

Scottish Parliamentary election

Guidance for candidates and agents

Part 5 of 6 – Your right to attend key electoral events

February 2021

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>.

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Essential information

This section of the document contains our guidance on attending key electoral processes at a Scottish Parliamentary election.

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 candidates. We refer to candidates at the regional election who are not included on a party list 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.

We have published the [election timetable](#) for the May 2021 polls on our website.

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The opening of postal votes

What is postal voting?

1.1 People aged 16 or over who are registered to vote, or have applied to be registered to vote, can apply to vote by post in the Scottish Parliamentary election by submitting an application to the Electoral Registration Officer. The application must be received by the Electoral Registration Officer by 5pm on the twenty-first working day (ie. 6 April 2021) before the poll. Those who have been appointed to vote as a proxy on behalf of someone else may also apply for a postal vote by applying by 5pm on the twenty-first working day before the poll. The Electoral Registration Officer has no discretion to extend the deadline for whatever reason.

1.2 Postal ballot packs will be dispatched around three weeks before polling day. There will be a final batch of postal ballot packs issued to electors who registered close to the registration deadline once their names have been added to the final register update on the fifth working day before the poll.

1.3 Electors will then mark their ballot paper(s), complete the postal voting statement by providing their signature and date of birth and return them to the Constituency Returning Officer (CRO) before the close of poll.

What does the postal ballot pack contain?

- **Envelope A** is the envelope that the elector returns their ballot papers in. It is marked with the letter 'A' and the words 'ballot paper envelope'
- **Envelope B** is the envelope that the elector will use to return the ballot paper envelope and the postal voting statement. It is marked with the letter 'B' and the address of the CRO
- **The postal voting statement** contains the elector's name, the numbers of the ballot papers issued to them, instructions on how to vote by post and space for the elector to sign and provide their date of birth
- **The constituency ballot paper**

If the election is combined with another poll, the CRO may have decided to combine the issue of postal votes.

In that case, the postal ballot pack will also contain the ballot paper for the other electoral event(s).

- **The regional ballot paper**

Attendance by candidates and agents at the constituency election

1.4 Constituency candidates and their election agents (or a person appointed by a candidate to attend in their election agent's place) can attend the opening of postal votes.

1.5 A sub-agent may also attend, but only if they are attending instead of an election agent.

1.6 Additionally, agents may be appointed specifically to attend postal vote openings. [Part 2a – Standing at the constituency election](#) contains information on how to appoint these agents.

Attendance by candidates and agents at the regional election

1.7 The election agent for a registered political party standing nominated in the regional election, or a person appointed by the Nominating Officer of that party to attend in the agent's place, can attend the opening of postal votes.

1.8 Individual regional candidates and their election agents (or a person appointed by an individual regional candidate to attend in their election agent's place) can attend the opening of postal votes.

1.9 A sub-agent may also attend, but only if they are attending instead of an election agent.

1.10 Additionally, agents may be appointed specifically to attend postal vote openings. [Part 2b - Standing at the regional election](#) contains information on how to appoint these agents.

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What does a postal voting agent do?

1.11 A postal voting agent is allowed to attend and observe postal vote opening sessions, which are run by the CRO. At each opening session the CRO will decide whether or not the date of birth and signature provided by electors on their postal voting statements match the signature and date of birth previously provided and held on their records. If there is a mismatch, the postal vote will be rejected.

1.12 A postal voting agent has a right to observe, but not to interfere with, this process. A postal voting agent can, however, object to the decision of a CRO to reject a postal vote. It will not affect the CRO's decision, but the CRO will record any objections by marking the postal voting statement with the words 'rejection objected to'.

1.13 Those candidates, election agents and other persons outlined in paragraphs **1.4** to **1.10 above** as entitled to attend postal vote openings are also entitled to object to a rejection.

1.14 The CRO will explain the postal vote opening process to you and may issue you with information on the procedures to be followed, including instructions on what people attending an opening session can and cannot do.

