

## SCHEDULE 2

Article 7

### SCOTTISH PARLIAMENTARY ELECTION RULES

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### 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

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<i>Proceeding</i>	<i>Time</i>
	(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
  - (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.

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### **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.

(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

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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.

(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.

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(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(1).

(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;

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(1) 1981 c. 34.

(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:—

(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.

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### **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 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

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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.

(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.

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(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(2).

(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.

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(2) 1980 c. 44.



### *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 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.

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(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—

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- (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.
- (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.

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(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.

(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.

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(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;
- (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—

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- (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;
- (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.

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### **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.

(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;

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- (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
- (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.

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### **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,

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

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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.

(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.

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### **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—

- (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.

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## 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 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

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

- (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.