

SCHEDULE 2

Rules for Conduct of an Election of Councillors of a Principal Area where Poll is not taken together with Poll at another Election

PART 3

Contested Elections

CHAPTER 4

Counting of Votes

Attendance at counting of votes

44.—(1) The returning officer must make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll, and must give to the counting agents notice in writing of the time and place at which he will begin to count the votes.

(2) No person other than—

- (a) the returning officer and his clerks,
- (b) the candidates and one other person chosen by each of them,
- (c) the election agents,
- (d) the counting agents,
- (e) persons who are entitled to attend by virtue of any of sections 6A to 6D of the Political Parties, Elections and Referendums Act 2000,

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 shall not be permitted to do so by the 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.

(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 can give them consistently with the orderly conduct of the proceedings and the discharge of his duties in connection with them.

(5) In particular, where the votes are counted by sorting the ballot papers according to the candidate for whom the vote is given and then counting the number of ballot papers for each candidate, the counting agents shall be entitled to satisfy themselves that the ballot papers are correctly sorted.

The count

45.—(1) The returning officer must—

- (a) in the presence of the counting agents open each ballot box and count and record the number of ballot papers in it;
- (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.

(2) The returning officer must not count the votes given on any ballot papers until—

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- (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.
- (3) A postal ballot paper must not be taken to be duly returned unless—
- (a) it is returned in the manner set out in paragraph (4) and reaches the returning officer or any polling station in the electoral area in question before the close of the poll;
 - (b) the postal voting statement, duly signed, is also returned in the manner set out in paragraph (4) and reaches him or such a polling station before that time;
 - (c) the postal voting statement also states the date of birth of the elector or proxy (as the case may be), and
 - (d) in a case where steps for verifying the date of birth and signature of an elector or proxy have been prescribed by regulations made under the 1983 Act⁽¹⁾, the returning officer (having taken such steps) verifies the date of birth and signature of the elector or proxy (as the case may be).
- (4) The manner in which any postal ballot paper or postal voting statement may be returned—
- (a) to the returning officer, is by hand or by post;
 - (b) to a polling station, is by hand.
- (5) The returning officer must not count any tendered ballot paper.
- (6) The returning officer, while counting and recording the number of ballot papers and 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.
- (7) The returning officer must 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 must draw up a statement as to the result of the verification, which any election agent may copy.
- (8) The returning officer must so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that he may exclude the hours between 7 in the evening and 9 on the following morning.
- (9) During the time so excluded the returning officer must—
- (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.

Re-count

46.—(1) A candidate or his election agent may, if present when the counting or any re-count 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 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.

(1) 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.

Rejected ballot papers

47.—(1) Any ballot paper—

- (a) which does not bear the official mark, or
- (b) on which votes are given for more candidates than the voter is entitled to vote for, or
- (c) 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
- (d) which is unmarked or void for uncertainty,

shall, subject to paragraphs (2) and (3), be void and not counted.

(2) Where the voter is entitled to vote for more than one candidate, a ballot paper shall not be deemed to be void for uncertainty as respects any vote as to which no uncertainty arises and that vote must be counted.

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

- (a) elsewhere than in the proper place, or
- (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 (either wholly or as respects that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he can be identified by it.

(4) The returning officer must—

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted; and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2), endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted;

and must add to the endorsement the words “rejection objected to” if any objection is made by a counting agent to his decision.

(5) The returning officer must draw up a statement showing the number of ballot papers rejected, including those rejected in part, under the several heads of—

- (a) want of official mark;
- (b) voting for more candidates than the voter is entitled to;
- (c) writing or mark by which the voter could be identified;
- (d) unmarked or void for uncertainty;

and the statement must record the number of ballot papers rejected in part.

Decisions on ballot papers

48. The decision of the returning officer on any question arising in respect of a ballot paper shall be final, but shall be subject to review on an election petition.

Equality of votes

49. 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 returning officer must forthwith decide between those candidates by lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

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