

2001 No. 1399 (S. 5)

CONSTITUTIONAL LAW

DEVOLUTION, SCOTLAND

**The Scottish Parliament (Elections etc.) (Amendment) Order
2001**

Made

5th April 2001

Coming into force in accordance with article 1

Whereas a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament;

Now therefore, the Secretary of State, in exercise of the powers conferred upon her by sections 12(1) and 113 of the Scotland Act 1998(a), and of all other powers enabling her in that behalf, and after consulting the Electoral Commission(b), hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Scottish Parliament (Elections etc.) (Amendment) Order 2001 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—
“the principal Order” means the Scottish Parliament (Elections etc.) Order 1999(c).

Amendment of the principal Order

3. The principal Order shall be amended as follows.

Article 2 (Interpretation)

4. In article 2(1)—
(a) after the reference to “the 1998 Act” insert—
““the 2000 Act” means the Representation of the People Act 2000(d);
“the 2000 Political Parties Act” means the Political Parties, Elections and Referendums Act 2000(e);

(a) 1998 c.46.

(b) As required by section 7 of the Political Parties, Elections and Referendums Act 2000 (c.41).

(c) S.I. 1999/787.

(d) 2000 c.2

(e) 2000 c.41.

“the 2001 Regulations” means the Representation of the People (Scotland) Regulations 2001(a);”;

- (b) in the definition of “nominating officer” for “the Registration of Political Parties Act 1998” substitute “Part II of the Political Parties, Elections and Referendums Act 2000”, and for “paragraph 5(2) of Schedule 1 to” substitute “section 24(3) of”;
- (c) in each of the definitions of “registered emblem” and “registered party” for “the Registration of Political Parties Act 1998” substitute “Part II of the Political Parties, Elections and Referendums Act 2000”;
- (d) in the definition of “service voter”, the reference to section 15 of the 1983 Act is a reference to that section as amended by the 2000 Act(b).

Article 3 (Register of electors etc.)

5. In article 3(1) for “section 11(1) or (2)” substitute “section 13A”(c), and for “correction” substitute “alteration”.

Article 8 (Absent vote etc.)

6.—(1) Article 8 shall be amended as follows.

- (2) In paragraph (1)—
 - (a) for the words “for an indefinite period” substitute “(whether for an indefinite period or for a particular period specified in his application)”;
 - (b) omit sub-paragraph (a), and
 - (c) in sub-paragraph (b), after “satisfied” insert “in the case of an application to vote by proxy”.
- (3) In paragraph (2)—
 - (a) omit the words “for an indefinite period”;
 - (b) omit sub-paragraph (b); and
 - (c) in sub-paragraph (d), at the end add “or by reason of his attendance on a course provided by an educational institution or that of his spouse”.
- (4) Omit paragraph (3).
- (5) In paragraph (4), before sub-paragraph (a) insert—

“(za) whether their applications were to vote by post or proxy for an indefinite or a particular period (specifying that period);”.
- (6) In paragraph (5)—
 - (a) in sub-paragraph (b)—
 - (i) for the words “as a service voter; or”, substitute—

“in pursuance of—

 - (i) a service declaration, or
 - (ii) a declaration of local connection;” and
 - (ii) at the end, omit “or”;
 - (b) in sub-paragraph (c)—
 - (i) at the beginning insert, “in the case of any person shown in the record as voting by proxy;”; and
 - (ii) at the end, add “or”;
 - (c) after sub-paragraph (c) add—

“(d) in the case of a person who applied to vote by post or proxy for a particular period, once that period has expired.”.
- (7) In paragraph (6) after “proxy” insert “(in either case, whether for an indefinite period or for a particular period specified in his application)”.
- (8) Omit paragraph (7).

(a) S.I. 2001/497.

(b) Section 15 was amended by the 2000 Act, Schedule 1, paragraph 8, and by Schedule 7.

(c) Section 13A of the 1983 Act was inserted by the 2000 Act, Schedule 1, paragraph 6.

Article 9 (Absent vote at a particular Scottish Parliamentary election)

7. In article 9–
 - (a) in paragraph (1)(a) after “satisfied”, insert “in the case of an application to vote by proxy,”, and
 - (b) omit paragraph (5).

Article 10 (Proxies at Scottish parliamentary elections)

- 8.—(1) Article 10 shall be amended as follows.
 - (2) In paragraph (6), for the words “for an indefinite period” substitute “(whether for an indefinite period or for a particular period specified in his application)”.
 - (3) In paragraph (9), at the end, add “; where the appointment was for a particular period, the appointment shall cease to be in force once that period expires.”.

Article 11 (Voting as proxy)

- 9.—(1) Article 11 shall be amended as follows.
 - (2) In paragraph (4)–
 - (a) for the words “for an indefinite period,” substitute “(whether for an indefinite period or for a particular period specified in his application)”;
 - (b) for sub-paragraphs (a) and (b) substitute–
 - “(a) the registration officer is satisfied that the elector is or will be registered in the register of electors; and
 - (b) there is in force an appointment of the applicant as the elector’s proxy to vote for him.”.
 - (3) Omit paragraph (5).
 - (4) In paragraph (6), for the words from “showing” to the end substitute–
 - (a) whether their applications were to vote by post as proxy for an indefinite or a particular period (specifying that period); and
 - (b) the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.”.
 - (5) Omit paragraphs (7) and (10).
 - (6) In paragraph (9)(b) for “(7)” substitute “(6)(b)”.
 - (7) In paragraph (11), for sub-paragraph (b) substitute–
 - “(b) in the case of a person who applied to vote by post as proxy for a particular period, once that period expires.”.
 - (8) Omit paragraph (12).

