

SCHEDULE 2

SCOTTISH PARLIAMENTARY ELECTION RULES

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).

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”).

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- (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(1) (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—

- (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;

(1) 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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(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
- (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.

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(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⁽²⁾ (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.

(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.

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

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- (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.	<ul style="list-style-type: none"> (a) “Are you the person registered in the register of local government electors for this election as follows (<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?”

<i>Person applying for ballot paper</i>	<i>Questions</i>
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, 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?”

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<i>Person applying for ballot paper</i>	<i>Questions</i>
	(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—
 - (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,

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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⁽³⁾ (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.

⁽³⁾ 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⁽⁴⁾ (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—

(4) 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.