

**THE BALLOT ACT, 1872, WITH  
INTRODUCTION. FORMING A  
GUIDE TO THE PROCEDURE AT  
PARLIAMENTARY AND  
MUNICIPAL ELECTIONS**

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**GERALD A. R. FITZGERALD**

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FORMING A GUIDE TO THE PROCEDURE AT PARLIAMENTARY  
AND MUNICIPAL ELECTIONS.

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# THE BALLOT ACT, 1872.

## INTRODUCTION.

### CHAPTER I.

#### PROCEDURE AT PARLIAMENTARY ELECTIONS.

THE object of this chapter is to trace succinctly the course of procedure at a parliamentary election, since a Ballot Bill, after an agitation more or less pronounced at different periods, has at length passed into law. The summoning of Parliament is taken as the starting-point, and chronological order is followed as the most convenient and intelligible. Throughout it has been attempted to point out distinctly and explain the alterations and modifications of the previously existing law made by the Ballot Act, 1872 (hereinafter referred to as "the Act"), with the result, it is hoped, of presenting a full and clear view of the law as it now stands.

OBJECT OF  
CHAPTER.

Parliament is summoned by the Sovereign by and with the advice of the Privy Council. According to the modern practice the royal proclamation dissolving

SUMMON  
ING OF  
PARLIA-  
MENT.  
Write.

Parliament declares it to be the royal pleasure to call a new Parliament, and the Chancellors of Great Britain and Ireland are in pursuance of such proclamation directed by an order in Council to issue writs of summons to the Lords Spiritual and Temporal, and writs for the election of knights, citizens, and burgesses to serve in the said Parliament.\*

The writs for election as well as the writs of summons to the Peers of England and Ireland, and the proclamation requiring the Peers of Scotland to meet at Holyrood House and choose sixteen representative peers, are prepared and issued by the Petty Bag office under the Great Seal.† It was formerly required by 7 & 8 W. 3, c. 25, that there should be forty days between the *teste* and the return of the writs of summons, and since the union with Scotland it had been the practice to extend this period to fifty days; but by 15 & 16 Vict. c. 23 the minimum period between the date of the proclamation appointing a time for the first meeting of Parliament and the time so appointed, has been reduced to thirty-five days.

A writ for the election of a member to fill a casual vacancy is issued by the clerk of the Crown in Chancery, on a warrant signed by the Speaker; and the form of the writ varies according as it is issued

\* These are the two kinds of writs now in use, but some confusion has arisen in the books from the use made of the term "writ of summons," which frequently includes the writs for election, and appears in some instances to have been applied to the warrant or order for the issuing of the writs out of Chancery. See 7 & 8 W. 3, c. 25; 10 W. 3, c. 7; Coke, 4 Inst. 4, 10; Com. Dig. V. 245-248; Hallam, *M. Ages*, iii. 4, *seq.*; Steph., *Bl. II.* 346 (6th edition); May, *Parl. Pract.*, p. 42 (6th edition); Rogers on Elections, p. 253, *seqq.* (11th edition).

† 12 & 13 Vict. c. 109, s. 14. The writs for election for Ireland are issued by the Clerk of the Crown in Ireland.



for that purpose, or for the election of members at a general election. (See the new form of writ in Schedule II. to the Act.)

Delivery of writs is made by post, except in the cases of the sheriffs of London and sheriff of Middlesex, and where a sheriff or other person to whom writs are directed holds his office in London, Westminster, or Southwark, or within five miles thereof, in which case the messenger is to carry the writ to such office (53 Geo. 3, c. 89). The date of the receipt of the writ must be endorsed on it in manner provided in Schedule II. to the Act.

Delivery of  
Writs.

The returning officer is the person to whom the writs for election are addressed, and he is charged throughout with the conduct of the election.

RETURN-  
ING OF-  
FICER.

In counties, and counties of cities and counties of towns, the returning officer is the sheriff.

In counties.