Article 21 (Effect of registers)

- 10.—(1) Article 21 shall be amended as follows.
 - (2) Omit paragraph (1).
 - (3) In paragraph (4) for “qualifying date”, wherever occurring, substitute “relevant date”.
 - (4) After paragraph (4) insert–
 - “(5) In paragraph (4) above, the “relevant date” means–
 - (a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act^(a), the 15th October immediately preceding the date of publication of the register;

(a) Section 13 was substituted by paragraph 6 of Schedule 1 to the 2000 Act.

- (b) in relation to any other person registered in the register, the relevant date for the purposes of section 4 of the 1983 Act(a).”.

Article 23 (Discharge of registration duties)

11. In article 23(1), after “Secretary of State” insert “, in accordance with, and on the recommendation of, the Electoral Commission under section 8(1) of the Political Parties, Elections and Referendums Act 2000,”.

Article 35 (Expenses etc)

12. For article 35, there shall be substituted –

“Expenses of constituency candidate

35. For the purpose of this Part of this Order, sums paid and expenses incurred by a candidate for return as a constituency member in respect of whom the constituency returning officer has received a certificate issued by a nominating officer of a registered party under rule 7 of the Scottish Parliamentary Election Rules are not to be regarded as having been made or incurred by that party.”.

Articles 37, 40-44, 47-49, 53, 54 and 57 (Election Expenses)

13.—(1) Articles 37, 40, 42, 47, 49 and 57 shall be omitted.

(2) In article 41 (limitation of elections expenses: candidates)–

- (a) in paragraph 2(a) and (c), for “£5,229” substitute “£5,483” and for “5.9p” substitute “6.2p”;
- (b) in paragraph 2(b), for £5,229” substitute “£5,483” and for “4.4p” substitute “4.6p”; and
- (c) in paragraph 3(a), (b) and (c), for the words from “£20,920” to the end, substitute “£100,000”.

(3) In article 43(1), (2) and (3) for “within” wherever it occurs there shall be substituted “not later than”.

(4) Paragraph (4) of article 48 (declarations as to expenses) shall be omitted.

(5) Articles 43, 44, 53 and 54 insofar as they relate to a registered party or its nominating officer shall cease to have effect.

14. After article 54 there shall be inserted–

“Duty of appropriate returning officer to forward returns and declarations to Electoral Commission

54A. Where the appropriate returning officer receives any return or declaration under article 39, 46 or 48 above in respect of an election to the Scottish Parliament, he shall as soon as reasonably practicable after receiving the return or declaration deliver a copy of it to the Electoral Commission and, if so requested by the Commission, he shall also deliver to them a copy of any accompanying documents.”.

Articles 66 to 70 and 73 (Transport and Committee Rules)

15. Articles 66 to 70 (transport of voters) and 73 (premises not to be used as committee rooms) shall be omitted.

Article 85 (Application of provisions)

16. In article 85, in each of paragraphs (1)(b) and (2)(b) for the reference to “(2)” substitute “(3)”, and in paragraph (4) for the reference to “(2)(b)” substitute “(3)(b)”.

(a) Section 4 was substituted by section 1(2) of the 2000 Act.

Schedule 1 to the principal Order (Election Lists and Registers: Miscellaneous and Related Provision)

17.—(1) Schedule 1 to the principal Order shall be amended in accordance with this article.

(2) Omit paragraphs 1, 5 and 6.

(3) In paragraph 2—

(a) in sub-paragraphs (2)(a) and (3)(a)—

(i) for “four copies” substitute “one copy”;

(ii) after “only” insert “if supplied in printed form”; and

(iii) for “them” substitute “it”;

(b) in sub-paragraphs (2)(b) and 3(b)—

(i) for “two copies” substitute “one copy”, and

(ii) after “only” insert “if supplied in printed form”; and

(c) for sub-paragraph 6, substitute—

“(6) The registration officer shall supply free of charge—

(a) as many printed copies of so much of the register as relates to a constituency to the constituency returning officer for that constituency; and

(b) as many printed copies of so much of the register as relates to the regional returning officer for that region,

as the returning officer may reasonably require for the purposes of a forthcoming Scottish Parliamentary election in his constituency.

(7) In paragraph 2(1), (2) and (3) above, the duty to supply one copy of the register means a duty to supply a copy in data form, unless, prior to publication, the recipient has requested in writing a copy in printed form.

(8) In paragraph 6 above, the duty to supply as many printed copies of the register as the returning officer may reasonably require includes a duty to supply one copy in data form.”.

(4) For paragraph 3 there shall be substituted—

“Sale of register

3. Regulation 48 of the 2001 Regulations (sale of register etc.) shall apply to—

(a) the supply by the registration officer under this Schedule of copies of any part or parts of the register to any person, and

(b) the calculation of the payment of fees for such supply by any person (other than any person to whom the registration officer has a duty under this Schedule to supply copies free of charge),

as it applies to the supply of, and calculation of payment of fees for, a copy or copies of the register of electors or list of overseas electors.”.

(5) For paragraph 4 there shall be substituted—

“Supply of Data

4.—(1) The duty on the registration officer to supply data under paragraphs 2 and 3 above imposes only a duty to supply such data recorded in the form in which he holds it.

(2) The registration officer shall not supply data which includes information not included in the printed version of the register otherwise than under paragraph 2(6) above.”.

(6) In paragraph 7 (interpretation) omit the definition of “data controller”.

Schedule 2 to the principal Order (Scottish Parliamentary Election Rules)

18.—(1) Schedule 2 to the principal Order shall be amended in accordance with this article.

