

SCHEDULE 1

SCOTTISH LOCAL GOVERNMENT ELECTIONS RULES RULES FOR CONDUCT OF A SCOTTISH LOCAL GOVERNMENT ELECTION WHERE THE POLL IS NOT TAKEN TOGETHER WITH THE POLL AT ANOTHER ELECTION

PART III

CONTESTED ELECTIONS

General provisions

Poll to be by ballot

13. The votes at the poll shall be given by ballot, counted and the result shall be ascertained in accordance with this Part of this Schedule.

The ballot papers

14.—(1) The ballot of every voter shall consist of a ballot paper and the persons remaining validly nominated for the electoral ward after any withdrawals under these rules, and no other persons, shall be entitled to have their names inserted in the ballot paper.

(2) Every ballot paper shall be in the form set out in Form 4 or a form to the like effect and shall be printed in accordance with the directions in Form 5, and in accordance with sub paragraphs (a) to (e)—

- (a) the ballot paper shall contain the names, addresses and descriptions (if any) of the candidates as shown in their respective nomination papers and arranged alphabetically by surname;
- (b) where a commonly used surname or forename is stated by a candidate on that candidate's nomination paper in accordance with rule 4(3), the commonly used surname or forename (instead of any other name) shall appear on the ballot paper;
- (c) if there are two or more candidates with the same surname, they shall be arranged alphabetically in the order of their other names;
- (d) where a candidate is qualified as a registered local government elector and any of such candidate's names or such candidate's address has been changed between the qualifying date for the register and the last day for the submission of nomination papers, the ballot paper shall also, if so required by the candidate, give such candidate's present names and current address; and
- (e) the ballot paper shall have a letter or letters, number or numbers or combination of letter and number or letters and numbers and other unique identifying mark printed on the back.

(3) If a candidate who is the subject of a registered political party's authorisation under rule 4(5) to (7) so requests, the ballot paper shall contain, against the candidate's particulars, the party's registered emblem (or, as the case may be, one of the party's registered emblems).

(4) The request referred to in paragraph (3) must—

- (a) be made in writing to the returning officer; and
- (b) be received by the returning officer before the last time for the delivery of nomination papers set out in the timetable in rule 1.

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(5) For the purposes of the last foregoing paragraph, the first valid nomination paper delivered at the place appointed for the delivery of nomination papers in respect of a candidate shall be deemed to be the nomination paper of that candidate.

Corresponding number list

15.—(1) The returning officer shall prepare a list (“the corresponding number list”) in accordance with paragraph (2).

(2) The corresponding number list shall—

- (a) be in two parts, part one containing the numbers and unique identifying marks of all ballot papers issued in pursuance of rule 20(1) and part two containing the numbers (but not the unique identifying marks) of all the ballot papers to be issued in pursuance of rule 24(1); and
- (b) be in the form set out in Form 6 or a form to the like effect.

Security marking

16.—(1) Every ballot paper must bear or contain—

- (a) a unique identifying mark; and
- (b) an official mark.

(2) The official mark shall be kept secret, and an interval of not less than five years shall intervene between the use of the same official mark at elections for the same local authority.

Prohibition of disclosure of vote

17. No person who has voted at the election shall, in any legal proceedings to question the election, be required to state for whom the person voted.

Use of schools and public rooms

18.—(1) The returning officer may use, free of charge, for the purpose of taking the poll or counting the votes—

- (a) a room in a school other than an independent school within the meaning of section 135 of the Education (Scotland) Act 1980(1); and
- (b) a room the expense of maintaining which is payable out of any rate,

provided that nothing in this paragraph shall authorise the use of a room used as part of a private dwellinghouse.

(2) The returning officer 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 counting the votes.

(3) The use of a room in an unoccupied house for that purpose or those purposes does not render a person liable to be rated or to pay any rate for the house.

(1) 1980 c. 44.

