾ 1990 c. 42.

⁽³¹⁾ 1996 c. 55.

⁽³²⁾ 1980 c. 44.

(6) For the purposes of this article (except those of paragraph (4)(b) above) the premises of a school shall not be taken to include any private dwellinghouse, and in this article—

- (a) the expression “meeting room” means any room which it is the practice to let for public meetings; and
- (b) the expression “room” includes a hall, gallery or gymnasium.

Schools and rooms for Scottish parliamentary election meetings: candidates for return as regional members

64.—(1) Subject to the provisions of this article—

- (a) an individual candidate for return as a regional member at a Scottish parliamentary election is entitled for the purpose of holding public meetings in furtherance of his candidature; and
- (b) a registered party submitting a regional list is entitled for the purpose of holding public meetings for the purpose of promoting or procuring the giving of votes for that registered party,

to the use free of charge at reasonable times between the last date on which notice of the election may be published in accordance with the Scottish Parliamentary Election Rules and the day preceding the date of the poll of—

- (i) a suitable room in the premises of a school to which this article applies;
- (ii) any meeting room to which this article applies.

(2) This article applies to any school of which the premises are situated in the region, not being an independent school within the meaning of the Education (Scotland) Act 1980.

(3) This article applies to meeting rooms situated in the region, the expense of maintaining which is payable wholly or mainly out of public funds or out of any rate or by a body whose expenses are so payable.

(4) Where a room is used for a meeting in pursuance of the rights conferred by this article, the candidate, or as the case may be, registered party by whom or on whose behalf the meeting is convened—

- (a) shall defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting; and
- (b) shall defray any damage done to the room or to the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A person is not entitled to exercise the rights conferred by this article except on reasonable notice; and this article does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

(6) The provisions of Schedule 7 to this Order have effect with respect to the rights conferred by this article and article 63 above and the arrangements to be made for their exercise.

(7) For the purposes of this article (except those of paragraph (4)(b) above), the premises of a school shall not be taken to include any private dwellinghouse, and in this article—

- (a) the expression “meeting room” means any room which it is the practice to let for public meetings; and
- (b) the expression “room” includes a hall, gallery or gymnasium.

Disturbances at Scottish parliamentary election meetings

65.—(1) A person who at a lawful public meeting to which this article applies acts, or incites others to act, in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an illegal practice.

(2) This article applies to a political meeting held—

- (a) in relation to an election for return of a constituency member, in that constituency; and
- (b) in relation to an election for return of regional members, in that region,

during the period beginning with the last day on which notice of election may be published in accordance with the Scottish Parliamentary Election Rules and ending with the day of election.

(3) If a constable reasonably suspects any person of committing an offence under paragraph (1) above, he may if requested so to do by the chairman of the meeting require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address, or gives a false name and address, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Officials not to act for candidates

66.—(1) If—

- (a) any constituency returning officer or regional returning officer;
- (b) any officer, clerk or member of staff of any such officer, appointed under the Scottish Parliamentary Election Rules; or
- (c) any partner or clerk of any such person,

acts as an agent for a candidate or a registered party in the conduct or management of the election, he shall be guilty of an offence, but nothing in this article prevents a candidate from acting as his own election agent or a candidate on a registered party's regional list from acting as election agent for that registered party in relation to that list.

(2) A person guilty of an offence under this article shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Illegal canvassing by police officers

67.—(1) No member of a police force shall, at a Scottish parliamentary election, by word, message, writing or in any other manner, endeavour to persuade any person to give, or dissuade any person from giving, his vote, whether as an elector or as proxy, for the return of any constituency or regional member where the constituency or region falls wholly or partly within the police area for which that police force is maintained.

(2) A person acting in contravention of paragraph (1) above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale; but nothing in that paragraph shall subject a member of a police force to any penalty for anything done in the discharge of his duty as a member of the force.

False statements as to candidates

68.—(1) A person who, or any director of any body or association corporate which—

- (a) before or during a Scottish parliamentary election;
- (b) for the purpose of affecting the candidate for whom, or registered political party for which, a vote is given at the election,

makes or publishes any false statement of fact in relation to the personal character or conduct of any candidate (including any candidate included in a registered party's regional list) shall be guilty of an illegal practice, unless he can show that he had reasonable grounds for believing, and did believe, the statement to be true.

(2) A candidate shall not be liable, nor shall his election be avoided, for any illegal practice under paragraph (1) above committed—

- (a) in the case of a candidate for return as a constituency member or an individual candidate for return as a regional member, by his agent other than his election agent;
- (b) in the case of a candidate included in a registered party's regional list, by the agent of that party other than its election agent,

unless—

- (i) it can be shown that the candidate or his election agent or in the case of a candidate on a registered party's regional list, that registered party's election agent in relation to that list, has authorised or consented to the committing of the illegal practice by the other agent or has paid for the circulation of the false statement constituting the illegal practice; or
- (ii) an election court find and report that the election of the candidate was procured or materially assisted in consequence of the making or publishing of such false statements.

(3) A person making or publishing any false statement of fact as mentioned above may be restrained by interdict or interim interdict of the Court of Session or the sheriff from any repetition of that false statement or of a false statement of a similar character in relation to the candidate or candidates.

(4) Any person who, before or during a Scottish parliamentary election, knowingly publishes a false statement of a withdrawal of candidature at the election for the purpose of promoting or procuring a particular result at that election shall be guilty of an illegal practice.

(5) A candidate shall not be liable, nor shall his election be avoided, for any illegal practice under paragraph (4) above committed by his agent (or in the case of a candidate included in a party's regional list, the agent of that party) other than the election agent for that candidate, or as the case may be, party.

Corrupt withdrawal from candidature

69. Any person who corruptly induces or procures any other person to withdraw from being a candidate at a Scottish parliamentary election, in consideration of any payment or promise of payment, and any person withdrawing in pursuance of the inducement or procurement, shall be guilty of an illegal payment.

Payments for exhibition of election notices

70.—(1) No payment or contract for payment for the purpose of promoting or procuring a particular result at a Scottish parliamentary election shall be made to an elector or his proxy on account of the exhibition of, or the use of any house, land, building or premises for the exhibition of, any address, bill or notice, unless—

- (a) it is the ordinary business of the elector or proxy as an advertising agent to exhibit for payment bills and advertisements; and
- (b) the payment or contract is made in the ordinary course of that business.

(2) If any payment or contract for payment is knowingly made in contravention of this article either before, during or after an election—

- (a) the person making the payment or contract; and

(b) if he knew it to be in contravention of this Order, any person receiving the payment or being a party to the contract,
shall be guilty of an illegal practice.

Printer's name and address on election publications

71.—(1) A person shall not—

- (a) print or publish, or cause to be printed or published, any bill, placard or poster having reference to a Scottish parliamentary election or any printed document distributed for the purpose of promoting or procuring a particular result at the election; or
- (b) post or cause to be posted any such bill, placard or poster as mentioned above; or
- (c) distribute or cause to be distributed any printed document for that purposes,

unless the bill, placard, poster or document bears upon its face the name and address of the printer and publisher.

(2) For the purposes of this article, any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression “printer” shall be construed accordingly.

(3) A candidate or election agent acting in contravention of this article shall be guilty of an illegal practice, and any other person so acting shall on summary conviction be liable to a fine not exceeding the amount specified as level 5 on the standard scale.

Prohibition of paid canvassers

72. If a person is, either before, during or after a Scottish parliamentary election, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting or procuring a particular result at the election—

- (a) the person so engaging or employing him; and
- (b) the person so engaged or employed,

shall be guilty of illegal employment.

Providing money for illegal purposes

73. Where a person knowingly provides money—

- (a) for any payment which is contrary to the provisions of this Order;
- (b) for any expenses incurred in excess of the maximum amount allowed by this Order; or
- (c) for replacing any money expended in any such payment or expenses,

except where the payment or the incurring of the expenses may have been previously allowed in pursuance of section 167 of the 1983 Act as applied by this Order⁽³³⁾ to be an exception, that person shall be guilty of an illegal payment.

Bribery

74.—(1) A person shall be guilty of a corrupt practice if he is guilty of bribery.

(2) A person shall be guilty of bribery if he, directly or indirectly, by himself or by any other person on his behalf—

(33) By Schedule 6 to this Order.

- (a) gives any money or procures any office to or for any voter, or to or for any other person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting;
- (b) corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting; or
- (c) makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, a particular result at a Scottish parliamentary election or the vote of any voter,

or if upon or in consequence of any such gift or procurement as mentioned above he procures or engages, promises or endeavours to procure a particular result at a Scottish parliamentary election or the vote of any voter.

(3) For the purposes of paragraph (2) above—

- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure any money or valuable consideration; and
- (b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.

(4) A person shall be guilty of bribery if he advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money or any part of it shall be expended in bribery at a Scottish parliamentary election or knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election.

(5) The foregoing provisions of this article shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning a Scottish parliamentary election.

(6) A voter shall be guilty of bribery if before or during a Scottish parliamentary election he directly or indirectly by himself or by any other person on his behalf receives, agrees, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(7) A person shall be guilty of bribery if after a Scottish parliamentary election he directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

(8) In this article the expression “voter” includes any person who has or claims to have a right to vote.

Treating

75.—(1) A person shall be guilty of a corrupt practice if he is guilty of treating.

(2) A person shall be guilty of treating if he corruptly, by himself or by any other person, either before, during or after a Scottish parliamentary election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—

- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.

(3) Every elector or his proxy who corruptly accepts or takes any such meat, drink, entertainment or provision shall also be guilty of treating.

Undue influence

76.—(1) A person shall be guilty of a corrupt practice if he is guilty of undue influence.

(2) A person shall be guilty of undue influence—

- (a) if he, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting; or
- (b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector, or so compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting.

Rights of creditors

77. The provisions of this Part prohibiting—

- (a) payments and contracts for payments;
- (b) the payment or incurring of election expenses in excess of the maximum amount allowed by this Order; or
- (c) the incurring of expenses not authorised by an election agent,

do not affect the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this Order.

Savings as to Scottish parliamentary elections

78.—(1) Where a person has been declared by others to be a candidate at a Scottish parliamentary election without his consent, nothing in this Part shall be construed to impose any liability on that person, unless he has afterwards given his assent to the declaration or has been nominated.

(2) Nothing in this Part makes it illegal for an employer to permit any elector or proxy to absent himself from his employment for a reasonable time for the purpose of voting at the poll at a Scottish parliamentary election without having any deduction from their salaries or wage on account of their absence, if the permission—

- (a) is (so far as practicable without injury to the employer’s business) given equally to all persons alike who are at the time in his employment; and
- (b) is not given with a view to inducing any person to record his vote for any particular candidate or, as the case may be, registered party at the election; and
- (c) is not refused to any person for the purpose of preventing him from recording his vote for any particular candidate or, as the case may be, registered party,

but this paragraph shall not be construed as making illegal any act which would not be illegal apart from this paragraph.

Interpretation of Part III

79. In this Part, unless the context otherwise requires—

a person becomes a “candidate” in relation to a Scottish parliamentary election—

- (a) on the date of—

- (i) the dissolution of the Scottish Parliament; or
 - (ii) in the case of an election under section 9 of the 1998 Act (constituency vacancies), the occurrence of the vacancy,
- in consequence of which the writ for the election is issued if on or before that date he is declared by himself or by others to be a candidate at the election; and

- (b) otherwise, on the day on which he is so declared by himself or by others or on which he is nominated as a candidate at the election (whichever is the earlier);

“date of allowance of an authorised excuse” has the meaning given by article 50(9) above;

“declaration as to election expenses” means a declaration made under article 45 or 46 above;

“disputed claim” has the meaning given by article 42(1) above as extended by article 43 above;

“money” and “pecuniary reward” shall (except in articles 74 and 75 above) be deemed to include—

- (a) any office, place or employment;
- (b) any valuable security or other equivalent of money; and
- (c) any valuable consideration,

and expressions referring to money shall be construed accordingly;

“payment” includes any pecuniary or other reward;

“personal expenses” as used with respect to the expenditure of any candidate in relation to any Scottish parliamentary election includes the reasonable travelling expenses of the candidate, and the reasonable expenses of his living at hotels or elsewhere for the purposes of and in relation to the election; and

“return as to election expenses” means a return (including the bills and receipts to be delivered with it) to be made under article 44 above.

Computation of time for purposes of Part III

80.—(1) Where the day or last day on which anything is required or permitted to be done by or in pursuance of this Part is any of the days mentioned in paragraph (2) below—

- (a) the requirement or permission shall be deemed to relate to the first day thereafter which is not one of those days; and
- (b) in computing any period of not more than seven days for the purposes of this Part any of the days so mentioned shall be disregarded.

(2) The days referred to in paragraph (1) above are a Saturday, Sunday, Christmas Eve, Christmas Day, Good Friday, Easter Monday, a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971⁽³⁴⁾, or a day appointed for public thanksgiving or mourning.

PART IV

LEGAL PROCEEDINGS

Application of certain provisions for Scottish parliamentary elections

81.—(1) The provisions of the 1983 Act which are specified in the left hand column of Part I of Schedule 6 to this Order shall apply—

⁽³⁴⁾ 1971 c. 80.

- (a) as if amended in accordance with the modifications and exceptions specified in relation to those provisions in the right hand column of that Schedule;
- (b) subject to paragraph (3) below; and
- (c) as if amended in accordance with such modifications as are necessary in consequence of those provisions,

for the purposes of a Scottish parliamentary election but only in relation to the election or return of a constituency member of the Scottish Parliament.

(2) The provisions of the 1983 Act which are specified in the left hand column of Part II of Schedule 6 to this Order shall apply—

- (a) as if amended in accordance with the modifications and exceptions specified in relation to those provisions in the right hand column of that Schedule;
- (b) subject to paragraph (3) below; and
- (c) as if amended in accordance with such modifications as are necessary in consequence of those provisions,

for the purposes of a Scottish parliamentary election but only in relation to the election or return of a regional member of the Scottish Parliament.

(3) Unless the context otherwise requires, in the provisions applied by Schedule 6 to this Order—

- (a) any provision relating to a local government election or local government electors and references in connection therewith (including a reference to a petition questioning an election under the Local Government (Scotland) Act 1973) shall be disregarded;
- (b) any reference to a parliamentary election (except the references specified in paragraph (4) below) shall be construed as a reference to a Scottish parliamentary election and any reference to a general election shall accordingly be construed as a reference to a Scottish parliamentary general election;
- (c) any reference to a constituency (or parliamentary constituency) shall be construed—
 - (i) in relation to any election or return of a constituency member, as a reference to a Scottish parliamentary constituency;
 - (ii) in relation to any election or return of a regional member, as a reference to a region;
- (d) any reference to promoting or procuring the election of a candidate shall be construed as a reference to promoting or procuring the giving of a vote for a particular candidate or registered party at the election;
- (e) any reference to a candidate, other than the one referred to in sub paragraph (d) above, shall be construed as a reference to either—
 - (i) a candidate on a registered party's regional list; or
 - (ii) an individual candidate,
 as the case may be;
- (f) any reference to a parliamentary elector shall be construed as a reference to an elector at a Scottish parliamentary election;
- (g) any reference to a member in the context of a Member of Parliament shall be construed as a reference to a member of the Scottish Parliament;
- (h) any reference to a parliamentary election petition (except in the context of the rota for the trial of parliamentary election petitions) shall be construed as a reference to a Scottish parliamentary election petition;

- (i) any reference to the High Court shall be construed as a reference to the Court of Session and any reference to the County Court or a judge of that Court shall be construed as a reference to the sheriff;
 - (j) any reference to the Director of Public Prosecutions or the Attorney General shall be construed as a reference to the Lord Advocate;
 - (k) any reference to a return in the context of a return to the writ of election (and the return to Parliament) shall be construed as a reference to the declaration of the result by the returning officer under rule 61 or, as the case may be, 65 of the Scottish Parliamentary Election Rules;
 - (l) any reference to an enactment or instrument made under an enactment shall be construed as a reference to that enactment or instrument as applied by this Part of this Order; and
 - (m) any references to an offence under the 1983 Act or to a practice (or payment, employment or hiring) made corrupt or illegal by any provision of that Act shall be construed, subject to any necessary modifications, as a reference to the offence under, or practice, payment, employment or hiring made illegal by, the corresponding provision of this Order.
- (4) The references to “parliamentary election” to which paragraph (3)(b) above does not apply are those in section 60(4) of the 1983 Act and the first reference in section 160(5) of that Act.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Vacancies: constituency seats

82. Where the seat of a constituency member is vacant and the date of the poll at an election to fill that vacancy is fixed by the Presiding Officer of the Scottish Parliament under section 9 of the 1998 Act, he shall forthwith send a notice to the constituency returning officer for that constituency stating—

- (a) that the vacancy exists; and
- (b) the date fixed for the poll at the election to fill that vacancy.

Vacancies: regional member seats

83.—(1) Where it comes to the notice of the Presiding Officer of the Scottish Parliament that the seat of a regional member who was returned from a registered party’s regional list is vacant, he shall forthwith send a notice in accordance with paragraph (2) below to the regional returning officer for that region.

(2) A notice under paragraph (1) above shall—

- (a) state that a vacancy exists; and
- (b) set out the name of the person who had been returned in the seat which is vacant, together with the name of the registered party on whose regional list his name is included.

(3) On receipt of a notice under paragraph (1) above, the regional returning officer shall ascertain the name of the person, if any, who is to fill the vacancy in accordance with section 10 of the 1998 Act as modified by article 84 below.

Modification of section 10 of the 1998 Act

84. Section 10 of the 1998 Act(35) shall be modified by substituting, for subsections (4) to (5A) of that section, the following:—

“(4) The regional returning officer shall ascertain from that party’s regional list the name and address of the person whose name appears highest on that list (“the first choice”) and shall take such steps as appear to him to be reasonable to contact the first choice to ask whether he will—

- (a) state in writing that he is willing and able to serve as a regional member for that region; and
- (b) deliver a certificate signed by or on behalf of the nominating officer of the registered party which submitted that regional list stating that the first choice may be returned as a regional member from that list.

(4A) Where—

- (a) within such period as the regional returning officer considers reasonable—
 - (i) he decides that the steps he has taken to contact the first choice have been unsuccessful; or
 - (ii) he has not received from that person the statement and certificate referred to in subsection (4); or
- (b) the first choice has—
 - (i) stated in writing that he is not willing to serve as a regional member for that region; or
 - (ii) failed to deliver the certificate referred to in subsection (4)(b),

the regional returning officer shall repeat the procedure required by subsection (4) in respect of the person (if any) whose name and address appears next in that list (“the second choice”) or, where sub paragraph (a) or (b) of this subsection applies in respect of that person, in respect of the person (if any) whose name and address appear next highest after the second choice in that list; and the regional returning officer shall continue to repeat the procedure until the regional returning officer has notified the Presiding Officer of the name of the person who is to fill the vacancy or the names in the list are exhausted.

(5) Where a person whose name appears on that list provides the statement and certificate referred to in subsection (4), the regional returning officer shall notify to the Presiding Officer the name of that person.

(5A) Where—

- (a) under subsection (4A), the regional returning officer has asked the second choice or a subsequent choice the questions referred to in subsection (4); and
- (b) the person who was asked those questions on an earlier occasion then provides the statement and certificate referred to in that subsection,

that statement and certificate shall have no effect unless and until the circumstances described in sub paragraph (a) or (b) of subsection (4A) apply in respect of the second choice or, as the case may be, of the subsequent choice.”.

Dissolution of Parliament: minimum period

85. The “minimum period” for the purpose of section 2(3) of the 1998 Act (ordinary general elections) is a period of 21 days, computed in accordance with rule 2 of the Scottish Parliamentary Election Rules.

Advertisements

86. The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984⁽³⁶⁾ shall have effect in relation to the display on any site in Scotland of an advertisement relating specifically to a Scottish parliamentary election as they have effect in relation to the display of an advertisement relating specifically to a parliamentary election.

Forms: variations

87. The forms set out in the Appendix to this Order may be used with such variations as the circumstances may require.

Sending of applications, notices etc

88.—(1) Any application, notice, claim or objection which is required by this Order to be made to a registration officer or a returning officer shall be made in writing and sent by post or delivered to his office or to the address specified by him for the purpose.