(2) In rule 4 (nomination of candidate for return as a constituency member), for paragraph (4) substitute—

- “(4) The description, if any, must consist of either–
- (a) a description (of not more than six words in length) which is authorised as mentioned in rule 7 below; or
 - (b) the word “Independent”.”.
- (3) In rule 5 (nomination of individual candidate for return as a regional member), for paragraph (4) substitute–
- “(4) The description, if any, must consist of either–
- (a) a description (of not more than six words in length) which is authorised as mentioned in rule 7 below; or
 - (b) the word “Independent”.”
- (4) In rule 6 (nomination of candidates on a regional list), for paragraph (7) substitute–
- “(7) In the application of this rule and rule 7 below, in relation to an election, “registered party” and “qualifying party” means a party which was registered under Part II of the Political Parties, Elections and Referendums Act 2000 at the time by which the notice of election is required to be published by virtue of rule 3 above.”.
- (5) In rule 7 (constituency nomination papers: name of registered party) in paragraph (1), after “unless” insert “the party is a qualifying party in relation to the constituency and”.
- (6) In rule 19 (publication of statement of persons and parties nominated for return as regional members) after paragraph (6) there shall be inserted–
- “(7) The regional returning officer shall send to the Electoral Commission–
- (a) a copy of the statement; and
 - (b) in the case of each candidate standing nominated in respect of whom a certificate has been received by the returning officer in accordance with rule 7 above, a copy of that certificate as well.”.
- (7) In rule 37 (equipment of polling stations), after paragraph (3) there shall be inserted–
- “(3A) The constituency returning officer shall also provide each polling station with–
- (a) at least one large version of the ballot paper which shall be displayed inside the polling station for the assistance of voters who are partially-sighted; and
 - (b) a device of the description set out in paragraphs (3B) to (3G) below, for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion (within the meaning of rule 47(1)).
- (3B) The device referred to in paragraph (3A)(b) above shall be such that–
- (a) it satisfies the conditions in sub-paragraphs (3C) to (3G) below;
 - (b) a ballot paper can–
 - (i) be inserted into, and removed from, it; or
 - (ii) be attached to, and detached from, it; and
 - (c) the ballot paper will remain firmly in place once inserted into, or attached to, the device.
- (3C) There shall be sufficient space to allow the particulars of each candidate and, where appropriate, registered party named on the ballot paper to be clearly shown.
- (3D) There shall be a separate hole in the device for each candidate and, where appropriate, registered party named on the ballot paper.
- (3E) Each hole in the device shall be of equal size.
- (3F) Each hole shall be positioned to frame the space to the right of the particulars of the candidate or registered party (as the case may be) on which the vote may be marked (“the relevant space”).
- (3G) Each hole shall be sufficiently large to allow a voter to mark a cross in the relevant space on the ballot paper.”.

(8) In rule 40(1)(f) (admission to polling station), for “blind voters” substitute “voters with disabilities”.

(9) In rule 47 (voting by blind persons)–

(a) for paragraph (1) there shall be substituted–

“Voting by persons with disabilities

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

(a) blindness or other physical incapacity; or

(b) inability to read,

to vote with the assistance of another person by whom he is accompanied (in this Schedule referred to as “the companion”), the presiding officer shall require the voter to declare, orally or in writing, whether he is so incapacitated by his blindness or other incapacity, or by his inability to read, as to be unable to vote without assistance.”;

(b) in paragraphs (2), (3), (4) and (8) for “blind voter” or “blind voters” (wherever occurring) there shall be substituted “voter with disabilities” or, as the case may be, “voters with disabilities”; and for “blind person” there shall be substituted “voter with disabilities”.

(10) In rule 51(1)(i) (procedure on close of poll) and rule 67(1)(d) (delivery of documents to sheriff clerk) for “blind voters”, wherever occurring, there shall be substituted “voters with disabilities”.

(11) In rule 53 (the count), for paragraph (3) there shall be substituted–

“(3) 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 constituency;

(b) by hand or by post to the constituency returning officer,

before the close of the poll and is accompanied by the declaration of identity duly signed and authenticated.

(3A) The presiding officer of the polling station shall deliver or cause to be delivered any postal ballot paper or declaration of identity returned to that polling station to the constituency returning officer in the same manner and at the same time as he delivers, or causes to be delivered, the packets referred to in rule 51(1) above.”.

Schedule 3 to the Principal Order (Absent Voting)

19.—(1) Schedule 3 to the principal Order shall be amended in accordance with this article.

(2) Paragraph 1 shall be amended as follows–

(a) in sub-paragraph (1), omit “, in addition to the address which is required by article 8(7), 9(5) or 11(12) (as the case may be)”;

(b) in sub-paragraph (2)(a), omit “and”; and the reference to section 16(d) of the 1983 Act is a reference to that section as amended by paragraph 9(c) of Schedule 1 to the 2000 Act;

(c) for paragraph (b) of sub-paragraph (2) substitute–

“(b) in the case of a voluntary mental patient, the address of the mental hospital or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act(a);

(c) in the case of a person remanded in custody, the address of the place at which he is detained or the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act; and

(d) in the case of a homeless person, the address shown on the declaration of local connection in accordance with section 7B(3)(d) of the 1983 Act.”.

(d) in sub-paragraph (3) at the end, add

“An application under article 9(1) or (2) shall also specify whether it is for an indefinite period or for a particular period specified in the application.”.

(a) Section 7B was inserted by section 6 of the 2000 Act.