Action to be taken before the poll

Notice of poll

19.—(1) Notice of the poll in the form set out in Form 7, or a form to the like effect shall be published by the returning officer and the said notice, which may apply to one or more electoral wards, shall, except where in the circumstances it is not appropriate, be combined with the notice of an uncontested election to be given under rule 12.

(2) Notwithstanding the generality of the foregoing paragraph, the notice of poll shall contain information about the number of councillors to be elected to the ward in question.

(3) The names of the candidates in the notice of poll shall be arranged in the same manner as they are arranged on the ballot paper in accordance with rule 14(2).

(4) The returning officer shall, not later than the time of the publication of the notice of the poll, also give public notice of—

- (a) the situation of each polling station; and
- (b) the description of voters entitled to vote there,

and shall as soon as practicable after giving such a notice give a copy of it to each of the election agents.

Postal ballot papers

20.—(1) The returning officer shall as soon as practicable issue to those entitled to vote by post—

- (a) a ballot paper; and
- (b) a postal voting statement in the form set out in Form 8, or a form to the like effect,

together with envelopes for their return.

(2) The returning officer must, as is reasonably practicable, also issue to those entitled to vote by post information about how to obtain—

- (a) translations into languages other than English of any directions to or guidance for voters sent with the ballot paper;
- (b) a translation into Braille of such directions or guidance;
- (c) graphical representations of such directions or guidance; and
- (d) the directions or guidance in any other form (including any audible form).

Provision of polling stations

21.—(1) The returning officer 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 but it shall not be necessary that a polling station for an electoral ward or a polling district be within the electoral ward or polling district, as the case may be.

(2) One or more polling stations may be provided in the same room.

(3) The polling station allotted to electors from any parliamentary polling district wholly or partly within the electoral ward shall, in the absence of special circumstances, be in the parliamentary polling place for that district, unless that place is outside the electoral ward.

(4) The returning officer 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.

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Appointment of presiding officers and clerks

22.—(1) The returning officer shall appoint and pay—

- (a) a presiding officer to attend at each polling station; and
- (b) such clerks as may be necessary for the purposes of the election,

but shall not appoint any person who has been employed by or on behalf of a candidate in or about the election.

(2) The returning officer may preside at a polling station and the provisions of these rules relating to a presiding officer shall apply to a returning officer so presiding with the necessary modifications as to things done by the returning officer to the presiding officer or by the presiding officer to the returning officer.

(3) A presiding officer may authorise the clerks appointed to assist such presiding officer to do any act (including the asking of questions) which such presiding officer is required or authorised by these rules to do at a polling station, except order the exclusion or removal of any person from the polling station.

Issue of official poll cards and notifications

23.—(1) The returning officer shall as soon as practicable after the issue of the notice of poll send to electors and their proxies an official poll card, an official postal poll card, an official poll card issued to the proxy of an elector and an official postal poll card issued to the proxy of an elector, as appropriate.

(2) An official poll card shall not be sent to a person registered, or to be registered, in pursuance of an overseas elector's declaration.

(3) An elector's official poll card or notification shall be sent or delivered to such elector's qualifying address, and a proxy's official poll notification to such proxy's address as shown in the list of proxies.

(4) The official poll card, the official postal poll card, the official poll card issued to the proxy of an elector and the official postal poll card issued to the proxy of an elector shall be in the form set out in Forms 9, 10, 11 and 12 respectively, or a form to the like effect, and shall include—

- (a) the name of the council and of the electoral ward to which councillors are to be elected and the number of councillors to be elected for that electoral ward;
- (b) the elector's name, qualifying address and number in the register; and
- (c) the date and hours of the poll and the situation of the elector's polling station.

Equipment of polling stations

24.—(1) The returning officer shall provide each presiding officer with such number of ballot boxes and ballot papers as the returning officer considers necessary.

(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 returning officer shall provide each polling station with—

- (a) materials to enable voters to mark the ballot papers;
- (b) copies of the register of electors for the electoral ward or such part of it as contains the entries relating to the electors allotted to the station;
- (c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the election corresponding to the register of electors for the electoral ward or the part of it provided under sub paragraph (b);

- (d) copies of forms of declarations and other documents required for the purpose of the poll; and
- (e) part two of the corresponding number list, 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.

