

## SCHEDULE 2

Article (4)

### SCOTTISH PARLIAMENTARY ELECTION RULES

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PART 1

PROVISIONS AS TO TIME

**Timetable**

1.—(1) The proceedings at a Scottish parliamentary election shall be conducted in accordance with the following Table—

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*Proceeding*

*Time*

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Publication of notice of election.	Not earlier than the thirty-fifth day before the date of the poll and not later than the twenty-eighth day before the date of the poll.
Delivery of nomination papers.	Not later than 4 pm on any day after the date of the publication of the notice of election but not later than the twenty-third day before the date of the poll.
The making of objections to nomination papers.	During the hours allowed for delivery of nomination papers on the last day for their delivery and the hour following, but—  (a) no objection may be made in the afternoon of that last day except to a nomination paper delivered within 24 hours of the last time for its delivery, and in the case of a nomination paper so delivered no objection may be so made to the sufficiency or nature of the particulars of a candidate unless made at or immediately after the time of the delivery of the nomination paper; and  (b) the foregoing provisions do not apply to objections made in pursuance of rule 22 or 23.
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.	(a) If no objections to nomination papers are made, at the close of the time for doing so, or  (b) if any such objections are made, not before they are disposed of but not later than 24 hours after the last time for delivery of nomination papers.
Polling	Between the hours of 7 am and 10 pm on the date of the poll.

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(2) In the Table in paragraph (1) the reference to “nomination papers” includes constituency nomination papers, individual nomination papers and regional lists.

### **Computation of time**

2. In computing any period of time for the purposes of the Table in rule 1(1)—
- (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 section 1 of the Banking and Financial Dealings Act 1971(1); 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 CRO be obliged to proceed with the counting of votes on such a day.

## **PART 2**

### **STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

#### Notice of election

#### **Notice of election**

- 3.—(1) The CRO 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 RRO 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) 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 ERO in order that they may be effective for the election.

(4) A notice of election under paragraph (1) or (2) must also state the arrangements which apply for the payment of the deposit required by rule 10 to be made by means of the electronic transfer of funds.

#### Nomination

#### **Nomination of candidate for return as a constituency member**

4.—(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 CRO at the place fixed under rule 11 for this purpose.

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(1) 1971 c.80.

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(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 the candidate's names.

(4) If a candidate commonly uses—

- (a) a surname which is different from any other surname the candidate has, or
- (b) a forename which is different from any other forename the candidate has,

the nomination paper may state the commonly used surname or forename in addition to the other name.

(5) The description, if any, must consist of—

- (a) the name of one registered party;
- (b) the names of two registered parties; or
- (c) the word "Independent".

(6) In paragraph (5) "name" means, subject to paragraph (7), the name as it has been registered under section 28 of the 2000 Political Parties Act<sup>(2)</sup> (registration of parties).

(7) Where the word "Scottish" is not used in a name so registered, the name given on the nomination paper may be preceded by that word (disregarding for this purpose the word "the" where it is the first word of the registered name).

(8) A description falling within paragraph (5)(b) may, in addition to the names of the parties, contain the word "and" between the names of the parties.

(9) If any constituency nomination paper includes the name of a registered party that has been preceded by the word "Scottish" by virtue of paragraph (7), then these Rules shall apply as if the name of the registered party of the relevant candidate included that word.

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

### **Nomination of individual candidate for return as a regional member**

5.—(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 RRO at the place or a place fixed under rule 12 for this 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, consisting of the word "Independent",

and the surname shall be placed first in the list of the candidate's names.

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(2) Section 28 was amended by the 2006 Act, section 48 and S.I. 2004/366, Schedule 1, paragraph 4.

(4) If a candidate commonly uses—

- (a) a surname which is different from any other surname the candidate has; or
- (b) a forename which is different from any other forename the candidate has,

the nomination paper may state the commonly used surname or forename in addition to the other name.

(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**

6.—(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 that officer to the RRO at the place or a place fixed under rule 12 for this purpose.

(2) Each regional list shall include the name of the registered party, and, if desired, a description of that party which has been registered under section 28A of the 2000 Political Parties Act<sup>(3)</sup>, and the use of that name and, where applicable, description shall be authorised by a certificate issued by or on behalf of the registered nominating officer of the party in the form I1 set out in the Appendix.

(3) The name of the registered party authorised by the nominating officer in accordance with paragraph (2) may be preceded (disregarding, for this purpose, the word "the" where it is the first word of the name) by the word "Scottish" if that word is not used in the name of the party registered under section 28 of the 2000 Political Parties Act.

(4) If the name of any registered party authorised by the nominating officer has been preceded by the word "Scottish" in accordance with paragraph (3), then these Rules shall apply as if the name of the registered party included that word.

(5) 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 known for the purposes of the election, which may include a different forename or surname if the candidate commonly uses that name.

(6) 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 that officer.

(7) 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).

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

- (a) "registered party" means a party which was registered under Part 2 of the 2000 Political Parties Act on the day ("the relevant day") which is two days before the last day for the delivery of nomination papers at the election; and
- (b) a registered party is a qualifying party in relation to a constituency if the constituency is in Scotland and the party was, on the relevant day, registered in respect of Scotland in the Great Britain register maintained under that Part of that Act.

(9) For the purposes of paragraph (8)(a), any day falling within rule 2 shall be disregarded.

### **Constituency nomination papers: name of registered party**

7.—(1) A constituency nomination paper may not include a description of a candidate which is likely to lead electors to associate the candidate with a registered party or parties unless the party

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(3) Section 28A was inserted by the 2006 Act, section 49.

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(or each party) is a qualifying party in relation to the constituency and the description is authorised by a certificate in the form I2 set out in the Appendix—

- (a) issued by or on behalf of the nominating officer of that party (or each party); and
- (b) received by the CRO at some time during the period for the delivery of nomination papers set out in the Table in rule 1(1).

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

### **Nomination papers and regional lists: miscellaneous**

8.—(1) The CRO—

- (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 CRO.

(2) The RRO—

- (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 RRO.

(3) The RRO 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 RRO.

### **Consent to nomination**

9.—(1) Subject to paragraph (3) a person shall not be validly nominated as a candidate for return as a constituency member unless that person's 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), 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 that person's 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 ("P") from the United Kingdom it has not been reasonably practicable for P's consent in writing to be given as mentioned above, a facsimile communication (or any similar means of communication) consenting to P's nomination and purporting to have been sent by P shall be deemed for the purposes of this rule to be consent in writing given by P on the day on which it purports to have been sent, and attestation of P's consent shall not be required.