1.15 Anyone attending an opening session should comply with any instructions that the CRO has given.

Duty to maintain secrecy

1.16 Ballot papers will be kept face down throughout a postal vote opening session. Anyone attending an opening session must not attempt to see how individual ballot papers have been marked. It follows therefore that **keeping a tally of how ballot papers have been marked is not allowed.**

1.17 In addition, anyone attending a postal vote opening must not attempt to look at identifying marks or numbers on ballot papers, disclose how any particular ballot paper has been marked or pass on any such information gained from the session. Anyone found guilty of breaching these requirements can face a fine of up to £5,000, or may be imprisoned for up to a year.

Candidates and agents are not entitled to attend the **issue** of postal votes.

For more information read the [postal voting secrecy requirements](#)

When are postal votes opened and how will you know when an opening session is taking place?

1.18 It is likely that several opening sessions will take place before polling day, as well as on polling day itself.

1.19 The CRO must give at least 48 hours' notice of when and where the sessions will take place, and will also set out how many postal voting agents will be allowed to attend each session. Notice must be given to:

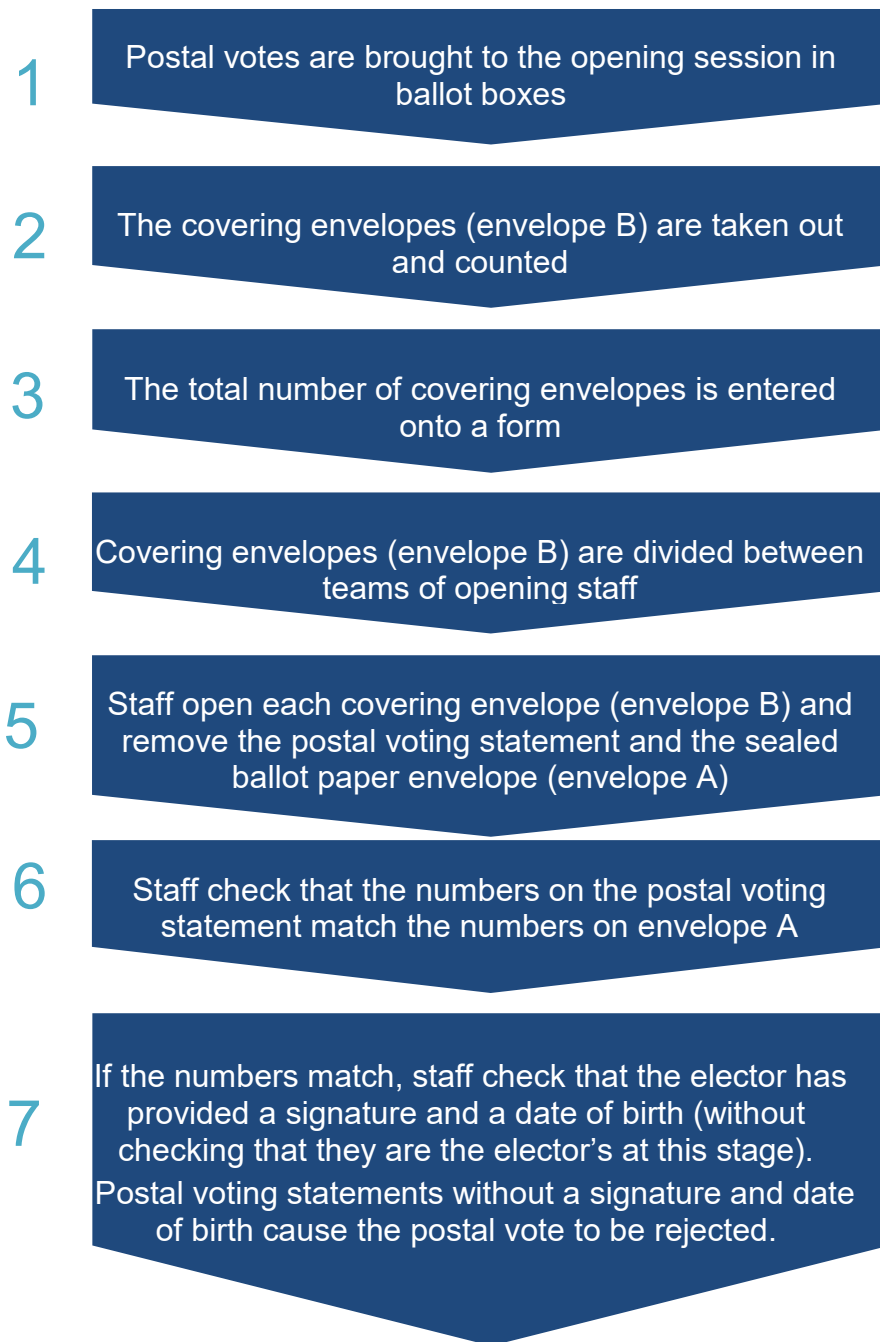
- each constituency candidate
- each individual regional candidate, and
- the election agent for each registered political party standing nominated in the regional election