- (3) Paragraph 2 shall be omitted.
- (4) Paragraph 4 shall be amended as follows–
 - (a) in sub-paragraph (1)(a), at end add–
 - “or, as the case may be, it is the applicant or his spouse who is attending the course provided by an educational institution in respect of which the application is made”.
 - (b) in sub-paragraph (1)(b), for the words from “or employment” to the end, substitute “, employment or course provided by an educational institution giving rise to the application;”;
 - (c) for paragraph (d) of sub-paragraph (1) substitute–
 - “(d) the reason relevant to the general nature of the employment, service or occupation in question or the course provided by an educational institution, why the applicant cannot reasonably be expected to go in person to his allotted polling station.”;
 - (d) in sub-paragraph (2)–
 - (i) in paragraph (a)(iii) omit “and”;
 - (ii) in paragraph (b), omit “in any other case”; and
 - (iii) after paragraph (b), add–
 - “; and
 - (c) in the case of a course provided by an educational institution, by the director or tutor of that course or by the principal or head of that institution or an employee to whom this function is delegated by the principal or head.”;
 - (e) in sub-paragraph (4)–
 - (i) in each of paragraphs (a) and (b), after “employed person” add “or the person attending the course”; and
 - (ii) after sub-paragraph (ii), add–
 - “; or
 - (iii) in the case of a person who attests under sub-paragraph (2)(c), the post he holds at the institution.”.
- (5) For paragraph 5 substitute–

“Additional requirements for applications for a proxy vote in respect of a particular election

5. An application under article 9(1) to vote by proxy at a particular election shall set out why the applicant’s circumstances on the date of the poll for that election in respect of which it is made will be or are likely to be such that he cannot reasonably be expected to vote in person at his allotted polling station.”.

- (6) Omit paragraph 7.
- (7) Paragraph 8 shall be amended as follows–
 - (a) for sub-paragraphs (1) and (2) substitute–
 - “(1) An application–
 - (a) to vote by post or proxy under article 8(1);
 - (b) to vote by post or proxy under article 9(1);
 - (c) for the appointment of a proxy under article 10(6);
 - (d) for the appointment of a proxy under article 10(7); or
 - (e) from a proxy to vote by post under article 11(7),
 shall be disregarded for the purposes of any particular election if it is received by the registration officer after 5 p.m. on the sixth day before the date of the poll at that election.
 - (2) Subject to sub-paragraph (3) below, an application–
 - (a) by an absent voter to alter his choice as to the manner of absent voting under article 8(6);
 - (b) from a proxy to vote by post under article 11(4);
 - (c) by a postal voter for his ballot papers to be sent to a different address or to vote instead by proxy at a particular election under article 9(2); or

- (d) from a postal proxy for his ballot papers to be sent to a different address at a particular election under article 11(8),

shall be refused if it is received by the registration officer after 5 p.m. on the eleventh day before the date of the poll at the election for which it was made.”;

- (b) in sub-paragraph (3)–
 - (i) omit “either sub-paragraphs (2) and (3) of paragraph 5 above or”; and
 - (ii) for “(4)” substitute “(2)”;
- (c) in sub-paragraph (4), for the words from “may be disregarded” to the end, substitute–

“shall be disregarded for the purposes of a particular election if it is received by the registration officer after–

 - (i) 5 p.m. on the eleventh day before the date of the poll at that election, in the case of an application by an elector who is entitled to vote by post to be removed from the record kept under article 8(4), and
 - (ii) 5 p.m. on the sixth day before the date of the poll at that election, in any other case.”.
- (8) In paragraph 9 (grant or refusal of application)–
 - (a) after sub-paragraph (1) insert–

“(1A) Where the registration officer grants an application for the appointment of a proxy, he shall, where practicable, confirm in writing to the elector that the proxy has been appointed, his name and address and the duration of the appointment.”; and
 - (b) after sub-paragraph (4) insert–

“(5) At an election where the registration officer is not the returning officer for any constituency or part of a constituency for which he is the registration officer, he shall send to that officer details of any application to vote by post which he has granted as soon as practicable after doing so.”.

Schedule 4 to the principal Order (issue and receipt of postal ballot papers)

- 20.**—(1) Schedule 4 to the principal Order shall be amended in accordance with this article.
- (2) In paragraph 1–
 - (a) before the definition of “postal ballot paper,” insert ““postal ballot box” means the ballot box referred to in paragraph 16(1)(b) below;”; and
 - (b) in the definition of “postal voters’ ballot box”, for “11” substitute “16(1)(a)”.
- (3) After paragraph 3 there shall be inserted–

“Persons entitled to be present at proceedings on issue of postal ballot papers

3A. No person may be present at the proceedings on the issue of postal ballot papers other than the constituency returning officer and his staff.”.

- (4) Paragraph 4 shall be amended as follows:–
 - (a) in sub-paragraph (1)–
 - (i) omit “issue or”;
 - (ii) in paragraph (a) for “clerks” substitute “staff”, and
 - (iii) omit paragraph (d); and
 - (b) in sub-paragraph (2)–
 - (i) omit the words from “Where” to the words “2 or more batches,”; and
 - (ii) omit “not exceeding the number of such batches”.
- (5) For paragraph 6 there shall be substituted–

“Time when postal ballot papers are to be issued

- 6.**—(1) In the case of a person shown in the record kept under–
 - (a) article 9(4)(a); or
 - (b) article 11(6),

no postal ballot paper (and declaration of identity) shall be issued until after 5 p.m. on the eleventh day before the date of the poll (computed in accordance with paragraph 8(5) of Schedule 3).

(2) In the case of any other person, the postal ballot paper (and declaration of identity) shall be issued by the constituency returning officer as soon as practicable after the registration officer has granted the application to vote by post.”.

(6) For paragraph 10 there shall be substituted—

“Delivery of postal ballot papers

10.—(1) For the purposes of delivering postal ballot papers, the constituency returning officer may use—

- (a) a universal postal service provider;
- (b) a commercial delivery firm, or
- (c) persons appointed under rule 35(1) of the Scottish Parliamentary Election Rules.

(2) Where the services of a universal postal service provider or commercial delivery firm are to be used, envelopes addressed to postal voters shall be counted and delivered by the constituency returning officer with such form of receipt to be endorsed by that provider or firm as may be arranged.

