

F¹SCHEDULE 5

The Local Government Act Referendums (Combination of Polls) Rules

Textual Amendments

- F1** Sch. 5 Pt. 8 Forms substituted (16.1.2023) by [The Voter Identification Regulations 2022 \(S.I. 2022/1382\)](#), regs. 1(3), **50(17)** (with reg. 1(6)(7))

PART 6

Counting of Votes

The count

38.—(1) Where the counting officer at the referendum is the relevant returning or counting officer, he or she must—

- (a) in the presence of the counting observers appointed for the purposes of the poll at the referendum and the election agents and counting agents or observers appointed for the purposes of the poll at each relevant election or referendum, open each ballot box and record separately the number of ballot papers used in each election;
- (b) in the presence of the counting observers appointed for the purposes of the poll at the referendum and the election agents and counting agents or observers appointed for the purposes of each relevant election or referendum, verify each ballot paper account;
- (c) count such of the postal ballot papers as have been duly returned and record separately the number counted at the referendum and each relevant election or referendum;
- (d) separate the ballot papers relating to the referendum from the ballot papers relating to each relevant election or referendum;
- (e) make up into packets the ballot papers for each relevant election or referendum and seal them up in separate containers endorsing on each a description of the area to which the ballot papers relate;
- (f) deliver or cause to be delivered to the returning or counting officer for the relevant election or referendum to which the ballot papers relate—
 - (i) those containers, together with a list of them and of the contents of each; and
 - (ii) the ballot paper accounts together with a copy of the statement as to the result of their verification in respect of that election; and
- (g) at the same time deliver or cause to be delivered to that officer packets that so relate containing—
 - (i) the unused and spoilt ballot papers;
 - (ii) the tendered ballot papers; and
 - (iii) the certificates as to employment on duty on the day of the poll.

(2) Where separate ballot boxes are used, no vote for any candidate or answer shall be rendered invalid by the ballot paper being placed in the ballot box intended for use at any relevant election or referendum.

(3) After completion of the proceedings under paragraph (1), the counting officer must mix together all of the ballot papers used at the referendum and count the votes given on them.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Local Authorities (Conduct of Referendums)(England) Regulations 2012*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(4) Where the counting officer at the referendum is not the relevant returning or counting officer, he or she must—

- (a) on receipt of containers from the relevant returning or counting officer, and after the time specified in the notice given under rule 37(2)(b), in the presence of the counting observers open each container;
- (b) where the proceedings on the issue and receipt of postal ballot papers are not taken together with such proceedings at a relevant election or referendum under regulation 65 of the Representation of the People (England and Wales) Regulations 2001 ^{F1}, or under that regulation as applied by these Regulations or by regulations made under sections 44 and 105 of the Local Government Act 2000, count such of the postal ballot papers as have been duly returned and record the number counted; and
- (c) mix together the postal ballot papers and the ballot papers from all of the containers and count the votes given on them,

and paragraph (11) shall not apply to these proceedings.

(5) A postal ballot paper must not be taken to be duly returned unless—

- (a) it is returned in the manner set out in paragraph (6) and reaches the relevant returning or counting officer or any polling station in the appropriate electoral area (as defined in paragraph (7)) before the close of the poll;
- (b) the postal voting statement, duly signed, is also returned in the manner set out in paragraph (6) and reaches the counting officer or such a polling station before that time;
- (c) the postal voting statement also states the date of birth of the voter or proxy; and
- (d) in a case where steps for verifying the date of birth and signature of a voter or proxy have been prescribed by regulations made under the 1983 Act ^{F2}, the relevant returning or counting officer (having taken such steps) verifies that date of birth and that signature.

[^{F3}(5A) A postal ballot paper or postal voting statement that reaches the relevant returning or counting officer or a polling station on or after the close of the poll is treated for the purposes of paragraph (5) as reaching that officer or polling station before the close of the poll if it is delivered by a person who, at the close of the poll, is in the polling station, or in a queue outside the polling station, for the purpose of returning it.]

(6) The manner in which any postal ballot paper or postal voting statement may be returned—

- (a) to the relevant returning or counting officer, is by hand or by post;
- (b) to a polling station, is by hand.

(7) The appropriate electoral area in respect of any voter or proxy shall be—

- (a) the area which is common to the parliamentary constituency ^{F4}, electoral area, ^{F5}... local authority area or voting area (as the case may be) in which the polls at the referendum and any relevant election or referendum are being taken together; and
- (b) in respect of which polls the voter or proxy has been issued with a postal ballot paper.

(8) In paragraphs (5)(a) and (d) and (6)(a) for “relevant returning or counting officer” substitute “counting officer” where proceedings on the issue and receipt of postal ballot papers at the referendum are not taken together with such proceedings at one or more relevant elections or referendums.