1.20 There will be a final opening session after the polls have closed to open any postal votes handed in to polling stations. This session may be held at the count venue or in another location. The CRO will advise those listed above of the location for the final opening.

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Flowchart of the opening session process

1.21 The postal vote opening process can be summarised as follows:



A very small number of voters do not need to sign their postal voting statement. These voters will have been granted a waiver because they are unable to sign or provide a consistent signature due to a disability or an inability to read or write. The postal voting statement sent to such electors will make this clear.

- 8 If the statement **or** ballot paper envelope is missing, or the numbers on the statement and ballot paper envelope do not match, the document(s) are set aside, recorded and stored in secure packets
- 9 The CRO must verify the dates of birth and signatures provided on the statements
- 10 The CRO must be satisfied that the dates of birth and signatures on the statements match those previously provided and held on record
- 11 Following verification of the signatures and dates of birth, postal voting statements are removed from the tables
- 12 Staff open the ballot paper envelopes (envelope A) and remove the ballot papers
- 13 Staff check that the numbers on the back of the ballot papers match the numbers on the ballot paper envelope (envelope A)
- 14 Valid ballot papers (**not** votes) are counted and the total number is recorded
- 15 All valid ballot papers are placed into ballot boxes and stored securely before being delivered to the count venue for counting after the close of poll

The CRO will match up postal voting documents received separately, provided the statement is completed correctly and received by the close of poll.

Ballot papers must be kept face down throughout this process.

Valid ballot papers are those ballot papers whose related postal voting statement has passed the signature and date of birth checks.

Invalid ballot papers are set aside and stored in secure packets.

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Invalid and rejected postal voting statements

1.22 Unless a waiver has been granted, the CRO will reject a postal voting statement if a signature and/or date of birth is missing or if a signature and/or date of birth does not match that previously provided by the elector and held on record.

1.23 Rejected statements are attached to the relevant ballot papers or ballot paper envelope. They are marked as 'rejected' and shown to any agents present.

1.24 Agents can object to the CRO's decision to reject any postal vote and, if they do, the words 'rejection objected to' are added to it. However, the CRO's decision is final and the postal vote will remain rejected.

Polling stations

1.25 All candidates are entitled to attend polling stations, except that only one candidate from a particular party list may be present inside a polling station at any given time.

1.26 Election agents, or a sub-agent attending in place of an election agent, may also attend.

1.27 Additionally, agents may be appointed specifically to attend polling stations. For details on how to appoint these agents, see [Part 2a – Standing at the constituency election](#) or [Part 2b – Standing at the regional election](#).

Who can vote at polling stations?

1.28 Most people choose to vote in person at their polling station. Any person on the polling station's electoral register can vote at the polling station in a Scottish Parliamentary election, unless:

- they are a registered postal voter
- they are a registered proxy voter and their proxy has already voted for them or has applied to vote on their behalf by post
- they are not 16 years of age or older on polling day

- they are registered as an overseas peer or an overseas elector

1.29 Electors will receive a poll card before the election telling them where and when they can vote. Electors do not need to take their poll card to the polling station in order to vote.

1.30 Registered postal voters cannot be issued with ballot papers at the polling station, but they can return their completed postal ballot pack to their polling station on polling day. Alternatively, they may return their postal vote to certain other polling stations in the constituency (the elections office will be able to provide details) or by hand to the CRO at the elections office.

1.31 Postal ballot packs returned to polling stations must be handed to polling station staff and not placed in the ballot box.

Polling station opening hours

1.32 Polling stations will be open on polling day between 7am and 10pm.

Finding the location of polling stations

1.33 The CRO will give public notice of the location of polling stations by 5pm on the twenty-third working day before the poll. They will give a copy of this notice to election agents soon after this.