- (4) The consent of a candidate (“Q”) given under this rule—
- (a) shall state the day, month and year of Q’s birth; and
  - (b) shall state—
    - (i) that Q is aware of the provisions of sections 15 to 18 of the 1998 Act<sup>(4)</sup> and of any Order in Council made under section 15 of that Act;
    - (ii) that to the best of Q’s knowledge and belief Q 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 Q is aware of the provisions of sections 5(2) and 9(6) of the 1998 Act and that, to the best of Q’s knowledge and belief, Q 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 Q is aware of the provisions of section 5(7) of the 1998 Act and that, to the best of Q’s knowledge and belief, Q may be included in that list;
    - (v) in the case of an individual candidate for return as a regional member, that Q is aware of the terms of section 5(8) of the 1998 Act and, to the best of Q’s knowledge and belief, Q may stand as an individual candidate to be a regional member for that region.

## Deposit

**10.—**(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, or on behalf of, that person with the CRO 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, or on behalf of, that candidate with the RRO 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 RRO 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 (including by means of a debit or credit card or the electronic transfer of funds),

but the appropriate returning officer may refuse to accept a deposit sought to be made by means of a banker’s draft if that officer 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 of making it give that person’s name and address to the appropriate returning officer unless that information has previously been given to that officer under article 32 (appointment of election agent) or rule 4 or 5.

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(4) Section 15 was amended by the Constitutional Reform Act 2005 (c.4), Schedule 18, Part 5. Section 16 was amended by the House of Commons (Removal of Clergy Disqualification) Act 2001 (c.13), Schedule 1, paragraph 4 and by the 2006 Act, Schedule 1, paragraph 45.

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(6) Where the deposit is made on behalf of a party's nominating officer the person making the deposit shall at the time of making it give that person's name and address to the RRO unless that information has previously been given to that officer under article 32 or rule 6.

#### **Place for delivery of constituency nomination papers**

**11.—**(1) The CRO shall fix the place at which constituency nomination papers (together with home address forms) are to be delivered to the CRO, 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**

**12.—**(1) The RRO shall fix the place or places at which individual nomination papers and regional lists are to be delivered to the RRO, and the RRO 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**

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

- (a) a person standing nominated as a candidate for return as a constituency member;
- (b) the election agent of such a person;
- (c) a person who has issued a certificate under rule 7(1)(a) in relation to such a candidate; or
- (d) a person who is entitled to attend by virtue of section 6A or 6B of the 2000 Political Parties Act<sup>(5)</sup> (representatives of the Electoral Commission),

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

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

(3) Paragraph (2) does not apply to a person mentioned in paragraph (1)(d).

(4) Except for the purpose of delivering an individual nomination paper or regional list or of assisting the RRO 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 that person 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;
- (d) the election agent or nominating officer of a party which has submitted a regional list; or

<sup>(5)</sup> Sections 6A and 6B were inserted by the 2006 Act, section 29.

- (e) a person who is entitled to attend by virtue of section 6A or 6B of the 2000 Political Parties Act,

but where an individual candidate acts as the candidate's own election agent, or a candidate on a party's regional list acts as election agent of that party in relation to that list, the candidate 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.

(5) The right conferred by paragraph (4) 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).

(6) Paragraph (5) does not apply to a person mentioned in paragraph (4)(e).

(7) One other person chosen by the candidate is entitled to be present at the delivery of the candidate's nomination under paragraph (1) or (4), and may afterwards, so long as the candidate stands nominated, attend the proceedings referred to in paragraph (1) or (4) as the case may be, but without any such right as is conferred by paragraph (2) or (5).

### **Decisions as to validity of constituency nomination papers**

**14.**—(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 CRO decides that the constituency nomination paper is invalid;
- (b) proof is given to the CRO's satisfaction of the candidate's death; or
- (c) the candidate withdraws.

(2) The CRO 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(6) (disqualification of certain offenders for membership of the House of Commons).

(3) Subject to paragraph (4) the CRO shall give a decision on any objection to a constituency nomination paper—

- (a) as soon as practicable after the objection is made, and
- (b) in any event, before the end of the period of 24 hours starting with the close of the period for delivery of nomination papers set out in the Table in rule 1.

(4) If in the CRO's opinion a constituency nomination paper breaches rule 7, the CRO shall give a decision to that effect—

- (a) as soon as practicable after delivery of the nomination paper; and
- (b) in any event, before the end of the period of 24 hours starting with the close of the period for delivery of nomination papers set out in the Table in rule 1.

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

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

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(6) 1981 c.34.

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

### **Decisions as to validity of individual nomination papers**

**15.**—(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 RRO decides that the individual nomination paper is invalid;
- (b) proof is given to the RRO's satisfaction of the candidate's death; or
- (c) the candidate withdraws.

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

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

(3) The RRO shall give a decision on any objection to an individual nomination paper—

- (a) as soon as practicable after the objection is made, and
- (b) in any event, before the end of the period of 24 hours starting with the close of the period for delivery of nomination papers set out in the Table in rule 1.

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

(5) The RRO'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), 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**

**16.**—(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)) each candidate on its list shall be deemed to stand nominated unless and until the RRO decides that the regional list is invalid.

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

- (a) that the name of the registered party stated under paragraph (2) of rule 6 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 that it is issued by the nominating officer or by the person authorised by the nominating officer as required by rule 6(6).

(3) Where, in respect of a candidate included in a registered party's regional list—

- (a) proof is given to the RRO's satisfaction of the candidate's death; or
- (b) the candidate withdraws or the candidate's candidature is withdrawn in accordance with rule 17,

the RRO 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) the candidate's particulars in that list are not as required by law;  
(b) the candidate is disqualified by virtue of the Representation of the People Act 1981 (disqualification of certain offenders for membership of the House of Commons); or  
(c) the consent to nomination of that candidate is not delivered in accordance with these Rules,  
the RRO shall delete the name and address of that candidate from the list.

(5) The RRO shall give a decision on any objection in respect of a regional list—

- (a) as soon as practicable after the objection is made; and
- (b) in any event, before the end of the period of 24 hours starting with the close of the period for delivery of nomination papers set out in the Table in rule 1.

(6) Where the RRO decides that—

- (a) a regional list is invalid; or
- (b) the name and address of a candidate shall be deleted from a regional list,

the RRO shall endorse and sign on the list that fact and the reasons for the decision.

(7) The RRO'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), nothing in this rule prevents the validity of a nomination being questioned on an election petition.

### **Withdrawal of candidates**

**17.—**(1) A candidate for return as a constituency member may withdraw that candidate's candidature by notice of withdrawal—

- (a) signed by the candidate and attested by one witness; and
- (b) delivered to the CRO at the place for delivery of constituency nomination papers.

