

## SCHEDULE 2

### SCOTTISH PARLIAMENTARY ELECTION RULES

#### PART 6

#### DEATH OF CANDIDATE

##### **Constituency election: death of independent candidate**

**71.**—(1) This rule applies if, at a contested constituency election, proof is given to the CRO's satisfaction before the result of the election is declared that one of the persons named or to be named on the ballot papers as an independent candidate has died.

(2) Subject to this rule and rules 72 and 73, these Rules apply to the election as if the candidate had not died.

(3) The following provisions of these Rules do not apply in relation to the deceased candidate—

- (a) rule 41(1)(a) to (c) (admission to polling station: candidates, election agents and polling agents);
- (b) rule 54(3)(b) to (d) (attendance at counting of votes);
- (c) rule 66(6) (forfeiture of deposit).

(4) If only two persons are shown as standing nominated in the statement of persons nominated the returning officer must—

- (a) if polling has not begun, countermand the notice of poll;
- (b) if polling has begun, direct that the poll be abandoned;
- (c) subject to rule 76 (abandoned poll), treat the election as an uncontested election for the purposes of rule 62(2).

(5) For the purposes of paragraph (1), a person is named or to be named on the ballot papers as an independent candidate if the description on the candidate's nomination paper is the word "Independent" or the candidate has no description on that nomination paper.

##### **Constituency election: deceased independent candidate wins**

**72.**—(1) This rule applies if at an election mentioned in rule 71(1) the majority of votes is given to the deceased candidate.

(2) Rule 62(1) (declaration of result) does not apply and the CRO must not complete a certificate under that rule, but must—

- (a) declare that the majority of votes has been given to the deceased candidate;
- (b) declare that no member is returned;
- (c) give public notice of 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; and
- (d) at a Scottish parliamentary general election, forthwith notify the RRO for the region containing that constituency that the majority of votes has been given to the deceased candidate and that no member is returned for that constituency.

(3) Rule 66 (return or forfeiture of deposit) does not apply in relation to the remaining candidates.

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(4) The proceedings with reference to the election must be commenced afresh subject to the following provisions of this rule.

(5) A new notice of election (“the new notice”) must be published on the first working day after the end of the period of seven days starting on the day of the poll of the election mentioned in rule 71(1).

(6) No fresh nomination is necessary in the case of a person shown in the previous statement of persons nominated, and no other nomination may be made.

(7) The time before which a notice of withdrawal of candidature by a person who stands nominated by virtue of paragraph (6) may be delivered is 4 pm on the seventh working day after the day on which the new notice is published.

(8) The time for publication of the statement of persons nominated is as soon as possible after the time specified in paragraph (7).

(9) Rule 10 (deposit) does not apply.

(10) Subject to paragraphs (11) and (12), the poll is to be held on a day fixed by the CRO, which day must be in the period (“the first period”) which starts 21 working days after the day on which the new notice is published and ends 28 working days after that day.

(11) If a day in the first period is 22nd December or 3rd January, the CRO may fix the day of the poll to be held in the period which starts 25 working days after the day on which the new notice is published and ends 32 working days after that day.

(12) If the last day of the first period would fall within the period of three months referred to in section 9(4) of the 1998 Act, then no poll is to be held.

(13) For the purposes of this rule—

- (a) a working day is a day which is not a day specified in rule 2; and
- (b) “previous statement of persons nominated” means the statement of persons nominated and standing nominated published under rule 18 in operation at the time of the death of the deceased candidate.

### **Constituency election: deceased independent candidate with equality of votes**

73. In an election mentioned in rule 71(1), if—

- (a) rule 60 (equality of votes) applies; and
- (b) any of the candidates to whom that rule applies is a deceased candidate,

the deceased candidate must be ignored.

### **Constituency election: death of party candidate**

74.—(1) This rule applies if—

- (a) at a contested constituency election proof is given to the CRO’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 has died; and
- (b) that person is standing in the name of a registered party.

(2) The CRO must—

- (a) countermand the notice of poll; or
- (b) if polling has begun, direct that the poll be abandoned.

(3) At a Scottish parliamentary general election, the CRO must forthwith notify the RRO for the region containing that constituency that the notice of the poll at that constituency election has

been countermanded or, as the case may be, that the poll has been abandoned and that no member is returned for that constituency.

(4) The proceedings with reference to the election must be commenced afresh subject to the following provisions of this rule.

(5) A new notice of the election (“the new notice”) must be published on the first working day after the end of the period of seven days starting on the day the proof is given to the CRO.

(6) No fresh nomination is necessary in the case of a person shown in the previous statement of persons nominated.

(7) No other nomination may be made except for a person standing in the name of the same registered party in whose name the deceased candidate was standing.

(8) The time before which a nomination mentioned in paragraph (7) may be delivered is 4 pm on the seventh working day after the day on which the new notice is published.