(4) The reference in paragraph (3)(b) to the copies of the registers of electors includes a reference to copies of any notices issued under section 13B(3B) or (3D) of the 1983 Act in respect of alterations to the register.

(5) A notice in the form set out in Form 13, giving directions for the guidance of voters in voting, shall be printed

- (a) in conspicuous characters; and
- (b) in a graphical format,

and exhibited inside and outside every polling station and in every compartment of every polling station.

(6) The returning officer shall also provide each polling station with—

- (a) an enlarged hand-held sample copy of the ballot paper for the assistance of voters who are partially sighted; and
- (b) a device for enabling voters who are blind or partially sighted to vote without any need for assistance from the presiding officer or any companion.

(7) The returning officer may cause to be displayed at every polling station an enlarged sample copy of the ballot paper clearly marked as a specimen provided only for the guidance of voters and may include a translation of those words into such other languages as is reasonably practicable.

(8) The sample copy mentioned in paragraph (6)(a) and (7) must be clearly marked as a specimen provided only for the guidance of voters.

Appointment of polling and counting agents

25.—(1) Each candidate 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 returning officer may limit the number of counting agents, but the number shall be the same in the case of each candidate.

(3) Notice in writing of the appointment, stating the names and addresses of the persons appointed, shall be given by the candidate to the returning officer and shall be so given not later than the Thursday before the day of election.

(4) If an agent dies, or becomes incapable of acting, the candidate may appoint another agent in such agent's place, and shall forthwith give to the returning officer notice in writing of the name and address of the agent appointed.

(5) The foregoing provisions of this rule shall be without prejudice to the requirements of section 72(1) of the 1983 Act as to the appointment of paid polling agents, and any appointment authorised by this rule may be made and the notice of appointment given to the returning officer by the candidate's election agent, instead of by the candidate.

(6) In the following provisions of these rules, references to polling agents 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.

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(7) Any notice required to be given to a counting agent by the returning officer may be delivered at or sent by post to the address stated in the notice of appointment and, where a candidate has no counting agent, any such notice shall be given to the candidate.

(8) A candidate may do any act or thing which any polling or counting agent of such candidate, if appointed, would have been authorised to do, or may assist such agent in doing any such act or thing.

(9) A candidate's election agent may do or assist in doing anything which a polling or counting agent of such candidate 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 a candidate's election agent instead of such candidate's polling agent or counting agents.

(10) 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 agent or agents 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

26.—(1) The returning officer shall make such arrangements as are reasonably practicable to ensure that every person attending at a polling station has been given a copy in writing of the provisions of subsections (1), (3), (5) and (6) of section 66 of the 1983 Act and that every person attending at the counting of the votes has been given a copy in writing of subsections (2) and (6) of that section.

(2) But these arrangements shall not apply to—

- (a) a person attending the polling station for the purpose of voting;
- (b) a person under the age of 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

27.—(1) The presiding officer shall exclude all persons from the polling station except—

- (a) voters;
- (b) persons under the age of 18 who accompany voters to the polling station;
- (c) the candidates and their election agents;
- (d) the polling agents appointed to attend at the polling station;
- (e) the clerks appointed to attend at the polling station;
- (f) the constables on duty;
- (g) the companions of voters with disabilities;
- (h) the returning officer and the returning officer's staff; and
- (i) individuals or nominated members of organisations granted permission to observe in accordance with sections 8 and 9 of the Local Electoral Administration and Registration Services (Scotland) Act 2006⁽²⁾.

(2) The presiding officer shall regulate the total number of voters and persons under the age of 18 who accompany them to be admitted to the polling station at the same time.

(2) 2006 asp 14.

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(3) Not more than one polling agent shall be admitted at the same time to a polling station on behalf of the same candidate.