(2) A candidate for return as a regional member may withdraw that candidate's candidature by notice of withdrawal—

- (a) signed by the candidate and attested by one witness; and
- (b) delivered to the RRO at the place or a place for delivery of individual nomination papers and regional lists.

(3) A registered 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 RRO 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 RRO 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**

**18.—**(1) The CRO shall prepare and publish a statement showing—

- (a) the persons who have been and stand nominated as candidates for return as a constituency member; and

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- (b) any other persons who have been nominated as such candidates, but who no longer stand nominated, with the reason why they no longer stand nominated.
- (2) The statement shall show the names 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) Unless paragraph (5) applies, if a person's nomination paper gives a commonly used surname or forename in addition to another name the statement shall show the person's commonly used surname or forename (as the case may be) instead of any other name.
- (5) This paragraph applies where the CRO thinks—
  - (a) that the use of the person's commonly used name may be likely to mislead or confuse electors; or
  - (b) that the commonly used name is obscene or offensive.
- (6) Where paragraph (5) applies, the CRO must give notice in writing to the candidate of the CRO's reasons for refusing to allow the use of a commonly used name.
- (7) In the case of a person nominated by more than one constituency nomination paper, the CRO shall take the particulars required by the foregoing provisions of this rule from such one of the papers as the candidate (or the CRO in default of the candidate) may select.
- (8) The CRO 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 7, a copy of that certificate.

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

- 19.**—(1) The RRO shall prepare and publish a statement showing—
- (a) each registered party which has been and stands nominated together with that party's regional list;
  - (b) the persons who have been and stand nominated as individual candidates for return as a regional member;
  - (c) any other persons or parties who have been nominated, but who no longer stand 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 and description of the party as given in that list and the names 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 of the persons nominated as individual candidates as given in their individual nomination papers, with the description as "Independent" if that is requested in those papers.
- (4) Unless paragraph (5) applies, if a regional list or an individual candidate's nomination paper gives a person's commonly used surname or forename in addition to another name the statement shall show the person's commonly used surname or forename (as the case may be) instead of any other name.
- (5) This paragraph applies where the RRO thinks—
- (a) that the use of the person's commonly used name may be likely to mislead or confuse electors; or

(b) that the commonly used name is obscene or offensive.

(6) Where paragraph (5) applies, the RRO must give notice in writing to the candidate of the RRO's reasons for refusing to allow the use of a commonly used name.

(7) The statement shall show the names and descriptions of the persons standing nominated as individual candidates after the names and descriptions 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.

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

(9) In the case of a registered 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 RRO 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 RRO 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, that candidate shall no longer stand nominated.

(10) The RRO shall send a copy of the statement to the Electoral Commission.

#### **Correction of minor errors**

**20.**—(1) A CRO may, if the CRO thinks fit, at any time before the publication under rule 18 of the statement of persons nominated as candidates for return as a constituency member, correct minor errors in the nomination paper.

(2) A RRO may, if the RRO thinks fit, at any time before the publication under rule 19 of the statement of persons and parties nominated for return as regional members, correct minor errors in the nomination paper.

(3) Errors which may be corrected include—

(a) errors as to a person's electoral number;

(b) obvious errors of spelling in relation to the details of a candidate or a party.

(4) Anything done by a CRO or RRO in pursuance of this rule must not be questioned in any proceedings other than proceedings on an election petition.

(5) A CRO or RRO shall have regard to any guidance issued by the Electoral Commission for the purposes of this rule.

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

**21.**—(1) If it appears to the CRO 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 (disqualification of certain offenders for membership of the House of Commons), the CRO 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 18.

(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 the candidate is disqualified for nomination under the Representation of the People Act 1981 may do so between the hours of 10 am and 4 pm on the day and at the place specified in the notice; and the day so specified shall be the day after the last day for the delivery of constituency nomination papers.

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

**22.**—(1) If it appears to the RRO 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 the RRO shall, as soon as practicable after the expiry of the time allowed for the delivery of individual nomination papers and regional lists, prepare and publish a draft of the statement required by rule 19.

(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 the candidate is disqualified for nomination under the Representation of the People Act 1981 may do so between the hours of 10 am and 4 pm on the day and at the place specified in the notice; and the day so specified shall be the day 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 18 shows more than one person standing nominated, a poll shall be taken in accordance with Part 3 of these Rules (contested elections).

(2) If that statement shows only one person standing nominated, that person shall be declared to be elected in accordance with Part 4 of these Rules (final proceedings in contested and uncontested elections).

### **Method of election: candidates for return as regional members**

**25.**—(1) Subject to paragraph (2)(b), if the statement of persons required by rule 19 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 3 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 RRO shall, following receipt of the notification under rule 62(3) (declaration of result for constituency members), allocate the seats in accordance with sections 7 and 8 of the 1998 Act(7) (return of regional members at a general election).

## PART 3

### 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 18 (statement of persons nominated as candidates for return as a constituency member) 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 descriptions of the candidates as shown in the statement required by rule 18; and

(b) shall have a number and unique identifying mark printed on the back.

(4) The order of the names in the constituency ballot paper shall be alphabetical, as set out in the statement required by rule 18.

(5) If a candidate’s description falls within rule 4(5)(a) or (b), and if the candidate so requests, the ballot paper shall also contain, to the right of that candidate’s particulars—

(a) where the description falls within rule 4(5)(a) (name of one registered party), the registered emblem (or one of the registered emblems) of the party named in that description; or

(b) where the description falls within rule 4(5)(b) (names of two registered parties), the registered emblem (or one of the registered emblems) of one of the parties named in that description.

(6) The request must—

(a) be made in writing to the CRO; and

(b) be received by the CRO during the period for delivery of nomination papers set out in the Table in rule 1(1).

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(7) Section 8 is modified by rule 65.

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### **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 following, namely—

(a) the registered parties shown in the statement required by rule 19 (statement of persons nominated as candidates for return as regional members); and

(b) the individual candidates shown in that statement,

and no others, shall be entitled to have their names and descriptions inserted in the regional ballot paper.

(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—

(a) contain the names and, where applicable, descriptions of the registered parties referred to in sub-paragraph (2)(a) as shown in the statement required by rule 19;

(b) contain the names and, where applicable, descriptions of the individual candidates as shown in the statement required by rule 19; and

(c) have a number and unique identifying mark printed on the back.

(4) The order of the names of the registered parties and of the individual candidates in the regional ballot paper shall be alphabetical, as set out in the statement required by rule 19.

(5) If a request has been made to the RRO under rule 6(7) 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.

(6) The regional ballot paper shall be a different colour from the constituency ballot paper.