(9) The counting officer must not count any tendered ballot papers.

(10) The—

- (a) relevant returning or counting officer, in respect of the proceedings under paragraph (1); and
- (b) the counting officer, while counting the votes,

must 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.

(11) The relevant returning or counting officer must verify each ballot paper account by comparing it with the number of ballot papers recorded by him or her, and the unused and spoiled ballot papers in his or her possession and the tendered votes list (opening and resealing the packets containing the unused and spoiled ballot papers and the tendered votes list) and must draw up a statement as to the result of the verification, which any counting observer may copy.

(12) The—

- (a) relevant returning or counting officer, in respect of the proceedings under paragraph (1); and
- (b) counting officer, in respect of the counting of the votes,

must so far as practicable proceed continuously, allowing only time for refreshment, except that they may exclude the hours between 7 in the evening and 9 on the following morning.

(13) During the time so excluded the relevant returning or counting officer or counting officer (as the case may be) must—

- (a) place the ballot papers and other documents relating to the referendum under his or her own seal and the seals of such of the counting observers as desire to affix their seals; and
- (b) otherwise take proper precautions for the security of the papers and documents.

Textual Amendments

- F1** [S.I. 2001/341](#).
- F2** See Regulations 85 and 85A of the [Representation of the People \(England and Wales\) Regulations 2001 \(S.I. 2001/341\)](#), which were inserted by [S.I. 2006/2910](#).
- F3** [Sch. 5 rule 38\(5A\)](#) inserted (6.4.2014) by [The Local Authorities \(Conduct of Referendums\) \(England\) \(Amendment\) Regulations 2014 \(S.I. 2014/924\)](#), regs. 1(3), **18** (with reg. 1(4))
- F4** For the meaning of “parliamentary constituency”, see section 1 of the [Parliamentary Constituencies Act 1986 \(c.56\)](#).
- F5** Words in [Sch. 5 rule 38\(7\)\(a\)](#) revoked (31.12.2020) by [The European Parliamentary Elections Etc. \(Repeal, Revocation, Amendment and Saving Provisions\) \(United Kingdom and Gibraltar\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1310\)](#), reg. 1, **Sch. 1 Pt. 2** (as amended by [S.I. 2019/1389](#), regs. 1, 2(2))

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Local Authorities (Conduct of Referendums)(England) Regulations 2012. Any changes that have already been made by the team appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 3 rule 21(1)(ba) inserted by [S.I. 2023/1225 reg. 6\(2\)\(a\)](#)
- Sch. 3 rule 36(3)(e) and word inserted by [S.I. 2023/1225 reg. 6\(2\)\(b\)\(ii\)](#)
- Sch. 3 rule 24 modified (temp.) by [S.I. 2023/1147 Sch. 2 para. 11\(2\)\(3\)](#)
- Sch. 3 rule 36(3)(c) word omitted by [S.I. 2023/1225 reg. 6\(2\)\(b\)\(i\)](#)
- Sch. 3 rule 24(1)(b) words inserted by [S.I. 2023/1147 reg. 15\(3\)\(a\)](#)
- Sch. 3 rule 24 table words omitted by [S.I. 2023/1147 reg. 15\(3\)\(b\)\(ii\)](#)
- Sch. 3 rule 24 table words substituted by [S.I. 2023/1147 reg. 15\(3\)\(b\)\(i\)](#)
- Sch. 3 rule 24(2) words substituted by [S.I. 2023/1147 reg. 15\(3\)\(c\)](#)
- Sch. 5 rule 23(1)(ba) inserted by [S.I. 2023/1225 reg. 6\(4\)\(b\)](#)
- Sch. 5 rule 38(5)(e) and word inserted by [S.I. 2023/1225 reg. 6\(4\)\(c\)\(ii\)](#)
- Sch. 5 rule 26 modified (temp.) by [S.I. 2023/1147 Sch. 2 para. 11\(2\)\(3\)](#)
- Sch. 5 rule 38(5)(c) word omitted by [S.I. 2023/1225 reg. 6\(4\)\(c\)\(i\)](#)
- Sch. 5 rule 26(1)(b) words inserted by [S.I. 2023/1147 reg. 15\(7\)\(a\)](#)
- Sch. 5 rule 26 table words omitted by [S.I. 2023/1147 reg. 15\(7\)\(b\)\(ii\)](#)
- Sch. 5 rule 26 table words substituted by [S.I. 2023/1147 reg. 15\(7\)\(b\)\(i\)](#)
- Sch. 5 rule 26(2) words substituted by [S.I. 2023/1147 reg. 15\(7\)\(c\)](#)
- Sch. 5 rule 17(10) words substituted by [S.I. 2023/1225 reg. 6\(4\)\(a\)](#)