(4) A constable or person employed by a returning officer shall not be admitted to vote in person elsewhere than at the polling station allotted under these rules, except on production and surrender of a certificate as to such employment which shall be in the form set out in Form 14, or a form to the like effect, and signed by an officer of police of or above the rank of inspector or by the returning officer, as the case may be.

(5) Any certificate surrendered under this rule shall forthwith be cancelled.

Keeping of order in station

28.—(1) It is the presiding officer’s duty to keep order at the polling station.

(2) If a person commits a misconduct in a polling station, or fails to obey the presiding officer’s lawful orders, such 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 returning officer to remove such person, and the person so removed shall not, without the presiding officer’s permission, again enter the polling station during that 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

29. 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

30.—(1) At the time of the application for a ballot paper (but not afterwards), the questions specified in paragraph (3) shall be put by the presiding officer to the applicant if a candidate or a candidate’s election or polling agent requires the question to be put.

(2) At the time of the application for a ballot paper (but not afterwards), the questions specified in paragraphs (3) and (4) may be put by the presiding officer to the applicant.

(3) The questions referred to in paragraphs (1) and (2) are—

<i>Person applying for ballot paper</i>	<i>Questions</i>
1. A person applying as an elector	(a) (a) “Are you the person registered in the register of local government electors for this

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<i>Person applying for ballot paper</i>	<i>Questions</i>
	election as follows?" <i>(read the whole entry from the register).</i>
	(b) "Have you already voted at this election [adding, in the case of an election for more than one electoral ward, in this or any other electoral ward] otherwise than as proxy for some other person?"
2. A person applying as proxy	(a) (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 at this election [adding, in the case of an election for more than one electoral ward, in this or any other electoral ward] 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) (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 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 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 register)?</i> "
4. Person applying as proxy if the question at entry 2(c) or 3(c) is not answered in the affirmative	"Have you already voted at this election [adding, in the case of an election for more than one electoral ward, in this or any other electoral ward] on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother/sister, child or grandchild?"

(4) The questions referred to in paragraph (2) are—

<i>Person applying for ballot paper</i>	<i>Questions</i>
1. A person applying as an elector in relation to whom there is an entry in the postal voters list	(a) (a) "Did you apply to vote by post?" (b) "Why have you not voted by post?"
2. A person applying as proxy who is named in the proxy postal voters list	(a) (a) "Did you apply to vote by post as proxy?"

<i>Person applying for ballot paper</i>	<i>Questions</i>
	(b) "Why have you not voted by post as proxy?"

(5) In the case of an elector in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, the references in the questions at entries 1(a) and (b) to reading from the register must be taken as references to reading from the notice issued under section 13B(3B) or (3D).

(6) A ballot paper shall not be delivered to any person required to answer the above questions or any of them unless such person has answered the questions or question satisfactorily.

(7) Except as authorised by this rule, no inquiry shall be permitted as to the right of any person to vote.

Challenge of voter

31. A person shall not be prevented from voting by reason only that—

- (a) a candidate or that candidate's election or polling agent has reasonable cause to believe that the person has committed an offence of personation and makes a declaration to that effect; or
- (b) the person is arrested on the grounds of being suspected of committing or of being about to commit such an offence.

Voting procedure

32.—(1) A ballot paper shall be delivered to a voter who applies for one, and immediately before delivery—

- (a) the number and (unless paragraph (2) applies) name of the elector as stated in the copy of the register of electors shall be called out;
- (b) the number of the elector shall be marked on part two of the corresponding number list mentioned beside the number of the ballot paper to be issued to the elector;
- (c) a mark shall be placed in the register of electors 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; and
- (d) in the case of a person applying for a ballot paper as proxy, a mark shall also be placed against that person's name in the list of proxies.

(2) In the case of an elector who has an anonymous entry, the elector's official poll card must be shown to the presiding officer and only the elector's number shall be called out in pursuance of paragraph (1)(a).

(3) In the case of an elector who is added to the register in pursuance of a notice issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (1) is modified as follows—

- (a) in sub paragraph (a), for "copy of the register of electors" substitute "copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act";
- (b) in sub paragraph (c), for "in the register of electors" substitute "on the copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act".