(2) Where a registration officer or returning officer is required by this Order to notify any person, such notification shall be in writing and may be sent by post—

- (a) in the case of a person other than a service voter, to the address provided by that person for the purpose of such notification or of any record or, if there is no such address, to the last known place of abode of that person;
- (b) in the case of a service voter, to any address provided by him for the purpose of such notification or of any record or to the address provided for the purpose by the appropriate government department (as defined by section 59(3) of the 1983 Act) or, as the case may be, the British Council.

Interference with notices etc

89. If any person without lawful authority destroys, mutilates, defaces or removes any notice published by a registration officer or a returning officer in connection with his duties or any copies of a document which have been made available for inspection in pursuance of those duties, he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Premises used for election purposes

90. In relation to premises in Scotland, section 65(6) of the Local Government Finance Act 1988⁽³⁷⁾ (occupation for election meetings and polls) shall have effect as if—

- (a) the reference to public meetings in furtherance of a person’s candidature at an election included a reference to public meetings promoting a particular result at a Scottish parliamentary election; and
- (b) the reference to use by a returning officer for the purpose of taking the poll in an election included a reference to use by a constituency returning officer in taking a poll or counting of the votes at a Scottish parliamentary election in accordance with Schedule 2.

⁽³⁶⁾ S.I. 1984/467.

⁽³⁷⁾ 1988 c. 41.

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Effect of demise of the Crown

91. A proclamation dissolving the Parliament as mentioned in section 2(5) of the 1998 Act shall not be affected by the demise of the Crown.

Consequential amendment

92. In the definition of “election petition” in rule 69.1 of the Rules of the Court of Session⁽³⁸⁾ (interpretation of Chapter 69 - election petitions), for “article 85 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 1999” substitute “article 81 of and Schedule 6 to the Scottish Parliament (Elections etc.) Order 2002”.

Scotland Office Meridian Court Glasgow
6th November 2002

HELEN LIDDELL
One of Her Majesty’s Principal Secretaries of
State

(38) [S.I. 1994/1443](#) as modified by [S.I. 1999/787](#), Schedule 8, paragraph 3.

SCHEDULE 1

Article 4(2)

ELECTORS REGISTERS: MISCELLANEOUS AND RELATED PROVISIONS

ARRANGEMENT OF PARAGRAPHS

1. Supply of free copy of full register for electoral purposes.
2. Supply of full register etc under paragraphs 3 and 4: general provisions.
3. Supply a full register etc to elected representatives for electoral purposes and restrictions on use.
4. Supply of full register etc to certain candidates and restrictions on use.
Signature
Explanatory Note

Supply of free copy of full register for electoral purposes

1.—(1) As soon as practicable after the relevant date, a registration officer shall supply free of charge to the returning officer for the council, or as the case may be, each council, constituted under section 2 of the Local Government etc (Scotland) Act 1994 for his registration area as many printed copies of—

- (a) the latest revised version of the register published under section 13(1) or (3) of the 1983 Act, as the case may be;
- (b) any notice setting out an alteration to the version of the register published under section 13A(2) or 13B(3) of that Act,

as the returning officer may reasonably require for the purposes of a Scottish Parliamentary election.

(2) In sub-paragraph (1) above—

- (a) “relevant date” means—
 - (i) in the case of a general election of members of the Scottish Parliament the date of the dissolution of the Scottish Parliament as provided for at section 2(3)(a) of the Scotland Act 1998;
 - (ii) where the Presiding Officer has proposed a day for the holding of the poll under section 2(5) or 3(2) of the Scotland Act 1998, the announcement of Her Majesty’s intention to dissolve the Parliament; or
 - (iii) the occurrence of a vacancy of a constituency seat in the relevant constituency; and
- (b) the duty to supply as many printed copies of the register and notices as the returning officer may reasonably require includes a duty to supply one copy of each in data form.

(3) No person to whom a copy of the register has been supplied under this paragraph may—

- (a) supply a copy of the full register;
- (b) disclose any information contained in it (that is not contained in the edited register); or
- (c) make use of any such information,

except for the purposes of an election.

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Supply of full register etc under paragraphs 3 and 4: general provisions

2.—(1) The persons or organisations falling within paragraph 3 or 4 below may request the registration officer to supply free of charge the relevant part (within the meaning of those paragraphs) of any of the following:—

- (a) a revised version of the register published under section 13(1) or (3) of the 1983 Act;
- (b) any notice setting out an alteration to the register published under section 13A(2) or 13B(3) of that Act.

(2) Such a request shall be made in writing and shall—

- (a) specify the documents requested;
- (b) subject to sub-paragraph (5) below, state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any subsequent document on publication for as long as the person making the request falls within the category of person entitled to receive such copies; and
- (c) state whether a printed copy of any of the documents is requested instead of the version in data form.

(3) Unless a request has been made in advance of supply under sub-paragraph (2)(c) above, the copy of a document supplied under this paragraph shall be in data form.

(4) The registration officer shall supply the relevant part of the documents referred to in sub-paragraph (1) above in accordance with a request that has been duly made.

(5) A person falling within sub-paragraph 4 below may not make the request set out in sub-paragraph (2)(b) above.

(6) A person who obtains a copy of any document under sub-paragraph (4) above may use it for any purpose for which that person would be entitled to obtain that document under this Schedule and any restrictions which apply under whichever of paragraph 3 or 4 below entitles that person to obtain that document for that purpose shall apply to such use.

Supply of full register etc to elected representatives for electoral purposes and restrictions on use

3.—(1) This paragraph applies to—

- (a) the constituency member of the Scottish Parliament wholly or partly within the registration area;
- (b) each regional member of the Scottish Parliament for an electoral region in which the registration area is situated.

(2) For the purposes of paragraph 2(1) above the relevant part of the documents listed in that provision—

- (a) in the case of a constituency member of the Scottish Parliament, is so much of them as relates to the whole or any part of the constituency which he represents as falls within the registration area;
- (b) in the case of a regional member of the Scottish Parliament, is the whole of them.

(3) No person to whom this paragraph applies and who has been supplied with a copy of the register may—

- (a) supply a copy of the full register to any person;
- (b) disclose any information contained in it (that is not contained in the edited register); or
- (c) make use of any such information,

except for purposes in connection with the office by virtue of which he is entitled to the full register or for electoral purposes.

(4) In this paragraph and paragraph 4 below a reference to the edited register is a reference to the version of the register published under regulation 93 of the Representation of the People (Scotland) Regulations 2001⁽³⁹⁾.

Supply of full register etc to certain candidates and restrictions on use

4.—(1) This paragraph applies to a candidate at a Scottish Parliamentary election where any part of the area in respect of which the candidate stands for election includes the whole or part of the registration area.

(2) In this paragraph “candidate” includes an individual regional candidate at a Scottish Parliamentary election.

(3) In the case of a registered political party which submits a list of candidates as regional members at a Scottish Parliamentary election, the entitlement otherwise conferred by this paragraph on a candidate is conferred on the election agent of that party.

(4) For the purposes of paragraph 2(1) above, the relevant part of the documents listed in that provision is so much of them as relates to the area for which the candidate is standing.

(5) No candidate or election agent to whom a copy of the register has been supplied by virtue of this regulation may—

- (a) supply a copy of the full register to any person;
- (b) disclose any information contained in it (that is not contained in the edited register); or
- (c) make use of any such information,

except for electoral purposes.

SCHEDULE 2

Article 7

SCOTTISH PARLIAMENTARY ELECTION RULES

ARRANGEMENT OF RULES

PART I

Provisions as to time

1. Timetable.
2. Timetable – Election to fill a vacancy in a constituency seat.
3. Computation of time.

PART II

STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

⁽³⁹⁾ S.I. 2001/497; regulation 93 was inserted by S.I. 2002/1872, article 14.

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Name of election

4. Notice of election.

Nomination

5. Nomination of candidate for return as a constituency member.
6. Nomination of individual candidate for return as a regional member.
7. Nomination of candidates on a regional list.
8. Constituency nomination papers: name of registered party.
9. Nomination papers and regional lists: miscellaneous.
10. Consent to nomination.
11. Deposit.
12. Place for delivery of constituency nomination papers.
13. Place for delivery of individual nomination papers and regional lists.
14. Right to attend nomination.
15. Decisions as to validity of constituency nomination papers.
16. Decisions as to validity of individual nomination papers.
17. Decisions as to validity of regional lists and as to the validity of nominations included on such a list.
18. Withdrawal of candidates.
19. Publication of statement of persons nominated as candidates for return as a constituency member.
20. Publication of statement of persons and parties nominated for return as regional members.
21. Disqualification by Representation of the People Act 1981: candidates for return as constituency members.
22. Disqualification by Representation of the People Act 1981: candidates for return as regional members.
23. Adjournment of nomination proceedings in the case of riot.
24. Method of election: candidates for return as constituency members.
25. Method of election: candidates for return as regional members.

PART III

CONTESTED ELECTIONS

General Provisions

26. Poll to be taken by ballot.
27. The ballot paper: constituency candidates.
28. The ballot paper: regional candidates.
29. Colour of ballot papers.
30. The official mark.
31. Prohibition of disclosure of vote.
32. Use of schools and public rooms.

Action to be taken before the poll

33. Notice of poll.
34. Postal ballot papers.
35. Provision of polling stations.
36. Appointment of presiding officers and clerks.
37. Issue of official poll cards and notifications.
38. Equipment of polling stations.
39. Appointment of polling and counting agents.

40. Notification of requirement of secrecy.

The poll

41. Admission to polling station.
42. Keeping of order in station.
43. Sealing of ballot boxes.
44. Questions to be put to voters.
45. Challenge of voter.
46. Voting procedure.
47. Votes marked by presiding officer.
48. Voting by persons with disabilities.
49. Tendered ballot papers.
50. Spoilt ballot papers.
51. Adjournment of poll in case of riot.
52. Procedure on close of poll.

Counting of votes

53. Attendance at counting of votes.
54. The count.
55. Recount: constituency election.
56. Recount: regional votes in a constituency
57. Rejected ballot papers.
58. Decisions on ballot papers.
59. Equality of votes: election for return of constituency members.
60. Conveying results of count etc. to regional returning officer.

PART IV

FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

61. Declaration of result: constituency members.
62. Attendance at allocation of seats for regional members.
63. Allocation of seats.
64. Equality of votes at poll for return of regional members.
65. Declaration of results: regional members.
66. Return or forfeiture of deposit.

PART V

DISPOSAL OF DOCUMENTS

67. Sealing up of ballot papers.
68. Delivery of documents to the sheriff clerk.
69. Orders for production of documents.
70. Retention and public inspection of documents.

PART VI

DEATH OF CANDIDATE

71. Countermand or abandonment of poll etc. on death of certificate.

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PART VII
MISCELLANEOUS

72. Return of members and record of returns etc.
Signature
Explanatory Note

Timetable

1.—(1) The proceedings at a Scottish Parliamentary election shall, subject to rule 2 below, be conducted in accordance with the following Table—

<i>Proceeding</i>	<i>Time</i>
Publication of notice of election.	Not earlier than the twenty-eighth day before the date of the poll and not later than the twenty-first day before the date of the poll.
Delivery of nomination papers.	Not later than 4.00 pm on any day after the date of the publication of the notice of election but not later than the sixteenth day before the date of the poll.
The making of objections to nomination papers.	During the hours allowed for delivery of nomination papers on the last day for their delivery and the hour following, but— (a) no objection may be made in the afternoon of that last day except to a nomination paper delivered within 24 hours of the last time for its delivery, and in the case of a nomination paper so delivered no objection may be so made to the sufficiency or nature of the particulars of a candidate unless made at or immediately after the time of the delivery of the nomination paper; and (b) the foregoing provisions do not apply to objections made in pursuance of rule 21 or 22 below.
Delivery of notice of withdrawal of candidature.	Within the time for the delivery of nomination papers at the election.
Publication of statement of persons nominated.	At the close of the time for making objections to nomination papers or as soon afterwards as any objections are disposed of.
Polling	Between the hours of 7.00am and 10.00pm on the date of the poll.

(2) Except in relation to the substitutions made by rule 2 below, in the Table in paragraph (1) above the reference to “nomination papers” includes constituency nomination papers, individual nomination papers and regional lists.

Timetable – Election to fill a vacancy in a constituency seat

2. In the case of an election under section 9 of the Scotland Act 1998 (constituency vacancies), the proceedings shall be conducted in accordance with the Table in rule 1(1) above, but subject to the following substitutions–

(a) for the first entry in the Table substitute–

“Publication of notice of election to fill a constituency vacancy.	Not earlier than the twenty-eighth day before the date of the poll and not later than the fourteenth day before the date of the poll”; and
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(b) for the second entry in the Table substitute–

“Delivery of constituency nomination papers	Not later than 4.00 pm on any day after the date of the publication of the notice of the election but not later than the eleventh day before the date of the poll.”.
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Computation of time

3. In computing any period of time for the purposes of the Table in rule 1(1) above–

- (a) a Saturday or Sunday;
- (b) Christmas Eve, Christmas Day, Good Friday or Easter Monday;
- (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971; or
- (d) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll nor shall a constituency returning officer be obliged to proceed with the counting of votes on such a day.

PART II

STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

Notice of election

Notice of election

4.—(1) The constituency returning officer shall publish notice of the election stating–

- (a) the place and times at which constituency nomination papers are to be delivered;
- (b) that forms of such nomination papers may be obtained at that place and at those times; and
- (c) the date of the poll in the event of a contest.

(2) The regional returning officer shall publish a notice of election stating–

- (a) the place or places and times at which individual nomination papers and regional lists are to be delivered;
- (b) that forms of such papers and lists may be obtained at that place or those places and at those times; and

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- (c) the date of the poll in the event of a contest.
- (3) A notice of election under paragraph (1) or (2) above shall state the dates by which—
 - (a) applications to vote by post or by proxy; and
 - (b) other applications and notices about postal or proxy voting,must reach the registration officer in order that they may be effective for the election.

Nomination

Nomination of candidate for return as a constituency member

5.—(1) Each candidate for return as a constituency member shall be nominated by a separate nomination paper (referred to in these Rules as a “constituency nomination paper”), in the form F set out in the Appendix, delivered to the constituency returning officer at the place fixed for the purpose.

(2) The constituency nomination paper shall be signed by the candidate and by a witness to the candidate’s signature.

- (3) The constituency nomination paper shall state the candidate’s—
 - (a) name in full;
 - (b) home address in full; and
 - (c) if desired, description,

and the surname shall be placed first in the list of his names.

- (4) The description, if any, must consist of either—
 - (a) a description (of not more than six words in length) which is authorised as mentioned in rule 8 below; or
 - (b) the word “Independent”.

(5) The constituency nomination paper shall also state the name and address of the witness to the candidate’s signature.

Nomination of individual candidate for return as a regional member

6.—(1) Each individual candidate for return as a regional member shall be nominated by a separate nomination paper (referred to in these rules as an “individual nomination paper”), in the form G set out in the Appendix, delivered to the regional returning officer at the place or a place fixed for the purpose.

(2) The individual nomination paper shall be signed by the candidate and by a witness to the candidate’s signature.

- (3) The individual nomination paper shall state the candidate’s—
 - (a) name in full;
 - (b) home address in full; and
 - (c) if desired, description,

and the surname shall be placed first in the list of his names.

- (4) The description, if any, must consist of either—
 - (a) a description (of not more than six words in length) which is authorised as mentioned in rule 8 below; or
 - (b) the word “Independent”.

(5) The individual nomination paper shall also state the name and address of the witness to the candidate's signature.

Nomination of candidates on a regional list

7.—(1) A registered party's regional list of candidates to be regional members for a particular region shall be in the form H set out in the Appendix and that party shall be nominated by the submission of that list by the party's nominating officer or a person authorised in writing by him to the regional returning officer at the place or a place fixed for the purpose.

(2) Each regional list shall include the name of the registered party, the description of which has been authorised by a certificate issued by or on behalf of the registered nominating officer of the party.

(3) That name shall not exceed 6 words in length.

(4) Each regional list shall set out the names and home addresses, in full, of each candidate included in that list and shall be accompanied by a statement of the names by which each such candidate is to be described in the regional ballot paper.

(5) Each regional list shall include a statement that it is issued by the nominating officer of the registered party in question or by a person authorised in writing by him.

(6) Each regional list may be accompanied by a request made by or on behalf of the nominating officer of the party in question that the regional ballot paper shall contain against the party's name the party's registered emblem (or, as the case may be, one of the party's registered emblems).

(7) In the application of this rule and rule 8 below, in relation to an election—

(a) "registered party" and "qualifying party" means a party which was registered under Part II of the Political Parties, Elections and Referendums Act 2000 at the time by which the notice of election is required to be published by virtue of rule 4 above; and

(b) a registered political party is a qualifying party in relation to a constituency if the constituency is in Scotland and the party was at the relevant time registered in respect of Scotland in the Great Britain register maintained under that Part of that Act.

Constituency nomination papers: name of registered party

8.—(1) A constituency nomination paper may not include a description of a candidate which is likely to lead voters to associate the candidate with a registered party unless the party is a qualifying party in relation to the constituency and the description is authorised by a certificate in the form I set out in the Appendix—

(a) issued by or on behalf of the nominating officer of the party; and

(b) received by the constituency returning officer at some time during the period for the delivery of nomination papers set out in the Table in rule 1(1) above.

(2) A person shall be guilty of a corrupt practice if he fraudulently purports to be authorised to issue a certificate under paragraph (1) above on behalf of a registered party's nominating officer.

Nomination papers and regional lists: miscellaneous

9.—(1) The constituency returning officer—

(a) shall supply any person with a form of constituency nomination paper at the place or a place, and during the time, for delivery of nomination papers; and

(b) shall at any person's request prepare such a nomination paper for signature,

but it is not necessary for a nomination to be on a form supplied by the constituency returning officer.

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(2) The regional returning officer—

- (a) shall supply any person with a form of individual nomination paper at the place and during the time for delivery of nomination papers; and
- (b) shall at any person's request, prepare such a nomination paper for signature,

but it is not necessary for a nomination to be on a form supplied by the regional returning officer.

(3) The regional returning officer shall, on request, supply any person with a form of regional list; but it is not necessary for a regional list to be submitted in the form supplied by the regional returning officer.

Consent to nomination

10.—(1) Subject to paragraph (3) below a person shall not be validly nominated as a candidate for return as a constituency member unless his consent to nomination—

- (a) is given and dated in writing on, or within one month before, the day fixed as the last day for the delivery of constituency nomination papers;
- (b) is attested by one witness; and
- (c) is delivered at the place, and within the time, for the delivery of constituency nomination papers.

(2) Subject to paragraph (3) below, a person shall not be validly nominated as an individual candidate for return as a regional member or as a candidate on a registered party's regional list unless his consent to nomination—

- (a) is given and dated in writing on, or within one month before, the day fixed as the last day for the delivery of individual nomination papers and regional lists;
- (b) is attested by one witness; and
- (c) is delivered at the place or a place, and within the time, for the delivery of individual nomination papers and regional lists.

(3) If the appropriate returning officer is satisfied that owing to the absence of a person from the United Kingdom it has not been reasonably practicable for his consent in writing to be given as mentioned above, a facsimile communication (or any similar means of communication) consenting to his nomination and purporting to have been sent by him shall be deemed for the purposes of this paragraph to be consent in writing given by him on the day on which it purports to have been sent, and attestation of his consent shall not be required.

(4) A candidate's consent given under this rule—

- (a) shall state the day, month and year of his birth; and
- (b) shall state—
 - (i) that he is aware of the provisions of sections 15 to 18 of the 1998 Act and of any Order in Council made under section 15 of that Act;
 - (ii) that to the best of his knowledge and belief he is not disqualified from being a member of the Scottish Parliament;
 - (iii) in the case of a candidate for return as a constituency member, that he is aware of the provisions of sections 5(2) and 9(6) of the 1998 Act and that, to the best of his knowledge and belief, he may stand as a candidate to be a member for that constituency;
 - (iv) in the case of a candidate on a registered party's regional list, that he is aware of the provisions of section 5(7) of the 1998 Act and that, to the best of his knowledge and belief, he may be included in that list;

- (v) in the case of an individual candidate for return as a regional member, that he is aware of the terms of section 5(8) of the 1998 Act and, to the best of his knowledge and belief, he may stand as an individual candidate to be a regional member for that region.