### **Corresponding number list**

**29.**—(1) The CRO must prepare a list containing the numbers and other unique identifying marks of all of the ballot papers to be issued by the CRO in pursuance of rule 34(1) or provided by the CRO in pursuance of rule 38(1).

(2) The list shall be in the form Z set out in the Appendix.

### **The official mark**

**30.**—(1) Every ballot paper shall bear an appropriate security marking (the official mark).

(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 CRO shall determine the official mark or marks to be used for ballot papers at an election and may use a different official mark for different purposes at the same election.

### **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, that person voted.

### Use of schools and public rooms

**32.**—(1) At a Scottish parliamentary election the CRO 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 expense of maintaining which is payable out of local authority funds.

(2) This rule applies to a school other than an independent school within the meaning given in section 135 of the Education (Scotland) Act 1980<sup>(8)</sup> (interpretation).

(3) The CRO 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.

(4) The use of a room in an unoccupied building for that purpose does not render a person liable to pay any council tax or non-domestic rates.

Action to be taken before the poll

### Notice of poll

**33.**—(1) The statement of persons nominated as candidates for return as a constituency member required by rule 18 and the statement of persons and parties nominated for return as regional members required by rule 19 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 CRO shall also give public notice (which may be combined with the statement required by rule 18) of—

- (a) the situation of each polling station;
- (b) the description of voters entitled to vote there,

and the CRO 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) and to paragraph 7 of Schedule 4 (time when postal ballot papers are to be issued), the CRO shall as soon as practicable send to those entitled to vote by post a ballot paper and a postal voting statement in the appropriate form as specified in paragraph 3 of Schedule 4 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) to “a ballot paper” shall be construed as a reference to a constituency ballot paper and a regional ballot paper.

(3) The CRO shall send along with any regional ballot paper a list showing the names of the candidates who appear on the regional list of each party, followed by the names of the individual candidates, as given in the statement prepared under rule 19 (statement of persons nominated as candidates for return as regional members) and arranged in the order in which their names appear on that list.

(4) The CRO must also issue to those entitled to vote by post such information as the CRO thinks appropriate about how to obtain—

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(8) 1980 c.44. The definition of “independent school” in section 135 was amended by the School Education (Ministerial Powers and Independent Schools) (Scotland) Act 2004 (asp 12), section 3 and the Standards in Scotland’s Schools etc Act 2000 (asp 6), schedule 2, paragraph 3(9).

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- (a) translations into languages other than English of any directions to or guidance for voters sent with a ballot paper;
- (b) a translation into Braille of such directions or guidance;
- (c) graphical representations of such directions or guidance;
- (d) the directions or guidance in any other form (including any audible form).

(5) In the case of a ballot paper issued to a person resident in the United Kingdom, the CRO must ensure that the return of the ballot paper and postal voting statement is free of charge to the voter.

### **Provision of polling stations**

**35.**—(1) The CRO 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 the CRO 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 CRO 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 CRO shall appoint and pay a presiding officer to attend at each polling station and such clerks as may be necessary, but the CRO 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 CRO may preside at a polling station and the provisions of these Rules relating to a presiding officer shall apply to a CRO so presiding with the necessary modifications as to things to be done by the CRO to the presiding officer or by the presiding officer to the CRO.

(3) A presiding officer may do, by the clerks appointed to assist that presiding officer, any act (including the asking of questions) which the presiding officer 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**

**37.**—(1) The CRO shall as soon as practicable after the publication of notice of the election send to each elector and proxy an official poll card.

(2) An elector's official poll card shall be sent or be delivered to the elector's qualifying address (within the meaning of article 8(11)), and a proxy's to the proxy's address as shown in the list of proxies.

(3) The official poll card shall be in the form set out in the Appendix, and—

- (a) except where sub-paragraph (e) applies, the official poll card issued to an elector shall be in form M;
- (b) the official postal poll card issued to an elector shall be in form M1;
- (c) the official poll card issued to the proxy of an elector shall be in form N;
- (d) the official postal poll card issued to the proxy of an elector shall be in form N1;
- (e) the official poll card issued to an elector who has appointed a proxy shall be in form N2.

(4) The official poll card may, in addition to the matters in the form, set out such other information, not relating to any candidate or registered party, as the CRO considers appropriate, and different additional information may be provided to different electors or descriptions of elector.

(5) In this rule, “elector”—

- (a) means a person 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 or in the record of anonymous entries as below voting age if (but only if) it appears from the register or record that the person will be of voting age on the day fixed for the poll.

### **Equipment of polling stations**

**38.**—(1) The CRO shall provide each presiding officer with such number of ballot boxes and ballot papers as in the CRO’s opinion may be necessary and at a Scottish parliamentary general election separate ballot boxes shall 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 CRO shall provide each polling station with—

- (a) materials to enable voters to mark the ballot papers;
- (b) copies of the polling register or such part of it as contains the entries relating to electors allotted to the station;
- (c) the parts of any list of proxies prepared for the election corresponding to the polling register or the part of it provided under sub-paragraph (b);
- (d) a list containing that part of the list prepared under rule 29 which contains the numbers (but not the other unique identifying marks) corresponding to those on the ballot papers provided to the presiding officer of the polling station (“corresponding number list”);
- (e) copies of forms and declarations and other documents required for the purpose of the poll; and
- (f) at least one list showing the names of the candidates who appear on the regional list of each party shown on any regional ballot paper, followed by the names of the individual candidates, as given in the statement prepared under rule 19 and arranged in the order in which their names appear on that list.

(4) The CRO shall also provide each polling station with—

- (a) at least one enlarged sample copy of a constituency ballot paper and any regional ballot paper for display at the station and at least one enlarged hand-held sample copy of that or those ballot papers for the assistance of voters who are partially sighted (in each case marked as required by article 90); and
- (b) a device of the description set out in paragraphs (5) to (10), 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) shall be such that—

- (a) it satisfies the conditions in paragraphs (6) to (10);
- (b) a ballot paper can—
  - (i) be inserted into, and removed from, it; or
  - (ii) be attached to, and detached from, it; and

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- (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) In every compartment of every polling station there shall be exhibited a notice in the form P set out in the Appendix.
- (13) The statements required by rule 18 (statement of persons nominated as candidates for return as a constituency member) and (except in the case of a poll to fill a vacancy in the seat of a constituency member) rule 19 (statement of persons and parties nominated for return as regional members) shall be printed in conspicuous characters and exhibited inside or outside every polling station and may be exhibited both inside and outside any polling station.

