

SCHEDULE 5

CONDUCT OF ASSEMBLY ELECTIONS AND RETURN OF ASSEMBLY MEMBERS

COUNTING OF VOTES

Time of, and attendance at, counting of votes

49.—(1) The constituency returning officer at an Assembly election shall—

- (a) (subject to sub-paragraph (4)) make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll, and
- (b) give to the counting agents notice in writing—
 - (i) of the time and place (or places, if the exercise of the power conferred by paragraph 50(2) means that there is more than one place) at which the proceedings described in paragraph 50(1) will begin,
 - (ii) in the case where the power conferred by paragraph 50(2) is exercised, of the time and the place at which he will count the votes following completion of the proceedings described in paragraph 50(1), and
 - (iii) in the case of a direction under sub-paragraph (4), of the time and the place at which he will count the votes following completion of the proceedings described in paragraph 50(1),

and a notice under this sub-paragraph may be combined with another such notice.

(2) At a regional election a notice under sub-paragraph (1)(b) shall also be given to the regional returning officer.

(3) At an ordinary election a notice required under sub-paragraph (1)(b) in respect of a constituency or a regional election may be combined with such a notice in respect of the other election.

(4) At an ordinary election where there are polls at—

- (a) a regional election, and
- (b) constituency elections in the Assembly electoral region for which the regional election is held,

the Secretary of State may direct that the count (excluding the proceedings described in paragraph 50(1)) in respect of each such election shall not begin before such time as is specified in the direction between the hours of 9 in the morning and noon on the day following the close of polls for those elections (disregarding any day mentioned in paragraph 2).

(5) A direction given under sub-paragraph (4) shall be given not later than 28 days before the date of the ordinary election in question.

(6) Where a direction is given under sub-paragraph (4), during the period beginning with the conclusion of the proceedings described in paragraph 50(1) and ending with the time specified in the direction, the constituency returning officer shall—

- (a) place the ballot papers and other documents relating to each election under his 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 and documents.

(7) No person other than—

- (a) the constituency returning officer and his clerks,
- (b) the candidates and their wives or husbands,

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- (c) the election agents,
- (d) the counting agents, or
- (f) in the case of a regional election, the regional returning officer,

may be present at the proceedings described in paragraph 50(1) or at the counting of the votes, unless permitted by the constituency returning officer.

(8) A person not entitled to attend at the proceedings described in paragraph 50(1) or at the counting of the votes shall not be permitted to do so by the constituency returning officer unless he—

- (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.

(9) The constituency returning officer shall give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as he can give them consistently with the orderly conduct of the proceedings and the discharge of his duties in connection with them.

(10) 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 election, or
- (b) an individual candidate or a registered political party for which a vote is given in the case of a regional election,

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

50.—(1) Where voters have been entitled at an ordinary election to give two votes in an Assembly constituency, the constituency returning officer shall—

- (a) in the presence of the counting agents appointed for the purposes of each election open each ballot box and count and record separately the number of ballot papers in those boxes for each election,
- (b) in the presence of the election agents appointed for the purposes of each election verify each ballot paper account,
- (c) count such of the postal ballot papers as have been duly returned and record separately the number counted for each election, and
- (d) separate the ballot papers relating to each election.

(2) The proceedings described in sub-paragraph (1) may be undertaken at a different place (or at different places) than a place at which the votes given on ballot papers are counted.

(3) But if the power is so exercised, during the period beginning with the conclusion of the proceedings described in sub-paragraph (1) and ending with the commencement of proceedings described in sub-paragraph (4), the constituency returning officer shall—

- (a) place the ballot papers and other documents relating to each election under his 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 and documents.

(4) Subject to sub-paragraphs (2) and (3), following completion of the proceedings described in sub-paragraph (1) the constituency returning officer shall in respect of the ballot papers relating to each election mix together all the ballot papers used at that election and count the votes given on them.

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(5) A postal ballot paper shall not be deemed to be duly returned unless it is returned in the proper envelope so as to reach the constituency returning officer before the close of the poll and is accompanied by the declaration of identity duly signed and authenticated.

(6) The constituency returning officer shall not count any tendered ballot paper.

(7) The constituency returning officer, while counting and recording the number of ballot papers and counting the votes, shall keep the ballot papers with their faces upwards and take all proper precautions for preventing any person from seeing the numbers printed on the back of the papers.

(8) The constituency returning officer shall verify each ballot paper account by comparing it with the number of ballot papers recorded by him, and the unused and spoilt ballot papers in his 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, which any election agent appointed for the purposes of that election may copy; but where the power conferred by sub-paragraph (2) is exercised in respect of more than one place a statement shall be drawn up in respect of each such place.

(9) The constituency returning officer shall so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that he may, in so far as he and the agents appointed for the purpose of that election agree, exclude the hours between 7 in the evening and 9 on the following morning.

For the purposes of this exception the agreement of—

- (a) in the case of a constituency election, a candidate or his election agent, or
- (b) in the case of a regional election, an individual candidate or his election agent or the election agent for a group of party list candidates,

shall be as effective as the agreement of his counting agents.

(10) During the time so excluded the constituency returning officer shall—

- (a) place the ballot papers and other documents relating to the election under his 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 and documents.