Deposit

11.—(1) A person shall not be validly nominated as a candidate for return as a constituency member unless the sum of £500 is deposited by him, or on his behalf, with the constituency returning officer at the place and during the time for delivery of nomination papers.

(2) An individual candidate for return as a regional member shall not be validly nominated unless the sum of £500 is deposited by him, or on his behalf, with the regional returning officer at the place or a place, and during the time, for delivery of individual nomination papers.

(3) A registered party shall not be validly nominated in relation to a regional list of that party for a particular region unless the sum of £500 is deposited by or on behalf of the party's nominating officer with the regional returning officer at the place or a place, and during the time, for delivery of regional lists.

(4) The deposit may be made—

- (a) by the deposit of any legal tender; or
- (b) by means of a banker's draft; or
- (c) with the appropriate returning officer's consent, in any other manner,

but the appropriate returning officer may refuse to accept a deposit sought to be made by means of a banker's draft if he does not know that the drawer carries on business as a banker in the United Kingdom.

(5) Where the deposit is made on behalf of a candidate for return as a constituency member or an individual candidate for return as a regional member, the person making the deposit shall at the time he makes it give his name and address to the appropriate returning officer unless that information has previously been given to him under article 31 or rule 5 or 6 above.

(6) Where the deposit is made on behalf of a party's nominating officer the person making the deposit shall at the time he makes it give his name and address to the regional returning officer unless that information has previously been given to him under article 31 or rule 7 above.

Place for delivery of constituency nomination papers

12.—(1) The constituency returning officer shall fix the place at which constituency nomination papers are to be delivered to him, and shall attend there during the time for their delivery and for making of objections to them.

(2) The place shall be in—

- (a) the constituency; or
- (b) the local government area or (if more than one) any of the local government areas in which the constituency is situated; or
- (c) any local government area adjoining the local government area or areas (as the case may be) in which the constituency is situated.

Place for delivery of individual nomination papers and regional lists

13.—(1) The regional returning officer shall fix the place or places at which individual nomination papers and regional lists are to be delivered to him, and he shall attend there during the time for their delivery and for making objections to them.

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(2) The place or places shall be in the region.

Right to attend nomination

14.—(1) Except for the purpose of delivering a constituency nomination paper or of assisting the constituency returning officer no person is entitled to attend the proceedings during the time for delivery of constituency nomination papers or for making objections to them unless he is—

- (a) a person standing nominated as a candidate for return as a constituency member;
- (b) the election agent of such a person; or
- (c) a person who has issued a certificate under rule 8(1)(a) above in relation to such a candidate,

but where a candidate acts as his own election agent he may name one other person who shall be entitled to attend in place of his election agent.

(2) The right to attend conferred by paragraph (1) above includes the right to inspect and to object to the validity of any constituency nomination paper.

(3) Except for the purpose of delivering an individual nomination paper or regional list or of assisting the regional returning officer no person is entitled to attend the proceedings during the time for delivery of individual nomination papers or regional lists or for making objections to them unless he is—

- (a) a person standing nominated as an individual candidate for return as a regional member;
- (b) the election agent of such a person;
- (c) a candidate included on a party's regional list; or
- (d) the election agent or nominating officer of a party which has submitted a regional list,

but where an individual candidate acts as his own election agent, or a candidate on a party's regional list acts as election agent of that party in relation to that list, he may name one other person who shall be entitled to attend in place of the election agent for that individual candidate or, as the case may be, party.

(4) The right conferred by paragraph (3) above includes the right to inspect and to object to the validity of any individual nomination paper or any regional list (including the nomination of any candidate on such a list).

Decisions as to validity of constituency nomination papers

15.—(1) Where a constituency nomination paper and the candidate's consent to it are delivered and a deposit is made in accordance with these Rules, the candidate shall be deemed to stand nominated unless and until—

- (a) the constituency returning officer decides that the constituency nomination paper is invalid;
- (b) proof is given to the constituency returning officer's satisfaction of the candidate's death; or
- (c) the candidate withdraws.

(2) The constituency returning officer is entitled to hold a constituency nomination paper invalid only on one of the following grounds:—

- (a) that the particulars of the candidate or the witness signing the paper are not as required by law;
- (b) that the paper is not witnessed as so required;

(c) that the candidate is disqualified by virtue of the Representation of the People Act 1981⁽⁴⁰⁾.

(3) Subject to paragraph (4) below the constituency returning officer shall give his decision on any objection to a constituency nomination paper as soon as practicable after it is made.

(4) If in the constituency returning officer's opinion a constituency nomination paper breaches rule 8 above, he shall give a decision to that effect as soon as practicable after the close of the period for delivery of constituency nomination papers set out in the Table in rule 1(1) above.

(5) Where the constituency returning officer decides that a constituency nomination paper is invalid, he shall endorse and sign on the paper the fact and the reasons for his decision.

(6) The constituency returning officer's decision that a constituency nomination paper is valid shall be final and shall not be questioned in any proceeding whatsoever.

(7) Subject to paragraph (6) above, nothing in this rule prevents the validity of a nomination being questioned on an election petition.

Decisions as to validity of individual nomination papers

16.—(1) Where an individual nomination paper and the candidate's consent to it are delivered and a deposit is made in accordance with these Rules, the candidate shall be deemed to stand nominated unless and until—

- (a) the regional returning officer decides that the individual nomination paper is invalid;
- (b) proof is given to the regional returning officer's satisfaction of the candidate's death; or
- (c) the candidate withdraws.

(2) The regional returning officer is entitled to hold an individual nomination paper invalid only on one of the following grounds:—

- (a) that the particulars of the candidate or the witness signing the paper are not as required by law;
- (b) that the paper is not witnessed as so required;
- (c) that the candidate is disqualified by virtue of the Representation of the People Act 1981.

(3) The regional returning officer shall give his decision on any objection to an individual nomination paper as soon as practicable after it is made.

(4) Where a regional returning officer decides that an individual nomination paper is invalid, he shall endorse and sign on the paper the fact and the reasons for his decision.

(5) The regional returning officer's decision that an individual nomination paper is valid shall be final and shall not be questioned in any proceeding whatsoever.

(6) Subject to paragraph (5) above, nothing in this rule prevents the validity of a nomination being questioned on an election petition.

Decisions as to validity of regional lists and as to the validity of nominations included on such a list

17.—(1) Where a registered party's regional list and the consent of each candidate included in that list are delivered and a deposit is made in accordance with these Rules, the party and (subject to paragraphs (3) and (4) below) each candidate on its list shall be deemed to stand nominated unless and until the regional returning officer decides that the regional list is invalid.

(2) The regional returning officer is entitled to hold a regional list invalid only on one of the following grounds:—

⁽⁴⁰⁾ 1981 c. 34.

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- (a) that the name stated under paragraph (2) of rule 7 above breaches that rule;
 - (b) that the number of candidates on the list is greater than 12;
 - (c) that the list does not contain the statement referred to in rule 7(5) above.
- (3) Where, in respect of a candidate included in a registered party's regional list—
- (a) proof is given to the regional returning officer's satisfaction of his death; or
 - (b) he withdraws or his candidature is withdrawn in accordance with rule 18 below,
- the regional returning officer shall delete the name and address of that candidate from the list.
- (4) Where, in respect of a candidate included on a registered party's regional list—
- (a) his particulars in that list are not as required by law;
 - (b) he is disqualified by virtue of the Representation of the People Act 1981; or
 - (c) the consent to nomination of that candidate is not delivered in accordance with these Rules,
- the regional returning officer shall delete the name and address of that candidate from the list.
- (5) The regional returning officer shall give his decision on any objection in respect of a regional list as soon as practicable after it is made.
- (6) Where the regional returning officer decides that—
- (a) a regional list is invalid; or
 - (b) the name and address of a candidate shall be deleted from a regional list,
- he shall endorse and sign on the list that fact and the reasons for his decision.
- (7) The regional returning officer's decision that—
- (a) a regional list is valid; or
 - (b) the name and address of a candidate should not be removed from a party list,
- shall not be questioned in any proceeding whatsoever.
- (8) Subject to paragraph (7) above, nothing in this paragraph prevents the validity of a nomination being questioned on an election petition.

Withdrawal of candidates

- 18.—**(1) A candidate for return as a constituency member may withdraw his candidature by notice of withdrawal—
- (a) signed by him and attested by one witness; and
 - (b) delivered to the constituency returning officer at the place for delivery of constituency nomination papers.
- (2) A candidate for return as a regional member may withdraw his candidature by notice of withdrawal—
- (a) signed by him and attested by one witness; and
 - (b) delivered to the regional returning officer at the place or a place for delivery of individual nomination papers and regional lists.
- (3) A registered political party may withdraw the candidature of any or all of the candidates included in a regional list of that party by notice of withdrawal—
- (a) signed by the party's nominating officer and attested by one witness; and
 - (b) delivered to the regional returning officer at the place or places for the delivery of regional lists.

(4) Where a candidate in a regional list has been withdrawn in accordance with this rule the regional returning officer shall delete the name and address of that candidate from the list.

Publication of statement of persons nominated as candidates for return as a constituency member

19.—(1) The constituency returning officer shall prepare and publish a statement showing the persons who have been and stand nominated as candidates for return as a constituency member and any other persons who have been nominated as such candidates, with the reason why they no longer stand nominated.

(2) The statement shall show the names, addresses and descriptions of the persons nominated as given in their constituency nomination papers.

(3) The statement shall show the persons standing nominated arranged alphabetically in the order of their surnames, and, if there are two or more of them with the same surname, of their other names.

(4) In the case of a person nominated by more than one constituency nomination paper, the constituency returning officer shall take the particulars required by the foregoing provisions of this paragraph from such one of the papers as the candidate (or the returning officer in default of the candidate) may select.

(5) The constituency returning officer shall send to the Electoral Commission—

- (a) a copy of the statement; and
- (b) in the case of each candidate standing nominated in respect of whom a certificate has been received by the returning officer in accordance with rule 8 above, a copy of that certificate.

Publication of statement of persons and parties nominated for return as regional members

20.—(1) The regional returning officer shall prepare and publish a statement showing—

- (a) the persons who have been and stand nominated as individual candidates for return as a regional member;
- (b) each registered party which has been and stands nominated together with that party's regional list;
- (c) any other persons or parties who have been nominated together with the reason why they no longer stand nominated.

(2) The statement shall show the registered parties which have been and stand nominated in alphabetical order with the name of the party as given in that list and the names and home addresses of the candidates who appear on the regional list of each party as given in that list and arranged in the order in which their names appear on that list.

(3) The statement shall also show the names, addresses and descriptions of the persons nominated as individual candidates as given in their individual nomination papers.

(4) The statement shall show the names, addresses and descriptions of the persons standing nominated as individual candidates after the names of the registered parties standing nominated and the names of those individual candidates shall be arranged alphabetically in the order of their surnames and, if there are two or more of them with the same surname, of their other names.

(5) In the case of a person nominated by more than one individual nomination paper, the regional returning officer shall take the particulars required by the foregoing provisions of this paragraph from such one of the papers as the candidate (or the regional returning officer in default of the candidate) may select.

(6) In the case of a registered political party which has delivered more than one regional list for a particular region (and which stands nominated by more than one of those lists), the regional

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returning officer shall take the particulars required by the foregoing provisions of this rule from such one of the lists as the nominating officer of that party (or the regional returning officer in default of that officer) may select; and if any candidate is shown standing nominated by a list not so selected but is not so shown in the selected list, he shall no longer stand nominated.

- (7) The regional returning officer shall send to the Electoral Commission—
- (a) a copy of the statement; and
 - (b) in the case of each candidate standing nominated in respect of whom a certificate has been received by the returning officer in accordance with rule 8 above, a copy of that certificate as well.

Disqualification by Representation of the People Act 1981: candidates for return as constituency members

21.—(1) If it appears to the constituency returning officer that any of the persons nominated as candidates for return as a constituency member might be disqualified by virtue of the Representation of the People Act 1981 he shall, as soon as practicable after the expiry of the time allowed for the delivery of constituency nomination papers, prepare and publish a draft of the statement required by rule 19 above.

(2) The draft shall be headed “Draft statement of persons nominated for return as a constituency member” and shall contain a notice stating that any person who wishes to object to the nomination of any candidate on the ground that he is disqualified for nomination under the Representation of the People Act 1981 may do so between the hours of 10.00 am and 4.00 pm on the day and at the place specified in the notice; and the day so specified shall be the day next after the last day for the delivery of constituency nomination papers.

Disqualification by Representation of the People Act 1981: candidates for return as regional members

22.—(1) If it appears to the regional returning officer that any of the persons nominated as candidates for return as a regional member might be disqualified by the Representation of the People Act 1981 he shall, as soon as practicable after the expiry of the time allowed for the delivery of individual nomination papers and regional lists, prepare and publish a draft of the statement required by rule 20 above.

(2) The draft shall be headed “Draft statement of persons nominated for return as regional members” and shall contain a notice stating that any person who wishes to object to the nomination of any candidate on the ground that he is disqualified for nomination under the Representation of the People Act 1981 may do so between the hours of 10.00 am and 4.00 pm on the day and at the place specified in the notice; and the day so specified shall be the day next after the last day for the delivery of individual nomination papers and regional lists.

Adjournment of nomination proceedings in the case of riot

23.—(1) Where the proceedings for, or in connection with, nomination are on any day interrupted or obstructed by riot or open violence—

- (a) the proceedings shall be abandoned for that day; and
- (b) if that day is the last day for the delivery of—
 - (i) constituency nomination papers; or
 - (ii) individual nomination papers and regional lists,the proceedings shall be continued on the next day as if that were the last day for such delivery,

and that day shall be treated for the purposes of these Rules as being the last day for such delivery (subject to any further application of this paragraph in the event of interruption or obstruction on that day).

- (2) Where proceedings are abandoned by virtue of this rule nothing—
 - (a) may be done after they are continued if the time for doing it had passed at the time of the abandonment;
 - (b) done before the abandonment shall be invalidated by reason of the abandonment.

Method of election: candidates for return as constituency members

24.—(1) If the statement required by rule 19 above shows more than one person standing nominated, a poll shall be taken in accordance with Part III of these Rules.

(2) If that statement shows only one person standing nominated, that person shall be declared to be elected in accordance with Part IV of these Rules.

Method of election: candidates for return as regional members

25.—(1) Subject to paragraph (2)(b) below, if the statement of persons required by rule 20 above shows more candidates (whether on a registered party's regional list or individual candidates) than the number of seats for that region a poll shall be taken in accordance with Part III of these Rules.

- (2) If that statement shows—
 - (a) a number of candidates (whether on a registered party's regional list or individual candidates) which is the same as, or less than, the number of seats for that region; or
 - (b) all of the candidates shown on that statement are on the regional list of the same registered party,

the regional returning officer shall, following receipt of the notification under rule 61(3) below, allocate the seats in accordance with sections 7 and 8 of the 1998 Act.

PART III

CONTESTED ELECTIONS

General Provisions

Poll to be taken by ballot

26.—(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

27.—(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 19 above and no others, shall be entitled to have their names inserted in the constituency ballot paper.

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(3) Every constituency ballot paper shall be in the form J 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 19 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 19 above.

(5) If a candidate who is the subject of a certificate under rule 8(1) above so requests, the ballot paper shall also contain, to the right 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

28.—(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—

- (a) the individual candidates shown in the statement required by rule 20 above; and
- (b) the registered political 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 7(4) above.

(3) Every regional ballot paper shall be in the form K 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 20 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 20 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 20 above.

(5) If a request has been made to the regional returning officer under rule 7(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 right of the party's name, that emblem.

Colour of ballot papers

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

The official mark

30.—(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 again 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

31. 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

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

(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⁽⁴¹⁾.

(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 or, as the case may be, counting the votes.

Action to be taken before the poll

Notice of poll

33.—(1) The statement required by rule 19 above and the statement required by rule 20 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 19 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

34.—(1) Subject to paragraph (2) below, 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

(41) 1980 c. 44.

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the case of a person entitled to vote by post as proxy, at the address shown in the list kept under article 12(7), a ballot paper and a declaration of identity in the form L set out in the Appendix together with an envelope for their return.

(2) In the case of a person who is entitled to a postal constituency vote and a postal 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

35.—(1) The constituency returning officer shall provide a sufficient number of polling stations and, subject to the following provisions of this rule, 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

36.—(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 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 and notifications

37.—(1) The constituency returning officer shall as soon as practicable send to each elector and proxy an official poll card or notification, but a card or notification 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 or notification 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 or notification shall be in the form M or, in the case of a proxy, form N, 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 in the register of electors for the constituency and the region on the last day for publication of notice of the election; and
 - (b) includes a person then shown in that register as below voting age if (but only if) it appears from the register that he will be of voting age on the day fixed for the poll.

Equipment of polling stations

38.—(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;
 - (e) copies of forms and declarations and other documents required for the purpose of the poll.
- (4) The constituency returning officer shall also provide each polling station with—
- (a) at least one large version of the constituency and regional ballot papers which shall be displayed inside the polling station for the assistance of voters who are partially-sighted; and
 - (b) a device of the description set out in paragraphs (5) to (10) below, for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion (within the meaning of rule 48(1)).
- (5) The device referred to in paragraph (4)(b) above shall be such that—
- (a) it satisfies the conditions in paragraphs (6) to (10) below;
 - (b) a ballot paper can—
 - (i) be inserted into, and removed from, it; or
 - (ii) be attached to, and detached from, it; and
 - (c) the ballot paper will remain firmly in place once inserted into, or attached to, the device.
- (6) There shall be sufficient space to allow the particulars of each candidate and, where appropriate, registered party named on the ballot paper to be clearly shown.
- (7) There shall be a separate hole in the device for each candidate and, where appropriate, registered party, named on the ballot paper.
- (8) Each hole in the device shall be of equal size.
- (9) Each hole shall be positioned to frame the space to the right of the particulars of the candidate or registered party (as the case may be) on which the vote may be marked (“the relevant space”).
- (10) Each hole shall be sufficiently large to allow a voter to mark a cross in the relevant space on the ballot paper.

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(11) A notice in the form O 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.

(12) At a Scottish parliamentary general election, a notice in the form P set out in the Appendix, giving 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.

(13) 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.”

(14) In the case of a poll to fill a vacancy in the seat of a constituency member, the references in paragraph (13) above and in form O to “each ballot paper” shall be construed as references to “the ballot paper”.

(15) The statements required by rules 19 and (except in the case of a poll to fill a vacancy in the seat of a constituency member) 20 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

39.—(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.

(6) The foregoing provisions of this rule shall be without prejudice to the requirements of articles 31 and 32 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

40. 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 voter with disabilities to vote or as a constable on duty there) has been given a copy in writing of the provisions of article 30; 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 30.

The Poll

Admission to polling station

41.—(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;
- (f) the companions of voters with disabilities; and
- (g) the returning officer and members of his staff.

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(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 Q 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

42.—(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

43. 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

44.—(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?";

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

- (i) “Are you the person whose name appears as [AB] 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

45.—(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

46.—(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

47.—(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 these Rules referred to as "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 persons with disabilities

48.—(1) If a voter makes an application to the presiding officer to be allowed, on the ground of—

- (a) blindness or other physical incapacity; or
- (b) inability to read,

to vote with the assistance of another person by whom he is accompanied (in these Rules referred to as "the companion"), the presiding officer shall require the voter to declare, orally or in writing, whether he is so incapacitated by his blindness or other incapacity, or by his inability to read, 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 these Rules referred to as “the declaration made by the companion of a voter with disabilities”) that the companion—
 - (i) is a qualified person within the meaning of this rule; and
 - (ii) has not previously assisted more than one voter with disabilities 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 rule, a person shall be qualified to assist a voter with disabilities 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 voter with disabilities 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 rule and the name and address of the companion shall be entered on a list (in these Rules referred to as “the list of voters with disabilities 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 R 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 voters with disabilities 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

- 49.**—(1) If a person, representing himself to be—
- (a) a particular elector named in the register of electors 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 these Rules referred to as “a tendered ballot paper”) in the same manner as any other voter.