(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 ballot paper and 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 ballot paper into the ballot box.

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Votes marked by presiding officer

33.—(1) The presiding officer, on the application of a voter—

- (a) who is incapacitated by blindness or other disability from voting in manner directed by these rules; or
- (b) who declares orally an inability to read,

shall, in the presence of the polling agents, cause the voter’s vote to be marked on a ballot paper in the manner directed by the voter, and the ballot paper to be placed in the ballot box.

(2) The name and number on the register of electors 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 called “the list of votes marked by the presiding officer”) and 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.

(3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) applies as if for “on the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act”.

Voting by persons with disabilities

34.—(1) If a voter makes an application to the presiding officer to be allowed, on the ground of—

- (a) blindness or other physical disability; or
- (b) inability to read,

to vote with the assistance of another person by whom such 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 such voter is so disabled by blindness or other disability, or by 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 by the companion (in these rules referred to as “the declaration made by the companions of voters 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,

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 that voter’s vote may be done to, or with the assistance of, the companion.

(3) For the purposes of these rules, a person is a voter with disabilities if such person has made such a declaration as is mentioned in paragraph (1), and a person shall be qualified to assist a voter with disabilities to vote if that person—

- (a) is a person who is entitled to vote as an elector at the election; or
- (b) is the father, mother, brother, sister, husband, wife, civil partner, son or daughter of the voter and has attained the age of 18 years.

(4) The name and number in the register of electors 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”) and 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.

(5) In paragraph (4), where the voter being assisted by a companion has an anonymous entry, only the voter's number in the register of electors shall be entered on the list of voters with disabilities assisted by companions.

(6) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (4) applies as if for "in the register of electors of every voter" there were substituted "relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act".

(7) The declaration made by the companion under paragraph (2)(b)–

(a) shall be in the form set out in Form 15; and

(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.

(8) No fee or other payment shall be charged in respect of the declaration.

Tendered ballot papers

35.—(1) If a person, representing to be–

(a) a particular elector named on the register and not named in the special lists; 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,

applies for a ballot paper after another person has voted in person either as the elector or the elector's proxy, the applicant shall, on satisfactorily answering the questions permitted by law 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.

(2) Paragraph (4) applies if–

(a) a person applies for a ballot paper representing that the person is a particular elector named on the register;

(b) the person is also named in the postal voters list; and

(c) the person claims that no application to vote by post at the election was made by that person.

(3) Paragraph (4) also applies if–

(a) a person applies for a ballot paper representing that the person is 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 that no application to vote by post as proxy was made by that person.

(4) The person shall, on satisfactorily answering the questions permitted by law to be asked at the poll, be entitled, subject to the following provisions of this rule, to mark a tendered ballot paper in the same manner as any other voter.

(5) Paragraph (6) 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 that the person is–

(a) a particular elector named on the 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 that the person has lost or has not received the postal ballot paper.

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(6) The person shall, on satisfactorily answering the questions permitted by law to be asked at the poll, be entitled, subject to the following provisions of this rule, to mark a tendered ballot paper in the same manner as any other voter.

(7) A tendered ballot paper shall—

- (a) be of a colour differing 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.

(8) The name of the voter and the voter's number on the register of electors shall be entered on a list (in these rules referred to as the "tendered votes list") and the voter must sign the list opposite the entry relating to that elector.

(9) 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.

(10) This rule applies to an elector who has an anonymous entry subject to the following modifications—

- (a) in paragraphs (7)(b) and (8) the references to the name of the voter must be ignored;
- (b) otherwise, a reference to a person named on a register or list must be construed as a reference to a person whose number appears on the register or list (as the case may be).

