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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2011 No.**

**The Crofting Commission (Elections)  
(Scotland) Regulations 2011**

**PART IV**

**COUNTING OF VOTES AND DECLARATION OF RESULT**

**Counting of the votes**

**38.**—(1) The returning officer must make arrangements for the counting of the votes to take place on the day of the count.

(2) Where the day of the count is a non-business day, the returning officer must make arrangements for the counting of the votes to take place on the next day which is not a non-business day.

**Opening of return envelopes**

**39.**—(1) When a ballot box has been opened, the returning officer must count and note the number of return envelopes and must then open each return envelope separately.

(2) Where a return envelope does not contain a ballot paper the returning officer must mark the return envelope “rejected”, attach to it the contents (if any) of the return envelope and place it in a separate receptacle (referred to as “the receptacle for rejected votes”).

(3) Where a return envelope does contain a ballot paper, the returning officer must place it face up in a different receptacle from the receptacle for rejected votes.

**Attendance at counting of votes**

**40.**—(1) The returning officer must give to the counting agents notice in writing of the time and place of the counting of the votes.

(2) No person other than—

- (a) the returning officer and his or her staff;
- (b) the candidates and their spouses or civil partners; and
- (c) the counting agents,

may be present at the counting of the votes, unless permitted by the returning officer to attend.

(3) A person not entitled to attend at the counting of the votes must not be permitted to do so by the returning officer unless he or she is satisfied that the efficient counting of the votes will not be impeded.

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

(5) Where the votes are counted by sorting the ballot papers according to the candidates to whom votes are allocated under regulation 42 and then counting the number of ballot papers for each candidate, the counting agents are entitled to satisfy themselves that the ballot papers are correctly sorted.

### **Electronic counting**

**41.**—(1) Subject to paragraph (3) and regulation 54, the returning officer is to provide an electronic counting system and the count is then conducted by means of such electronic system.

(2) For the purposes of enabling the count to be conducted using the electronic counting system, the returning officer may carry out any functions or perform any procedure to be undertaken in connection with the count by electronic means and the references to ballot papers include references to such ballot papers recreated in electronic form.

(3) If it proves impossible, impracticable or inefficient to conduct the count or some or all of the operations comprising the count using the electronic counting system, the returning officer may make arrangements for the count or such operations, as the case may be, to be conducted by other means.

### **How votes are to be counted**

**42.**—(1) This regulation sets out how votes are to be counted, in one or more stages of counting, in order to give effect to the preferences marked by electors on their ballot papers and so to determine which candidate is elected.

(2) Votes are allocated to candidates in accordance with electors' first or sole preferences and, if by this allocation one candidate has more votes than the other candidates put together, that candidate is elected.

(3) If not, the candidate with the fewest votes is eliminated and the ballot papers of electors whose first preference was that candidate are dealt with as follows:—

- (a) each vote cast by an elector who also ranked one or more of the remaining candidates are reallocated to that remaining candidate or (as the case may be) to the one that the elector ranked highest;
- (b) any votes not reallocated play no further part in the counting.

(4) If after that stage of counting one candidate has more votes than the other remaining candidates put together, that candidate is elected.

(5) If not, the process mentioned in paragraph (3) is repeated as many times as necessary until one candidate has more votes than the other remaining candidates put together and so is elected.

### **Information to be given by returning officer after each stage of counting**

**43.**—(1) If no candidate is elected at the first stage of counting (by virtue of regulation 42(2)), the returning officer must, immediately after that stage, record and make publicly available the following information:—

- (a) the number of first or sole preferences obtained by each candidate;
- (b) which candidate was eliminated; and
- (c) the number of rejected ballot papers.

(2) Immediately after each subsequent stage of counting, except the final stage (on completion of which the requirements in regulation 46 may apply), the returning officer must record and make publicly available the following information:—

- (a) the number of votes obtained by each candidate at that stage (including any reallocated in accordance with regulation 42);
- (b) which candidate was eliminated at that stage; and
- (c) the number of votes of the candidate eliminated at the previous stage that were not reallocated.