- (2) A tendered ballot paper shall—
- (a) be a different colour from the other ballot papers;

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(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 these Rules 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

50. 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

51.—(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

52.—(1) As soon as practicable after the close of the poll, the presiding officer shall, in the presence of the polling agents, using his own seal and the seals of such polling agents as desire to affix their seals, seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers. He shall then make up into separate packets, sealed with his own seal and the seals of such polling agents as desire to affix their seals—

- (a) the unused and spoilt constituency ballot papers placed together;
- (b) the tendered constituency ballot papers;
- (c) the unused and spoilt regional ballot papers placed together;
- (d) the tendered regional ballot papers;
- (e) the marked copies of the register of electors and of the list of proxies;
- (f) the counterfoils of the used constituency ballot papers and the certificates as to employment on duty on the day of the poll;
- (g) the counterfoils of the used regional ballot papers;

- (h) the tendered votes list, the list of voters with disabilities 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 voters with disabilities;
- (i) the postal ballot papers and declarations of identity which have been returned by hand to the polling station,

and shall deliver the sealed ballot boxes and the packets, or cause them to be delivered, to the constituency returning officer to be taken charge of by him; but if the boxes and 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 (c), (d) and (g) 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 these Rules 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

53.—(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 members of his staff;
 - (b) each candidate and one guest each;
 - (c) the election agents;
 - (d) the counting agents;
 - (e) (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.

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- (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 whom or 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

- 54.**—(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—
- (a) by hand to a polling station in the same constituency;
 - (b) by hand or by post to 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—
 - (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

55.—(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

56.—(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 60 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

- 57.**—(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 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

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(c) by more than one mark,

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

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

(4) The constituency returning officer shall endorse the word "rejected" on any ballot paper which under this rule 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

58. 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

59. 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

60.—(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.

PART IV

FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

Declaration of result: constituency members

61.—(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 8(1) above in respect of that candidate, the name of that party, to the Clerk of the Scottish Parliament (“the Clerk of the Parliament”); and
- (c) give public notice of—
 - (i) his name and, if applicable, the name of the registered party referred to in sub paragraph (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 officer of a registered party under rule 8(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 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 S set out in the Appendix; and
- (b) delivering it, or causing it to be delivered, to the Clerk of the Parliament.

Attendance at allocation of seats for regional members

62.—(1) At a contested election, the regional returning officer shall make arrangements for making the calculation and allocation referred to in rule 63 below as soon as practicable after receipt by him of the statement prepared under rule 60 above and of the notification under rule 61(3) above from each constituency returning officer in that region.

(2) No person other than—

- (a) the regional returning officer and members of his staff;
- (b) each candidate on a registered party’s regional list and one guest each;
- (c) each individual candidate and one guest each;
- (d) the election agent of each individual candidate or registered party standing nominated, or a person acting on his behalf;
- (e) the nominating officer of each registered party standing nominated,

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may be present at that calculation and allocation unless permitted by the regional returning officer to attend.

(3) A person not entitled to attend the proceedings under rule 63 below shall not be permitted to do so by the regional returning officer unless he—

- (a) is satisfied that the efficient conduct of those proceedings will not be impeded; and
- (b) has either consulted the election agents or thought it impracticable to do so.

(4) The regional returning officer shall give to—

- (a) the nominating officer and election agent of each registered party standing nominated;
- (b) each individual candidate and his election agent; and
- (c) each constituency returning officer for a constituency included in that region,

notice in writing of the place at which he will begin the proceedings under rule 63 below.

Allocation of seats

63.—(1) The regional returning officer shall calculate the total number of regional votes given for each registered party and each individual candidate in all of the constituencies included in the region by adding together the votes given for that registered party or, as the case may be, individual candidate as shown in the statements received under rule 60 above.

(2) An individual candidate for return as a regional member or his election agent, or the election agent for a party standing nominated (or, in the absence of such agent, any candidate included in that party's list) may, prior to the allocation of the seats by the regional returning officer under paragraph (3) below, if present when the calculation under paragraph (1) above (or any recalculation under this paragraph) is completed, require the regional returning officer to recalculate or again recalculate the total number of regional votes given for each registered party and each individual candidate in all of the constituencies included in the region, but the regional returning officer may refuse to do so if in his opinion the request is unreasonable.

(3) The regional returning officer shall then allocate the seats in accordance with sections 7 and 8 of the 1998 Act.

Equality of votes at poll for return of regional members

64. Section 8(7) of the 1998 Act shall be modified by substituting, for the words after "candidates", the following words:—

- “(a) the subsection in question shall apply to each of them; or
- (b) if paragraph (a) would result in more than the correct number of seats for the region being allocated, the subsection in question shall apply as if the regional figure for each of those parties or candidates had been adjusted in accordance with subsection (8).

(8) The regional figure for a party or candidate is adjusted in accordance with this subsection by—

- (a) adding one vote to the total number of regional votes given for the party or candidate in all the constituencies included in the region; and
- (b) (in the case of a party) recalculating the regional figure accordingly.

(9) If, on the application of the subsection in question in accordance with subsection (7) (b), seats would be allocated to two or more parties or individual candidates and that would result in more than the correct number of seats for the region being allocated, the regional returning officer shall decide between them by lot.”

Declaration of results: regional members

65.—(1) When the regional returning officer has allocated the regional member seats he shall forthwith—

- (a) announce the individual candidates or the candidates on a registered party's regional list to whom seats have been allocated;
- (b) declare those candidates to have been elected;
- (c) return the names of those persons to the Clerk of the Parliament in accordance with paragraph (2) below;
- (d) give public notice—
 - (i) of the name of any individual candidate elected;
 - (ii) of the name of any candidate elected who was included on a registered party's regional list (and the name of the registered party on whose list he was included);
 - (iii) (in a contested election) of the total number of votes given for each individual candidate or registered party together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers; and
 - (iv) whether, in the case of a registered party, there are candidates remaining on that party's regional list who have not been declared to be elected;
- (e) send a copy of that notice to each constituency returning officer for a constituency included in that region.

(2) For the purposes of paragraph (1) above the regional returning officer shall return those names required to be returned by—

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

Return or forfeiture of deposit

66.—(1) The deposit made under rule 11 above shall either be returned to the person making it or his personal representatives or be forfeited to Her Majesty.

(2) Except in the cases mentioned below in this rule, the deposit shall be returned not later than the next day after that on which the result or results of the election is or are declared.

(3) For the purposes of paragraph (2) above—

- (a) a day shall be disregarded if it would be disregarded under rule 3 above in computing any period of time for the purposes of the timetable for the election; and
- (b) the deposit shall be treated as being returned on a day if a cheque for the amount of the deposit is posted on that day.

(4) If a candidate for return as a constituency member is not shown as standing nominated in the statement required by rule 19 above, or if the poll is countermanded or abandoned by reason of his death, the deposit shall be returned as soon as practicable after the publication of the statement or after his death, as the case may be.

(5) Where—

- (a) a registered party or an individual candidate for return as a regional member is not shown as standing nominated in the statement prepared under rule 20 above; or
- (b) in the case of an individual candidate, that candidate dies,

the deposit shall be returned as soon as practicable after the publication of that statement or the time when the regional returning officer is satisfied of the candidate's death, as the case may be.

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(6) Subject to paragraph (4) above, the deposit made by or on behalf of a candidate for return as a constituency member shall be forfeited if a poll is taken and, after the counting of the votes by the constituency returning officer (including any re-count) is completed, the candidate is found not to have polled more than one twentieth of the total number of votes polled by all the candidates.

(7) Subject to paragraph (5) above, the deposit made by or on behalf of any individual candidate for return as a regional member or any registered party standing nominated shall be forfeited if after the total number of regional votes given for each registered party and each individual candidate in all of the constituencies included in the region has been calculated (or recalculated) under rule 63 above, the registered party or individual candidate is found not to have polled more than one twentieth of the total number of votes polled by all the registered parties and individual candidates in all of the constituencies included in the region and has not been allocated a seat under section 8 of the 1998 Act.

PART V

DISPOSAL OF DOCUMENTS

Sealing up of ballot papers

67.—(1) On the completion of the counting at a contested election the constituency returning officer shall seal up in separate packets the counted and rejected ballot papers.

(2) The constituency returning officer shall not open the sealed packets of tendered ballot papers or of counterfoils and certificates as to employment on duty on the day of the poll, or of marked copies of the register of electors and lists of proxies.

Delivery of documents to the sheriff clerk

68.—(1) The constituency returning officer shall then forward to—

- (a) the sheriff clerk of the sheriff court district comprising the constituency; or
- (b) if the constituency comprises the whole or part of more sheriff court districts than one, the sheriff clerk of any one of those sheriff court districts,

the following documents—

- (c) the packets of constituency ballot papers in his possession;
- (d) the packets of regional ballot papers in his possession;
- (e) the ballot paper accounts and the statements of rejected ballot papers and of the result of the verification of the ballot paper accounts;
- (f) the tendered votes lists, the lists of voters with disabilities assisted by companions, the lists of votes marked by the presiding officer and the related statements, and the declarations made by the companions of voters with disabilities;
- (g) the packets of counterfoils and certificates as to employment on duty on the day of the poll; and
- (h) the packets containing marked copies of registers and of lists of proxies,

endorsing on each packet—

- (i) a description of its contents;
- (ii) the date of the election to which they relate; and
- (iii) the name of the constituency in which the votes were given.

(2) The constituency returning officer may forward the documents either by delivering them by himself or his agent to the sheriff clerk or by sending them by post.

(3) If he sends them by post—

(a) he shall deliver the documents to the officer designated by the universal postal service provider concerned or his deputy for the constituency;

(b) the designated official or his deputy shall—

(i) give a receipt in respect of those documents to the constituency returning officer; and

(ii) send the documents to the sheriff clerk by the first post free of charge,

(c) he shall send a letter to the sheriff clerk by the same post, specifying the number and description of the documents so sent; and

(d) a copy of the receipt given to him by the designated official or his deputy shall be signed by him and retained by the designated official or his deputy.

(4) On receipt of the documents by the sheriff clerk a receipt shall be given to the person delivering them, and the receipt of those documents shall be registered in books kept for the purpose by the sheriff clerk specifying the date and time of receipt.

(5) Any receipt to be given for the documents shall show the date and time of their receipt.

Orders for production of documents

69.—(1) An order—

(a) for the inspection or production of any rejected ballot papers in the custody of the sheriff clerk; or

(b) for the opening of a sealed packet of counterfoils and certificates as to employment on duty on the day of the poll or the inspection of any counted ballot papers in his custody,

may be made, if satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of an election petition, by the Court of Session or the sheriff.

(2) An order for the opening of a sealed packet of counterfoils and certificates or for the inspection of any counted ballot papers in the sheriff clerk's custody may be made by an election court.

(3) An order under this paragraph may be made subject to such conditions as to—

(a) persons;

(b) time;

(c) place and mode of inspection;

(d) production or opening,

as the court making the order may think expedient; but in making and carrying into effect an order for the opening of a packet of counterfoils and certificates or for the inspection of counted ballot papers, care shall be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it has been proved—

(i) that his vote was given; and

(ii) that the vote has been declared by a competent court to be invalid.

(4) An appeal lies to the Court of Session from any order of the sheriff under this rule.

(5) Any power given under this rule to the Court of Session or to the sheriff, may be exercised by any judge of the court otherwise than in open court.

(6) Where an order is made for the production by the sheriff clerk of any document in his possession relating to any specified election—

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- (a) the production by him or his agent of the document ordered in such manner as may be directed by that order shall be conclusive evidence that the document relates to the specified election; and
- (b) any endorsement on any packet of ballot papers so produced shall be prima facie evidence that the ballot papers are what they are stated to be by the endorsement.

(7) The production from proper custody of a ballot paper purporting to have been used at any election, and of a counterfoil marked with the same printed number and having a number marked on it in writing, shall be prima facie evidence that the elector whose vote was given by that ballot paper was the person who at the time of the election had affixed to his name in the register of electors the same number as the number written on the counterfoil.

(8) Save as by this paragraph provided, no person shall be allowed to inspect any rejected or counted ballot papers in the possession of the sheriff clerk or to open any sealed packets of counterfoils and certificates.

Retention and public inspection of documents

70.—(1) The sheriff clerk shall retain for a year all documents relating to an election forwarded to him in pursuance of these Rules by a constituency returning officer, and then, unless otherwise directed by order of the Court of Session, shall cause them to be destroyed.

(2) Those documents, except ballot papers, counterfoils and certificates as to employment on duty on the day of the poll, shall be open to public inspection at such time and subject to such conditions as may be determined by the sheriff clerk with the consent of the Presiding Officer of the Scottish Parliament.

(3) The sheriff clerk may, on request, supply copies of or extracts from the documents open to public inspection on payment of such fees and subject to such conditions as may be sanctioned by the Treasury.

PART VI

DEATH OF CANDIDATE

Countermand or abandonment of poll etc. on death of candidate

71.—(1) If at a contested election for the return of a constituency member proof is given to the constituency returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as candidate in the ballot papers has died, then the constituency returning officer shall—

- (a) countermand notice of the poll; or
- (b) if polling has begun, direct that the poll be abandoned; and
- (c) except in the case of an election to fill a vacancy in the seat of a constituency member, forthwith notify the regional returning officer for the region in which the constituency is situated of the action that he has taken,

and all proceedings with reference to the election for the return of a constituency member for that constituency shall be commenced afresh in all respects as if publication of notice of election had been given 28 days after the day on which proof was given to the returning officer of the death.

(2) Where paragraph (1) above applies, no fresh nominations shall be necessary in the case of a person shown in the statement of persons nominated as standing nominated.

(3) Where there is a contested election for return of regional members and the poll at a constituency election for a constituency included within that region is abandoned, or notice of the poll countermanded, in accordance with paragraph (1) above, rule 62 above shall be satisfied when the regional returning officer has received the statement prepared under rule 60 above and the notification under rule 61(3) above in respect of each of the other constituencies in that region (other than a constituency in relation to which paragraph (1) above also applies); and in such a case section 7(1) of the 1998 Act shall apply with the modification that the reference in that subsection to “constituencies included in the region” shall be construed as a reference to the constituencies included in the region except those in relation to which paragraph (1) above applies.

(4) Where paragraph (3) applies, the subsequent election of a candidate for the constituency shall have no effect upon the validity of the election or return of any regional member.

(5) If at a contested election for return of regional members proof is given to the regional returning officer’s satisfaction before the result of the election is declared that one of the persons named or to be named as candidate in the ballot papers (whether as an individual candidate or as a candidate on a regional list) has died and as a result of that death the election becomes uncontested, then the regional returning officer shall—

- (a) countermand notice of the poll; or
- (b) if polling has begun, direct that the poll be abandoned; and
- (c) in either case, forthwith notify each constituency returning officer in the region of the action that he has taken.

(6) If at a contested election for return of regional members proof is given to the regional returning officer’s satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate on the ballot paper (whether as an individual candidate or as a candidate on a regional list) has died, but notwithstanding that death the election continues to remain contested, the notice of poll shall not be countermanded nor, as the case may be, shall the poll be abandoned.

(7) Where such a death occurs, it shall have no effect upon the validity of the election or return of any regional members for that region and the regional returning officer shall take such steps as he considers reasonable to publicise—

- (a) the name of that candidate and the fact of his death;
- (b) whether that candidate was an individual candidate or a candidate on a regional list; and
- (c) if he was a candidate on a regional list the name of the registered party on whose regional list he appeared,

in the region for which the election is held.

(8) Subject to paragraph (9) below, where a poll is abandoned by reason of a candidate’s death the proceedings at or consequent on that poll shall be interrupted, and the presiding officer at any polling station shall take the like steps (so far as not already taken) for the delivery to the constituency returning officer of ballot boxes and of ballot papers and other documents as he is required to take on the close of the poll in due course, and the constituency returning officer shall dispose of ballot papers and other documents in his possession as he is required to do on the completion in due course of the counting of the votes, but—

- (a) it shall not be necessary for any ballot paper account to be prepared or verified; and
- (b) the constituency returning officer, without taking any step or further step for the counting of the ballot papers or of the votes shall seal up all the ballot papers, whether the votes on them have been counted or not, and it shall not be necessary to seal up counted and rejected ballot papers in separate packets.

(9) At a Scottish parliamentary general election where only one poll is abandoned the steps required to be taken by the presiding officer at such a polling station by paragraph (8) above shall take place on the close of the poll, and paragraph (8) above shall have effect as if, after “the

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constituency returning officer” in sub-paragraph (b) there were inserted “having separated the ballot papers relating to the other poll”.

(10) The provisions of these Rules as to the inspection, production, retention and destruction of ballot papers and other documents relating to a poll at an election apply to any such documents relating to a poll abandoned by reason of a candidate’s death, with the following modifications—

- (a) ballot papers on which the votes were neither counted nor rejected shall be treated as counted ballot papers; and
- (b) no order shall be made for the production or inspection of any ballot papers or for the opening of a sealed packet of counterfoils or certificates as to employment on duty on the day of the poll unless the order is made by a court with reference to a prosecution.

PART VII

MISCELLANEOUS

Return of members and record of returns etc.

72.—(1) The Clerk of the Parliament shall on receipt of a certificate delivered under rule 61 or 65 above enter the information contained in that certificate in a book kept for that purpose at the Parliament (in this paragraph referred to as “the returns book”).

(2) Where the Presiding Officer of the Scottish Parliament—

- (a) sends a notice under article 82 or 83; or
- (b) concludes that an election to fill a vacancy in the seat of a constituency member shall not be held because section 9(4) of the 1998 Act applies,

he shall—

- (i) record in the returns book the fact of the vacancy; and
- (ii) where sub paragraph (b) applies, that no election shall be held to fill the vacancy because section 9(4) of the 1998 Act applies.

(3) Where it comes to the notice of the Presiding Officer of the Scottish Parliament that—

- (a) the seat of a regional member is vacant; and
- (b) the person was returned as an individual candidate,

he shall record—

- (i) in the returns book the fact of that vacancy; and
- (ii) that the seat (in accordance with section 10(2) of the 1998 Act) is to remain vacant until the next ordinary election.

(4) The returns book shall be open to public inspection at reasonable times and any person may, on payment of a reasonable fee, obtain copies from the book.

SCHEDULE 3

Article 13(2)

ABSENT VOTING

ARRANGEMENT OF PARAGRAPHS

1. General requirements for applications.
 2. Additional requirements for applications on grounds of physical incapacity.
 3. Additional requirements for applications based on occupation, service or employment.
 4. Additional requirements for applications for proxy votes in respect of a particular election.
 5. Additional requirements for applications for appointment of a proxy.
 6. Closing dates for applications.
 7. Grant or refusal of applications.
 8. Notice of appeal.
 9. Cancellation of proxy appointment.
 10. Inquiries by registration officer.
 11. Records and lists to be kept under articles 9, 10 and 12.
 12. Marked register for polling stations.
- Signature
Explanatory Note

General requirements for applications

1.—(1) Applications under article 9, 10, 11 or 12 shall, in the case of a person applying to vote by post, state—

- (a) the applicant’s name in full;
- (b) except in the case of an application under article 12, the address in respect of which the applicant is or will be registered in the register;
- (c) in the case of an application under article 12, the address of the applicant, together with the name of the elector for whom he acts as proxy and the address of that elector for the purposes of sub-paragraph (b) above;
- (d) in the case of an application under article 9(1), 10(1) or 12(4), the grounds on which the applicant claims to be entitled to an absent vote; and
- (e) the address to which the ballot paper should be sent,

and the application shall be signed by the applicant and made and sent or delivered in accordance with article 88.

(2) For the purposes of sub paragraph (1)(b) above, the address in respect of which the applicant is or will be registered includes—

- (a) in the case of a service voter, the address given in the service declaration in accordance with section 16(d) of the 1983 Act⁽⁴²⁾;
- (b) in the case of a voluntary mental patient, the address of the mental hospital or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act⁽⁴³⁾;
- (c) in the case of a person remanded in custody, the address of the place at which he is detained or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act; and
- (d) in the case of a homeless person, within the meaning of section 7B(2)(c) of the 1983 Act, the address shown on the declaration of local connection in accordance with section 7B(3)(d) of that Act.

