

## Scottish Parliamentary election

# Guidance for candidates and agents

## Part 6 of 6 – After the declaration of results

October 2020

This document applies to Scottish Parliamentary elections. Our guidance and resources for other elections in the UK can be accessed from our website at: <https://www.electoralcommission.org.uk/i-am-a/candidate-or-agent>.

# Contents

|  |          |
|--|----------|
| <b>Essential information</b> .....   | <b>1</b> |
| Oath of allegiance or solemn affirmation .....                                 | 2        |
| Return of deposit.....   | 2        |
| Constituency election.....   | 2        |
| Regional election .....  | 2        |
| Election petitions .....   | 3        |
| What happens to the election paperwork after the results are announced? .....  | 3        |
| Submitting your election spending returns .....                                | 3        |
| <b>Supplementary information</b> .....   | <b>5</b> |
| Lodging an election petition.....  | 5        |
| Inspection and supply of election-related documents.....                       | 6        |
| Inspection and supply of the marked registers and lists of absent voters ..... | 7        |
| Inspection of other election documents .....                                   | 8        |
| Election spending returns .....  | 9        |



# Essential information

This section of the document contains our guidance on what happens after the results at a Scottish Parliamentary election have been announced. Supplementary information, which may only be relevant to some candidates, is provided at the back of this document. You can also view this supplementary guidance by clicking on the links within this document or by clicking on the chapter heading on the contents page.

We are here to help, so please contact us if you have any questions.

See our [Overview document](#) for contact details.

In this document, we use ‘you’ to refer to all types of candidates at elections to the Scottish Parliament. We refer to candidates who are not included on a party list at the regional election as ‘individual regional candidates’.

We use ‘must’ when we refer to a specific requirement. We use ‘should’ for items we consider to be minimum good practice, but which are not legal or regulatory requirements.

Deadlines mentioned in this document are generic and we have published a generic [election timetable](#) on our website. For scheduled elections, we will publish an election timetable containing the specific deadlines for those polls which you can download from [our website](#).

# 2

## Oath of allegiance or solemn affirmation

1.1 If elected, you will be given information on how you will be able to attend the Scottish Parliament.

1.2 Before a person can sit and vote in the Scottish Parliament they must take the oath of allegiance or make a solemn affirmation to the monarch in front of the Clerk of the Parliament. This is known as the swearing in and will take place at the start of the new Parliament. You can find more information on taking the oath or affirmation on the [Scottish Parliament website](#).

## Return of deposit

### Constituency election

1.3 Those constituency candidates who have polled more than 5% of the total number of valid votes cast in the constituency will have their deposit returned by the Constituency Returning Officer by the next working day following the declaration of result.

1.4 Those candidates who have polled equal to or less than 5% of the total number of valid votes cast in the constituency will lose their deposit.

### Regional election

1.5 The deposit made by or on behalf of any individual regional candidate or registered party list that has polled more than 5% of the total number of valid votes cast at the regional election will be returned by the Regional Returning Officer by the next working day following the declaration of result.

1.6 The deposit will also be returned if a regional list or individual regional candidate is allocated a seat, even if they have not obtained more than 5% of the valid votes cast. In all other cases the deposit is forfeited.

## Election petitions

1.7 The outcome of a Scottish Parliamentary election can be challenged through an election petition. For further details on challenging an election, see paragraph **1.15**.

## What happens to the election paperwork after the results are announced?

1.8 After the results are declared, all election documents are securely held by the Constituency Returning Officer for a period of 12 months.

1.9 Most documents are available for public inspection. Please note that ballot papers are not open to public inspection. If you wish to inspect election documents, see paragraph **1.23** for further information.

## Submitting your election spending returns

1.10 If you stood for election at the constituency election, within 35 calendar days of the election result being declared your election agent will need to prepare and submit an election spending return to the Constituency Returning Officer.

1.11 If you stood for election as an individual regional candidate within 35 calendar days of the election result being

Political parties contesting the Scottish Parliamentary election must also report the details of their campaign spending to us. Detailed information can be found in our [guidance document for political parties](#).

# 4

declared your election agent will need to prepare and submit an election spending return to the Regional Returning Officer.

1.12 In addition, in the case of constituency and individual regional candidates, both you and your election agent will need to sign a declaration stating that the return is complete and correct to the best of your knowledge and belief.

1.13 If you stood for election as a candidate on a party list, within 35 calendar days of the election result being declared you will need to complete [a declaration](#) and submit it to the Regional Returning Officer.

1.14 More information on what must be included in the return is contained in [Part 3 - Spending and donations](#). We have also produced forms which you can use to complete your return. These forms – and accompanying detailed notes explaining how to complete and submit your return – can be found under Part 3 [on our website](#).