In boroughs under the Municipal Corporations Act (5 & 6 Wm. 4, c. 76), other than the town of Berwick-upon-Tweed, and other than cities and towns which are counties of themselves, the returning officer is the mayor (s. 57); in such of the new boroughs created by 2 Wm. 4, c. 45, as have since obtained a charter of incorporation, is the mayor or other chief municipal officer, if the charter gives power to elect such a person (s. 11); in the new boroughs created by 30 & 31 Vict. c. 102, which are or include a municipal borough, is the mayor of such municipal borough (s. 47);\* in certain other boroughs (especially those

In boroughs.

\* 31 & 32 Vict. c. 58, s. 33, provides generally that whenever a parliamentary borough becomes a municipal borough, the mayor shall take the place of the then returning officer.

mentioned in 2 W. 4, c. 45, Schedule C.), is by custom some local officer, such as the high bailiff or borough-reeve or the warden of the Cinque Ports.

In boroughs other than the above mentioned, the sheriff of the county within which the borough is situate appoints a fit person, resident in the borough, to be returning officer (2 Wm. 4, c. 45, s. 11; 30 & 31 Vict. c. 102, s. 47).\*

With a view to such cases, by 6 Vict. c. 18, s. 101, and the other Acts relating to registration, the term "returning officer" is declared to apply to every person to whom by virtue of his office, under any law, custom, or statute, the execution of any writ or precept doth or shall belong for the election of a member or members to serve in Parliament, by whatever name or title such person may be called.

In Univer-  
sities.

In the Universities of Oxford, Cambridge, and London, the returning officer is the Vice-Chancellor (16 & 17 Vict. c. 68; 30 & 31 Vict. c. 102, s. 41).†

Casual  
vacancies.

The law with respect to *casual* vacancies in the office of returning officer is contained in numerous statutes, and its provisions are in some cases ambiguous and incomplete.

\* In Scotland the returning officer for a county and for a single city, burgh, or town, is the sheriff of the county; for a district of cities, burghs, or towns is some particular sheriff specified in Sched. L. to 2 & 3 W. 4, c. 65; and see 31 & 32 Vict. c. 48. In Ireland the returning officer in counties is the sheriff; in boroughs is the mayor. 3 & 4 Vict. c. 108, s. 84; 25 & 26 Vict. c. 92.

† The returning officer for the Universities of Edinburgh and St. Andrews is the vice chancellor of the University of Edinburgh; for the Universities of Glasgow and Aberdeen, is the vice chancellor of the University of Glasgow (31 & 32 Vict. c. 48, s. 37). The returning officer for the University of Dublin is the Provost of Trinity College (see 24 & 25 Vict. c. 58).

Where the sheriff dies before the expiration of his year of office, or, being an officer of militia, is on service with his militia, the under-sheriff is answerable for the execution of his office until another is appointed and sworn, or the militia is disembodied (3 Geo. 1, c. 15, s. 8; 2 & 3 Vict. c. 59, s. 2).

But other cases do not seem to be provided for; as, for example, the case of a sheriff dying or going out of office after the issue and before the delivery of the writ, or dying after the election and before the return.

With respect to municipal boroughs other than Berwick-on-Tweed, and other than counties of cities and counties of towns, 5 & 6 W. 4, c. 76, s. 57, declares that in case of the death, incapacity, or absence of the mayor, or in case there be no mayor, "the council of such borough, *shall* forthwith elect one of the aldermen to be returning officer;" while 16 & 17 Vict. c. 79, s. 7, provides that the mayor of every city, borough, or town corporate *may*, during his illness or absence, appoint an alderman or councillor to act as his deputy; and section 8, that such deputy may, during such illness or absence, "lawfully do and perform all acts which the mayor, in his official capacity, might himself do or perform." Under the above sections it may be doubted whether, in the event of the illness or absence of the mayor of a municipal borough, the choice of a returning officer lies with the council or the mayor.

Further, it is enacted by 17 & 18 Vict. c. 57,\* that whenever in a borough, city, or town there is no

\* So in Ireland. 25 & 26 Vict. c. 92, s. 3.