⁽⁴²⁾ Section 16(d) was amended by the 2000 Act, Schedule 1, paragraph 9(c).

⁽⁴³⁾ Section 7B was inserted by the 2000 Act, section 6.

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(3) An application under article 10(1) or (2), 11(7) or 12(4) or (6) shall specify the election in respect of which it is made. An application under article 10(1) or (2) shall also specify whether it is for an indefinite period or for a particular period specified in the application.

(4) An application to vote by proxy under article 9(2) or (6) or 10(1) or (2) shall include an application for the appointment of a proxy which meets the requirements of paragraph 5 below.

(5) An application under article 9, 10, 11 or 12 shall comply with such further requirements of this Schedule as apply to such an application including the requirements as to time set out by paragraph 6 below.

Additional requirements for applications on grounds of physical incapacity

2.—(1) An application under paragraph (1), as read with paragraph (3)(b), of article 9 shall specify the physical incapacity by reason of which the application is made.

(2) Subject to sub-paragraphs (3) and (5) below, such an application shall be attested and signed by—

- (a) a registered medical practitioner;
- (b) a registered nurse within the meaning of section 7(7) of the Nurses, Midwives and Health Visitors Act 1997⁽⁴⁴⁾; or
- (c) a Christian Science practitioner;
- (d) in the case of an application in which the applicant states that he is resident in an establishment within the meaning of section 61 of the Social Work (Scotland) Act 1968⁽⁴⁵⁾ in respect of which a person is required to be registered under that section, that person;
- (e) in the case of an application in which the applicant states that he is resident in residential accommodation provided by a local authority under section 59(2) of the Social Work (Scotland) Act 1968, the matron or other person in charge of that accommodation;
- (f) in the case of an application in which the applicant states that he resides in premises forming one of a group of premises—
 - (i) which are provided for persons of pensionable age or physically disabled persons; and
 - (ii) for which there is a resident warden,
 that warden.

(3) But a person may not attest an application under the said article 9(1) and (3)(b) by virtue of sub paragraph (2)(a), (b) or (c) above, unless he is treating the applicant for the physical incapacity specified in accordance with sub-paragraph (1) above or the applicant is receiving care from him in respect of that incapacity.

(4) The person attesting an application under sub-paragraph (2) above shall state—

- (a) his name and address and the qualification by virtue of which he is authorised to attest the application and, where the person attests the application by virtue of sub paragraph (2)(a), (b) or (c) above, that he is treating the applicant for the physical incapacity specified in accordance with sub-paragraph (1) above or that the applicant is receiving care from him in respect of that incapacity;
- (b) that, to the best of his knowledge and belief, the applicant is suffering from the physical incapacity specified in the application and that he cannot reasonably be expected to go in person to his allotted polling station or to vote unaided there, by reason of that incapacity; and

⁽⁴⁴⁾ 1997 c. 24.

⁽⁴⁵⁾ 1968 c. 49.

- (c) that, to the best of his knowledge and belief, the physical incapacity specified in the application is likely to continue either indefinitely or for a period specified by the person attesting the application.
- (5) Sub-paragraphs (2) and (4) above shall not apply where—
 - (a) the application is based on the applicant’s blindness and the applicant is registered as a blind person by a local authority, or by a local society for the blind, which is specified in the application;
 - (b) the application states that the applicant is (under section 73 of the Social Security Contributions and Benefits Act 1992⁽⁴⁶⁾ in receipt of the higher rate of the mobility component of a disability living allowance (payable under section 71 of that Act) because of the physical incapacity specified in the application in pursuance of sub-paragraph (1) above.
- (6) The fact that an applicant is registered with a local authority or local society for the blind shall be deemed sufficient evidence that he is eligible for an absent vote on the grounds set out in article 9(3)(b).
- (7) In this paragraph and paragraphs 3 and 4 below, “his allotted polling station”, in relation to an elector, means the polling station allotted or likely to be allotted to him under this Order.

Additional requirements for applications based on occupation, service or employment

- 3.—(1) An application under article 9 and under paragraph (1), as read with paragraph (3)(c), of article 9 shall state—
- (a) whether the occupation, service or employment, in respect of which it is made, is that of the applicant or his spouse or, as the case may be, it is the applicant or his spouse who is attending the course provided by an educational institution in respect of which the application is made;
 - (b) the nature of the occupation, service, employment or course provided by an educational institution giving rise to the application;
 - (c) where the person in respect of whose occupation, service or employment it is made (in this paragraph referred to as “the employed person”) is self-employed, that fact and, in any other case, the name of that person’s employer, and
 - (d) the reason relevant to the general nature of the employment, service or occupation in question or the course provided by an educational institution, why the applicant cannot reasonably be expected to go in person to his allotted polling station.
- (2) Such an application shall be attested and signed—
- (a) where the employed person is self-employed, by a person who—
 - (i) is aged 18 years or over;
 - (ii) knows the employed person; and
 - (iii) is not related to him;
 - (b) by the employer of the employed person or by another employee to whom this function is delegated by the employer; and
 - (c) in the case of a course provided by an educational institution, by the director or tutor of that course or by the principal or head of that institution or an employee to whom this function is delegated by the principal or head.

(46) 1992 c. 4.

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(3) For the purposes of sub-paragraph (2)(a) above and of sub-paragraph (4)(b)(i) below, one person is related to another if he is the husband, wife, parent, grandparent, brother, sister, child or grandchild of the other.

(4) The person attesting an application under sub-paragraph (2) above shall—

- (a) where the applicant is the employed person or the person attending the course, certify that the statements included in the application in accordance with the requirements of sub-paragraph (1)(a) to (d) above are true; or
- (b) where the applicant is the spouse of the employed person or the person attending the course, certify that the statements included in the application in accordance with the requirements of sub-paragraphs (1)(a) to (c) above are true,

and, in addition, he shall state—

- (i) in the case of a person who attests an application under sub-paragraph (2)(a) above, his name and address, and that he is aged 18 years or over, knows the employed person, but is not related to him; or
- (ii) in the case of a person who attests an application under sub-paragraph (2)(b) above, either that he is the employer of the employed person or the position he holds in the employment of that employer; or
- (iii) in the case of a person who attests under sub-paragraph (2)(c), the post he holds at the institution.

Additional requirements for applications for proxy votes in respect of a particular election

4. An application under article 10(1) to vote by proxy at a particular election shall set out why the applicant's circumstances on the date of the poll for that election in respect of which it is made will be or are likely to be such that he cannot reasonably be expected to vote in person at his allotted polling station.

Additional requirements for applications for appointment of a proxy

5. An application for the appointment of a proxy under article 11(6) or (7) shall state the full name and address of the person whom the applicant wishes to appoint as his proxy, together with his family relationship, if any, with the applicant, and—

- (a) if it is signed only by the applicant, shall contain a statement by him that he has consulted the person so named and that that person is capable of being and willing to be appointed to vote as his proxy; or
- (b) if it is also signed by the person to be appointed, shall contain a statement by that person that he is capable of being and willing to be appointed to vote as the applicant's proxy.

Closing dates for applications

6.—(1) An application—

- (a) to vote by post or proxy under article 9(1) or (2);
- (b) to vote by post or proxy under article 10(1);
- (c) for the appointment of a proxy under article 11(6);
- (d) for the appointment of a proxy under article 11(7); or
- (e) from a proxy to vote by post under article 12(4),

shall be disregarded for the purposes of any particular election if it is received by the registration officer after 5.00 pm on the sixth day before the date of the poll at that election.

- (2) Subject to sub-paragraph (3) below, an application—
- (a) by an absent voter to alter his choice as to the manner of absent voting under article 9(6);
 - (b) from a proxy to vote by post under article 12(4);
 - (c) by a postal voter for his ballot papers to be sent to a different address or to vote instead by proxy at a particular election under article 10(2);
 - (d) from a postal proxy for his ballot papers to be sent to a different address at a particular election under article 12(6),

shall be refused if it is received by the registration officer after 5pm on the eleventh day before the date of the poll at the election for which it was made.

- (3) The following, namely—
- (a) an application under article 9(5)(a) by an elector to be removed from the record kept under article 9(4);
 - (b) an application under article 12(8)(a) by a proxy to be removed from the record kept under article 12(5); and
 - (c) a notice under article 11(9) of the cancellation of a proxy's appointment,

shall be disregarded for the purposes of a particular election if it is received by the registration officer after 5pm on the eleventh day before the date of the poll at that election.

- (4) In computing a period of days for the purposes of this paragraph—
- (a) a Saturday or a Sunday;
 - (b) Christmas Eve, Christmas Day, Easter Monday or Good Friday; or
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

shall be disregarded.

Grant or refusal of applications

7.—(1) Where the registration officer grants an application under article 9, 10, 11 or 12 he shall, where practicable, notify the applicant of his decision.

(2) Where the registration officer grants an application for the appointment of a proxy, he shall, where practicable, confirm in writing to the elector that the proxy has been appointed, his name and address and the duration of the appointment.

(3) The proxy paper to be issued by the registration officer on the appointment of a proxy may be combined with another form of proxy paper if the registration officer is issuing a proxy paper appointing that person as proxy for the same elector in respect of another election or other elections.

(4) Where the registration officer does not grant an application under article 9, 10, 11 or 12, he shall notify the applicant of his decision and, in the case of an application under article 9(1) or 12(4), of the reason for his decision; and he shall date such notification.

(5) Where under paragraph 6(1) or (3) above the registration officer disregards an application for the purposes of any particular election, he shall, where practicable, notify the applicant of this.

(6) At an election where the registration officer is not the returning officer for any constituency or part of a constituency for which he is the registration officer, he shall send to that officer details of any application to vote by post which he has granted as soon as practicable after doing so.

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Notice of appeal

8.—(1) A person desiring to appeal under article 5(1) against the decision of a registration officer must give notice of the appeal to the registration officer within 14 days of the receipt of the notice given under paragraph 7(4) above, specifying the grounds of the appeal.

(2) The registration officer shall forward any such notice to the sheriff with a statement of the material facts which in his opinion have been established in the case, of his decision upon the whole case, and on any point which may be specified as a ground of appeal and shall also give to the sheriff any other information which the sheriff may require and which the registration officer is able to give.

(3) Where it appears to the registration officer that any notices of appeal given to him are based on similar grounds, he shall inform the sheriff so that the sheriff may consolidate the appeals or select a case as a test case.

Cancellation of proxy appointment

9. Where the appointment of a proxy is cancelled by notice given to the registration officer under article 11(9) or ceases to be in force under that provision or is no longer in force under article 11(10) (b), the registration officer shall—

- (a) notify the person whose appointment as proxy has been cancelled, has expired, ceases to be or is no longer in force, unless the registration officer has previously been notified by that person that he no longer wishes to act as proxy; and
- (b) remove his name from the record kept under article 9(4).

Inquiries by registration officer

10.—(1) The registration officer may, at such times as he thinks fit, make inquiries of a person who is shown in the record kept under article 9(4) by virtue of an application under that article on the grounds set out in article 9(3)(c) or (d);

(2) The registration officer may treat the failure by a person of whom inquiries have been made under sub-paragraph (1) above to respond to such inquiries within one month of the date on which they were made as sufficient evidence of a material change in circumstances.

Records and lists kept under articles 9, 10 and 12

11.—(1) Subject to the provisions of this paragraph, the records kept under articles 9(4) and 12(5) and the lists kept under articles 10(4) and 12(7) shall be in such form as the registration officer thinks fit.

(2) In that part of the absent voters list referred to in article 10(4)(a), the address to which a ballot paper shall be sent to a person who is entitled to vote by post as an elector shall be placed on the right hand side of his name and electoral number.

(3) In that part of the absent voters list referred to in article 10(4)(b) (the list of proxies), the name and address of the proxy shall be placed on the right hand side of the elector's name and electoral number.

(4) In the list kept under article 12(7) (those proxies who are entitled to vote by post), the name of the proxy, together with the address to which his ballot paper shall be sent, shall be placed on the right hand side of the elector's name and electoral number.

(5) The registration officer shall make available for inspection at his office a copy of the records kept under articles 9(4) and 12(5).

(6) As soon as practicable after the day referred to in paragraph 6(1) above, the registration officer shall publish the lists kept under articles 10(4) and 12(7) by making a copy of them available for

inspection at his office; and he shall continue to make a copy of those lists so available until the date of the poll.

(7) Subject to sub-paragraph (8) below, as soon as practicable after the publication of the lists referred to in sub-paragraph (6) above, the registration officer shall, on request, supply free of charge a copy of them to each—

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

(8) But if such a request is made before any issue of postal ballot papers, he shall before that issue supply a copy of those lists or so much of them as relates to that issue.

(9) In this paragraph, “electoral number” means a person’s number in the register to be used at the election.

Marked register for polling stations

12. To indicate that an elector or his proxy is entitled to vote by post and is for that reason not entitled to vote in person, the letter “A” shall be placed against the name of that elector in any copy of the register, or part of it, provided for a polling station.

SCHEDULE 4

Article 13(3)

ISSUE AND RECEIPT OF POSTAL BALLOT PAPERS

ARRANGEMENT OF PARAGRAPHS

1. Interpretation

Issue of postal ballot papers

- 2. Combination of polls.
- 3. Form of declaration of identity.
- 4. Persons entitled to be present at proceedings on issue of postal ballot papers.
- 5. Persons entitled to be present at receipt of postal ballot papers.
- 6. Notification of requirement of secrecy.
- 7. Time when postal ballot papers are to be issued.
- 8. Procedures on the issue of postal ballot papers..
- 9. Refusal to issue postal ballot paper.
- 10. Envelopes.
- 11. Delivery of postal ballot papers.
- 12. Sealing up of special lists and counterfoils.
- 13. Spoilt postal ballot paper.
- 14. Lost postal ballot paper.

Receipt of postal ballot papers

- 15. Notice of opening of postal ballot paper envelopes.

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16. Postal ballot boxes and receptacles.
 17. Receipt of covering envelope.
 18. Opening of postal voters' ballot box.
 19. Opening of covering envelopes.
 20. Procedure in relation to declarations of identity.
 21. Opening of ballot paper envelopes.
 22. Lists of rejected postal ballot papers.
 23. Checking of lists kept under paragraph 22.
 24. Sealing of receptacle.
 25. Abandoned poll.
 26. Forwarding of documents.
- Signature
Explanatory Note

Interpretation

1. For the purposes of this Schedule, unless the context otherwise requires—
 - “agent” includes an election agent and a person appointed to attend in the election agent’s place;
 - “ballot paper envelope” and “covering envelope” mean the envelopes referred to in paragraph 10 below;
 - “issue” includes the original and any subsequent issue;
 - “list of postal proxies” means the list kept under article 12(7);
 - “postal ballot box” means the ballot box referred to in paragraph 16(1)(b) below;
 - “postal ballot paper” means a ballot paper issued to a postal voter;
 - “postal voter” means a voter who is entitled to vote by post (and includes a postal proxy);
 - “postal voters' ballot box” means the ballot box referred to in paragraph 16(1)(a) below;
 - “receptacle for ballot paper envelopes” and “receptacle for declarations of identity” mean the receptacles referred to in paragraph 16(5) below;
 - “receptacle for rejected ballot paper envelopes” means the receptacle referred to in paragraph 15(4) below;
 - “receptacle for rejected votes” means the receptacle referred to in paragraph 16(5) below; and
 - “spoilt postal ballot paper” means a ballot paper referred to in paragraph 13(1) below.

Issue of postal ballot papers

Combination of polls

2. Where the polls at elections are taken together under article 14(1) or (2) the proceedings on the issue and receipt of postal ballot papers in respect of each election may, if the returning officers concerned agree, be taken together.

Form of declaration of identity

3. The declaration of identity sent with the postal ballot paper to a postal voter shall be—
 - (a) in the form L set out in the Appendix at a Scottish parliamentary election other than one to which sub paragraph (b) or (c) below applies;

- (b) in the form U set out in the Appendix to a Scottish parliamentary election where the proceedings on the issue and receipt of ballot papers are taken together with those proceedings at another election under paragraph 2 above; and
- (c) in the form V set out in the Appendix at a Scottish parliamentary election the poll at which is taken together with a poll at another election under article 14(1) or (2) in any part of the constituency but where the proceedings on the issue and receipt of postal ballot papers are not taken together under paragraph 2 above, for use in that part of the constituency in which polls at more than one election are taken together.

Persons entitled to be present at proceedings on issue of postal ballot papers

4. No person may be present at the proceedings on the issue of postal ballot papers other than the constituency returning officer and members of his staff.

Persons entitled to be present at receipt of postal ballot papers

5.—(1) No person may be present at the proceedings on the receipt of postal ballot papers other than—

- (a) the constituency returning officer and members of his staff;
- (b) a candidate for return as a constituency member or an election agent of such a candidate or any person appointed by a candidate to attend in his election agent's place;
- (c) except in the case of an election to fill a vacancy in the seat of a constituency member—
 - (i) the regional returning officer;
 - (ii) an individual candidate for return as a regional member or his election agent or any person authorised by the candidate to attend in his election agent's place or;
 - (iii) the election agent of a registered party standing nominated or the nominating officer of that party or any person authorised by that officer to attend in his place; and
- (d) an agent appointed under sub paragraph (1) below.

(2) Each—

- (a) candidate for return as a constituency member; and
- (b) except in the case of an election to fill a vacancy in the seat of a constituency member, individual candidate for return as a regional member and each election agent for a registered party standing nominated,

may appoint one or more agents up to the number he may be authorised by the constituency returning officer to appoint, so, however, that the number authorised should be the same in the case of each candidate or, as the case may be, election agent for a registered party standing nominated.

(3) Notice of the appointment stating the names and addresses of the persons appointed shall be given by the candidate or election agent to the constituency returning officer before the time fixed for the issue of the postal ballot papers or the opening of the postal voters' ballot boxes, as the case may be.

(4) Where postal ballot papers for more than one election are issued together under paragraph 2 above, the constituency returning officer to whom notice shall be given under sub-paragraph (3) above and sub-paragraphs (5) and (6) below is the returning officer who issues the postal ballot papers.

(5) If an agent dies or becomes incapable of acting, the candidate or election agent 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) Agents may be appointed and notice of appointment given to the constituency returning officer by a candidate's election agent instead of by the candidate.

(7) In this Schedule references to agents shall be taken as references to agents whose appointments have been duly made and notified and, in the case of agents appointed under sub-paragraph (2) above, who are within the number authorised by the constituency returning officer.

(8) Any of the following persons, namely—

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

may himself do any act or thing which any agent of his, if appointed, would have been authorised to do, or may assist his agent in doing any such act or thing.

(9) Where in this Schedule any act or thing is required or authorised to be done in the presence of the candidates or their agents, the non-attendance of any such person 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

6. The constituency returning officer shall make arrangements to ensure that every person attending the proceedings in connection with the issue or receipt of postal ballot papers has been given a copy in writing of the provisions of article 30(4) and (6).

Time when postal ballot papers are to be issued

7.—(1) In the case of a person shown in the record kept under—

- (a) article 9(4)(a); or
- (b) article 12(5),

no postal ballot paper (and no declaration of identity) shall be issued until after 5 p.m. on the eleventh day before the date of the poll (computed in accordance with paragraph 6(4) of Schedule 3).

(2) In the case of any other person, the postal ballot paper (and declaration of identity) shall be issued by the constituency returning officer as soon as practicable after the registration officer has granted the application to vote by post.

Procedures on the issue of postal ballot papers

8.—(1) Each postal ballot paper issued shall be stamped with the official mark and the name and number of the elector as stated in the register shall be called out, and such number shall be marked on the counterfoil, and a mark shall be placed in the absent voters list or the list of postal proxies against the number of the elector to denote that a ballot paper has been issued to the elector or his proxy but without showing the particular ballot paper issued.

(2) The number of a postal ballot paper shall be marked on the declaration of identity sent with that paper.

(3) Where postal ballot papers for more than one election are issued together under paragraph 2 above—

- (a) one mark shall be placed in the absent voters list or the list of postal proxies under sub-paragraph (1) above to denote that ballot papers have been issued in respect of all of those elections, except that where ballot papers are not so issued a different mark shall be placed in the absent voters list or list of postal proxies to identify the election in respect of which the ballot paper was issued; and

(b) the number of each ballot paper shall be marked on the declaration of identity under sub-paragraph (2) above.