### **Appointment of polling and counting agents**

- 39.**—(1) Each candidate for return as a constituency member, each individual candidate for return as a regional member, and the election agent of each registered party standing nominated, may, before the commencement of the poll, appoint—
- (a) polling agents to attend at polling stations for the purpose of detecting personation; and
  - (b) counting agents to attend at the counting of the votes.
- (2) The CRO may limit the number of counting agents for candidates for return as a constituency member, but the limit set shall be the same for each candidate.
- (3) The CRO may limit the number of counting agents for individual candidates for return as regional members and for registered parties standing nominated, but the limit set shall be the same for each individual candidate and registered party.
- (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 CRO and shall be so given not later than the fifth day (computed like any period of time in the Table in rule 1(1)) before the day of the poll.
- (5) If an agent dies, or becomes incapable of acting, the person who appointed that agent may appoint another agent in the first agent’s place, and shall forthwith give to the CRO notice in writing of the name and address of the agent appointed.
- (6) Any appointment authorised by this rule may be made, and the notice of appointment given, to the CRO 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 CRO 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 do any act or thing which any polling or counting agent, if appointed by, or on behalf of, the candidate would have been authorised to do, or may assist such agent in doing 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.**—(1) The CRO shall make such arrangements as the CRO thinks fit to ensure that every person attending at a polling station and every person attending at the counting of the votes has been given a copy in writing of the provisions of article 31 (requirement of secrecy).

(2) But these arrangements shall not apply to—

- (a) a person attending a polling station for the purpose of voting;
- (b) a person under 18 years of age accompanying a voter;
- (c) a person assisting a voter with disabilities to vote; or
- (d) a constable on duty at a polling station or at the count.

### **The Poll**

### **Admission to polling station**

**41.**—(1) The presiding officer shall regulate the total number of voters and persons under the age of 18 years who accompany them 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;
- (g) persons who are entitled to attend by virtue of any of sections 6A to 6D of the 2000 Political Parties Act<sup>(9)</sup> (representatives of the Electoral Commission and accredited observers); and
- (h) the CROs and RROs and members of their 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.

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<sup>(9)</sup> Sections 6A to 6D were inserted by the 2006 Act, section 29.

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(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 CRO or RRO shall not be admitted to vote in person elsewhere than at the person’s own polling station under the relevant provision of this Order, except on production and surrender of a certificate as to the person’s 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 the presiding officer’s polling station.

(2) If a person misconducts himself or herself in a polling station, or fails to obey the presiding officer’s lawful orders, the person 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 CRO to remove the person,

and the person so removed shall not, without the presiding officer’s permission, again enter the polling station during the day.

(3) Any person so removed may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.

(4) The powers conferred by this rule shall not be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

**Sealing of ballot boxes**

43. Immediately before the commencement of the poll, the presiding officer shall—

- (a) show each ballot box proposed to be used for the purposes of the poll empty to such persons, if any, as are present in the polling station, so that they may see that each box is empty;
- (b) place the presiding officer’s seal on it in such a manner as to prevent it being opened without breaking the seal;
- (c) place each box in the presiding officer’s view for the receipt of ballot papers; and
- (d) keep it so sealed.

**Questions to be put to voters**

44.—(1) At the time of the application for a ballot paper (but not afterwards), the questions specified in the second column of the following table—

- (a) may be put by the presiding officer to a person who is mentioned in the first column; and
- (b) in the case of the questions at entries 1 to 4, shall be put if the candidate or the election or polling agent of a candidate or of a registered party standing nominated requires the question to be put:

<i>Person applying for ballot paper</i>	<i>Questions</i>
1. A person applying as an elector.	(a) “Are you the person registered in the register of local government electors for this election as follows

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<i>Person applying for ballot paper</i>	<i>Questions</i>
	<i>(read out the whole entry from the polling register)?"</i>
	(b) "Have you already voted, here or elsewhere, at this election, otherwise than as proxy for some other person?"
2 A person applying as proxy.	(a) "Are you the person whose name appears as A.B. in the list of proxies for this election as entitled to vote as proxy on behalf of C.D.?"
	(b) "Have you already voted here or elsewhere at this election, as proxy on behalf of C.D.?"
	(c) "Are you the spouse, civil partner, parent, grandparent, brother/sister, child or grandchild of C.D.?"
3. A person applying as proxy for an elector with an anonymous entry (instead of the questions at entry 2 above).	(a) "Are you the person entitled to vote as proxy on behalf of the elector whose number on the register of local government electors is <i>(read out the number from the polling register)?"</i>
	(b) "Have you already voted here or elsewhere as proxy on behalf of the elector whose number on the register of local government electors is <i>(read out the number from the polling register)?"</i>
	(c) "Are you the spouse, civil partner, parent, grandparent, brother/sister, child or grandchild of the person whose number on the register of local government electors is <i>(read out the number from the polling register)?"</i>
4. A person applying as proxy if the question at entry 2(c) or 3(c) is not answered in the affirmative.	"Have you at this election already voted in this constituency on behalf of two persons of whom you are not the spouse,

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<i>Person applying for ballot paper</i>	<i>Questions</i>
	civil partner, parent, grandparent, brother/sister, child or grandchild?"
5 A person applying as an elector in relation to whom there is an entry in the postal voters list.	(a) "Did you apply to vote by post?"  (b) "Why have you not voted by post?"
6 A person applying as proxy who is named in the proxy postal voters list.	(a) "Did you apply to vote by post as proxy?"  (b) "Why have you not voted by post as proxy?"

(2) A ballot paper shall not be delivered to any person required to answer any of the above questions unless the person has answered each question satisfactorily.

(3) Except as authorised by this rule, no inquiry shall be permitted as to the right of any person to vote.

### Challenge of voter

45. A person shall not be prevented from voting by reason only that—

- (a) a candidate or the election or polling agent of a candidate or of a registered party standing nominated declares that that candidate or agent has reasonable cause to believe that the person has committed an offence of personation; or
- (b) the person is arrested on the grounds that the person is suspected of committing or about to commit such an offence.

### 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, but 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 number and (unless paragraph (3) applies) name of the elector as stated in the polling register shall be called out;
- (b) the number of the elector shall be marked on the corresponding number list mentioned in rule 38(3)(d) beside the number of the ballot paper to be issued to the elector;
- (c) a mark shall be placed in the polling register against the number of the elector to note that a ballot paper has been received but without showing the particular ballot paper which has been received;
- (d) in the case of a person applying for a ballot paper as proxy, a mark shall also be placed against the proxy's name in the list of proxies.

(3) In the case of an elector who has an anonymous entry, the elector must show the presiding officer the elector's official poll card and only the elector's number shall be called out in pursuance of sub-paragraph (2)(a).