(11) This rule applies in the case of a person in respect of whom a notice has been issued under section 13(3B) or (3D) of the 1983 Act as if—

- (a) in paragraphs (1)(a), (2)(a) and (5)(a) for "named on the register" there were substituted "in respect of whom a notice under section 13B(3B) or (3D) of the 1983 Act has been issued";
- (b) in paragraph (7)(b) for "the voter's number in the register of electors" there were substituted "the number relating to that person on a notice issued under section 13B(3B) or (3D) of the 1983 Act"; and
- (c) in paragraph (8) for "the voter's number on the register of electors" there were substituted "the number relating to that person on a notice issued under section 13B(3B) or (3D) of the 1983 Act."

Spoilt ballot papers

36. 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 the ballot paper so delivered is referred to as a "spoilt ballot paper"), and the spoilt ballot paper shall be immediately cancelled.

Correction of errors on day of poll

37. The presiding officer shall keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) of the 1983 Act which takes effect on the day of the poll.

Adjournment of poll in case of riot

38.—(1) Where the proceedings at any polling station are interrupted or obstructed by riot or open violence, the presiding officer shall adjourn the proceedings until the following day and shall forthwith give notice to the returning officer.

(2) Where the poll is adjourned at any polling station—

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- (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 these rules to the close of the poll shall be construed accordingly.

Procedure on close of poll

39.—(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 and thereafter separate and 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 marked copies of the register of electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the list of proxies;
- (d) the certificates as to employment on duty on the day of the poll;
- (e) part two of the corresponding number list completed in accordance with rule 32(1)(b) (referred to in these rules as “the completed corresponding number list”);
- (f) the tendered votes list, the list of voters with disabilities assisted by companions, the list of votes marked by the presiding officer, the list maintained under rule 37 and the declarations made by the companions of voters with disabilities; and
- (g) any postal ballot paper or postal voting statement returned to the station in terms of rule 42(2),

and shall deliver the sealed ballot boxes or packets or cause them to be delivered to the returning officer to be taken charge of by the returning officer; but if the sealed ballot boxes or packets are not delivered by the presiding officer personally to the returning officer, the arrangements for their delivery shall require the returning officer’s approval.

(2) The marked copies of the register of electors and of the list of proxies shall be in one packet but shall not be in the same packet as the lists mentioned in paragraph (1)(e) or the certificates as to employment on duty on the day of the poll.

(3) 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 of them under the heads of ballot papers issued and not otherwise accounted for, unused, spoilt and tendered ballot papers.

Counting of votes

Attendance at counting of votes

40.—(1) The returning officer 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 notice in writing of the time and place at which the returning officer will begin to count the votes.

- (2) No person other than—
 - (a) the returning officer and the returning officer’s staff;
 - (b) the candidates and one guest each;
 - (c) the election agents;

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- (d) the counting agents;
- (e) persons performing duties under a contract for services entered into in connection with the conduct of or administration of the election; and
- (f) individuals or nominated members of organisations granted permission to observe in accordance with sections 8 and 9 of the Local Electoral Administration and Registration Services (Scotland) Act 2006⁽³⁾,

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

(3) A person may only be permitted by the returning officer to attend at the counting of the votes if the returning officer—

- (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 returning officer shall give the counting agents all such reasonable facilities for overseeing the proceedings, and all such information with respect to them, as the returning officer can give them consistently with the orderly conduct of the proceedings and the discharge of the returning officer's duties in connection with them.

Electronic counting

41.—(1) Subject to paragraph (3), the returning officer shall provide an electronic counting system and the count shall be conducted by means of such electronic counting 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 and parcels of ballot papers shall include references to such ballot papers or parcels in electronic form.

(3) If it proves impossible or impracticable 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.

The count

42.—(1) The 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 it, checking the number against the ballot paper account;
- (b) if required to do so by a candidate or an election agent, 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.

(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 local government area; or
- (b) by hand or post to the returning officer,

before the close of the poll and is accompanied by the postal voting statement duly signed.

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

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(4) The returning officer, 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.

(5) Where under paragraph (1)(b) the returning officer is required to verify each ballot paper account, the returning officer shall do so by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the returning officer'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, which any election agent may copy.