(3) Postage shall be prepaid on envelopes addressed to the postal voters (except where paragraph (1)(c) above applies).

(4) Return postage shall be prepaid on all covering envelopes where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.

(5) In this paragraph, “universal postal service provider” has the meaning given in the Postal Services Act 2000(a) to a “universal service provider.”.

(7) Paragraph 11 shall be omitted.

(8) For paragraph 12 there shall be substituted—

“12.—(1) As soon as practicable after the issue of each batch of postal ballot papers, the constituency returning officer shall make up into a packet the counterfoils of those ballot papers which have been issued and shall seal such a packet.

(2) As soon as practicable after the last batch of postal ballot papers have been issued, the constituency returning officer shall make up into a packet the marked copy of the absent voters list and the list of postal proxies and shall seal such a packet.

(3) Until the time referred to in sub-paragraph (2) above, the constituency returning officer shall take proper precautions for the security of the lists referred to in that sub-paragraph.”.

(9) (a) Paragraph 13 (spoilt postal ballot paper) shall be amended as follows.

(b) In sub-paragraph (1) for the words from “spoilt postal ballot papers,” to the end, substitute “spoilt postal ballot paper and the declaration of identity.”.

(c) In sub-paragraph (3) for the words from “too late” to the end, substitute “after 5 p.m. on the day before the day of the poll.”.

(d) For sub-paragraph (4), substitute—

“(4) Paragraphs 3A, 4, 5 and 7 to 12 above shall apply to the issue of postal ballot papers under sub-paragraph (3) above.”.

(e) In sub-paragraph (5)—

(i) after “it” insert “and”, and

(ii) omit “and the ballot paper envelope”.

(f) After sub-paragraph (6) insert—

“(7) Where a postal voter applies in person, the constituency returning officer may hand a replacement postal ballot paper to him instead of delivering it in accordance with paragraph 12 above.

(8) The constituency returning officer shall enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)–

- (a) the name and number of the elector as stated in the register;
- (b) the number of the postal ballot paper (or papers) issued under this paragraph, and
- (c) where the postal voter whose ballot paper is spoilt is a proxy, his name and address.”.

(10) After paragraph 13 insert–

“Lost postal ballot papers

13A.—(1) Where a postal voter has not received his postal ballot paper by the third day before the day of the poll, he may apply (whether or not in person) to the constituency returning officer for a replacement ballot paper.

(2) Such an application shall include evidence of the voter’s identity.

(3) Where the application is received by the constituency returning officer before 5 p.m. on the day before the day of the poll and the constituency returning officer–

- (a) is satisfied as to the voter’s identity, and
- (b) has no reason to doubt that the postal voter did not receive the original postal ballot paper,

he shall issue another postal ballot paper or, as the case may be, postal ballot papers.

(4) The constituency returning officer shall enter in a list kept for the purpose (“the list of lost postal ballot papers”)–

- (a) the name and number of the elector as stated in the register;
- (b) the number of the lost postal ballot paper and of its replacement issued under this paragraph, and
- (c) where the postal voter whose ballot paper is lost is a proxy, his name and address.

(5) Paragraphs 3A, 4, 5 and 7 to 12 above shall apply to the issue of replacement postal ballot papers under sub-paragraph (3) above.

(6) Where a postal ballot voter applies in person, the constituency returning officer may hand a replacement ballot paper to him instead of delivering it in accordance with paragraph 12 above.

(7) Where the constituency returning officer issues another ballot paper, or as the case may be, postal ballot papers under sub-paragraph (3) above, the lost ballot paper shall be void and of no effect.”.

(11) Paragraph 14 shall be omitted.

(12) For paragraphs 15 to 20, there shall be substituted–

“Receipt of postal ballot papers

Notice of opening of postal ballot paper envelopes

15.—(1) The constituency returning officer shall give not less than 48 hours’ notice in writing of each occasion on which a postal voters’ ballot box and the envelopes contained in it is to be opened to each–

- (a) candidate for return as a constituency member; and
- (b) except in the case of an election to fill a vacancy in the seat of a constituency member, individual candidate for return as a regional member and the election agent for each registered party standing nominated.

(2) Such a notice shall specify–

- (a) the time and place at which such an opening is to take place; and
- (b) the number of agents a candidate may appoint under paragraph 4(2) above to attend each opening.

Postal ballot boxes and receptacles

16.—(1) The constituency returning officer shall provide a separate ballot box for the reception of—

- (a) the covering envelopes when returned by the postal voters (“postal voters’ ballot box”); and
- (b) postal ballot papers (“postal ballot box”).

(2) Each such ballot box shall be marked “postal voters’ ballot box” or “postal ballot box”, as the case may be, and with the name of the constituency or electoral area for which the election is, or elections are, held.

(3) The postal ballot box shall be shown to the agents present on the occasion of opening the first postal voters’ ballot box as being empty.

(4) The constituency returning officer shall then lock the ballot box and apply his seal in such manner as to prevent its being opened without breaking the seal; any of the agents present who wish to add their seals may then do likewise.

(5) The constituency returning officer shall provide the following receptacles—

- (a) the receptacle for rejected votes;
- (b) the receptacle for declarations of identity;
- (c) the receptacle for ballot paper envelopes; and
- (d) the receptacle for rejected ballot paper envelopes.

(6) The constituency returning officer shall take proper precautions for the safe custody of every ballot box and receptacle referred to in this paragraph.

Receipt of covering envelope

17.—(1) The constituency returning officer shall, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters’ ballot box.

(2) Where an envelope, other than a covering envelope issued by the constituency returning officer—

(a) has been opened; and

(b) contains a ballot paper envelope, declaration of identity or ballot papers, the first-mentioned envelope, together with its contents, shall be placed in a postal voters’ ballot box.