(4) Where the poll at a Scottish parliamentary election is taken with the poll at another election under article 14(1) or (2) but the proceedings on the issue and receipt of postal ballot papers are not taken together under paragraph 2 above, the colours of the postal ballot papers (or, as the case may be, the colour of the postal ballot paper) shall also be marked on the declaration of identity sent with those papers (or as the case may be, that paper).

Refusal to issue postal ballot paper

9. Where a constituency returning officer is satisfied that two or more entries in either the absent voters list, or the list of postal proxies, or in each of those lists relate to the same elector he shall not issue more than one constituency ballot paper or, as the case may be, more than one regional ballot paper in respect of the same elector in respect of the same election.

Envelopes

10.—(1) The envelope which the constituency returning officer is required by rule 34 of the Scottish Parliamentary Election Rules(47) to send to a postal voter for the return of postal ballot papers (or, as the case may be, a postal ballot paper) and the declaration of identity (referred to as a “covering envelope”) shall be marked with the letter “B”.

(2) In addition to the documents referred to in sub-paragraph (1) above, the constituency returning officer shall send to a postal voter a smaller envelope (referred to as a “ballot paper envelope”) which shall be marked with—

- (a) the letter “A”;
- (b) the words “Ballot paper envelope”; and
- (c) the number of each ballot paper.

(3) Where the poll at one election is taken together with the poll at another election under article 14(1) or (2) but the proceedings on the issue and receipt of postal ballot papers are not be taken together under paragraph 2 above—

- (a) the envelope referred to in sub-paragraph (1) above shall also be marked “Covering envelope for the “insert colour of ballot paper(s) coloured ballot paper(s)””; and
- (b) on the envelope referred to in sub-paragraph (2) above, after the words “Ballot paper envelope” there shall be added the words “for the [insert colour of ballot paper(s)] coloured ballot paper(s)”.

Delivery of postal ballot papers

11.—(1) For the purpose of delivering postal ballot papers, the constituency returning officer may use—

- (a) a universal postal service provider;
- (b) a commercial delivery firm; or
- (c) members of his own staff.

(2) Where the services of a universal postal service provider or commercial delivery firm are to be used, envelopes addressed to postal voters shall be counted and delivered by the constituency returning officer with such form of receipt to be endorsed by that provider or firm as may be arranged.

(47) Schedule 2 to this Order.

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(3) Postage shall be prepaid on envelopes addressed to the postal voters (except where sub paragraph (1)(c) above applies).

(4) Return postage shall be prepaid on all covering envelopes where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.

(5) In this paragraph, “universal postal service provider” has the meaning given in the Postal Services Act 2000 to a “universal service provider”.

Sealing up of special lists and counterfoils

12.—(1) As soon as practicable after the issue of each batch of postal ballot papers, the constituency returning officer shall make up into a packet the counterfoils of those ballot papers which have been issued and shall seal such a packet.

(2) As soon as practicable after the last batch of postal ballot papers have been issued, the constituency returning officer shall make up into a packet the marked copy of the absent voters list and the list of postal proxies and shall seal such a packet.

(3) Until the time referred to in sub-paragraph (2) above, the constituency returning officer shall take proper precautions for the security of the lists referred to in that sub paragraph.

Spoilt postal ballot paper

13.—(1) If a postal voter has inadvertently dealt with a postal ballot paper of his in such manner that it cannot be conveniently used as a ballot paper (referred to as “a spoilt postal ballot paper”) he may return (either by hand or by post) to the constituency returning officer the spoilt postal ballot paper and the declaration of identity.

(2) Where two or more postal ballot papers have been issued together to him (whether at a Scottish parliamentary general election or under paragraph 2 above), the postal voter shall, if he exercises the entitlement conferred by sub-paragraph (1) above, return all of the ballot papers so issued, whether spoilt or not.

(3) On receipt of the documents referred to in sub-paragraph (1) or (2) above the constituency returning officer shall issue a replacement ballot paper or, as the case may be, papers except where those documents are received after 5.00 p.m. on the day before the day of the poll.

(4) Paragraphs 4, 5, 6 and 8 to 12 above shall apply to the issue of postal ballot papers under sub-paragraph (3) above.

(5) The spoilt postal ballot paper, and any other postal ballot paper issued with it and the declaration of identity, shall be immediately cancelled.

(6) The constituency returning officer, as soon as practicable after cancelling those documents, shall make up those documents in a separate packet and shall seal the packet; and if on any subsequent occasion documents are cancelled as mentioned above, the sealed packet shall be opened and the additional cancelled documents included in it and the packet shall then be again made up and sealed.

(7) Where a postal voter applies in person, the constituency returning officer may hand a replacement postal ballot paper to him instead of delivering it in accordance with paragraph 11 above.

(8) The constituency returning officer shall enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)—

- (a) the name and number of the elector as stated in the register;
- (b) the number of the postal ballot paper (or papers) issued under this paragraph, and
- (c) where the postal voter whose ballot paper is spoilt is a proxy, his name and address.

Lost postal ballot paper

14.—(1) Where a postal voter has not received his postal ballot paper by the third day before the day of the poll, he may apply (whether or not in person) to the constituency returning officer for a replacement ballot paper.

(2) Such an application shall include evidence of the voter's identity.

(3) Where the application is received by the constituency returning officer before 5pm on the day before the day of the poll and the constituency returning officer—

(a) is satisfied as to the voter's identity, and

(b) has no reason to doubt that the postal voter did not receive the original postal ballot paper, he shall issue another postal ballot paper or, as the case may be, postal ballot papers.

(4) The constituency returning officer shall enter in a list kept for the purpose ("the list of lost postal ballot papers")—

(a) the name and number of the elector as stated in the register;

(b) the number of the lost postal ballot paper and of its replacement issued under this paragraph; and

(c) where the postal voter whose ballot paper is lost is a proxy, his name and address.

(5) Paragraphs 4, 5, 6 and 8 to 12 above shall apply to the issue of replacement postal ballot papers under sub-paragraph (3) above.

(6) Where a postal ballot voter applies in person, the constituency returning officer may hand a replacement ballot paper to him instead of delivering it in accordance with paragraph 11 above.

(7) Where the constituency returning officer issues another ballot paper, or as the case may be, postal ballot papers under sub-paragraph (3) above, the lost ballot paper shall be void and of no effect.

Receipt of postal ballot papers

Notice of opening of postal ballot paper envelopes

15.—(1) The constituency returning officer shall give not less than 48 hours' notice in writing of each occasion on which a postal voters' ballot box and the envelopes contained in it is to be opened, to—

(a) each candidate for return as a constituency member; and

(b) except in each case of an election to fill a vacancy in the seat of a constituency member, each individual candidate for return as a regional member and the election agent for each registered party standing nominated.

(2) Such a notice shall specify—

(a) the time and place at which such an opening is to take place, and

(b) the number of agents a candidate may appoint under paragraph 5(2) above to attend each opening.

Postal ballot boxes and receptacles

16.—(1) The constituency returning officer shall provide a separate ballot box for the reception of—

(a) the covering envelopes when returned by the postal voters ("postal voters' ballot box"); and

(b) postal ballot papers ("postal ballot box").

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(2) Each such ballot box shall be marked “postal voters' ballot box” or “postal ballot box”, as the case may be, and with the name of the constituency or electoral area for which the election is, or, as the case may be, the elections are, held.

(3) The postal ballot box shall be shown to the agents present on the occasion of opening the first postal voters' ballot box as being empty.

(4) The constituency returning officer shall then lock the ballot box and apply his seal in such manner as to prevent its being opened without breaking the seal; any of the agents present who wish to add their seals may then do likewise.

(5) The constituency returning officer shall provide the following receptacles—

- (a) the receptacle for rejected votes;
- (b) the receptacle for declarations of identity;
- (c) the receptacle for ballot paper envelopes; and
- (d) the receptacle for rejected ballot paper envelopes.

(6) The constituency returning officer shall take proper precautions for the safe custody of every ballot box and receptacle referred to in this paragraph.

Receipt of covering envelope

17.—(1) The constituency returning officer shall, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters' ballot box.

(2) Where an envelope, other than a covering envelope issued by the constituency returning officer—

- (a) has been opened; and
- (b) contains a ballot paper envelope, declaration of identity or ballot papers,

the first-mentioned envelope, together with its contents, shall be placed in a postal voters' ballot box.

Opening of postal voters' ballot box

18.—(1) Each postal voters' ballot box shall be opened by the constituency returning officer in the presence of any agents, if in attendance.

(2) So long as the constituency returning officer ensures that there is at least one sealed postal voters' ballot box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters' ballot boxes may previously be opened by him.

(3) The last postal voters' ballot box and the postal ballot box shall be opened at the counting of the votes under rule 54 of the Scottish Parliamentary Election Rules.

Opening of covering envelopes

19.—(1) When a postal voters' ballot box is opened, the constituency returning officer shall count and record the number of covering envelopes, and shall then open each covering envelope (including any envelope to which paragraph 17(2) above applies) separately.

(2) The procedure in paragraph 20 below applies where a covering envelope (including an envelope to which paragraph 17 (2) above applies) contains both—

- (a) a declaration of identity; and
- (b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper (or ballot papers).

(3) Where the covering envelope does not contain the declaration of identity separately, the constituency returning officer shall open the ballot paper envelope to ascertain whether the declaration of identity is inside.

(4) Where a covering envelope does not contain both—

- (a) a declaration of identity (whether separately or not); and
- (b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper (or ballot papers)

the constituency returning officer shall mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.

Procedure in relation to declarations of identity

20.—(1) The constituency returning officer shall satisfy himself that the declaration of identity has been duly signed by the voter and authenticated by a witness who has signed the declaration and given his address (referred to as a “valid declaration of identity”).

(2) Where the constituency returning officer is not so satisfied, he shall mark the declaration “rejected”, attach to it the ballot paper envelope, or if there is no such envelope, the ballot paper (or ballot papers), and, subject to sub-paragraph (3) below, place it in the receptacle for rejected votes.

(3) Before placing the declaration in the receptacle for rejected votes, the constituency returning officer shall show it to the agents and, if any of them object to his decision, he shall add the words “rejection objected to”.

(4) The constituency returning officer shall then compare the number (or numbers) on the declaration of identity against the number or (numbers) on the ballot paper envelope and, where they are the same, he shall place the declaration and the ballot paper envelope in, respectively the receptacle for declarations of identity and the receptacle for ballot paper envelopes.

(5) Where there is a valid declaration of identity but no ballot paper envelope, or where the envelope has been opened under paragraph 19(3) above, he shall place—

- (a) in the postal ballot box, any ballot paper the number on which is the same as the number (or one of the numbers) on the declaration of identity;
- (b) in the receptacle for rejected votes, any other ballot paper, to which shall be attached the declaration of identity marked “provisionally rejected”; and
- (c) in the receptacle for declarations of identity, any declaration of identity not disposed of under sub paragraph (b) above.

(6) Where the number (or numbers) on a valid declaration of identity is (or are) not the same as the number (or numbers) on the ballot paper envelope or where that envelope has no number on it (or only one number where the declaration of identity has more than one), the constituency returning officer shall open the envelope.

(7) Where an envelope has been opened under paragraph 19(3) above or sub paragraph (6) above, the constituency returning office shall—

- (a) place in the postal ballot box any ballot paper the number on which is the same as the number (or one of the numbers) on the valid declaration of identity;
- (b) place in the receptacle for rejected votes any other ballot paper, to which shall be attached the declaration of identity marked “provisionally rejected”;
- (c) place in the receptacle for rejected votes any declaration of identity marked “provisionally rejected” in respect of a ballot paper envelope—
 - (i) which does not contain a ballot paper; or

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- (ii) which does not contain a sufficient number of ballot papers if more than one number appears on the declaration,
and shall indicate the missing ballot paper, where that is the case; and
- (d) place in the receptacle for declarations of identity, any such declaration not disposed of under sub paragraph (b) or (c) above.

Opening of ballot paper envelopes

21.—(1) The constituency returning officer shall open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

- (2) He shall place—
 - (a) in the postal ballot box, any ballot paper the number on which is the same as the number (or one of the numbers) on the ballot paper envelope;
 - (b) in the receptacle for rejected votes, any other ballot paper which shall be marked “provisionally rejected” and to which shall be attached the ballot paper envelope; and
 - (c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope which shall be marked “provisionally rejected” because it does not contain either a ballot paper or, where more than one number appears on the ballot paper envelope, a sufficient number of ballot papers (and indicating, in such a case, the missing ballot paper/or papers).

Lists of rejected postal ballot papers

22.—(1) In respect of any election, the constituency returning officer shall keep two separate lists of rejected postal ballot papers.

(2) In the first list, he shall record the ballot paper number of any postal ballot paper which is not accompanied by a valid declaration of identity.

(3) In the second list, he shall record the ballot paper number of any postal ballot paper which is entered on a valid declaration of identity where that ballot paper is not received with the declaration of identity.

Checking of lists kept under paragraph 22

23.—(1) Where the constituency returning officer receives a valid declaration of identity without the postal ballot paper (or papers or, as the case may be, all of the papers) to which it relates, he shall from time to time prior to the close of the poll, check the list kept under paragraph 22(2) above to see whether the number (or numbers) of a postal ballot paper to which the declaration relates is (or are) entered in that list.

(2) Where the constituency returning officer receives a postal ballot paper without the declaration of identity relating to it, he may, at any time prior to the close of the poll, check the list kept under paragraph 22(3) above to see whether the number of that ballot paper is entered in that list.

(3) The constituency returning officer shall conduct the checks required by sub paragraphs (1) and (2) above as soon as practicable after the receipt of packets from every polling station in the constituency or, as the case may be, electoral area under rule 52 of the Scottish Parliamentary Election Rules.

(4) Where the ballot paper number in the list matches the number of a valid declaration of identity or, as the case may be, a postal ballot paper, the constituency returning officer shall retrieve the relevant declaration or paper.

(5) The constituency returning officer shall then take the appropriate steps under this Schedule as though any document earlier marked “provisionally rejected” had not been so marked and shall amend the document accordingly.

Sealing of receptacles

24.—(1) As soon practicable after the completion of the procedure under paragraph 23(3) and (4) above, the constituency returning officer shall make up into separate packets the contents of—

- (a) the receptacle of rejected votes;
- (b) the receptacle of declarations of identity;
- (c) the receptacle of rejected ballot paper envelopes; and
- (d) the lists of spoilt and lost postal ballot papers,

and shall seal up such packets.

(2) Any document in those packets marked “provisionally rejected” shall be deemed to be marked “rejected”.

Abandoned poll

25.—(1) Where a poll is abandoned or countermanded after postal ballot papers have been issued, by reason of the death of a candidate, the constituency returning officer—

- (a) shall not take any step or further step to open covering envelopes or deal with the contents in accordance with the provisions of this Schedule; and
- (b) shall, notwithstanding paragraphs 19 to 21 above, treat all unopened covering envelopes and the contents of those that have been opened as if they were counted ballot papers.

(2) Sub-paragraph (1) above shall not apply where postal ballot papers for more than one election have been issued together under paragraph 2 above.

Forwarding of documents

26.—(1) The constituency returning officer shall forward to the sheriff clerk at the same time as he forwards the documents mentioned in rule 68 of the Scottish Parliamentary Election Rules—

- (a) any packets referred to in paragraphs 12, 13(6) and 24 above, subject to paragraph 25 above, endorsing on each packet a description of its contents, the date of the election to which it relates and the name of the constituency or electoral ward for which the election (or elections) was (or were) held; and
- (b) a completed statement in form W set out in the Appendix of the number of postal ballot papers issued.

(2) Where—

- (a) any covering envelopes are received by the constituency returning officer after the close of the poll (apart from those delivered in accordance with Rule 52(1)(i) of the Scottish Parliamentary Election Rules);
- (b) any envelopes addressed to postal voters are returned as undelivered too late to be readdressed; or
- (c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued

the constituency returning officer shall put them unopened in a separate packet, seal up such packet and endorse and forward it at a subsequent date in the manner described in sub paragraph (1) above.

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(3) Rules 67 and 68 of the Scottish Parliamentary Election Rules shall apply to any packet or document forwarded under this paragraph.

(4) A copy of the statement referred to in sub-paragraph (1)(b) above shall be provided by the constituency returning officer to the Secretary of State.

SCHEDULE 5

Article 13(5)

COMBINATION OF POLLS

ARRANGEMENT OF PARAGRAPHS

PART I

GENERAL

1. Returning officers and polling stations.
2. Functions at combined polls.
3. Modification of provisions about expenses in this Order and the 1983 Act.

PART II

MODIFICATIONS OF THE SCOTTISH PARLIAMENTARY ELECTION RULES TO APPLY WHERE THE POLL AT A SCOTTISH PARLIAMENTARY ELECTION IS TAKEN TOGETHER WITH A POLL AT A LOCAL GOVERNMENT ELECTION UNDER ARTICLE 14(1) OR (2)

4. Modifications of the Scottish Parliamentary Election Rules: general provision.
5. Rule 29 (colour of ballot papers).
6. Rule 33 (notice of poll).
7. Rule 37 (issue of official poll cards and notifications).
8. Rule 38 (equipment of polling stations).
9. Rule 39 (appointment of polling and counting agents).
10. Rule 44 (questions to be put to voters).
11. Rule 46 (voting procedure).
12. Rule 47 (votes marked by presiding officer).
13. Rule 48 (voting by persons with disabilities).
14. Rule 49 (tendered ballot papers).
15. Rule 51 (adjournment of poll in case of riot).
16. Rule 52 (procedure on close of poll).
17. Rule 53 (attendance at counting of votes).
18. Rule 54 (the count).
19. Rule 68 (delivery of documents to the sheriff clerk).
20. Rule 71 (countermand or abandonment of poll etc. on death of candidate).
21. Form of directions for the guidance of the voters in voting in Schedule 5.

PART III

MODIFICATIONS OF THE SCOTTISH LOCAL GOVERNMENT ELECTIONS RULES 2002 TO APPLY WHERE THE POLL AT A LOCAL GOVERNMENT ELECTION IS TAKEN TOGETHER WITH A POLL AT A SCOTTISH PARLIAMENTARY ELECTION UNDER ARTICLE 14(1) OR (2)

22. Modifications of the local elections rules: general provision.
 23. Rule 1 of the local elections rules (timetable).
 24. Rule 13 of the local elections rules (the ballot papers).
 25. Rule 17 of the local elections rules (notice of poll).
 26. Rule 21 of the local elections rules (issue of official poll cards and notifications).
 27. Rule 22 of the local elections rules (equipment of polling stations).
 28. Rule 23 of the local elections rules (appointment of polling and counting agents).
 29. Rule 28 of the local elections rules (questions put to voters).
 30. Rule 30 of the local elections rules (voting procedure).
 31. Rule 31 of the local elections rules (votes marked by presiding officer).
 32. Rule 32 of the local elections rules (voting by persons with disabilities).
 33. Rule 33 of the local elections rules (tendered ballot papers).
 34. Rule 35 of the local elections rules (adjournment of poll in case of riot).
 35. Rule 36 of the local elections rules (procedure on close of poll).
 36. Rule 37 of the local elections rules (attendance at counting of votes).
 37. Rule 38 of the local elections rules (the count).
 38. Rule 45 of the local elections rules (delivery of documents).
 39. Rule 48 of the local elections rules (countermand or abandonment of poll on death of candidate).
 40. Local elections rules: declaration of identity.
 41. Local elections rules: elector's official poll card and notification, and
 42. Local elections rules: declaration to be made by the companion of a voter with disabilities.
- Signature
Explanatory Note

PART 1

GENERAL

Returning officers and polling stations

1.—(1) Where the polls at a Scottish parliamentary general election and an ordinary local government election are taken together under article 14(1)—

- (a) those functions of the returning officer at the local government election which are specified in paragraph 2 below shall be discharged by the constituency returning officer for the Scottish parliamentary election for such part of the local government area as is situated in the Scottish parliamentary constituency; and
- (b) only polling stations used for the Scottish parliamentary election shall be used for the local government election.