(4) The voter, on receiving the ballot paper, shall forthwith proceed into one of the compartments in the polling station and there secretly mark the voter's paper, shall show to the presiding officer the back of the paper, so as to disclose the number and other unique identifying mark, and shall then put the ballot paper into the ballot box in the presiding officer's presence.

(5) The voter shall vote without undue delay, and shall leave the polling station as soon as the voter has put the voter's ballot paper into the ballot box.

(6) At a Scottish parliamentary general election the same copy of the polling register may be used under paragraph (2) for a constituency ballot paper and a regional ballot paper and one mark may be placed in that register under paragraph (2)(c) or in the list of proxies under paragraph (2)(d) to denote that each of the ballot papers has been received; and, where one mark is so placed in that register or, as the case may be, list, the mark shall, unless the contrary intention appears, be taken to denote that a constituency ballot paper and regional ballot paper have been received.

#### **Votes marked by presiding officer**

**47.**—(1) The presiding officer on the application of a voter—

- (a) who is incapacitated by blindness or other disability from voting in a manner directed by these Rules; or
- (b) who declares orally that the voter 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 in the polling register of every voter whose vote is marked in pursuance of this rule, 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, required under paragraph (2), 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 disability; or
- (b) inability to read,

to vote with the assistance of another person by whom the voter is accompanied (in these Rules referred to as "the companion"), the presiding officer shall require the voter to declare, orally or in writing, whether the voter is so incapacitated by the voter's blindness or other disability, or by the voter's 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 in accordance with the requirements of paragraph (6) by the companion (in these Rules referred to as "the declaration made by the companion of a voter with disabilities") that the companion—

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- (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 the voter's 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 spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities and has attained the age of 18 years.

(4) The name and number in the polling register 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), 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, required under paragraph (4), 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) Paragraph (5) applies if a person represents to be—

- (a) a particular elector named in the polling register and not named in the postal voters list or list of proxies; 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,

and that person applies for a ballot paper after another person has voted in person either as the elector or the elector's proxy.

(2) Paragraph (5) also applies if—

- (a) a person applies for a ballot paper by representing to be a particular elector named in the polling register,
- (b) the person is also named in the postal voters list, and
- (c) the person claims not to have made an application to vote by post at the election.

(3) Paragraph (5) also applies if—

- (a) a person applies for a ballot paper by representing to be a particular person named as a proxy in the list of proxies,

- (b) the person is also named in the proxy postal voters list, and
- (c) the person claims not to have made an application to vote by post as proxy.

(4) Paragraph (5) also applies if, before the close of the poll but after the last time at which a person may apply for a replacement postal ballot paper, a person represents to be—

- (a) a particular elector named in the polling register and who is also named in the postal voters list, or
- (b) a particular person named as a proxy in the list of proxies and who is also named in the proxy postal voters list,

and claims to have lost or not to have received that person’s postal ballot paper.

(5) The person shall, on satisfactorily answering the questions permitted under rule 44 to be asked at the poll, be entitled, subject to the following provisions of this rule, to mark a ballot paper (in these rules referred to as a “tendered ballot paper”) in the same manner as any other voter.

- (6) A tendered ballot paper shall—
  - (a) be a different colour or colours from the other ballot papers;
  - (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter’s number in the register of electors, and set aside in a separate packet.

(7) The name of the voter and the voter’s number in the polling register shall be entered on a list (in these Rules referred to as the “tendered votes list”) and the voter shall sign the list opposite the entry relating to the voter.

(8) 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.

(9) This rule applies to an elector who has an anonymous entry subject to the following modifications—

- (a) in paragraphs (6)(b) and (7) the references to the name of the voter must be ignored;
- (b) in paragraph (7) the reference to the voter being required to sign the tendered votes list must be ignored;
- (c) otherwise, a reference to a person named in the polling register or a list must be construed as a reference to a person whose number appears on the polling register or list (as the case may be).

(10) At a Scottish parliamentary general election, the same tendered votes list, required under paragraph (7), 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 the voter’s votes at that election.

### **Spoilt ballot papers**

**50.** A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on delivering it to the presiding officer and proving to the presiding officer’s 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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### **Correction of errors on day of poll**

**51.** The presiding officer shall keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register of electors made by virtue of section 13B(3B) or (3D) of the 1983 Act<sup>(10)</sup> (notice of alteration in the register) which takes effect on the day of the poll.

### **Adjournment of poll in case of riot**

**52.**—(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 CRO and, except in the case of an election to fill a vacancy in the seat of a constituency member, the RRO.

(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**

**53.**—(1) As soon as practicable after the close of the poll, the presiding officer shall, in the presence of the polling agents, using the presiding officer's 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.

(2) The presiding officer shall then make up into separate packets, sealed with the presiding officer's own seal and the seals of such polling agents as desire to affix their seals—

- (a) the unused and spoilt ballot papers placed together;
- (b) the tendered ballot papers;
- (c) the corresponding number lists prepared under rule 29, including the parts which were completed in accordance with rule 46(2)(b) (together referred to in these Rules as “the completed corresponding number lists”);
- (d) the certificates as to employment on duty on the day of the poll surrendered under rule 41(4);
- (e) the marked copies of the polling register and of the list of proxies;
- (f) the tendered votes list maintained under rule 49(7), the list of voters with disabilities assisted by companions maintained under rule 48(4), the list of votes marked by the presiding officer maintained under rule 47(2), a statement of the number of voters whose votes are so marked by the presiding officer under the heads ‘disability’ and ‘unable to read’, the list maintained under rule 51, the written declarations made by voters with disabilities under rule 48(1), and the declarations made by the companions of voters with disabilities under rule 48(2)(b);
- (g) the postal ballot papers and postal voting statements which have been returned by hand to the polling station (unless previously collected in accordance with paragraph 17(3) of Schedule 4),

and shall deliver the sealed ballot boxes and the packets, or cause them to be delivered, to the CRO to be taken charge of by the CRO; but if the boxes and packets are not delivered by the presiding officer personally to the CRO, the arrangements for their delivery shall require the CRO's approval.

<sup>(10)</sup> Section 13B was substituted by the 2000 Act, Schedule 1, paragraph 6. Section 13B(3B) and (3D) were inserted by the 2006 Act, section 11(4).

(3) The marked copies of the polling register and of the list of proxies shall be in one packet but shall not be in the same packet as the completed corresponding number lists or the certificates as to employment on duty on the day of the poll.

(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 the presiding officer, 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

**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 and 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.

(2) 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>(11)</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.

(3) 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.

(4) 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.

(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

**55.**—(1) The CRO shall—

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<sup>(11)</sup> Sections 6A to 6D were inserted by the 2006 Act, section 29.