Opening of postal voters’ ballot box

18.—(1) Each postal voters’ ballot box shall be opened by the constituency returning officer in the presence of any agents, if in attendance.

(2) So long as the constituency returning officer ensures that there is at least one sealed postal voters’ ballot box for the reception of covering envelopes up to the time of the close of the poll, the other postal voters’ ballot boxes may previously be opened by him.

(3) The last postal voters’ ballot box and the postal ballot box shall be opened at the counting of the votes under rule 53 of the Scottish Parliamentary Election Rules.

Opening of covering envelopes

19.—(1) When a postal voters’ ballot box is opened, the constituency returning officer shall count and record the number of covering envelopes, and shall then open each covering envelope (including any envelope described in paragraph 17(2) above) separately.

- (2) The procedure in paragraph 20 below applies where a covering envelope (including an envelope to which paragraph 17(2) above applies) contains both—
- (a) a declaration of identity; and
 - (b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper (or ballot papers).

(3) Where the covering envelope does not contain the declaration of identity separately, the constituency returning officer shall open the ballot paper envelope to ascertain whether the declaration of identity is inside.

- (4) Where a covering envelope does not contain both—
- (a) a declaration of identity (whether separately or not); and
 - (b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper (or ballot papers),

the constituency returning officer shall mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.

Procedure in relation to declarations of identity

20.—(1) The constituency returning officer shall satisfy himself that the declaration of identity has been duly signed by the voter and authenticated by a witness who has signed the declaration and given his address (referred to as a “valid declaration of identity”).

(2) Where the constituency returning officer is not so satisfied, he shall mark the declaration “rejected”, attach to it the ballot paper envelope, or if there is no such envelope, the ballot paper (or ballot papers), and, subject to sub-paragraph (3) below, place it in the receptacle for rejected votes.

(3) Before placing the declaration in the receptacle for rejected votes, the constituency returning officer shall show it to the agents and, if any of them object to his decision, he shall add the words “rejection objected to”.

(4) The constituency returning officer shall then compare the number (or numbers) on the declaration of identity against the number (or numbers) on the ballot paper envelope and, where they are the same, he shall place the declaration and the ballot paper envelope respectively in the receptacle for declarations of identity and the receptacle for ballot paper envelopes.

(5) Where there is a valid declaration of identity but no ballot paper envelope, or where the envelope has been opened under paragraph 19(3) above, he shall place—

- (a) in the postal ballot box, any ballot paper the number on which is the same as the number (or one of the numbers) on the declaration of identity;
- (b) in the receptacle for rejected votes, any other ballot paper, to which shall be attached the declaration of identity marked “provisionally rejected”; and
- (c) in the receptacle for declarations of identity, any declaration of identity not disposed of under paragraph (b) above.

(6) Where the number (or numbers) on a valid declaration of identity is (or are) not the same as the number (or numbers) on the ballot paper envelope or where that envelope has no number on it (or only one number where the declaration of identity has more than one), the constituency returning officer shall open the envelope.

(7) Where an envelope has been opened under paragraph 19(3) above or sub-paragraph (6) above, the constituency returning officer shall—

- (a) place in the postal ballot box any ballot paper the number on which is the same as the number (or one of the numbers) on the valid declaration of identity;
- (b) place in the receptacle for rejected votes any other ballot paper, to which shall be attached the declaration of identity marked “provisionally rejected”;
- (c) place in the receptacle for rejected votes any declaration of identity marked “provisionally rejected” in respect of a ballot paper envelope—
 - (i) which does not contain a ballot paper; or
 - (ii) which does not contain a sufficient number of ballot papers if more than one number appears on the declaration, and shall indicate the missing ballot paper, where that is the case; and

- (d) place in the receptacle for declarations of identity, any such declaration not disposed of under paragraph (b) or (c) above.

Opening of ballot paper envelopes

21.—(1) The constituency returning officer shall open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

- (2) He shall place—
 - (a) in the postal ballot box, any ballot paper the number on which is the same as the number (or one of the numbers) on the ballot paper envelope;
 - (b) in the receptacle for rejected votes, any other ballot paper which shall be marked “provisionally rejected” and to which shall be attached the ballot paper envelope; and
 - (c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope which shall be marked “provisionally rejected” because it does not contain either a ballot paper or, where more than one number appears on the ballot paper envelope, a sufficient number of ballot papers (and indicating, in such a case, the missing ballot paper).

Lists of rejected postal ballot papers

22.—(1) In respect of any election, the constituency returning officer shall keep two separate lists of rejected postal ballot papers.

(2) In the first list, he shall record the ballot paper number of any postal ballot paper which is not accompanied by a valid declaration of identity.

(3) In the second list, he shall record the ballot paper number of any postal ballot paper which is entered on a valid declaration of identity where that ballot paper is not received with the declaration of identity.

Checking of lists kept under paragraph 22

23.—(1) Where the constituency returning officer receives a valid declaration of identity without the postal ballot paper (or papers or, as the case may be, all of the papers) to which it relates, he shall from time to time prior to the close of the poll, check the list kept under paragraph 22(2) above to see whether the number (or numbers) of a postal ballot paper to which the declaration relates is (or are) entered in that list.

(2) Where the constituency returning officer receives a postal ballot paper without the declaration of identity relating to it, he may, at any time prior to the close of the poll, check the list kept under paragraph 22(3) above to see whether the number of that ballot paper is entered in that list.

(3) The constituency returning officer shall conduct the checks required by subparagraphs (1) and (2) above as soon as practicable after the receipt of packets from every polling station in the constituency or, as the case may be, electoral area under rule 51 of the Scottish Parliamentary Election Rules.