What does a polling agent do?

1.34 Polling agents have a number of important roles to play on polling day. They can:

- be present in the polling station before the opening of the poll to watch the Presiding Officer show the empty ballot box(es) before they are sealed
- detect personation and prevent people voting more than once in the election (other than as proxies)

The only electors who need to bring a poll card with them to vote are those who have registered anonymously because of risks to their safety.

Any voters waiting in a queue at their polling station at 10pm will be allowed to vote, even if they haven't been issued with ballot papers.

While a polling agent can observe the poll, they do not have to be present in a polling station for polling and related procedures to take place.

Personation is when an individual votes as someone else (whether that person is living or dead, or is a fictitious person).

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- be present when the Presiding Officer marks ballot papers at the request of an elector who needs assistance marking their ballot papers because of a disability or an inability to read or write
- report to candidates or election agents any improper activities and keep notes, if required, for giving evidence in court
- be present at the close of poll when the various packets of documents are sealed
- attach their seal to any packets made up by the Presiding Officer at the close of poll, including the ballot box(es)

Polling agents' seals cannot be attached to ballot boxes at the start of or during the poll.

1.35 Candidates and election agents can also do anything that a polling agent is entitled to do.

Maintaining the secrecy of the ballot

1.36 Anyone attending a polling station has a duty to maintain the secrecy of the ballot. In particular, the following information must not be disclosed:

- the name or electoral number of who has or has not voted
- the number or other unique identifying mark on the ballot papers

For more information see: [secrecy requirements - the poll](#)

1.37 Anyone attending a polling station must also not try to ascertain how a voter has voted or who they are about to vote for.

1.38 A polling agent can mark off on their copy of the register of electors those voters who have applied for ballot papers. If the polling agent leaves the polling station during the hours of polling, they will need to leave the marked copy of the register in the polling station to ensure that secrecy requirements are not breached.

1.39 Any person found guilty of breaching the secrecy requirements can face a fine of up to £5,000, or may be imprisoned for up to a year.

What is the normal voting process?

1.40 The normal voting process at a polling station is straightforward and can be summarised as follows:

Polling station staff will...

- ask voters for their name and address, and make sure they are eligible to vote
- mark a straight line against the voter's entry on the register of electors
- call out the number and name of the elector
- write the elector number on a list next to the numbers of the ballot papers to be issued
- ensure the ballot papers include the official mark (e.g. a barcode or watermark)
- fold the ballot papers and then hand them to the voter **unfolded** so that they can see all of the options on the ballot papers
-

Where the election is combined with another electoral event, polling station staff will be issuing the ballot papers for all electoral events.

Different ballot boxes may be used for different contests.

The voter will...

- mark the ballot papers in private in the polling booth
- fold the ballot papers and show the ballot paper number and unique identifying mark on the back of the ballot papers to the Presiding Officer
- place the ballot papers in the ballot box(es) and leave the polling station

1.41 The Presiding Officer can assist anyone who is unable to mark the ballot papers themselves. Alternatively, a voter may bring along someone they know and trust to assist them in marking their vote. The person assisting the voter must either be a close relative over the age of 16, or be a person entitled to vote at the election. A person can only assist a maximum of two voters at the election.

Collection of postal ballots from the polling station

1.42 The CRO may arrange for the collection of any postal votes that electors have handed in at polling stations throughout polling day. The Presiding Officer must seal any returned postal votes in a packet before they are collected. Any agents present can add their own seal to the packet if they wish.

Tellers

1.43 Tellers are people who stand outside polling stations and record the elector numbers of electors who have voted. They can then identify likely supporters who have not voted and encourage them to vote before the close of poll.

1.44 Tellers have no legal status and voters can refuse to give information to them.

1.45 We have produced a factsheet of [tellers dos and don'ts](#), as well as more comprehensive [guidance on the activities of tellers](#). The guidance aims to ensure that everyone knows precisely what is and is not acceptable and is designed to promote appropriate standards of conduct. The CRO may also provide their own guidance to tellers.

The CRO is in charge of the conduct of the election. If they are concerned by the activities of tellers, they can ask tellers to comply with agreed behaviour or leave the polling place.