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- (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;
  - (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) In a case where steps for verifying the date of birth and signature of an elector or proxy have been taken in accordance with paragraph 21 or 22 of Schedule 4, the 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.
- (d) 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.

(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 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 and other unique identifying mark 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;

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- (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, 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.

## **PART 4**

### **FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

#### **Declaration of result: constituency members**

**62.—**(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 CRO shall forthwith—

- (a) declare to be elected the candidate to whom the majority of votes has been given;

- (b) return to the Clerk of the Scottish Parliament (“the Clerk of the Parliament”) in accordance with paragraph (4) that candidate’s name, address and,
  - (i) if a certificate has been received by the CRO issued by or on behalf of the nominating officer of a registered party under rule 7(1) in respect of that candidate, the name of that party,
  - (ii) if the candidate’s description on the statement prepared under rule 18 consisted of the word “Independent”, that word; or
  - (iii) if the candidate had no description on that statement, the words “no description”; and
- (c) give public notice of—
  - (i) that candidate’s name and, if applicable, the name of the registered party referred to in sub-paragraph (b)(i); 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 paragraph (1)(b) applies to a person so returned as it applies to a person returned under that paragraph.

(3) In any case to which paragraph (1) or (2) applies (except in an election to fill a vacancy in the seat of a constituency member) the CRO shall forthwith also notify the RRO of the candidate who has been returned and, if applicable, the name of the registered party referred to in paragraph (1) (b) or, as the case may be, (2).

(4) For the purposes of paragraph (1)(b) and (2) the CRO 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**

**63.**—(1) At a contested election, the RRO shall make arrangements for making the calculation and allocation referred to in rule 64 as soon as practicable after the RRO receives the statement prepared under rule 61 and the notification under rule 62(3) from each CRO in that region.

- (2) No person other than—
  - (a) the RRO and members of the RRO’s staff;
  - (b) the candidates on a registered party’s regional list and one other person chosen by each of them;
  - (c) the individual candidates and one other person chosen by each of them;
  - (d) the election agent of each individual candidate or registered party standing nominated, or a person acting on that agent’s behalf;
  - (e) the nominating officer of each registered party standing nominated,
  - (f) a person who is entitled to attend by virtue of any of sections 6A to 6D of the 2000 Political Parties Act (representatives of the Electoral Commission and accredited observers);

may be present at that calculation and allocation unless permitted by the RRO to attend.

(3) A person not entitled to attend the proceedings for the calculation and allocation referred to in rule 64 shall not be permitted to do so by the RRO unless the RRO—

- (a) is satisfied that the efficient conduct of those proceedings will not be impeded; and

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- (b) has either consulted the election agents or thought it impracticable to do so.
- (4) The RRO shall give to—
  - (a) the nominating officer and election agent of each registered party standing nominated;
  - (b) each individual candidate and the election agent of each such candidate; and
  - (c) each CRO for a constituency included in that region,
 notice in writing of the place at which the RRO will begin the proceedings under rule 64.

### **Allocation of seats**

**64.**—(1) The RRO 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 61.

(2) An individual candidate for return as a regional member or the election agent for such a candidate, 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 RRO under paragraph (3), if present when the calculation under paragraph (1) (or any recalculation under this paragraph) is completed, require the RRO 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 RRO may refuse to do so if in the RRO's opinion the request is unreasonable.

(3) The RRO shall then allocate the seats in accordance with sections 7 and 8 of the 1998 Act **(12)** (calculation of regional figures and allocation of seats).

### **Equality of votes at poll for return of regional members**

**65.** Section 8(7) of the 1998 Act **(13)** (allocation of seats to regional members) 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**

**66.**—(1) When the RRO has allocated the regional member seats the RRO shall forthwith—

**(12)** Section 8 is modified by rule 65.

**(13)** Section 8 was previously modified by [S.I. 2007/937](#), but that instrument is revoked by this Order.

- (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 to the Clerk of the Parliament in accordance with paragraph (2) the name and address of each of those persons and,
    - (i) if the person was returned from the regional list of a registered party, the name of that party;
    - (ii) if the person was an individual candidate whose description on the statement prepared under rule 19 consisted of the word "Independent", that word; or
    - (iii) if the person was an individual candidate who had no description on that statement, the words "no description";
  - (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 the candidate 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; and
  - (e) send a copy of that notice to each CRO for a constituency included in that region.
- (2) For the purposes of paragraph (1) the RRO 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**

67.—(1) The deposit made under rule 10 shall either be returned to the person making it or to that person's 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)—

- (a) a day shall be disregarded if it would be disregarded under rule 2 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 18, or if the poll is countermanded or abandoned by reason of the candidate's death, the deposit shall be returned as soon as practicable after the publication of the statement or after the candidate's 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 19; or
- (b) in the case of an individual candidate, that candidate dies,

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the deposit shall be returned as soon as practicable after the publication of that statement or the time when the RRO is satisfied of the candidate's death, as the case may be.

(6) Subject to paragraph (4), 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 CRO (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), 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 64, 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 5

### DISPOSAL OF DOCUMENTS

#### Sealing up of ballot papers

**68.**—(1) On the completion of the counting at a contested election the CRO shall seal up in separate packets the counted and rejected ballot papers.

(2) The CRO shall not open the sealed packets of—

- (a) tendered ballot papers;
- (b) the completed corresponding number lists;
- (c) certificates as to employment on duty on the day of the poll; or
- (d) marked copies of the polling register and lists of proxies.

#### Retention of documents by CRO

**69.**—(1) This rule applies to the following documents<sup>(14)</sup>—

- (a) the packets of counted ballot papers and of rejected ballot papers sealed by the CRO under rule 68(1), the packets of unused and spoilt ballot papers sealed under rule 53(2)(a) and the packets of tendered ballot papers sealed under rule 53(2)(b);
- (b) the ballot paper accounts prepared under rule 53(4) and the statements of rejected ballot papers prepared under rule 58(5) and of the result of the verification of the ballot paper accounts prepared under rule 55(7);
- (c) the tendered votes lists prepared under rule 49(7), the lists of voters with disabilities assisted by companions prepared under rule 48(4), the lists of votes marked by the presiding officer prepared under rule 47(2) and the related statements prepared under rule 53(2)(f), the lists of persons to whom ballot papers are delivered in consequence of an alteration to the register of electors which takes effect on the day of poll maintained under rule 51, the written declarations made by voters with disabilities under rule 48(1), and the declarations made by the companions of voters with disabilities under rule 48(2)(b);
- (d) the packets of the completed corresponding number lists sealed under rule 53(2)(c);

<sup>(14)</sup> By virtue of paragraph 30(3) of Schedule 4, rule 69 (together with rules 68, 70 and 71(1)) also applies to the documents specified in that paragraph.