(4) Where the ballot paper number in the list matches the number of a valid declaration of identity or, as the case may be, a postal ballot paper, the constituency returning officer shall retrieve the relevant declaration or paper.

(5) The constituency returning officer shall then take the appropriate steps under this Schedule as though any document earlier marked “provisionally rejected” had not been so marked and shall amend the document accordingly.

Sealing of receptacles

24.—(1) As soon as practicable after the completion of the procedure under paragraph 23(3) and (4) above, the constituency returning officer shall make up into separate packets the contents of—

- (a) the receptacle of rejected votes;
- (b) the receptacle of declarations of identity;

- (c) the receptacle of rejected ballot paper envelopes; and
 - (d) the lists of spoilt and lost postal ballot papers,
- and shall seal up such packets.

(2) Any document in those packets marked “provisionally rejected” shall be deemed to be marked “rejected”.

Abandoned poll

25.—(1) Where a poll is abandoned or countermanded after postal ballot papers have been issued, by reason of the death of a candidate, the constituency returning officer—

- (a) shall not take any step or further step to open covering envelopes or deal with the contents in accordance with the provisions of this Schedule; and
- (b) shall, notwithstanding paragraphs 19 to 21 above, treat all unopened covering envelopes and the contents of those that have been opened as if they were counted ballot papers.

(2) Sub-paragraph (1) above shall not apply where postal ballot papers for more than one election have been issued together under paragraph 2 above.

Forwarding of documents

26.—(1) The constituency returning officer shall forward to the sheriff clerk at the same time as he forwards the documents mentioned in rule 67 of the Scottish Parliamentary Election Rules—

- (a) any packets referred to in paragraphs 12, 13(6) and 24 above, subject to paragraph 25 above, endorsing on each packet a description of its contents, the date of the election to which it relates and the name of the constituency or electoral ward for which the election (or elections) was (or were) held; and
- (b) a completed statement in Form AC set out in the Appendix of the number of postal ballot papers issued.

(2) Where—

- (a) any covering envelopes are received by the constituency returning officer after the close of the poll (apart from those delivered in accordance with rule 53(3A) of the Scottish Parliamentary Election Rules);
- (b) any envelopes addressed to postal voters are returned as undelivered too late to be readdressed; or
- (c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued.

the constituency returning officer shall put them unopened in a separate packet, seal up such packet and endorse and forward it at a subsequent date in the manner described in sub-paragraph (1) above.

(4) Rules 66 and 67 of the Scottish Parliamentary Election Rules shall apply to any packet or document forwarded under this paragraph.

(5) A copy of the statement referred to in sub-paragraph (1)(b) above shall be provided by the constituency returning officer to the Secretary of State.”.

Schedule 6 to the Principal Order (Legal Proceedings)

21.—(1) Schedule 6 to the principal Order shall be amended in accordance with this article.

(2) In Part 1—

- (a) in the entry for section 138 (list of petitions), in the right-hand column, insert “In subsection (1) the words from “, copy of which” onwards shall be omitted”;
- (b) the entries for sections 148 to 153 (withdrawal or abatement of petition) shall be omitted;
- (c) in the entry for section 159(a) (candidate reported guilty of corrupt or illegal practice), in the right-hand column omit the entry for subsection (2);

(a) Section 159 of the 1983 Act was amended by paragraph 7 of Schedule 17 to the 2000 Political Parties Act.

- (d) in the entry for section 160 (persons reported personally guilty of corrupt or illegal practice), in the right-hand column, delete paragraph (a) and the entry in respect of subsection (5);
 - (e) in the entry for section 173(a) (incapacities on conviction of corrupt or illegal practice), in the right-hand column, insert “Omit subsection (10)”;
 - (f) after the entry for section 173, there shall be added “section 173A(b) (incapacity to hold public or judicial office in Scotland)”;
 - (g) after the entry for section 180 (evidence by certificate of holding of elections) there shall be added “section 180A(c) (evidence by certificate of electoral registration)”;
 - (h) the reference to section 166 is a reference to that section as amended by paragraph 9 of Schedule 17 to the 2000 Political Parties Act.
- (3) In Part II–
- (a) the entries for sections 146 (special case for determination of High Court), 147 and 152 (withdrawal or abatement of petition) shall be omitted;
 - (b) in the entry for section 160 (persons reported personally guilty of corrupt or illegal practices), in the right-hand column in the entry for subsection (4), there shall be omitted paragraphs (b) and (c) and the entry for subsection (5);
 - (c) after the entry for section 170, there shall be added “Section 173A (incapacity to hold public or judicial office in Scotland)”;
 - (d) after the entry for section 180, there shall be added “Section 180A (evidence by certificate of electoral registration)”.
- (4) In Parts I and II–
- (a) the reference to section 137 (petition at issue) is a reference to that section as substituted by paragraph 3 of Schedule 17 to the 2000 Political Parties Act;
 - (b) the reference to section 185 (interpretation) is a reference to that section as amended by paragraph 10 of Schedule 17 to the 2000 Political Parties Act.

Appendix of Forms

22.—(1) The Appendix of Forms shall be amended in accordance with this article.

(2) In Form G (form of declaration to be made by election agent for a candidate etc), omit “Justice of the Peace (or as the case may be) for”.

(3) In Form V (form of declaration to be made by companion of a blind voter), for “blind person” or “blind voter” (wherever occurring) there shall be substituted “voter with disabilities”; and after the note at the end of the Form (which shall become Note 1), there shall be inserted–

“2. A voter with disabilities is a voter who has made a declaration under the Scottish Parliamentary Election Rules that he is so incapacitated by his blindness or other disability, or by his inability to read, as to be unable to vote without assistance.”.

