

## SCHEDULE 2

### SCOTTISH PARLIAMENTARY ELECTION RULES

#### PART 3

#### CONTESTED ELECTIONS

##### General Provisions

##### *Counting of votes*

##### **Attendance at counting of votes**

**54.**—(1) The CRO shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll, but in making such arrangements the CRO shall not knowingly appoint or employ any person who has been employed by or on behalf of a candidate or a registered party in or about the election.

(2) The CRO shall give to the counting agents and the RRO notice in writing of the time and place at which the CRO will begin to count the votes.

(3) No person other than—

- (a) the CRO and members of the CRO's staff;
- (b) the candidates and one other person chosen by each of them;
- (c) the election agents;
- (d) the counting agents;
- (e) a person who is entitled to attend by virtue of any of sections 6A to 6D of the 2000 Political Parties Act<sup>(1)</sup> (representatives of the Electoral Commission and accredited observers);
- (f) (except in the case of an election to fill a vacancy in the seat of a constituency member), the RRO,

may be present at the counting of the votes, unless permitted by the CRO to attend.

(4) A person not entitled to attend at the counting of the votes shall not be permitted to do so by the CRO unless the CRO—

- (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.

(5) The CRO shall give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as the CRO can give them consistently with the orderly conduct of the proceedings and the discharge of the CRO's duties in connection with them.

(6) 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.

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(1) Sections 6A to 6D were inserted by the 2006 Act, section 29.

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## **The count**

**55.**—(1) The CRO 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 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) 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; or
- (b) by hand or by post to the CRO,

before the close of the poll and is accompanied by the postal voting statement duly signed and which also states the date of birth of the elector or proxy (as the case may be).

(3) A postal ballot paper shall not be deemed to be duly returned unless the CRO verifies the date of birth and signature of the elector or proxy (as the case may be).

(4) The CRO shall not count any tendered ballot paper.

(5) The CRO shall not count the votes given on any ballot papers until—

- (a) in the case of constituency postal ballot papers, they have been mixed with constituency ballot papers from at least one ballot box;
- (b) in the case of constituency ballot papers from a ballot box, they have been mixed with constituency ballot papers from at least one other ballot box;
- (c) in the case of regional postal ballot papers, they have been mixed with regional ballot papers from at least one ballot box; and
- (d) in the case of regional ballot papers from a ballot box, they have been mixed with regional ballot papers from at least one other ballot box.

(6) The CRO, while counting and recording the number of ballot papers and counting the votes, shall take all proper precautions for preventing any person from identifying the voter who cast the vote.

(7) The CRO shall verify each ballot paper account by comparing it with the number of ballot papers recorded by the CRO, and the unused and spoilt ballot papers in the CRO's possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list) and shall draw up a statement as to the result of the verification and shall, on request, supply a copy of that statement to any election agent appointed for the purpose of that election.

(8) The CRO shall so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that the CRO may, in so far as the CRO and the counting agents appointed for the purpose of that election agree, exclude any or all of the hours between 7 pm and 9 am the following day.

(9) For the purposes of the exception in paragraph (8) the agreement of—

- (a) a candidate for return as a constituency member or the election agent of such a candidate; 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.

- (10) During the time so excluded the CRO shall—
- (a) place the ballot papers and other documents relating to the election under the CRO's 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, equipment and documents.

#### **Re-count: constituency election**

**56.**—(1) A candidate for return as a constituency member or the election agent of such a candidate may, if present when the counting or any re-count of the votes given in the constituency ballot papers is completed, require the CRO to have the votes re-counted or again re-counted but the CRO may refuse to do so if in the CRO's 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**

**57.**—(1) If a person specified in paragraph (3) is present when the counting or any re-count of the votes given in the regional ballot papers is completed in a constituency, that person may, prior to the publication of the statement required by rule 61, require the CRO to have the votes re-counted or again re-counted.

- (2) The CRO may refuse to do so if in the CRO's opinion the request is unreasonable.
- (3) The persons are—
- (a) an individual candidate for return as a regional member;
  - (b) an election agent for such a candidate or for a registered party standing nominated;
  - (c) any person authorised in writing by such an agent.

(4) 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**

- 58.**—(1) Any ballot paper—
- (a) which does not bear the official mark and the unique identifying number;
  - (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 unique identifying number on the back; or
  - (e) which is unmarked or void for uncertainty,

shall, subject to the provisions of paragraphs (2) and (3), be void and not counted.

- (2) A ballot paper on which the vote is marked—
- (a) elsewhere than in the proper place;
  - (b) otherwise than by means of a cross; or

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(c) by more than one mark,

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

(3) Where different numbers have been written by a voter on a ballot paper apparently as a vote in a sequential order of preference, and the ballot would otherwise be rejected under this rule, the ballot shall be treated as a vote for the candidate (or in the case of a regional ballot paper, for the individual candidate or registered party) against whom the number “1” appears.

(4) The CRO shall record, by marking the ballot paper, the rejection of any ballot paper which under this rule is not to be counted, and shall also record any objection that is made by a counting agent to the decision to reject the ballot paper.

(5) The CRO shall draw up a statement showing the number of constituency ballot papers and the number of regional ballot papers, respectively, rejected under each of sub-paragraphs (a) to (e) of paragraph (1).

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

**59.** The decision of the CRO 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**

**60.** 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 CRO 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 RRO**

**61.—(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 CRO shall, in accordance with any directions given by the RRO, 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 CRO shall forthwith inform the RRO of the contents of that statement.

(3) The CRO shall give public notice of the statement prepared under paragraph (1) as soon as practicable after the CRO has informed the RRO.