### **Re-count**

**44.**—(1) A candidate or such candidate’s counting agent may, if present when the counting or re-counting of the votes is completed, require the returning officer to have the votes re-counted or again re-counted at the completion of any stage of the count or re-count but the returning officer may refuse to do so if, in the returning officer’s opinion, the request is unreasonable.

(2) No step may be taken on the completion of the counting or any re-counting of votes until the candidates and counting agents present at the completion of any stage have been given a reasonable opportunity to exercise the right conferred by paragraph (1).

(3) At any time before the declaration of the result, the returning officer may, if he or she thinks fit, have the votes re-counted or again re-counted in respect of any or all of the stages.

### **Rejected ballot papers and invalid markings**

**45.**—(1) A ballot paper is, subject to paragraph (2), rejected as void and not counted at any stage if—

- (a) it does not bear a unique identifying number;
- (b) the number “1” has not been marked opposite the name of any of the candidates;
- (c) the number “1” has been marked opposite the name of more than one candidate;
- (d) anything is written or marked by which the elector can be identified except the unique identifying number; or
- (e) it is unmarked or is marked in a way that does not indicate a clear choice as to the elector’s first (or sole) preference.

(2) A ballot paper on which a number is marked elsewhere than in a proper place is not deemed to be void for that reason alone.

(3) If a ballot paper is marked with the same number (other than the number “1”) opposite the name of more than one candidate, that number (each time it appears) and any numbers after the repeated numbers are ignored for the purposes of regulation 42.

(4) If—

- (a) one or more preferences are validly marked on a ballot paper; and
- (b) other marks are made on the paper which do not indicate a clear intention as to the elector’s next preference,

those other marks are ignored for the purposes of regulation 42.

(5) A ballot paper on which the elector makes any mark which—

- (a) is clearly intended to indicate a particular preference for a particular candidate; but
- (b) is not a number (or is a number written otherwise than as an arabic numeral),

is treated in the same way as if the appropriate number (written as an arabic numeral) had been marked instead.

(6) In paragraph (5), a reference to a mark includes a reference to more than one mark.

(7) Paragraphs (4) and (5) apply only if the way the paper is marked does not itself identify the elector and it is not shown that the elector can be identified by it.

(8) The returning officer must endorse the word “rejected” on any ballot paper which under this regulation is not to be counted, and must add to the endorsement the words “rejection objected to” if any objection is made by a candidate or a counting agent to such decision.

(9) The returning officer must draw up a statement showing the number of ballot papers rejected under each sub-paragraph of paragraph (1).

### **Equality of votes: which candidate to be eliminated**

**46.**—(1) This regulation applies to determine which candidate is eliminated under regulation 42 in a case where—

- (a) there are 2 or more candidates, or remaining candidates, with fewer votes than the others but an equal number to each other; or
- (b) there are 3 or more candidates, or remaining candidates, and they all have an equal number of votes to each other.

(2) The candidates with an equal number of votes to each other are referred to in this regulation as “the tied candidates”.

(3) The candidate to be eliminated where there has been a previous elimination is—

- (a) whichever of the tied candidates was allocated the fewer or fewest votes in accordance with electors’ first preferences; or
- (b) if that fails to resolve the tie, whichever of them had the fewer or fewest votes after the next stage of counting (if any),

and so on.

(4) Where there has been no previous elimination, or where there has been a previous elimination but the tie is not resolved under paragraph (3), the returning officer must decide by lot, as soon as reasonably practicable, which of the tied candidates is to be eliminated.

### **Equality of votes: which candidate to be elected**

**47.**—(1) This regulation applies to determine which candidate is elected under regulation 42—

- (a) in a case where there are only 2 remaining candidates and they have an equal number of votes; or
- (b) in the case of an election with only 2 candidates they receive an equal number of votes.

(2) Where paragraph (1)(a) applies, the candidate to be elected is—

- (a) whichever of the remaining candidates was allocated the more votes in accordance with electors’ first preferences; or
- (b) if that fails to resolve the tie, whichever of them had the more votes after the next stage of counting (if any),

and so on.