(6) The returning officer shall so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that the returning officer may, insofar as the returning officer and the agents agree, exclude any hours between 7 p.m. and 9 a.m. on the following morning and for the purposes of this exception the agreement of a candidate or such candidate's election agent shall be as effective as the agreement of such candidate's counting agents.

(7) During the time so excluded the returning officer shall—

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

Rejected ballot papers

43.—(1) Any ballot paper—

- (a) which does not bear a unique identifying mark in a form that is capable of being read by electronic means;
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for some candidate;
- (c) on which the figure “1” standing alone indicating a first preference is set opposite the name of more than one 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 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 figure indicating a first or subsequent preference; or
- (c) by more than one mark,

shall not for such reason be deemed to be void by reason only of indicating a preference by the use of words (or any other mark) instead of figures, if in the opinion of the returning officer the word or mark clearly indicates a preference or preferences, and the way the paper is marked does not itself identify the voter and it is not shown that such voter can be identified by it.

(3) The 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 any objection is made by a counting agent to such decision.

(4) The returning officer shall draw up a statement showing the number of ballot papers rejected under each of sub paragraphs (a) to (e) of paragraph (1).

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Decisions on ballot papers

44. The decision of the returning officer, whether express or implied, on any question arising in respect of a ballot paper, the exclusion of a candidate or the transfer of votes shall be final, but shall be subject to review on an election petition.

First stage

45.—(1) The returning officer shall sort the valid ballot papers into parcels according to the candidates for whom first preference votes are given.

(2) The returning officer shall then—

- (a) count the number of ballot papers in each parcel;
- (b) credit the candidate receiving the first preference vote with one vote for each ballot paper; and
- (c) record those numbers.

(3) The returning officer shall also ascertain and record the total number of valid ballot papers.

The quota

46.—(1) The returning officer shall divide the total number of valid ballot papers for the electoral ward by a number exceeding by one the number of councillors to be elected at the election for that electoral ward.

(2) The result of the division under paragraph (1) (ignoring any decimal places), increased by one, is the number of votes needed to secure the return of a candidate as a councillor (in these rules referred to as the “quota”).

Return of councillors

47.—(1) Where, at any stage of the count, the number of votes for a candidate equals or exceeds the quota, the candidate is deemed to be elected.

(2) A candidate is returned as a councillor when declared to be elected in accordance with rule 55(a).

Transfer of ballot papers

48.—(1) Where, at the end of any stage of the count, the number of votes credited to any candidate exceeds the quota and, subject to rules 49 and 52, one or more vacancies remain to be filled, the returning officer shall sort the ballot papers received by that candidate into further parcels so that they are grouped—

- (a) according to the next available preference given on those papers; and
- (b) where no such preference is given, as a parcel of non transferable papers.

(2) The returning officer shall, in accordance with this rule and rule 49, transfer each parcel of ballot papers referred to in paragraph (1)(a) to the continuing candidate for whom the next available preference is given on those papers and shall credit such continuing candidates with an additional number of votes calculated in accordance with paragraph (3).

(3) The vote on each ballot paper transferred under paragraph (2) shall have a value (“the transfer value”) calculated as follows—

A divided by B

Where

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A = the value which is calculated by multiplying the surplus of the transferring candidate by the value of the ballot paper when received by that candidate; and

B = the total number of votes credited to that candidate,

the calculation being made to five decimal places (any remainder being ignored).

(4) For the purposes of paragraph (3)–

(a) “transferring candidate” means the candidate from whom the ballot paper is being transferred; and

(b) “the value of the ballot paper” means–

(i) for a ballot paper on which a first preference vote is given for the transferring candidate, one; and

(ii) in all other cases, the transfer value of the ballot paper when received by the transferring candidate.

Transfer of ballot papers – supplementary provisions

49.—(1) If, at the end of any stage of the count, the number of votes credited to two or more candidates exceeds the quota the returning officer shall–

(a) first sort the ballot papers of the candidate with the highest surplus; and

(b) then transfer the transferable papers of that candidate.