(2) Where the polls for related areas are taken together under article 14(2)—

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- (a) the returning officers for those elections shall decide which returning officer shall discharge in the area in which the polls are combined (“the combined area”) those functions of the other which are specified in paragraph 2 below; and
- (b) the only polling stations which shall be used in the combined area at such elections are the polling stations used at the election for which the returning officer who discharges the functions referred to above acts as returning officer.

Functions at combined polls

2.—(1) The functions referred to in paragraph 1 above are the functions conferred or imposed—

- (a) at a Scottish parliamentary election by those rules in the Scottish Parliamentary Election Rules in Schedule 2 which are specified in sub paragraph (2) below; and
- (b) at a local government election, by those rules in the rules made under section 42 of the 1983 Act⁽⁴⁸⁾ which correspond to the provisions specified in sub paragraph (2) below,

and, where the proceedings on the issue and receipt of postal ballot papers at two or more elections are taken together under paragraph 2 of Schedule 4, the functions conferred or imposed by that Schedule and by Part V of the 2001 Regulations⁽⁴⁹⁾.

(2) The rules referred to in sub-paragraph (1) above are—

- (a) rule 33(2)(a) (notice of situation of polling stations);
- (b) where the proceedings on the issue and receipt of postal ballot papers at two or more elections are taken together under paragraph 2 of Schedule 4, rule 34 (postal ballot papers);
- (c) rule 35 (provision of polling stations);
- (d) rule 36(1) and (2) (appointment of presiding officers and clerks) to the extent that that rule concerns the appointment of presiding officers and clerks to assist them;
- (e) rule 38 (equipment of polling stations);
- (f) rule 40(a) (notification of requirement of secrecy at polling station);
- (g) rule 41(4) (signature of certificate as to employment);
- (h) rule 42(2)(b) (authorisation to order removal from polling station); and
- (i) in rule 54, paragraph (1) (the count) (as substituted by paragraph 18 of this Schedule) and paragraph (5).

Modification of provisions about expenses in this Order and the 1983 Act

3.—(1) Where those functions of a returning officer at an election which are specified in paragraph 2 above are discharged by the returning officer at another election under paragraph 1 above, references to the returning officer or his charges or expenditure—

- (a) in sub-sections (3), (4), (4A), (4B), (7), and (8) of section 29 of the 1983 Act⁽⁵⁰⁾ (payments by and to returning officers) as applied and modified by article 19;
- (b) in article 20 (taxation of returning officer’s account); and
- (c) in sub-sections (5) and (6) of section 42 of the 1983 Act (expenses at local elections),

shall, to the extent that such functions are so discharged, be construed as references to the returning officer who discharges those functions and his charges or expenditure in respect of those functions.

⁽⁴⁸⁾ The current rules are the Scottish Local Government Elections Rules 2002 (S.S.I. 2002/457).

⁽⁴⁹⁾ S.I. 2001/497 as amended by S.I. 2002/1872, regulations 11, 12 and 13.

⁽⁵⁰⁾ Section 29 was amended by the 2000 Political Parties Act, Schedule 21, para 6(3).

(2) The reference in section 42(6) of the 1983 Act to the returning officer or person acting as returning officer requesting an advance in respect of his expenses shall, to the extent that those expenses relate to the functions specified in paragraph 2 above and in respect of the remuneration of presiding officers and clerks, include a reference to the returning officer who under paragraph 1 above discharges those functions at the local government election.

(3) In relation to elections the polls at which are taken together under article 14(1) or (2), the Secretary of State may under section 29(3) of the 1983 Act as applied and modified by article 19 include special provision for services properly rendered, or expenses properly incurred, in respect of the discharge of functions specified in paragraph 2 above, and in respect of the remuneration of presiding officers and clerks, by the returning officer who discharges those functions by virtue of paragraph 1 above.

PART II

MODIFICATIONS OF THE SCOTTISH PARLIAMENTARY ELECTION RULES TO APPLY WHERE THE POLL AT A SCOTTISH PARLIAMENTARY ELECTION IS TAKEN TOGETHER WITH A POLL AT A LOCAL GOVERNMENT ELECTION UNDER ARTICLE 14(1) OR (2)

Modifications of the Scottish Parliamentary Election Rules: general provision

4. Where the poll at a Scottish parliamentary election is taken with the poll at a local government election under article 14(1) or (2), the Scottish Parliamentary Election Rules in Schedule 2 to this Order shall have effect subject to the modifications set out in the remaining paragraphs of this Part.

Rule 29 (colour of ballot papers)

5. At the end of rule 29 there shall be added—

“The ballot paper to be used at a local government election the poll for which is taken together with the poll at a Scottish parliamentary election shall be of a different colour from that of any ballot paper to be used at the Scottish parliamentary election.”.

Rule 33 (notice of poll)

6. At the end of rule 33 there shall be added—

“(3) The notice published under paragraph (2) above shall—

- (a) state that the poll at the Scottish parliamentary election is to be taken together with the poll at a local government election;
- (b) specify the relevant local authority and, in the case of a local government election to fill a casual vacancy, the electoral area for which the election is held; and
- (c) where the polls are to be taken together in part of a Scottish parliamentary constituency only, specify that part.”.

Rule 37 (issue of official poll cards and notifications)

7. At the end of rule 37 there shall be added—

“(5) An official poll card or notification issued under this rule may be combined with any official poll card or notification issued at a local government election.”.

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Rule 38 (equipment of polling stations)

8. After paragraph (1) of rule 38 there shall be added–

“(1A) A different ballot box shall be used for the poll at the local government election from the ballot box or ballot boxes used for the poll at the Scottish parliamentary election.”.

Rule 39 (appointment of polling and counting agents)

9. At the end of paragraph (5) of rule 39 there shall be added–

“Notices of the appointment of polling agents which are required by this paragraph and paragraphs (6) and (7) below to be given to the returning officer shall be given to the returning officer who discharges the functions specified in paragraph 2 of Schedule 5.”.

Rule 44 (questions to be put to voters)

10. In question (ii) in paragraph (1)(a) and (b) of rule 44 and in the second question of paragraph (2) of that rule before “election” there shall be inserted “Scottish parliamentary”.

Rule 46 (voting procedure)

11. At the end of rule 46 there shall be added–

“(6) Where the poll at a Scottish parliamentary election is taken together with a poll at a local government election the same copy of the register of electors may be used under paragraph (2) above for each election 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 a ballot paper has been received in respect of each election; except that, where a ballot paper has been issued in respect of one election only, a different mark shall be placed in the register or, as the case may be, list so as to identify the election in respect of which the ballot paper was issued.”.

Rule 47 (votes marked by presiding officer)

12. At the end of rule 47 there shall be added–

“(5) Where the poll at a Scottish parliamentary election is taken together with a poll at a local government election the same list of votes marked by the presiding officer may be used for each election and, where it is so used, an entry in that list shall be taken to mean that the ballot papers were so marked in respect of each election, unless the list identifies the election at which the ballot paper was so marked.”.

Rule 48 (voting by persons with disabilities)

13. At the end of rule 48 there shall be added–

“(9) Where the poll at a Scottish parliamentary election is taken together with a poll at a local government election the same list of voters with disabilities assisted by companions may be used for each election and, where it is so used, an entry in that list shall be taken to mean that votes were so given in respect of each election, unless the list identifies the election at which the vote was so given.”.

Rule 49 (tendered ballot papers)

14. At the end of rule 49 there shall be added–

“(7) Where the poll at a Scottish parliamentary election is taken together with a poll at a local government election the same tendered votes list may be used for each election and, where it is so used, an entry in that list shall be taken to mean that tendered ballot papers were marked in respect of each election, unless the list identifies the election at which a tendered ballot paper was marked.”.

Rule 51 (adjournment of poll in case of riot)

15. In rule 51(1) for the words “constituency returning officer” there shall be substituted—
“returning officer who discharges the functions specified in paragraph 2 of Schedule 5”.

Rule 52 (procedure on close of poll)

16. After rule 52(1) there shall be added—
“(1A) The contents of the packets referred to in paragraph (1)(b) to (e) and (g) to (i) above shall not be combined with the contents of packets made under the corresponding rule that applies at a local government election; nor shall the statement prepared under paragraph (4) below be so combined.
(1B) References to the returning officer in paragraph (1) above are references to the returning officer who discharges the functions specified in paragraph 2 of Schedule 5.”.

Rule 53 (attendance at counting of votes)

- 17.—(1) For paragraph (1) of rule 53 there shall be substituted the following paragraphs:—
“(1) Where the constituency returning officer at the Scottish parliamentary election discharges the functions specified in paragraph 2 of Schedule 5, he shall make arrangements for discharging the functions under rule 54 below (as amended by paragraph 18 of Schedule 5) in the presence of the counting agents appointed for the purposes of the Scottish parliamentary election as soon as practicable after the close of the poll and for thereafter counting the votes at the Scottish parliamentary election in the presence of those agents; and he shall give to those counting agents notice in writing of the time and place at which he will begin to discharge the functions under rule 54 below (as so amended).
(1A) Where the constituency returning officer at the Scottish parliamentary election does not discharge the functions specified in paragraph 2 of Schedule 5, he shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the delivery of the ballot papers to him by the returning officer who does discharge those functions, and who shall give to those counting agents notice in writing of the time after which he will begin to count the votes if by then he has received the ballot papers and of the place at which that count will take place.”.
(2) In rule 53(2), before “at the counting of the votes” there shall be inserted—
“at the proceedings described in rule 54(1) below (as substituted by paragraph 18 of Schedule 5) or”
(3) In rule 53(2), before “the counting of the votes” there shall be inserted—
“proceedings described in rule 54(1) below (as so substituted) or”, and
(4) in rule 53(3)(a) before “the efficient” there shall be inserted—
“the efficient separating of the ballot papers or, as the case may be,”.

Rule 54 (the count)

18. For rule 54(1) there shall be substituted—

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“(1) Where the constituency returning officer at the Scottish parliamentary election discharges the functions specified in paragraph 2 of Schedule 5 he shall–

- (a) in the presence of the counting agents appointed for the purposes of the Scottish parliamentary election open each ballot box;
- (b) separate the ballot papers relating to the Scottish parliamentary election from the ballot papers relating to the local government election;
- (c) make up into packets the ballot papers for the local government election (including any postal ballot papers which have been duly returned) and seal them up in separate containers endorsing on each a description of the polling station to which the ballot papers relate;
- (d) in the presence of the election agents appointed for the purpose of the Scottish parliamentary election, 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;
- (e) in the presence of those election agents verify each ballot paper account in relation to the ballot papers for the Scottish parliamentary election;
- (f) count such of the constituency postal ballot papers and regional 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;
- (g) deliver or cause to be delivered to the returning officer at the local government election to which the ballot papers relate–
 - (i) the containers referred to in sub-paragraph (c) above, together with a list of them and of the contents of each; and
 - (ii) the ballot paper accounts; and
- (h) at the same time deliver, or cause to be delivered, to that returning officer the packets which so relate containing–
 - (i) the unused and spoilt ballot papers;
 - (ii) the tendered ballot papers; and
 - (iii) the counterfoils of the used ballot papers and the certificates as to employment on duty on the day of the poll.

(1A) Where a constituency returning officer at a Scottish parliamentary election does not discharge the functions specified in paragraph 2 of Schedule 5 he shall–

- (a) on receipt of containers from the returning officer who does discharge those functions, and after the time specified in the notice given under rule 53(1A) above (as substituted by paragraph 17(1) of Schedule 5), in the presence of the counting agents open each container and record separately the number of constituency ballot papers there are in each container and the number of regional ballot papers there are in each container;
- (b) in the presence of the election agents appointed for the purposes of the election verify each ballot paper account;
- (c) count such of the postal ballot papers as have been duly returned and record separately the number of constituency ballot papers counted and the number of regional ballot papers counted.”.

Rule 68 (delivery of documents to the sheriff clerk)

19. At the end of rule 68(1) there shall be added—

“At an election where the constituency returning officer does not discharge the functions specified in paragraph 2 of Schedule 5, this paragraph shall have effect as if sub-paragraphs (f) and (h) were omitted.”.

Rule 71 (countermand or abandonment of poll etc. on death of candidate)

20.—(1) At the end of paragraph (1) of rule 71 there shall be added—

“Provided that neither the countermand of the poll at the Scottish parliamentary election nor the direction that that poll be abandoned under this paragraph shall affect the poll at the local government election.”.

(2) For paragraph (2) of rule 71 there shall be substituted—

“(2) Where the poll at the Scottish parliamentary election is abandoned by reason of a candidate’s death, no further ballot papers at that election shall be delivered in any polling station and, at the close of the poll for the local government election, the presiding officer at any polling station shall take the like steps for the delivery to the returning officer of ballot boxes and of ballot papers and other documents as he would be required to do if the poll at the Scottish parliamentary election had not been abandoned, and the returning officer shall dispose of ballot papers used at the Scottish parliamentary election and other documents in his possession as he is required to do on the completion in due course of the counting of the votes, but—

- (a) it shall not be necessary for any Scottish parliamentary ballot paper account to be prepared or verified; and
- (b) the returning officer, having separated the ballot papers relating to the local government election shall take no step or further step for the counting of the ballot papers used at the Scottish parliamentary election or of the votes and shall seal up all those ballot papers, whether the votes in them have been counted or not, and it shall not be necessary to seal up counted and rejected ballot papers in separate packets.”.

Form of directions for the guidance of the voters in voting in Schedule 5

21. In the Appendix of Forms, for form P (giving information to voters, referred to in rule 38(12)), there shall be substituted form X set out in the Appendix.

PART III

**MODIFICATIONS OF THE SCOTTISH LOCAL GOVERNMENT
ELECTIONS RULES 2002 TO APPLY WHERE THE POLL AT A LOCAL
GOVERNMENT ELECTION IS TAKEN TOGETHER WITH A POLL AT A
SCOTTISH PARLIAMENTARY ELECTION UNDER ARTICLE 14(1) OR (2)**

Modifications of the local elections rules: general provision

22.—(1) Where the poll at a local government election is taken together with the poll at a Scottish parliamentary election under article 14(1) or (2), Schedule 2 to the Scottish Local Government

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Elections Rules 2002(51) shall have effect subject to the modifications set out in the remaining paragraphs of this Part.

(2) In this Part the rules referred to in sub-paragraph (1) above are referred to as “the local elections rules”.

Rule 1 of the local elections rules (timetable)

23. In rule 1 of the local elections rules, in the entry relating to polling, for “8.00 am and 9.00 pm” there shall be substituted “7.00 am and 10.00 pm”.

Rule 13 of the local elections rules (the ballot papers)

24.—(1) At the end of rule 13(2) of the local elections rules there shall be added—

“(e) shall be of a different colour from that of any ballot papers used at a Scottish parliamentary election the poll at which is taken together with the poll at the local government election.”.

(2) At the end of rule 13 of the local election rules there shall be added—

“(6) References to a Scottish parliamentary election in paragraph (2)(e) above and elsewhere in these Rules are to an election to the Scottish Parliament; and references to a Scottish parliamentary election (and to a poll at such an election) include a reference to Scottish parliamentary elections (and to polls at such elections) where the context so requires.”.

Rule 17 of the local elections rules (notice of poll)

25. At the end of rule 17 of the local elections rules there shall be added—

“(4) The notice published under paragraph (3) above shall—

- (a) state that the poll at the local government election is to be taken together with the poll at a Scottish parliamentary election;
- (b) specify the Scottish parliamentary constituency and region and the relevant local authority and, in the case of an election to fill a casual vacancy, the electoral area for which the other election is held; and
- (c) where the polls are to be taken together in part of the local government area only, specify that part.”.

Rule 21 of the local elections rules (issue of official poll cards and notifications)

26. At the end of rule 21 of the local elections rules there shall be added—

“(4) An official poll card or notification issued under this rule may be combined with the official poll card or notification, as the case may be, issued at a Scottish parliamentary election.”.

Rule 22 of the local elections rules (equipment of polling stations)

27.—(1) After paragraph (1) of rule 22 of the local elections rules there shall be added—

“(1A) A different ballot box shall be used for the poll at the local government election from the ballot box or ballot boxes used for the Scottish parliamentary election.”.

(2) For rule 22(5) of the local elections rules there shall be substituted—

(51) S.S.I. 2002/457.

“(5) In every compartment of every polling station there shall be exhibited the notice—
“Vote once only on each ballot paper. Put no other mark on each ballot paper, or your vote may not be counted.””.

Rule 23 of the local elections rules (appointment of polling and counting agents)

28. At the end of rule 23(3) of the local elections rules there shall be added—
“Notices of the appointment of polling agents which are required by this paragraph and paragraphs (4) and (5) below to be given to the returning officer shall be given to that returning officer who discharges the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002.”.

Rule 28 of the local elections rules (questions to be put to voters)

29. In question (ii) in sub-paragraphs (a) and (b) of paragraph (1) of rule 28 of the local elections rules and in the second question of paragraph (2) of that rule, after the words “this election” there shall be added the words “for this local government area”.

Rule 30 of the local elections rules (voting procedure)

30. At the end of rule 30 of the local elections rules there shall be added—
“(4) The same copy of the register of electors may be used under paragraph (1) above for each election and one mark may be placed in that register under paragraph (1)(d) above or in the list of proxies under paragraph (1)(e) above to denote that a ballot paper has been received in respect of each election; except that, where a ballot paper has been issued in respect of one election only, a different mark shall be placed in the register or, as the case may be, list so as to identify the election in respect of which the ballot paper was issued.”.

Rule 31 of the local elections rules (votes marked by presiding officer)

31. At the end of rule 31(2) of the local elections rules there shall be added—
“The same list may be used for each election and, where it is so used, an entry in that list shall be taken to mean that the ballot papers were so marked in respect of each election, unless the list identifies the election at which the ballot paper was so marked.”.

Rule 32 of the local elections rules (voting by persons with disabilities)

32. At the end of rule 32(4) of the local elections rules there shall be added—
“The same list may be used for each election and, where it is so used, an entry in that list shall be taken to mean that the votes were so given in respect of each election, unless the list identifies the election at which the vote was so given.”.

Rule 33 of the local elections rules (tendered ballot papers)

33. At the end of rule 33(3) of the local election rules there shall be added—
“The same list may be used for each election and, where it is so used, an entry in that list shall be taken to mean that tendered ballot papers were marked in respect of each election, unless the list identifies the election at which a tendered ballot paper was marked.”.

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Rule 35 of the local elections rules (adjournment of poll in case of riot)

34. At the end of paragraph (1) of rule 35 of the local elections rules there shall be inserted the words “who discharges the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002.”.

Rule 36 of the local elections rules (procedure on close of poll)

35. After rule 36(1) of the local elections rules there shall be added—

“(1A) The contents of the packets referred to in paragraph (1)(b), (c) and (e) above shall not be combined with the contents of the packets made under the corresponding rule that applies at a Scottish parliamentary election; nor shall the statement prepared under paragraph (3) below be so combined.

(1B) References to the returning officer in paragraph (1) above are references to the returning officer who discharges the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002.”.

Rule 37 of the local elections rules (attendance at counting of votes)

36.—(1) For rule 37(1) of the local elections rules there shall be substituted—

“(1) Where the returning officer at the local government election does not discharge the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002 he shall make arrangements for counting the votes in the presence of the counting agents after the delivery of the ballot papers to him by the returning officer who does discharge those functions, but not before 10.00 am on the day following the day of the poll, and shall give to the counting agents notice in writing of the time after which he will begin to count the votes, if by then he has received the ballot papers, and of the place at which that count will take place.

(1A) Where the returning officer at the local government election discharges the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002, he shall make arrangements for discharging the functions under rule 38(1) (as substituted by paragraph 37 of Schedule 5 to that Order) in the presence of the counting agents appointed for the purposes of the local government election as soon as practicable after the close of the poll and for thereafter counting the votes at that election in the presence of those agents; and he shall give to those counting agents notice in writing of the time and place at which he will begin to discharge the functions under rule 38(1) (as so substituted).”.

(2) In paragraph (2) of rule 37 before the words “at the counting of the votes” there shall be inserted the words “at the proceedings under rule 38(1) (as so substituted) or”.

