

SCHEDULE 2

SCOTTISH PARLIAMENTARY ELECTION RULES

PART III

CONTESTED ELECTIONS

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.