(4) In each of Forms P, AA and AB (declarations of identity for a postal vote etc.) in the Front of form, omit the entry for “name of witness”, and in the Back of form, in paragraph 1 omit the words “name and”.

(a) Section 173 was substituted by section 136 of the 2000 Political Parties Act.

(b) Section 173A was inserted into the 1983 Act by section 136 of the 2000 Political Parties Act.

(c) Section 180A was inserted into the 1983 Act by paragraph 20 of Schedule 1 to the 2000 Act.

(5) For Form AC (statement as to Postal Ballot Papers) there shall be substituted the Form AC set out in the Schedule to this Order.

HELEN LIDDELL
One of Her Majesty's Principal Secretaries of State

Scotland Office,
Meridian Court
Glasgow
5th April 2001

**SCHEDULE
FORM AC**

STATEMENT AS TO POSTAL BALLOT PAPERS

Constituency/Region.....Date of poll....., 20.....

A. Issue of postal ballot papers	No Constituency	No Region
1. Total number of postal ballot papers issued under Schedule 4, paragraph 6(1).		
2. Total number of postal ballot papers issued under Schedule 4, paragraph 13(3) (where the first ballot paper was spoilt and returned for cancellation.).		
3. Total number of postal ballot papers issued (1 + 2).		

B. Receipt of postal ballot papers.	No Constituency	No Region
4. Number of covering envelopes received by the returning officer before the close of poll (including any received under Schedule 4, paragraph 14(1) but excluding any undelivered or returned with spoilt ballot papers).		
5. Number of covering envelopes received by the returning officer after the close of poll, excluding any returned as undelivered.		
6. Number of postal ballot papers returned spoilt for cancellation in time for other ballot papers to be issued.		
7. Number of postal ballot papers returned as spoilt too late for another ballot papers to be issued.		
8. Number of covering envelopes returned as undelivered (up to the date of this statement).		
9. Number of covering envelopes not received by the returning officer by the date of this statement.		
10. Total Nos. 4-9 (This number should be the same as that in 3 above).		

C. Count of ballot papers	No Constituency	No Region
11. Number of covering envelopes received by the returning officer before the close of poll (excluding any undelivered or returned with spoilt ballot papers). This should equal item 4 above and should also equal items 12 plus 13.		
12. Number of ballot papers returned by postal voters which were included in the count of ballot papers.		
13. Number of cases in which a covering envelope or its contents were marked "Rejected" (cancellations under Schedule 4 paragraph 13(5) are not rejections and should be included in items 2 and 6 above).		

Date.....Signed.....

Returning Officer

Address.....

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Scottish Parliament (Elections etc.) Order 1999 (“the 1999 Order”). The amendments are needed as a consequence of changes made by the Representation of the People Act 2000, the Political Parties, Elections and Referendums Act 2000, the Postal Services Act 2000 and the Representation of the People (Scotland) Regulations 2001.

The main changes to the 1999 Order result from the introduction by the Representation of the People Act 2000 of a new system of “rolling registration”. Under this system the register of local government electors continues in force indefinitely (although revised versions of it will be produced at least once a year). This contrasts with the previous system under which the register remained in force for one year and was compiled by reference to residence on a qualifying date.

As eligibility to vote at elections for membership of the Scottish Parliament depends on registration in the register of local government electors, amendment of the 1999 Order is necessary to reflect, and take account of, the changes made by the recent primary and subordinate legislation.

The main changes concern—

- (a) absent voting (articles 6 and 7), amending articles 8 and 9 of the 1999 Order;
- (b) voting by proxy (articles 8 and 9), amending articles 10 and 11 of the 1999 Order;
- (c) the effect of registration (article 10), amending article 21 of the 1999 Order;
- (d) election expenses (articles 12 and 13), amending articles 35, 41, 43, 53 and 54, and omitting articles 37, 40, 42, 47, 49 and 57, of the 1999 Order;
- (e) provision and sale of the register (article 17), amending Schedule 1 to the 1999 Order;
- (f) changes to the Scottish Parliamentary Election Rules (article 18(7) to (11)), amending Schedule 2 to the 1999 Order;
- (g) absent voting (article 19), amending Schedule 3 to the 1999 Order in respect of absent voting, whether by post or by proxy, for an indefinite or particular period, or for a particular election;
- (h) issue and receipt of postal ballot papers (article 20), amending Schedule 4 to the 1999 Order;
- (i) amendment of Schedule 6 to the 1999 Order (article 21) which applies, to the election or return of a constituency or regional member of the Scottish Parliament, the provisions of the Representation of the People Act 1983 on legal proceedings; and
- (j) amendment of Forms G, V, P, AA, AB and AC set out in the Appendix to the 1999 Order (article 22 and the Schedule to this Order).

Other changes are made to take account of the establishment of the Electoral Commission and the different provisions about the registration of political parties and election campaigns made by the Political Parties, Elections and Referendums Act 2000. These are—

- (k) the requirement for the Secretary of State to act only in accordance with and on the recommendation of the Electoral Commission (article 11), amending article 23 of the 1999 Order;
- (l) the duty on returning officers to forward returns and declarations to the Electoral Commission (article 14) inserting a new article, 54A, in the 1999 Order, and
- (m) amendment of the requirements of the Scottish Parliamentary Election Rules (set out in Schedule 2 to the 1999 Order) on nominations of candidates as constituency or regional members (article 18(2) to (6)).

Articles 2, 27, 58 and Schedules 2 and 4 of the 1999 Order are also amended by paragraph 131 of Schedule 1, and by Schedule 2, to the Postal Services Act 2000 (Consequential Modifications No. (1) Order 2001 as a consequence of the changes made by that Act.

£3.50

© Crown Copyright 2001

Published and printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament
400 05/01 19593