(3) Where paragraph (1)(a) applies but the tie is not resolved under paragraph (2), or where paragraph (1)(b) applies, the returning officer must decide by lot, as soon as reasonably practicable, which of the 2 candidates is to be elected.

### **Declaration of result**

**48.**—(1) In a contested election, when the result of the count has been ascertained, the returning officer must as soon as is reasonably practicable—

- (a) declare the number of votes obtained by each candidate (including any reallocated in accordance with regulation 42), in alphabetical order of the candidates' surnames;
  - (b) declare which is the candidate who is elected;
  - (c) declare the stage at which each eliminated candidate was eliminated and the stage at which the elected candidate was elected;
  - (d) give notice of the name of the candidate elected to the registration officer; and
  - (e) give public notice of the name of the elected candidate, the number of rejected ballot papers under each head shown in the statement of rejected ballot papers, the number of votes allocated to each candidate in accordance with electors' first preferences and for each subsequent stage of counting—
    - (i) the name of the eliminated candidate;
    - (ii) the number of votes reallocated to each of the remaining candidates; and
    - (iii) the number of votes of the candidates eliminated at the previous stage that were not reallocated.
- (2) Where notice of an uncontested election has been given under regulation 18, the returning officer must—
- (a) not later than 11.00 a.m. on the day of the count declare to be elected the validly nominated candidate referred to in the notice of uncontested election;
  - (b) give notice of the name of that candidate to the registration officer; and
  - (c) give public notice of the name of such person.
- (3) Where the day of the count is a non-business day, the declaration under paragraph (2)(a) is to take place on the next day which is not a non-business day.

### **Publication of voting information**

**49.**—(1) In a contested election, the returning officer must give public notice of the information specified in paragraph (2) ("the information"), within one week following the declaration of the result of the count.

- (2) The information is—
- (a) the number of first and subsequent preferences for each candidate;
  - (b) the numbers of ballot papers transferred and their transfer values at each stage of the count;
  - (c) the number of votes credited to each candidate at each stage of the count;
  - (d) the number of non-transferable ballot papers at each stage of the count; and
  - (e) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.
- (3) Once public notice of the information has been given, the returning officer must as soon as reasonably practicable procure the destruction of any electronic data or other records retained under regulation 50(3) in a manner which ensures that their confidentiality is preserved.

### **Sealing up of ballot papers**

- 50.**—(1) On the completion of the counting at a contested election the returning officer must seal up in packets—
- (a) the ballot papers, marked copies of the crofting electoral register, marked copies of the absent electors list and the list of proxies, the completed corresponding number lists,

certificates as to employment on duty on the day of the count or certificates as to the inspection of any counted ballot papers in such officer's custody; and

- (b) where an electronic counting system has been used, a complete electronic copy of the information stored in the electronic counting system held in a device suitable for the purposes of its storage.

(2) The returning officer must not open the packets sealed under paragraph (1).

(3) As soon as reasonably practicable after an electronic copy mentioned in paragraph (1) has been stored in accordance with that paragraph, the returning officer must obtain a copy of such information as may be required to comply with the requirements of regulation 49 and must then procure that all original electronic data or records relating to the election are removed from the electronic counting system and that it (and any copy of that data or records other than a copy made pursuant to paragraph (1) or to comply with the requirements of regulation 49) is destroyed in a manner which ensures that the confidentiality of the data or records is preserved.

(4) Any information retained to comply with the requirements of regulation 49 may be used only for that purpose and the returning officer must, in keeping and using it, take all reasonable steps to maintain the secrecy of voting.

### **Delivery of documents**

**51.** The returning officer must then forward to the registration officer the packets sealed under regulation 50(1) endorsing on each packet a description of its contents, the date of the election to which they relate and the name of the constituency for which the election was held.

