

## SCHEDULE 3

Rules for Conduct of an Election of Councillors of a Principal Area where the Poll is taken together with the Poll at a Relevant Election or Referendum

### PART 3

#### Contested Elections

##### CHAPTER 4

##### Counting of Votes

#### **Attendance at counting of votes**

**44.**—(1) Where the returning officer at the principal area election discharges the functions specified in regulation 5 of the Combination of Polls Regulations, he must—

- (a) make arrangements for—
  - (i) discharging the functions under rule 45(1) in the presence of the counting agents appointed for the purposes of the principal area election and those appointed for the purpose of each relevant election or referendum as soon as practicable after the close of the poll, and
  - (ii) thereafter counting the votes at the principal area election in the presence of the agents appointed for the purpose of that election; and
- (b) give to the counting agents appointed for the purposes of the principal area election and those appointed for the purpose of each relevant election or referendum notice in writing of the time and place at which he will begin to discharge the functions under rule 45(1).

(2) Where the returning officer at the principal area election does not discharge the functions specified in regulation 5 of the Combination of Polls Regulations, he must—

- (a) make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the delivery of the ballot papers to him by the returning officer who does discharge those functions; and
  - (b) give to the counting agents notice in writing of the time after which he will begin to count the votes if by then he has received the ballot papers and of the place at which that count will take place.
- (3) 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.

(4) No person other than a person entitled to be present at the counting of the votes at the principal area election under paragraphs (4) to (13) of rule 45 or at a relevant election or referendum may be present at the proceedings under rule 45(1) unless permitted by the returning officer to attend.

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(5) A person not entitled to attend at the proceedings under rule 45(1) or the counting of the votes under paragraphs (4) to (13) of rule 45 must not be permitted to do so by the returning officer unless he—

- (a) is satisfied that the efficient separation of the ballot papers or, as the case may be, 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.

(6) 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.

(7) 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) Where the returning officer at the principal area election discharges the functions specified in regulation 5 of the Combination of Polls Regulations, he must—

- (a) in the presence of the counting agents appointed for the purposes of the poll at the principal area election and 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 election agents appointed for the purposes of the poll at the principal area election and 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 principal area election and each relevant election or referendum;
- (d) separate the ballot papers relating to the principal area election 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 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) In the application of paragraph (1) to combined polls at county and district council elections, it shall have effect as if after the words “principal area election” in the first place where they occur and in sub-paragraphs (a) to (d), there are inserted the words “for which he is the returning officer”.

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

(4) After completion of the proceedings under paragraph (1), the returning officer must mix together all of the ballot papers used at the principal area election and count the votes given on them.

(5) Where the returning officer at the principal area election does not discharge the functions specified in regulation 5 of the Combination of Polls Regulations, he must—

- (a) on receipt of containers from the returning officer who does discharge those functions, and after the time specified in the notice given under rule 44(2)(b), in the presence of the counting agents open each container;
- (b) where the proceedings on the issue and receipt of postal ballot papers are not taken together with those proceedings at a relevant election or referendum under regulation 65 of the Representation of the People (England and Wales) Regulations 2001(1), or under that regulation as applied by regulations made under sections 44 and 105 or 45 and 105 of the Local Government Act 2000(2), 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.

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

- (a) it is returned in the manner set out in paragraph (7) and reaches the returning officer or any polling station in the appropriate electoral area (as defined in paragraph (8)) before the close of the poll;
- (b) the postal voting statement, duly signed, is also returned in the manner set out in paragraph (7) 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(3), the returning officer (having taken such steps) verifies the date of birth and signature of the elector or proxy.

(7) 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.

(8) The appropriate electoral area in respect of any voter shall be—

- (a) the area which is common to the parliamentary constituency(4), electoral area, local counting area, local authority area or voting area (as the case may be) in which the polls at the principal area election and any relevant election or referendum are being taken together; and
- (b) in respect of which polls the voter has been issued with a postal ballot paper.

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

(10) 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.

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(1) [S.I. 2001/341](#)

(2) [2000 c.22](#). See the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2002 ([S.I. 2002/185](#)) under section 44 and the Local Authorities (Conduct of Referendums) (England) Regulations 2001 ([S.I. 2001/1298](#)) under section 45.

(3) 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](#).

(4) For the meaning of “parliamentary constituency”, see section 1 of the Parliamentary Constituencies Act [1986 \(c.56\)](#).

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(11) 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 spoiled ballot papers in his 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 election agent may copy.

(12) 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.

(13) 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.

### **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 on the back and other unique identifying mark, 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 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.