

SCHEDULE 5

Assembly election rules

PART 3

Contested elections

Counting of votes

Time of, and attendance at, counting of votes

54.—(1) At an Assembly election the constituency returning officer shall—

- (a) (subject to paragraph (2)) 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 and, in the case of a regional election, to the regional returning officer, notice in writing—
 - (i) of the time and place at which the proceedings described in rule 55(1) will begin;
 - (ii) in the case where the power conferred by rule 55(3) is exercised, of the time and the place at which he will count the votes following completion of the proceedings described in rule 55(1); and
 - (iii) in the case of a direction under paragraph (2), of the time and the place at which he will count the votes following completion of the proceedings described in rule 55(1),

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

(2) At an Assembly general 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 each constituency returning officer for any constituency within that Assembly electoral region that the counting of votes (as provided for in rule 55(5)) in respect of the regional and each constituency election shall not begin before such time 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 rule 2) as is specified in the direction.

(3) A direction given under paragraph (2) shall be given not later than 28 days before the date of the poll at the Assembly general election in question.

(4) Where a direction is given under paragraph (2), then during the period beginning with the conclusion of the proceedings described in rule 55(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.

(5) No person other than—

- (a) the constituency returning officer and his clerks;
- (b) the candidates and one other person chosen by each of them;
- (c) the election agents;

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- (d) the counting agents;
- (e) persons who are entitled to attend by virtue of any of sections 6A to 6D of the 2000 Political Parties Act; and
- (f) in the case of a regional election, the regional returning officer,

may be present at the proceedings described in rule 55(1) or at the counting of the votes, unless permitted by the constituency returning officer.

(6) A person not entitled to attend at the proceedings described in rule 55(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.

(7) 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.

(8) 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 for whom, 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

55.—(1) Subject to paragraph (8) where the polls at a regional election and at a constituency election for a constituency situated in that region are held on the same day, 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 each box 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) Where separate ballot boxes are used at polls in respect of a regional election and a constituency election for a constituency situated within that region, no vote shall be rendered invalid solely by the ballot paper being placed in the wrong ballot box.

(3) The proceedings described in 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.

(4) But if the power in paragraph (3) is exercised, during the period beginning with the conclusion of the proceedings described in paragraph (1) and ending with the commencement of proceedings described in paragraph (5), 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.

(5) Subject to paragraphs (3) and (4) and any direction under rule 54(2), 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.

(6) A postal ballot paper shall not be taken to be duly returned unless—

(a) before the close of the poll—

(i) it is returned by hand or post and reaches the constituency returning officer; or

(ii) it is returned by hand to a polling station in the same constituency as that for which that returning officer is appointed;

(b) the postal voting statement duly signed is, before that time also returned either—

(i) by hand or post and reaches the constituency returning officer; or

(ii) by hand and reaches such a polling station;

(c) the postal voting statement also states the date of birth of the elector or, as the case may be, proxy; and

(d) in a case where the constituency returning officer takes steps to verify the date of birth and signature of the elector or, as the case may be, proxy in accordance with paragraph 23 or, as the case may be, 24 of Schedule 3, he so verifies the date of birth and signature of that elector or, as the case may be, proxy.

(7) The presiding officer of the polling station shall deliver or cause to be delivered any postal ballot paper or postal voting statement returned to that polling station to the constituency returning officer in the same manner and at the same time as he delivers, or causes to be delivered, the packets referred to in rule 53.

(8) The constituency returning officer may collect, or cause to be collected, any postal ballot paper or postal voting statement which by virtue of paragraph (7) the presiding officer of a polling station would otherwise be required to deliver or cause to be delivered to him.

(9) Where the constituency returning officer collects, or causes to be collected, any postal ballot paper or postal voting statement in accordance with paragraph (8) the presiding officer shall first make it (or them) up into a packet (or packets) sealed with his own seal and the seals of such polling agents as are present and desire to affix their seals.

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

(11) 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 or other unique identifying marks printed on the back of the papers.

(12) 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 paragraph (3) is exercised in respect of more than one place a statement shall be drawn up in respect of each such place.

(13) 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.

(14) For the purposes of the exception in paragraph (13), the agreement of—

(a) in the case of a constituency election, a candidate or his election agent; or

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- (b) in the case of a regional election, an individual candidate or his election agent or the election agent for a registered political party,
shall be as effective as the agreement of his or its counting agents.
- (15) 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.
- (16) In relation to an Assembly election to which paragraph (1) does not apply—
- (a) paragraph (17) shall apply in its place;
 - (b) the references in paragraphs (3) and (4) and in rule 54(1), (5) and (6) to paragraph (1) shall be construed as references to paragraph (17);
 - (c) “each election” in paragraph (4)(a) shall be construed as a reference to “the election”; and
 - (d) paragraph (18) shall apply in place of paragraph (5) and the reference to paragraph (5) in paragraph (4) shall be construed as a reference to paragraph (18).
- (17) 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.
- (18) Subject to paragraphs (3) and (4), following completion of the proceedings described in paragraph (17) 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
 - (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

56.—(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 rule.

Re-count of electoral region votes in an Assembly constituency

- 57.**—(1) At a regional election and prior to the certification required by rule 61(1)—
- (a) an individual candidate or his election agent;
 - (b) a party list candidate or an election agent for a registered political party standing nominated; or
 - (c) subject to paragraph (3), a counting agent for an individual candidate or a registered political party standing nominated,

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 rule.

(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 rule (if he had been present) may be exercised by a counting agent referred to in paragraph (1)(c) so present provided that in his terms of appointment as a counting agent he is authorised to exercise the right conferred by this rule; but not more than one such counting agent for the same individual candidate or registered political party standing nominated may be appointed for the purposes of this rule in relation to the same Assembly constituency.

Rejected ballot papers

58.—(1) Any ballot paper—

- (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 or other unique identifying mark on the back; or
- (d) which is unmarked or void for uncertainty,

shall, subject to the provisions of 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 rule 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.

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Decisions on ballot papers

59. 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 Assembly election petition.

Equality of votes at a constituency election

60. 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

61.—(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 under rule 58(5), 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 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 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 paragraph (1) he may, subject to paragraph (4) give public notice in such manner as he considers appropriate of the information so conveyed.

(4) The regional returning officer may direct that the constituency returning officer may only give the notice referred to in paragraph (3) after the regional returning officer has given the notice that he is required to give under rule 64(1)(d).