ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

Position Paper: Scrutiny of Verification and Count at the Scottish Parliament Election 2021

1. To achieve confidence in the result of an election all processes must be transparent, accurate, auditable and evidenced, while maintaining secrecy.

2. This is true for all processes including polling, the processing of postal votes and the verification and counting of ballot papers.

3. Full and effective scrutiny of processes is an important element in promoting confidence in and acceptance of results. However it is not the only element. Processes themselves must be robust and transparent with in-built mechanisms to preserve accuracy and completeness.

4. At all key electoral processes regulations facilitate such scrutiny through observation of the processes by agents appointed by candidates. Properly appointed independent observers are also entitled to attend such processes. All are required to observe the relevant secrecy requirements.

5. Counting agents can be appointed to observe the verification and counting processes to ensure that it is accurate. They can alert the Returning Officer and staff to any concerns with respect to those processes or decisions around the validity of papers.

6. Returning Officers are permitted by law to limit the number of counting agents. The number that may be appointed by each candidate/registered party must be the same.

7. A formula is suggested by law such that unless there are special circumstances, the number appointed must not be less than the number obtained by dividing the number of counting assistants (i.e. those staff counting the ballot papers) by the number of candidates. This should provide sufficient counting agents per candidate/party to allow full and proper scrutiny of the processes.

8. Across all of their operations Returning Officers must consider health and safety implications. When deciding on the maximum numbers of counting agents they must consider the safe capacity of the venue. Usually this will be determined by fire regulations.

9. Measures to suppress and prevent the spread of the coronavirus are predicated fundamentally on physical distancing. The imposition of a 2 metre distance between people necessarily limits the capacity of count venues.

10. Physical distancing has severely limited the capacity of some Count venues. This has consequences for the duration of Counts which will take longer as there are fewer staff counting votes. However with priority given to counting staff there will be a limit on the number of counting agents that candidates may appoint. This election is being held under circumstances that will require the number of counting agents to be less than the formula suggested by law. It will not be possible for Returning Officers to allow as many as they would under usual conditions, while adhering to the health and safety regulations.

11. Returning Officers must clearly communicate to Candidates, their Agents and Registered Parties that in order to allow the verification and count to proceed safely and legally there will be strict limits on the number of counting agents that may be appointed.

12. While the number of counting agents will be limited Returning Officers must ensure that the verification and count are fully and effectively scrutinised through offering and promoting other mechanisms to allow transparency.

13. It will be essential that those counting agents who are present understand the importance of their role in providing scrutiny, ultimately on behalf of the elector. In being present at the count they ensure that a secret process is still transparent and operated according to the rules.

14. Candidates and Agents are legally entitled to be at the verification/count and the adjudication of doubtful papers by the Returning Officer. Where counting agent numbers are limited candidates and election agents must themselves observe processes and give attention to scrutiny.

15. At any verification and count it is not the role of agents to scrutinise every paper. Rather they need to have and provide confidence in the overall process. They need to be content that the process is robust, is being operated according to the rules and preserves electoral integrity.

16. With limited numbers of counting agents Returning Officers must give attention to other methods of demonstrating that the process is sound. These methods may include:

    a. **Checking of bundles** – count staff may offer to quickly flick through bundles of papers at both verification and count stages under the observation of agents to give assurance that the correct papers have been received and that they are sorted correctly.

    b. **Revised layouts** – Returning Officers must consider the layout of their count operation. While physical distancing is necessary the arrangement of tables must be such that there is maximum potential for observation of the processes.

    c. **Sharing of verification documentation** – verification reconciliations showing the full verification accounts for all polling stations must be shared openly with candidates and agents at the count. These will allow every paper to be accounted for whether issued, unused or spoiled.

    d. **Narrating the process** - in a mini-count style process count at the verification can tell observers the box that they are working on and the number of papers found in it.

    e. **Operating as a collective** group – counting agents should be encouraged to act as a body, not on behalf of individual candidates. Their responsibility should be seen as being to the elector and in support of democracy itself. Acting as a group they will be better able to scrutinise the process.

    f. **Process not papers** – Returning Officers must ensure that agents understand their role is to scrutinise the *process* rather than individual papers. To do so they must understand that process and its checks and balances. Returning Officers must consider ways to explain the process at and ahead of the count so that those in attendance are familiar with the stages involved. Ignorance of the process limits effective scrutiny. Returning Officers may consider guidebooks, flow charts, posters at the count and information videos to explain and educate.

17. There have been suggestions that CCTV cameras could be arranged to monitor each table allowing observation of the processes at a distance or in different rooms.   This is not an approach that the EMB would promote for several reasons:

    a. Technical complexity – a system allowing for an equivalent observation of the verification and count process as would be offered by the usual number of counting agents would be technically complex, difficult to operate and expensive in terms of resource and staff. Other options as described in this paper are simpler and as effective.

    b. Secrecy of the ballot - the broadcast of images of ballot papers enhances the risk of breaches of the secrecy of the ballot. There would be options for maintaining a secure and closed circuit system but there would remain a risk of a breach of secrecy.

    c. Cyber security – again the cyber security of the system would need to be considered. Any streaming of images over the internet would risk the breach of the requirement for secrecy.

18. The adjudication of doubtful papers needs to be undertaken with particular attention to transparency.   Under current conditions physical distancing will need to be enforced in order to operate a safe count. It is essential that arrangements are in place to allow every doubtful paper to be properly scrutinised while candidates and agents are at a distance from the Returning Officer and from each other. Returning Officers may consider:

    a. **Digital Overhead Projectors** – as often used in classrooms, images of the paper could be projected onto screens or displayed on large TV screens allowing candidates and agents to see the paper and if they wish object to the adjudication decision of the Returning Officer.

    b. **Networked IT systems** – ROs could utilise a network of laptops distanced from each other to allow papers to be seen and adjudication witnessed via a video conference system such as MS Teams or Zoom. There would need to be an option for the physical paper to be inspected if requested.

19. While the fundamental role of a counting agent is to scrutinise the process it is usual for them to undertake some sampling of boxes, using statistical models to predict the result of a contest. Returning Officers sometimes permit such activities in the interest of transparency. Sampling is not a right however and given the limits on numbers and the physical distance from tables, candidates and agents will need to understand that it will be highly unlikely that such sampling will be possible in these conditions. Returning Officers will need to explain that the other options suggested in this paper are in place to support transparency.

20. Returning Officers will need actively to promote the transparency of the verification and count using a variety of methods to address the concerns of candidates and agents who maybe dissatisfied with the limited number of agents. This needs to be seen as a clear consequence of physical distancing which is required for a safe and legal count. There should be early and clear communication.

21. In summary, the capacity of Count venues is limited due to the imposition of 2 metre distancing required for safe operation. This will necessarily limit the number of counting agents. Scrutiny of both verification and count processes is fundamental, and Returning Officers should adopt a range of measures to allow full and proper scrutiny of processes, with attention given to the adjudication of doubtful papers.

MALCOLM BURR
Convener of the Electoral Management Board for Scotland
10 March 2021