(11) Where sub-paragraph (1) does not apply—

- (a) sub-paragraph (12) shall apply in its place,
- (b) the references in sub-paragraphs (2) and (3) and in paragraph 49(1), (7) and (8) to sub-paragraph (1) shall be construed as references to sub-paragraph (12),
- (c) “each election” in sub-paragraph (3)(a) shall be construed as “the election”, and
- (d) sub-paragraph (13) shall apply in place of sub-paragraph (4) and the reference to sub-paragraph (4) in sub-paragraph (3) shall be construed as a reference to sub-paragraph (13).

(12) The constituency returning officer shall—

- (a) in the presence of the counting agents open each ballot box and count and record the number of ballot papers in those boxes,
- (b) in the presence of the election agents verify each ballot paper account, and
- (c) count such of the postal ballot papers as have been duly returned and record the number counted.

(13) Subject to sub-paragraphs (2) and (3), following completion of the proceedings described in sub-paragraph (12) the constituency returning officer shall count the votes given on the ballot papers after—

- (a) in the case of postal ballot papers, they have been mixed with the ballot papers from at least one ballot box, and

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- (b) in the case of ballot papers from a ballot box, they have been mixed with the ballot papers from at least one other ballot box.

Re-count at a constituency election

51.—(1) At a constituency election a candidate or his election agent may, if present when the counting or any re-count of the votes is completed, require the constituency returning officer to have the votes re-counted or again re-counted but the constituency returning officer may refuse to do so if in his opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-count of votes until the candidates and election agents present at its completion have been given a reasonable opportunity to exercise the right conferred by this paragraph.

Re-count of electoral region votes in an Assembly constituency

52.—(1) At a regional election and prior to the certification required by paragraph 56(1)—

- (a) an individual candidate or his election agent,
- (b) a party list candidate or an election agent for a group of party list candidates, or
- (c) subject to sub-paragraphs (3) and (4), a counting agent for an individual candidate or a group of party list candidates,

may, if present when the counting or any re-count of the votes is completed in a constituency, require the constituency returning officer to have the votes re-counted or again re-counted but the constituency returning officer may refuse to do so if in his opinion the request is unreasonable.

(2) No step shall be taken on the completion of the counting or any re-count of votes until the candidates, election agents and counting agents present at its completion have been given a reasonable opportunity to exercise the right conferred by this paragraph.

(3) Where no candidate or election agent is present on the completion of the counting or any re-count of votes, the right conferred on that person by this paragraph (if he had been present) may be exercised by a counting agent referred to in sub-paragraph (1)(c) so present provided that the counting agent has been appointed for the purposes of this paragraph by a person who also has the right to appoint a counting agent and the requirements of sub-paragraph (4) are met; but not more than one such counting agent for the same individual candidate or group of party list candidates may be appointed for the purposes of this paragraph in relation to the same Assembly constituency.

(4) Notice in writing of an appointment under sub-paragraph (3), stating the name and address of the person appointed, shall be given by the person making the appointment to the constituency returning officer and shall be so given at the same time as notice is given to that returning officer of that person's appointment as counting agent under paragraph 35(5) or (6).

Rejected ballot papers

53.—(1) Any ballot paper at an Assembly election—

- (a) which does not bear the official mark,
- (b) on which more than one vote is given,
- (c) on which anything is written or marked by which the voter can be identified except the printed number on the back, or
- (d) which is unmarked or void for uncertainty,

shall, subject to the provisions of sub-paragraph (2), be void and not counted.

(2) A ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a cross, or
- (c) by more than one mark,

shall not for such reason be deemed to be void if an intention how the vote is to be given clearly appears, and the way the paper is marked does not of itself identify the voter and it is not shown that he can be identified by it.

(3) At a regional election, a ballot paper on which a vote is marked for a particular party list candidate on the party list of a registered political party shall, if otherwise valid, be treated as a vote for that party, whether or not there is also a vote marked for that party.

(4) The constituency returning officer shall endorse the word “rejected” on any ballot paper which under this paragraph is not to be counted, and shall add to the endorsement the words “rejection objected to” if an objection is made by a counting agent to his decision.

(5) The constituency returning officer shall draw up a statement showing the number of ballot papers rejected under the several heads of—

- (a) want of official mark,
- (b) giving more than one vote,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or void for uncertainty.

Decisions on ballot papers

54. The decision of the constituency returning officer at an Assembly election 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 at a constituency election

55. At a constituency election, where, after the counting of the votes (including any re-count) 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 constituency returning officer shall forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Regional election: conveying results of count etc. to regional returning officer

56.—(1) At the conclusion of the count of ballot papers in an Assembly constituency at a regional election the constituency returning officer shall, in accordance with any directions given by the regional returning officer, certify—

- (a) the number of ballot papers counted by him and the total number of votes given for each individual candidate or registered political party, and
- (b) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers, and

forthwith convey that information to the regional returning officer.

(2) Where the regional returning officer has received the information required to be conveyed to him under sub-paragraph (1) from each constituency returning officer for an Assembly constituency in the Assembly electoral region, he shall certify the totals of the numbers referred to in sub-paragraph (1) for the electoral region.

(3) After a constituency returning officer has conveyed to the regional returning officer the information required to be conveyed under sub-paragraph (1) he may give public notice of the

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information so conveyed (in such manner as he considers appropriate) unless sub-paragraph (4) applies.

(4) The regional returning officer may direct that the constituency returning officer may only give the notice referred to in sub-paragraph (3) after the regional returning officer has given the notice that he is required to give under paragraph 59(1)(d).