# Supplementary information

## Lodging an election petition

1.15 Only certain people can lodge an election petition, and only under specific circumstances.

1.16 A Scottish Parliamentary election petition can be issued by:

- a person claiming to have been a candidate at the election, or
- a person claiming to have had a right to be elected or returned at the election, or
- a person who voted as an elector at the election or who had a right to vote at the election, except for an elector who is registered anonymously

1.17 The allowable grounds for a petition are that there has been an:

- undue election, or
- undue return

1.18 There is a separate judicial process for challenging the election of an MSP on the grounds that they were or are disqualified, by application to the Court of Session.

1.19 The Member whose election or return is complained about must be a respondent to the petition. If the petition complains about the conduct of the Returning Officer (either the Constituency Returning Officer and/or the Regional



# 6

Returning Officer) or their staff during the election, the Returning Officer(s) must also be a respondent.

1.20 Normally a petition must be presented within 21 calendar days after the date of the return made by the Returning Officer to the Clerk of the Parliament. However, if the petition complains of corrupt or illegal practices involving the payment of money or other reward, or an illegal practice relating to election spending, further time may be allowed.

1.21 For any questions relating to election petitions, including to confirm the deadlines for lodging an election petition, you should contact:

The Petition Department  
Court of Session  
Parliament House  
Parliament Square  
Edinburgh  
EH2 1RQ

Email: [supreme.courts@scotcourts.gov.uk](mailto:supreme.courts@scotcourts.gov.uk)

Tel: 0131 225 2595

Fax: 0131 240 6711

1.22 There are costs attached to an election petition. If you are considering lodging an election petition, we strongly recommend that you take independent legal advice.

## Inspection and supply of election-related documents

1.23 All documents available for supply and inspection are retained by the Constituency Returning Officer. The names and contact details of Constituency Returning Officers will be updated and made available prior to scheduled elections on our [website](#).

## Inspection and supply of the marked registers and lists of absent voters

1.24 The marked electoral registers and lists of absent voters show who has been issued with a ballot paper, who has returned their postal ballot paper, and who has had a proxy vote cast on their behalf.

1.25 You can inspect or obtain copies of the marked register of electors and lists of absent voters after the election if you make a written request. If you stood as a constituency candidate, you can have access to the marked registers and lists of absent voters across the constituency. If you stood as an individual regional candidate or were a candidate on a party list who has been elected you can have access to the marked registers and lists of absent voters across the region.

1.26 To inspect or obtain copies of the marked register and lists of absent voters you must make a request in writing to the relevant Constituency Returning Officer.

1.27 You should be aware that you can only use the information obtained from these documents for research or electoral purposes.

1.28 The request for inspection must specify:

- which documents are requested
- the purposes for which the information in any document will be used
- where the request is to inspect the marked register or lists, any reason why inspecting the full register or unmarked lists would not be sufficient to achieve that purpose
- who will inspect the documents
- the date on which they wish to inspect the documents, and
- whether they would prefer to inspect the documents in a printed or data form

# 8

1.29 Inspection is under supervision and will be free of charge. You will not be able to take copies, but may make handwritten notes.

1.30 The request for supply must specify:

- which of the marked register or lists (or the relevant part of the register or lists) are requested
- whether a printed copy of the records or lists is requested or a copy in data form
- the purposes for which the marked register or lists will be used and why the supply or purchase of a copy of the full register or unmarked lists would not be sufficient to achieve that purpose

1.31 The requested document will be supplied for a fee of £10 plus £2 for printed and £1 for data versions per 1,000 entries.

1.32 After 12 months these documents will be destroyed, unless a court order directs otherwise.

1.33 Under data protection legislation, personal data processed for any purpose shall not be kept for longer than is necessary for that purpose. If you request and are supplied with any of the information listed above, once the purpose for collecting this data has passed, you need to consider if there is a reason for you to retain that data. If there is not you should ensure secure destruction of any data held.

## Inspection of other election documents

1.34 You can inspect other election documents, but you will not be allowed to make any notes or take copies of these documents. The only documents that cannot be inspected are:

- the ballot papers
- the corresponding number lists
- the certificates allowing polling station staff to vote at the polling station they are working at

Nomination papers may only be inspected during the time for delivery of nomination papers, and only by those entitled to attend. Further details can be found in [Part 2a Standing at the constituency election](#) and [Part 2b Standing at the regional election](#).

- nomination papers

1.35 After 12 months all of the election documents, with the exception of election spending returns, will be destroyed, unless a court order directs otherwise.

## Election spending returns

1.36 Spending returns and declarations held by the Constituency Returning Officer and Regional Returning Officer can be inspected by any person after they have been submitted. Copies can also be made for a fee of 20p per side per page.

1.37 Spending returns and declarations are kept for two years. You can request to have them returned to you or your agent at the end of this period. If you or your agent does not want them back, the documents will be destroyed.