(2) If the surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest number of votes at the end of the most recent preceding stage at which they had unequal numbers of votes shall be transferred first.

(3) If the numbers of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide, by lot, which candidate’s transferable papers are to be transferred first.

Exclusion of candidates

50.—(1) If, one or more vacancies remain to be filled and–

(a) the returning officer has transferred all ballot papers which are required by rule 48 or this rule to be transferred; or

(b) there are no ballot papers to be transferred under rule 48 or this rule,

the returning officer shall exclude from the election at that stage the candidate with the then lowest number of votes.

(2) The returning officer shall sort the ballot papers for the candidate excluded under paragraph (1) into parcels so that they are grouped–

(a) according to the next available preference given on those papers; and

(b) where no such preference is given, as a parcel of non transferable papers.

(3) The returning officer shall, in accordance with this article, transfer each parcel of ballot papers referred to in paragraph (2)(a) to the continuing candidate for whom the next available preference is given on those papers and shall credit such continuing candidates with an additional number of votes calculated in accordance with paragraph (4).

(4) The vote on each ballot paper transferred under paragraph (3) shall have a transfer value of one unless the vote was transferred to the excluded candidate in which case it shall have the same transfer value as when transferred to the candidate excluded under paragraph (1).

(5) This rule is subject to rule 52.

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Exclusion of candidates – supplementary provisions

- 51.**—(1) If, when a candidate has to be excluded under rule 50—
- (a) two or more candidates each have the same number of votes; and
 - (b) no other candidate has fewer votes,
- paragraph (2) applies.
- (2) Where this paragraph applies—
- (a) regard shall be had to the total number of votes credited to those candidates at the end of the most recently preceding stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide, by lot, which of those candidates is to be excluded.

Filling of last vacancies

- 52.**—(1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled, the continuing candidates are deemed to be elected.
- (2) Where the last vacancies can be filled under this rule, no further transfer shall be made.

Re count

- 53.**—(1) A candidate or such candidate’s election 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 but the returning officer may refuse to do so if in the returning officer’s opinion the request is unreasonable.
- (2) No step shall be taken on the completion of the counting or any re counting 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.

Counting of votes by means other than electronic counting

- 54.**—(1) Where in accordance with rule 41(3) the returning officer makes arrangements for the count to be conducted other than by means of an electronic counting system these rules shall apply with the following modifications—
- (a) in rule 42 after paragraph (1) insert—
 - “(1A) The returning officer shall not count the votes given on any ballot papers until the ballot papers from a ballot box have been mixed with at least one other ballot box.”;
 - (b) in rule 43 for paragraph (1)(a) substitute, “(a) which does not bear or contain an official mark;”;
 - (c) in rule 52 after paragraph (1) insert—
 - “(1A) Where only one vacancy remains unfilled and the number of votes then credited to any one continuing candidate (“the highest continuing candidate”) is equal to or greater than the total number of votes then credited to all the other continuing candidates, the highest continuing candidate is deemed to be elected.”;
 - (d) in rule 56—
 - (i) for paragraph (1) substitute—

“(1) On the completion of the counting at a contested election, the returning officer shall seal up in separate packets the counted and registered ballot papers;”;
and

(ii) omit paragraph (3); and

(e) in the directions as to the printing of the ballot paper in the Appendix, omit paragraph 8.

Declaration of result

55. In a contested election, when the result of the poll has been ascertained, the returning officer shall forthwith—

- (a) declare to be elected the candidates who have been deemed to be elected as councillors under this Part;
- (b) give notice of the names of the candidate elected to the proper officer of the council for which the election was held; and
- (c) give public notice of—
 - (i) the name of the candidates elected;
 - (ii) the number of first and subsequent preference votes for each candidate;
 - (iii) the numbers of ballot papers transferred and their transfer values at each stage of the count;
 - (iv) the number of votes credited to each candidate at each stage of the count;
 - (v) the number of non transferable ballot papers at each stage of the count; and
 - (vi) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.