What happens after polls close?

1.46 Once all voters who have been issued with ballot papers have voted, the ballot box(es) are sealed by the Presiding Officer and polling agents, candidates or election agents can add their own seal if they wish. After the Presiding Officer has completed all of the paperwork, the sealed ballot box(es) are taken to the count venue.

The count

1.47 Candidates (whether constituency candidates, individual regional candidates or those on a party list) and one other person chosen by them, as well as election agents are entitled to attend the count. A sub-agent is entitled to attend in place of an election agent.

1.48 Additionally, agents may be appointed specifically to attend the count. See [Part 2a – Standing at the constituency election](#) or [Part 2b – Standing at the regional election](#) for details on how to appoint counting agents.

What does a counting agent do?

1.49 Counting agents have a number of important roles to play at the count:

- they observe the counting process and make sure that it is accurate
- they can draw to the attention of count staff any doubtful ballot papers
- if they disagree with a decision by the CRO to reject a ballot paper, they can ask the CRO to mark on the ballot paper “rejection objected to”
- if a count is suspended for any reason or there is a break in the proceedings, counting agents can add their seals when the CRO seals the ballot boxes and envelopes

1.50 Candidates and election agents can also do anything that a counting agent is allowed to do.

When and where will the count take place?

1.51 The CRO is responsible for verifying and counting the votes cast in their constituency for both the constituency and regional elections. The CRO will provide notification of the exact time and location.

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1.52 CROs must make arrangements for counting the votes as soon as practicable after the close of poll.

1.53 While it is important that a count is timely, it is also important that the count produces accurate results that everyone can have confidence in.

1.54 The Regional Returning Officer (RRO) will notify the individual regional candidates and the election agents for regional party lists of the time and place where the allocation of regional seats will take place. For further information on the allocation of regional seats see paragraph **1.61** onwards.

How the votes will be counted

Check-in

- 1 The CRO's staff deliver the ballot boxes from the polling stations to the count venue
- 2 The CRO's staff check in ballot boxes as they arrive at the count venue

Verification

- 3 Ballot boxes are emptied onto tables and the empty boxes are shown to agents
- 4 Staff count the constituency and regional ballot papers from each polling station, keeping them face up
- 5 Staff verify that the number of ballot papers matches the number of papers issued, as recorded on the Presiding Officers' ballot paper accounts
- 6 The CRO determines the reasons for any discrepancies and produces a final verified total for constituency ballot papers and for regional ballot papers
- 7 The CRO produces a statement of the verification. Agents can view or copy this statement if they wish

There may be a single ballot box or different boxes for the different contests. In any case, ballot papers will be sorted into the separate contests.

Any ballot paper found in the 'wrong' ballot box is still valid and will be moved to the correct box during verification.

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Counting of the votes

The processes for counting the constituency and regional ballot papers are the same, although the results from the constituency will be transmitted to the Regional Returning Officer for the calculation of the regional results and the allocation of regional seats.

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Staff sort ballot papers by candidate or party

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Staff count the number of votes cast for each candidate or party

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The CRO can refuse to recount if they think the request is unreasonable

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The CRO will share the provisional constituency result/regional local totals and the candidates and agents can ask the CRO to recount the votes

Recounts for both the constituency and the regional elections can only be requested at constituency level. Once the regional totals for the constituency have been submitted to the Regional Returning Officer and these have been approved, no recounts may take place.

What if the vote on a ballot paper is not clear?

1.55 A ballot paper will not be counted if it:

- is unmarked
- does not contain the official mark
- contains votes for more than one candidate or party

- contains any mark or writing that can identify the voter
- does not indicate the voter's intention with certainty

1.56 For each of the constituency and regional elections, the CRO must draw up a statement showing the number of ballot papers rejected for these reasons.

1.57 If the voter's intention is clear on a ballot paper and the voter cannot be identified by any mark or writing, it will not be void if a vote is marked:

- elsewhere than in the proper place
- by other means than a cross (e.g. a tick)
- by more than one mark

1.58 The CRO must mark the word "rejected" on any ballot paper that is rejected. They must add the words "rejection objected to" if a counting agent objects to the CRO's decision. For more details on the adjudication of doubtful ballot papers, see paragraph **1.73**.