### **Orders for production of documents**

**52.**—(1) An order—

- (a) for the inspection or production of any rejected ballot papers in the custody of the registration officer;
- (b) for the opening of a sealed packet of the crofting electoral register, marked copies of the absent electors list and the list of proxies, the completed corresponding number lists, certificates as to employment on duty on the day of the count or certificates as to the inspection of any counted ballot papers in such officer's custody; or
- (c) for the inspection or production of information held on an electronic copy of information made under regulation 50(1),

may be made by the sheriff principal having jurisdiction and, where more than one sheriff principal has jurisdiction, by any such sheriff principal, on being satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence under these Regulations.

(2) An order under this regulation may be made subject to such conditions as to—

- (a) persons;
- (b) time;
- (c) place and mode of inspection; and
- (d) production or opening,

as the sheriff principal may think expedient.

(3) But in making and carrying into effect an order for the opening of a packet of the completed corresponding number lists or of certificates or for the inspection of counted ballot papers or information held on an electronic copy of information made under regulation 50(1), care must be

taken that the way in which the vote of any particular elector has been given must not be disclosed until it has been proved—

- (a) that such vote was given; and
- (b) that such vote has been declared by a competent court to be invalid.

(4) An appeal lies to the Court of Session from any order of a sheriff principal under this regulation.

(5) Where an order is made for the production by the registration officer of any document in such officer's possession relating to any specified election—

- (a) the production by such officer or the officer's agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the specified election; and
- (b) any endorsement on any packet of ballot papers so produced is, unless the contrary is shown, conclusive evidence that the ballot papers are what they are stated to be by the endorsement.

(6) The production from proper custody of—

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

is, unless the contrary is shown, conclusive evidence that the elector whose vote was given by that ballot paper was the person whose entry in the crofting electoral register at the time of the election contained the same number as the number written as mentioned in sub-paragraph (b).

(7) Except as provided by this regulation, no person is allowed to inspect any rejected or counted ballot papers in the possession of the registration officer or any information held on an electronic copy made under regulation 50(1).

### **Retention of documents**

**53.** The registration officer must retain for one year all—

- (a) documents; and
- (b) electronic copies of information made under regulation 50(1),

relating to an election forwarded to such officer in pursuance of these Regulations by a returning officer, and at the expiry of that period must, unless otherwise directed by an order of a sheriff principal, cause them to be destroyed.

### **Death of candidate**

**54.**—(1) If, in relation to a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as candidate in the ballot papers has died, the returning officer must direct that the election be abandoned; and, subject to paragraph (2), no further steps are to take place under Part II, III or IV in respect of it.

(2) The provisions of these Regulations as to the inspection, production, retention and destruction of ballot papers and other documents relating to a count at an election apply to any such documents relating to an election abandoned by reason of a candidate's death, with the modification that ballot papers on which the votes were neither counted nor rejected are to be treated as counted ballot papers.

(3) If, in relation to an election, only one candidate remains validly nominated at the close of nominations and proof is given to the returning officer's satisfaction that the candidate has died, the returning officer must direct that the election be abandoned; and no further steps are to take place under regulation 18(2) or 48(2) in respect of it.

(4) Where, under paragraph (1) or (3), the returning officer directs that an election be abandoned—

- (a) the returning officer must, as soon as practicable, give public notice of that fact in such form as he or she thinks fit; and
- (b) another election in respect of the constituency concerned must then take place.

(5) Where an election is to take place by virtue of paragraph (4)(b)—

- (a) the election notice is to be published within one month of the date on which the direction of abandonment was given;
- (b) the day of the count is to be a day fixed by the returning officer for a date no later than 3 months after the date of the publication of the election notice; and
- (c) if it is inefficient to provide an electronic counting system for the purposes of conducting the count, the returning officer may make arrangements for the count to be conducted by other means,

but in all other respects the election takes place as if it were any other election under these Regulations.

(6) For the purpose of regulation 8(3) the day of the count at the next election in respect of the constituency concerned following an election by virtue of paragraph (4)(b) is the first Friday occurring 5 years after the day when the count at the original election would have been held or, as the case may be, the candidate would have been declared elected under regulation 48.