(3) In paragraph (3) of rule 37 before the words “counting of votes” in the first place where they occur, there shall be inserted the words “proceedings under rule 38(1) (as so substituted) or the,” and before the words “the efficient” there shall be inserted the words “the efficient separating of the ballot papers or, as the case may be,”.

Rule 38 of the local elections rules (the count)

37.—(1) For paragraph (1) of rule 38 of the local elections rules there shall be substituted the following paragraphs—

“(1) Where the returning officer at the local government election discharges the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002, he shall—

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- (a) in the presence of the counting agents appointed for the purposes of the local government election, open each ballot box;
 - (b) separate the ballot papers relating to the local government election from the ballot papers relating to the Scottish parliamentary election;
 - (c) in the presence of the counting agents appointed for the purpose of the local government election, record separately the number of ballot papers for the local government election;
 - (d) if required to do so by a candidate or election agent in the presence of the election agents appointed for the purposes of the local government election verify each ballot paper account;
 - (e) count such of the postal ballot papers for the local government election as have been duly returned and record separately the number counted at each election;
 - (f) make up into packets the ballot papers for the Scottish parliamentary election and seal them up in separate containers endorsing on each a description of the polling station to which the ballot papers relate;
 - (g) deliver, or cause to be delivered, to the constituency returning officer for the Scottish parliamentary election to which the ballot papers relate—
 - (i) those containers, together with a list of them and of the contents of each; and
 - (ii) the ballot paper accounts; and
 - (h) at the same time deliver or cause to be delivered to that officer packets which so relate containing—
 - (i) the unused and spoilt ballot papers;
 - (ii) the tendered ballot papers;
 - (iii) the counterfoils of the used ballot papers; and
 - (iv) the certificates as to employment on duty on the day of the poll.
- (1A) Where the returning officer at the local government election does not discharge the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002, he shall—
- (a) following the receipt of containers from the returning officer who does discharge those functions but not before 10.00 am on the day following the day of the poll or the time specified in the notice given under rule 37(1) (as substituted by paragraph 36 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002) in the presence of the counting agents open each container and record separately the number of ballot papers used in the election, checking the number against the ballot paper account;
 - (b) if required to do so by a candidate or election agent in the presence of the election agents appointed for the purposes of the local government election verify each ballot paper account;
 - (c) count such of the postal ballot papers as have been duly returned and record the number counted.”.

Rule 45 of the local elections rules (delivery of documents)

38. At the end of rule 45 of the local elections rules there shall be added—

“At an election where the returning officer does not discharge the functions specified in paragraph 2 of Schedule 5 to the Scottish Parliament (Elections etc.) Order 2002, this rule shall have effect as if sub paragraphs (c) and (e) were omitted.”.

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Rule 48 of local elections rules (countermand or abandonment of poll on death of candidate)

39.—(1) At the end of rule 48(1) of the local elections rules there shall be added—
“Provided that neither the countermand of the poll at the local government election nor the direction that that poll be abandoned shall affect the poll at the Scottish parliamentary election.”.

(2) For rule 48(2) of the local elections rules there shall be substituted—

“(2) Where the poll at the local government election is abandoned by reason of a candidate’s death, no further ballot papers shall be delivered in any polling station and, at the close of the poll for the Scottish parliamentary election, the presiding officer shall take the like steps for the delivery to the returning officer of the ballot boxes and of ballot papers and other documents as he would be required to do if the poll at the local government election had not been abandoned, and the returning officer shall dispose of ballot papers used at the local government election (at which a candidate has died) as he is required to do on the completion in due course of the counting of the votes, but—

- (a) it shall not be necessary for any ballot paper account at that election to be prepared or verified; and
- (b) the returning officer, having separated the ballot papers relating to the Scottish parliamentary election shall take no step or further step for the counting of the ballot papers used at the local government election (at which a candidate has died) or of the votes and shall seal up all of those ballot papers, whether the votes on them have been counted or not, and it shall not be necessary to seal up counted and rejected ballot papers in separate packets.”.

Local elections rules: declaration of identity

40. In the Appendix of forms in Schedule 2 to the local elections rules, for the form of declaration of identity there shall be substituted form U or, as the case may be, Y set out in the Appendix to this Order.

Local elections rules: elector’s official poll card and notification

41. In the Appendix of forms in Schedule 2 to the local elections rules, in the form of an elector’s official poll card and the form of a proxy’s official notification for “8.00 am to 9.00 pm” there shall be substituted “7.00 am to 10.00 pm”.

Local elections rules: declaration to be made by the companion of a voter with disabilities

42. In the Appendix of forms in Schedule 2 to the local elections rules, in the form of declaration to be made by the companion of a voter with disabilities, after “this election” wherever occurring add “and the election now being held in this Scottish parliamentary constituency”.

SCHEDULE 6

Article 81

LEGAL PROCEEDINGS

PART I

ELECTION OR RETURN OF CONSTITUENCY MEMBER

<i>Provision applied</i>	<i>Modification</i>
Section 120 (method of questioning parliamentary election)	
Section 121 (presentation and service of parliamentary election petition)	
Section 122 (time for presentation or amendment of parliamentary election petition)	
Section 123 (constitution of election court and place of trial)	
Section 125 (judges' expenses and reception: Scotland)	
Section 126 (attendance of House of Commons shorthand writer)	In subsection (1) for the words from the beginning to "deputy" substitute "A shorthand writer". In subsection (2) for "Speaker" substitute "Clerk of the Scottish Parliament".
Section 136 (security for costs)	
Section 137 (petition at issue)	
Section 138 (list of petitions)	In subsection (1) the words from " , copy of which" onwards shall be omitted.
Section 139 (trial of petition)	In subsection (3) the words from "the acceptance" to "notwithstanding" , in the third place where it occurs, shall be omitted. In subsection (6), the reference to the Parliamentary Election Rules shall be construed as a reference to the Scottish Parliamentary Election Rules in Schedule 2 to this Order.
Section 140 (witnesses)	Omit subsection (6).
Section 141 (duty to answer relevant questions)	
Section 143 (expenses of witnesses)	
Section 144 (conclusion of trial of parliamentary election petition)	In subsections (2), (4) and (6), for "Speaker" substitute "Clerk of the Scottish Parliament". Omit subsections (5) and (7).

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<i>Provision applied</i>	<i>Modification</i>
Section 146 (special case for determination of High Court)	In subsection (2) for “Speaker” substitute “Clerk of the Scottish Parliament”.
Section 147 (withdrawal of petition)	
Section 154 (costs of petition)	
Section 155 (neglect or refusal to pay costs)	
Section 156 (further provision as to costs)	
Section 157 (appeals and jurisdiction)	Omit subsections (1), (4), (6) and (8). For subsection (2) substitute– “(2) Subject to the provisions of this Act and the rules made under it, the principles, practice and rules on which election courts act in dealing with parliamentary election petitions shall be observed, so far as is appropriate having regard to the different system of election, by the Court of Session and election court in the case of Scottish Parliamentary election petitions”.
Section 158 (report as to candidate guilty of corrupt or illegal practice)	
Section 159 (candidate reported guilty of corrupt or illegal practice)	
Section 160 (persons reported personally guilty of corrupt or illegal practices)	In subsection (4)– after “Commons” , in each place where it occurs, insert “or the Scottish Parliament”. Omit subsection (6).
Section 161 (justice of the peace)	
Section 162 (member of legal and certain other professions)	
Section 163 (holder of licence or certificate under Licensing Acts).	
Section 164 (avoidance of election for general corruption etc.)	
Section 165 (avoidance of election for employing corrupt agent)	
Section 166 (votes to be struck off for corrupt or illegal practices)	
Section 167 (application for relief)	Omit subsection (5).
Section 168 (prosecutions for corrupt practices)	In subsection (1)(b) for “6 months” substitute “3 months” and for “statutory maximum” substitute “amount specified as level 5 on the standard scale”.

<i>Provision applied</i>	<i>Modification</i>
Section 169 (prosecutions for illegal practices)	After “exceeding” insert “the amount specified as”.
Section 170 (conviction of illegal practice on charge of corrupt practice, etc.)	
Section 173 (incapacities on conviction of corrupt or illegal practice)	In subsection (1) after “Commons”, in each place where it occurs, insert “or the Scottish Parliament”.
	In subsection (7) after “Commons” insert “, the Scottish Parliament” and after “functions”, where it second occurs, insert “as a member of the Scottish Parliament or”.
	Omit subsection 10.
Section 173A (incapacity to hold public or judicial office in Scotland)	
Section 174 (mitigation and remission etc.)	
Section 175 (illegal payments etc.)	
Section 176 (time limit for prosecutions)	
Section 178 (prosecution of offences committed outside United Kingdom)	
Section 179 (offences by associations)	
Section 180 (evidence by certificate of holding of elections)	
Section 180A (evidence by certificate of electoral registration)	
Section 181 (Director of Public Prosecutions)	Omit subsections (2) to (6).
Section 183 (costs)	
Section 184 (service of notices)	
Section 185 (interpretation of Part III)	
Section 186 (computation of time for purposes of Part III)	The reference to “section 119 above” shall be construed as a reference to article 80 and the reference to “Part II of this Act” shall be construed as a reference to Part III of this Order.

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PART II

ELECTION OR RETURN OF REGIONAL MEMBER

<i>Provision applied</i>	<i>Modification</i>
Section 120 (method of questioning parliamentary election)	At the end insert— “(3) No election petition may be brought on the grounds of the commission of corrupt or illegal practices or of illegal payments, employments or hirings. (4) No election petition may be brought in any case in which an application may be made under section 18 of the Scotland Act 1998”.
Section 121 (presentation and service of parliamentary election petition)	For subsection (2) substitute— “(2) If the petition complains of the conduct of— (a) the regional returning officer, (b) any constituency returning officer, the officer (or officers) in question shall be deemed to be the respondent (or respondents), together with any regional member returned at the election.”.
Section 122 (time for presentation or amendment of parliamentary election petition)	For the section substitute— “ 122. An election petition shall be presented within 21 days after the day on which the result of the election was declared under rule 65 of the Scottish Parliamentary Election Rules in Schedule 2 to the Order.”
Section 123 (constitution of election court and place of trial)	Omit subsections (3) and (4).
Section 125 (judges' expenses and reception: Scotland)	
Section 126 (attendance of House of Commons of shorthand writer)	In subsection (1) for the words from the beginning to “deputy” substitute “A shorthand writer”. In subsection (2) for “Speaker” substitute “Clerk of the Scottish Parliament”.
Section 136 (security for costs)	
Section 137 (petition at issue)	
Section 139 (trial of election petition)	In subsection (3) for the words from “the acceptance” to the end substitute “that one (or more) of the respondents is no longer a member of the Scottish Parliament.”.

<i>Provision applied</i>	<i>Modification</i>
	Omit subsection (4).
	In subsection (6), the reference to the Parliamentary Election Rules shall be construed as a reference to the Scottish Parliamentary Election Rules in Schedule 2 to this Order.
Section 140 (witnesses)	Omit subsection (6).
Section 141 (duty to answer relevant questions)	
Section 143 (expenses of witnesses)	
Section 144 (conclusion of trial of parliamentary election petition)	In subsection (1) for the words from “the member” to “void” substitute— <ul style="list-style-type: none">“(a) the member or members whose election is complained of, was or were duly elected,(b) some other person or persons should have been declared to be elected, or(c) the election of all members for that region was void.”.
	In subsection (2) for “Speaker” substitute “Clerk of the Scottish Parliament”.
	For subsection (3) substitute— <p>“(3) If the judges constituting the election court differ as to any matter which they are required to determine, they shall certify that difference and, to the extent that there is such a difference, the result of the election shall stand.”.</p>
	Omit subsections (4) to (7).
Section 154 (costs of petition)	
Section 155 (neglect or refusal to pay costs)	
Section 157 (appeals and jurisdiction), subsections (3) and (7)	
Section 160 (persons reported personally guilty of corrupt or illegal practices)	Omit subsections (1) to (3) and (6). In subsection (4)— <ul style="list-style-type: none">(a) for the words “reported by an election court personally guilty” substitute “convicted”;(b) after “Kingdom” insert “or election to the Scottish Parliament”;(c) after “Kingdom” insert “or election to the Scottish Parliament”; and

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<i>Provision applied</i>	<i>Modification</i>
	(d) after “Commons”, in each place where it occurs, insert “or the Scottish Parliament”.
Section 167 (application for relief)	Omit subsection (5).
Section 168 (prosecutions for corrupt practices)	In subsection (1)(b) for “6 months” substitute “3 months” and for “statutory maximum” substitute “amount specified as level 5 on the standard scale”.
Section 169 (prosecutions for illegal practices)	For the words from the beginning to “prosecution” substitute— <p>“A person who is guilty of an illegal practice shall be liable—</p> <ul style="list-style-type: none"> (a) in the case of an illegal practice under article 40 or 45 of the Order (as applied by article 81 of the Order), on conviction on indictment to a fine; (b) in the case of any illegal practice (including the ones mentioned in paragraph (a) above), on summary conviction, to a fine not exceeding the amount specified as level 5 on the standard scale; <p>and on a prosecution”.</p>
Section 170 (conviction of illegal practice on charge of corrupt practice etc.)	
Section 173A (incapacity to hold public or judicial office in Scotland)	
Section 174 (mitigation and remission etc.)	Omit subsections (1) to (4). <p>In subsection (5) omit—</p> <ul style="list-style-type: none"> (a) “or the report of an election court”; and (b) “or report”, in both places where the words occur.
Section 175 (illegal payments)	In subsection (2) omit the words from “and if” to the end.
Section 176 (time limit for prosecutions)	
Section 178 (prosecution of offences committed outside United Kingdom)	
Section 179 (offences by associations)	
Section 180 (evidence by certificate of holding of elections)	Omit paragraph (b). <p>After paragraph (ii) insert “and (iii) that a registered party named in the certificate submitted a regional list at the election,”.</p>

<i>Provision applied</i>	<i>Modification</i>
Section 180A (evidence by certificate of electoral registration)	
Section 181 (Director of Public Prosecutions)	Omit subsections (2) to (6).
Section 183 (costs)	
Section 184 (service of notices)	
Section 185 (interpretation of Part III)	At the end, insert “the Order” means the Scottish Parliament (Elections etc.) Order 2002.”.
Section 186 (computation of time for purposes of Part III)	The reference to “section 119 above” shall be construed as a reference to article 80 and the reference to “Part II of this Act” shall be construed as reference to Part III of this Order.

SCHEDULE 7

Article 64(6)

USE FOR ELECTION MEETINGS OF ROOMS IN SCHOOL PREMISES AND OF MEETING ROOMS

Use of rooms in school premises

1.—(1) Any arrangements for the use of a room in school premises shall be made with the education authority managing the school or, in the case of a room in the premises of a self governing school, with the board of management of the school.

(2) Any question—

- (a) as to the rooms in school premises in any constituency which a candidate for return as a constituency member is entitled to use;
- (b) as to the rooms in school premises in any region which an individual candidate for return as a regional member or a registered party is entitled to use;
- (c) as to the times at which that candidate or party is entitled to use them; or
- (d) as to the notice which is reasonable,

shall be determined by the Secretary of State.

Lists of rooms in school premises

2.—(1) It is the duty of the proper officer of every local authority to prepare and keep for each Scottish parliamentary constituency wholly or partly situated in the area of that authority—

- (a) a list of rooms in school premises;
- (b) a list of meeting rooms,

which candidates for return as constituency members or individual candidates for return as regional members or registered parties are entitled to use.

(2) The list shall include the rooms in premises outside, as well as those in premises inside, the constituency.

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Inspection etc. of lists

3.—(1) Subject to sub-paragraph (2) below, in the event of a publication of a notice of election any person stating himself to be, or to be authorised by—

- (a) a candidate or his election agent; or
- (b) a registered party's nominating officer or the election agent of that registered party in relation to a regional list submitted by that party,

shall be entitled at all reasonable hours to inspect those lists or a copy of them.

(2) The rights conferred by sub-paragraph (1) above on an individual candidate for return as a regional member or a registered party's nominating officer (or the election agent of such a candidate or party) shall not apply in relation to an election to fill a vacancy in the seat of a constituency member.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order sets out afresh the provisions as to the conduct of elections for, and the return of members to, the Scottish Parliament, established by the Scotland Act 1998. The Order consolidates, with amendments, the provisions of the Scottish Parliament (Elections etc.) Order 1999 ("the 1999 Order") and the amendments made to that Order by the Scottish Parliament (Elections etc.) (Amendment) Order 2001 and the Scottish Parliament (Elections etc.) (Amendment) (No. 2) and (No. 3) Orders 2001. All of these Orders are revoked by this Order, apart from some minor and consequential, technical amendments made by Schedule 8 to the 1999 Order to primary and subordinate legislation.

The main changes to the 1999 Order reflect the introduction by the Representation of the People Act 2000 of a new system of "rolling registration". Under this system the register of local government electors continues in force indefinitely. Eligibility to vote at elections for membership of the Scottish Parliament depends on registration in the register of local government electors. The changes from the 1999 Order concern, principally, absent voting, voting by proxy, and the issue and receipt of postal ballot papers.

Other changes to the 1999 Order are required as a consequence of the establishment of the electoral commission and the new provisions about the registration of political parties and election campaigns and election expenses made by the Political Parties, Elections and Referendums Act 2000.

Other, more minor, changes are required as a result of the Postal Services Act 2000, the Representation of the People (Scotland) Regulations 2001 and the Representation of the People (Scotland) (Amendment) Regulations 2002.

The Electoral Commission has been consulted on the draft of this Order, as required by section 7 of the Political Parties, Elections and Referendums Act 2000.

Part I of the Order (articles 1, 2 and 3) contains general provisions concerning the commencement citation and interpretation of the Order, and revocation of earlier Orders. The Order will not apply to any elections where the last date for the publication of the notice of that election precedes the date when the Order comes into force.

Part II of the Order (articles 4 to 30) makes provision about the franchise for the Scottish Parliament and the exercise of that franchise.

Part III of the Order (articles 31 to 80) deals with election campaigns and election expenses at Scottish Parliamentary elections.

Part IV of the Order (article 81) along with Schedule 6, makes provision for legal proceedings.

Part V of the Order (articles 82 to 92) makes miscellaneous and supplementary provision. In particular article 85 provides that the minimum period of dissolution of the Scottish Parliament under section 2(3) of the Scotland Act 1998, will be 21 days, computed in accordance with rule 2 of the Rules set out in Schedule 2 to the Order. This reduces the “minimum period” provided in the 1999 Order by 4 days.

Schedule 1 makes fresh provision about the free supply and the sale of the register of local government electors to MSPs, their election agents and to candidates standing for election to the Scottish Parliament and also the election agents of registered political parties in respect of list MSP candidates. The provision made in respect of MSPs and candidates for election to the Scottish Parliament is similar to that made in respect of MPs and councillors by the Representation of the People (Scotland) (Amendment) Regulations 2002 and elections to the UK Parliament and Scottish local councils.

Schedule 2 contains the Scottish Parliamentary Election Rules. They are substantially in the same form as the earlier Rules set out in Schedule 2 to the 1999 Order.

Schedule 3 contains provision about absent voting. This incorporates changes comparable to those made by the Representation of the People Act 2000 for elections to the UK Parliament.

Schedule 4 makes provision about the issue and receipt of postal ballot papers. This contains provision comparable to that made by the Representation of the People Act 2000 in respect of elections to the UK Parliament.

Schedule 5 makes provision for the combination of polls. In particular it deals with the combination of the poll at a further Scottish parliamentary election with the poll at a Scottish local government election. As a result of the Scottish Local Government (Elections) Act 2002, the ordinary election of councillors is to be synchronised with the ordinary general election for membership of the Scottish Parliament. Part II of Schedule 5 modifies the Scottish Parliamentary Election Rules set out in Schedule 2 to this Order, and Part III modifies the Scottish Local Government Elections Rules set out in Schedule 2 to the Scottish Local Government Elections Rules 2002.

Schedule 6 applies, with modifications, provisions of the Representation of the People Act 1983 concerning legal proceedings, for the purposes of Scottish Parliamentary Elections.

Schedule 7 provides for the use of rooms in school premises and meeting rooms for election meetings.

The Appendix sets out forms for use at Scottish Parliamentary elections.