(9) The time before which a notice of withdrawal of candidature by a person who stands nominated by virtue of paragraph (6) or in pursuance of paragraph (7) may be delivered is 4 pm on the seventh working day after the day on which the new notice is published.

(10) Subject to paragraphs (11) and (12), the poll is to be held on a day fixed by the CRO, which day must be in the period (“the first period”) which starts 21 working days after the day on which the new notice is published and ends 28 working days after that day.

(11) If a day in the first period is 22nd December or 3rd January, the CRO may fix the day of the poll to be held in the period which starts 25 working days after the day on which the new notice is published and ends 32 working days after that day.

(12) If the last day of the first period would fall within the period of three months referred to in section 9(4) of the 1998 Act, then no poll is to be held.

(13) For the purposes of this rule—

- (a) a person stands in the name of a registered party if that person’s nomination paper contains a description which is the name of a registered party;
- (b) a working day is a day which is not a day specified in rule 2; and
- (c) “previous statement of persons nominated” means the statement of persons nominated and standing nominated published under rule 18 in operation at the time of the death of the deceased candidate.

### **Regional election: death of candidate**

**75.**—(1) If at a contested election for the return of regional members proof is given to the RRO’s satisfaction before the results of the election are declared that one of the persons named or to be named as a candidate on the ballot paper (whether on a registered party’s regional list or as an individual candidate) has died and as a result of that death the election becomes uncontested, then the RRO must—

- (a) countermand the notice of poll; or
- (b) if the polling has begun, direct that the poll be abandoned; and
- (c) in either case, forthwith notify each CRO in the region of the action that has been taken.

(2) Where paragraph (1) applies, the RRO shall, following receipt of the notification under rule 62(3), allocate the seats in accordance with sections 7 and 8 of the 1998 Act<sup>(1)</sup>.

(3) If at a contested election for the return of regional members proof is given to the RRO’s satisfaction before the results of the election are declared that one of the persons named or to be

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(1) Section 8 is modified by rule 65 of [S.I. 2010/2999](#).

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named as a candidate on the ballot paper (whether on a registered party's regional list or as an individual candidate) has died, but notwithstanding that death the election continues to be contested, the notice of poll shall not be countermanded nor shall the poll be abandoned and the death shall have no effect upon the validity of the election and return of any regional member.

(4) But where paragraph (3) applies, the RRO shall take such steps as the RRO considers reasonable to publicise in the region for which the election is held—

- (a) the name of that candidate and the fact of the candidate's death;
- (b) whether that candidate was an individual or party list candidate; and
- (c) if the candidate was a party list candidate, the name of the registered party for which the candidate was such a candidate,

and the RRO shall, in particular, consider whether the RRO should publicise as required by this rule by causing notices to be placed outside the polling stations.

(5) In respect of an election to which paragraph (1) or (3) applies, rules 41(1)(a) to (c) (admission to polling station: candidates, election agents and polling agents) and 54(3)(b) to (d) (attendance at counting of votes) do not apply in relation to the deceased candidate, and where the deceased candidate is an individual candidate rule 66(7) (forfeiture of deposit) also does not apply in relation to that deceased candidate.

### **Abandoned poll**

76.—(1) This rule applies to—

- (a) a poll which is abandoned in pursuance of rule 71(4)(b) or 75(1)(b) as if it were a poll at a contested election;
- (b) a poll which is abandoned in pursuance of rule 74(2)(b).

(2) Subject to paragraph (10) the presiding officer at a polling station must take the like steps (so far as not already taken) for the delivery to the CRO of ballot boxes and of ballot papers and other documents as the presiding officer is required to take on the close of the poll.

(3) The CRO must retain and dispose of ballot papers and other documents in the CRO's possession as the CRO is required to do on the completion of the counting of the votes.

(4) It is not necessary for a ballot paper account to be prepared or verified.

(5) No step or further step is to be taken for the counting of the ballot papers or of the votes.

(6) The CRO must seal up all the ballot papers (whether the votes on them have been counted or not) and it is not necessary to seal up counted and rejected ballot papers in separate packets.

(7) 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 subject to paragraphs (8) and (9).

(8) Ballot papers on which the votes were neither counted nor rejected must be treated as counted ballot papers.

(9) No order is to be made for—

- (a) the production or inspection of any ballot papers; or
- (b) the opening of a sealed packet of the completed corresponding number lists or of certificates as to employment on the day of the poll,

unless the order is made by a court with reference to a prosecution.

(10) Where the polls at an election for the return of regional members and at an election for the return of a member for a constituency within that region are held on the same day but the poll at one election is abandoned in any of the circumstances mentioned in paragraph (1)—

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- (a) the steps which the presiding officer is required to take at such a polling station by paragraph (2) shall take place at the close of the poll at the other election;
- (b) paragraph (3) shall have effect as if after “the CRO” there were inserted “having separated the ballot papers relating to the other election,” and
- (c) paragraphs (4) to (9) shall apply only to the election at which the poll has been abandoned.