- (e) the packets of certificates as to employment on duty on the day of the poll sealed under rule 53(2)(d); and
  - (f) the packets containing marked copies of polling registers and of lists of proxies sealed under rule 53(2)(e).
- (2) The documents specified in paragraph (1) must remain in the CRO's custody.
- (3) The CRO must endorse on each packet—
- (a) a description of its contents;
  - (b) the date of the election to which they relate; and
  - (c) the name of the constituency in which the votes were given.

### **Orders for production of documents and records**

**70.**—(1) An order—

- (a) for the inspection or production of any rejected ballot papers in the custody of the CRO; or
- (b) for the opening of a sealed packet of the completed corresponding number lists or of certificates as to employment on duty on the day of the poll or the inspection of any counted ballot papers in the CRO's 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—

- (a) for the opening of a sealed packet of the completed corresponding number lists or of certificates; or
- (b) for the inspection of any counted ballot papers in the CRO'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 such an order 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 the elector's 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 CRO of any document or record in the CRO's possession relating to any specified election—

- (a) the production by the CRO or the CRO's agent of the document or record ordered in such manner as may be directed by that order shall be conclusive evidence that the document or record relates to the specified election; and

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- (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) a ballot paper purporting to have been used at any election; and
  - (b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,

shall be prima facie evidence that the elector whose vote was given by that ballot paper was the person whose entry in the register of electors (or on a notice issued under section 13A(2), 13B(3), (3B) or (3D) or 13BB(4) or (5) of the 1983 Act<sup>(15)</sup> (notice of alteration in the register)) at the time of the election contained the same number as the number marked as mentioned in sub-paragraph (b).

(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 CRO, or to open any sealed packets of the completed corresponding number lists or of certificates.

### **Retention and public inspection of documents**

**71.**—(1) The CRO shall retain the documents specified in rule 69(1) for a year and then, unless otherwise directed by order of the Court of Session, shall cause them to be destroyed.

- (2) The documents mentioned in paragraph (1) except—
  - (a) ballot papers;
  - (b) the completed corresponding number lists; and
  - (c) certificates as to employment on duty on the day of the poll,

shall be open to public inspection.

(3) Each of the following shall, on request, be supplied with a copy of the marked copies of the polling register, the postal voters list, the list of proxies and the proxy postal voters list—

- (a) a registered party;
- (b) a person who was a candidate at the constituency election to which those documents relate;
- (c) a person who was a candidate (whether an individual candidate or a candidate on a registered party's list) at the regional election to which those documents relate.

(4) Schedule 8 makes further provision as to inspection of, and access to, documents retained by the CRO.

## **PART 6**

### **DEATH OF CANDIDATE**

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

**72.**—(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 73 and 74, these Rules apply to the election as if the candidate had not died.

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<sup>(15)</sup> Sections 13A and 13B were substituted by the 2000 Act, Schedule 1, paragraph 6. Section 13B was amended by the 2006 Act, section 11(4). Section 13BB was inserted by the Political Parties and Elections Act 2009 (c.12), section 23(1).

- (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(2)(b) to (d) (attendance at counting of votes);
  - (c) rule 67(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 78 (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**

73.—(1) This rule applies if at an election mentioned in rule 72(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 rule 62(4) 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 67 (return or forfeiture of deposit) does not apply in relation to the remaining candidates.

(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 72(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 paragraph (11), 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.

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(11) If any of the days within the first period is a day in the period which starts with 22nd December and ends with 3rd January following, 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) 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**

74. In an election mentioned in rule 72(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**

75.—(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 paragraph (11), 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 any of the days within the first period is a day in the period which starts with 22nd December and ends with 3rd January following, 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) 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: effect of countermand or abandonment of constituency poll**

**76.**—(1) This rule applies where at a Scottish parliamentary general election there is a contested election for return of regional members and the poll or declaration of result at a constituency election for a constituency in that region is postponed in accordance with rule 73 or 75.

(2) For the purposes of rule 63(1) (arrangements for allocation of seats for regional members), the RRO is to be treated as having received the statements prepared under rule 61 (conveying results of count etc. to RRO) and the notifications under rule 62(3) (notification of constituency member returned) from each CRO in that region when the RRO has received those statements and notifications in respect of the constituencies in the region for which the polls or declarations of result have not been so postponed.

(3) Section 7(1) of the 1998 Act (calculation of regional figures) shall apply with the modification that the reference in that subsection to “constituencies included in the region” must be read as excluding the constituencies for which the polls or declarations of result have been so postponed.

(4) The subsequent election of a candidate for the constituency shall have no effect upon the validity of the election and return of any regional member.

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

**77.**—(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(16).

(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 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.

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(16) Section 8 is modified by rule 65.

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(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(2)(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 67(7) (forfeiture of deposit) also does not apply in relation to that deceased candidate.

### **Abandoned poll**

78.—(1) This rule applies to—

- (a) a poll which is abandoned in pursuance of rule 72(4)(b) or 77(1)(b) as if it were a poll at a contested election;
- (b) a poll which is abandoned in pursuance of rule 75(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)—

- (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.

## PART 7

### MISCELLANEOUS

#### **Return of members and record of returns etc.**

**79.**—(1) The Clerk of the Parliament shall on receipt of a certificate delivered under rule 62 or 66 (declaration of results) enter the details specified in paragraph (2) in a book kept for that purpose at the Parliament (in this rule referred to as “the returns book”).

(2) The details are the name of each member returned contained in the certificate and the member’s registered party, the word “Independent” or the words “no description” as appropriate.

(3) Where the Presiding Officer of the Scottish Parliament—

- (a) sends a notice under article 85 or 86 (vacancies in constituency and regional member seats); 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 (constituency vacancy where latest date for holding the poll would fall in three months before next ordinary general election) applies,

the Presiding Officer shall record in the returns book the fact of the vacancy and, where subparagraph (b) applies, that no election shall be held to fill the vacancy because section 9(4) of the 1998 Act applies.

(4) 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,

the Presiding Officer shall record in the returns book the fact of the vacancy and that the seat (in accordance with section 10(2) of the 1998 Act (regional vacancies which are to remain vacant)) is to remain vacant until the next ordinary election.

(5) For the period referred to in paragraph (6) 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.

(6) That period is the period starting on the day on which the first entry is made in the returns book and ending on the day on which the Parliament is dissolved or such later date as the Presiding Officer of the Scottish Parliament may, in writing, direct.

(7) A direction given by the Presiding Officer of the Scottish Parliament under paragraph (6) may be varied or revoked by a subsequent direction.