Declaration of the constituency result

1.59 On concluding the constituency count, the CRO will declare the candidate with the most votes elected. If two or more constituency candidates have the same number of votes, and a further vote for either would see the candidate elected, the CRO must decide between them by drawing lots. In that case, the CRO will decide the method of drawing lots.

1.60 They will also produce a statement showing the total number of votes given for each candidate, the name of their party (if applicable), and the number of rejected ballot papers.

Transmission of constituency result and local regional totals

1.61 Once the constituency result has been declared and the regional votes have been counted, the CRO will inform the Regional Returning Officer of the constituency result and the totals for the regional election in the constituency. Once

Some Returning Officers allow candidates to make speeches after the result is declared. If you are a constituency candidate, please check arrangements with your CRO.

For details of what happens to the election documents after the results have been announced see: [Part 6 – After the declaration of results](#)

satisfied that the regional totals are accurate, the Regional Returning Officer will authorise those totals and the CRO will give public notice of them.

1.62 The Regional Returning Officer will use the constituency results and the totals for the regional election from the constituencies across the region to calculate the regional result and allocate the seats.

The allocation of regional seats

1.63 Once the totals for the regional election have been authorised, the Regional Returning Officer will collate them and add them together to calculate the total number of votes cast for each party or individual regional candidate in the electoral region (the 'regional result').

Who can attend the allocation of regional seats?

1.64 Individual regional candidates, party list candidates and one other person chosen by them, as well as the election and counting agents for individual regional candidates and party lists may attend the allocation of regional seats. Additionally, the Nominating Officer of a party list may attend. A person attending in place of the election agent may also attend (this could be a sub-agent).

When and where will the allocation of regional seats take place?

1.65 The Regional Returning Officer will notify individual regional candidates and the election agent of each party list of the time and place where the allocation of regional seats will take place. The allocation cannot take place until all the constituency results within the region have been declared.

Calculation and allocation of regional seats

1.66 Each region is allocated seven seats to be filled. A mathematical formula (called ‘modified d’Hondt’) determines who obtains those seats.

1.67 This formula sees the number of votes cast in the regional election for each party or individual candidate divided by the number of constituency seats they have gained, plus one.

Total number of votes received by the party/individual candidate

Number of seats that the party/individual candidate has won at the constituency election + 1

1.68 The first regional seat is allocated to the party or candidate who has the largest figure after the Regional Returning Officer performs this calculation.

1.69 To allocate the second to seventh regional seats, the calculation is repeated, but each time the number that the regional vote figure must be divided by will be the total number of seats already won (regional and constituency), plus one.

1.70 The seats each party is entitled to are filled by the candidates in the order in which their names appear on their party list.

1.71 Once an individual candidate has been allocated a seat, or a party has been allocated as many seats as there are candidates on its list, they are removed from the calculation for the allocation of the remaining seats.

Recalculation

1.72 Individual regional candidates and the election agent for each party list (or, in the agent’s absence, one of the candidates on the list) may request that the Regional Returning Officer conducts a recalculation of the allocation of seats.

However, the Regional Returning Officer may refuse to do so if they believe the request is unreasonable.

1.73 There is no provision at this stage to request a recount of votes.

Declaration of regional results

1.74 Once all the seats have been allocated, the Regional Returning Officer will declare and give public notice of the regional results.

Some Returning Officers allow candidates to make speeches after the result is declared. Check the specific arrangements with the Regional Returning Officer.

Supplementary information

Doubtful ballot papers

1.75 To assist CROs, we have produced guidance on how to adjudicate votes on ballot papers that may appear doubtful. This guidance is contained in our booklet [Dealing with doubtful ballot papers](#) which CROs may refer to at the count. We have also produced a placemat of allowed and rejected votes at the [constituency](#) and [regional](#) election for quick reference.

1.76 The examples given in these are based on the election rules. Please note that while they provide guidance for CROs, each individual CRO has the ultimate responsibility for making a decision on individual ballot papers. Their decision to reject a particular ballot paper during the count or recount is final and can be reviewed only at an election petition after the declaration of the result. For more details on election petitions, see [Part 6 – After the declaration of results](#).