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## General

Dutch nationals resident in the Netherlands who are aged 18 and over are entitled to vote for representatives in the Lower House of the States-General and the provincial and municipal councils. This was not always the case. Universal male suffrage was not introduced in the Netherlands until 1917 and women were not given the vote until two years later.

## Types of election

As a rule, members of the Lower House, provincial councils and municipal councils are directly elected every four years. The Lower House has 150 members, and the number of members of a provincial assembly varies according to the population of the province concerned. The assembly of the most densely populated province, South Holland, has 83 members, while that of Flevoland, the least densely populated, has 43. The municipal councils also vary in size, depending on the population of the municipality. The largest has 45 members, the smallest seven. On 1 January 2005 there were 467 municipalities.

The 75 members of the Upper House, sometimes called the Senate, are elected indirectly, likewise for a four-year term, by the members of the provincial councils of the 12 provinces. Together the Upper and Lower Houses constitute the States-General, which is also referred to as Parliament.

Since 1979, the European Parliament has also been directly elected. The voters of the Member States of the European Union elect the members of the Parliament for a period of five years. Of the 732 members, 27 are elected from the Netherlands. The regulations governing these elections in the Netherlands are modelled as closely as possible on those governing elections to the Lower House. Where this booklet deals with elections to the European Parliament, it is referring of course to the election of representatives from the Netherlands.

## Elections following the dissolution of the Lower or Upper House

The Constitution provides for the dissolution of the Lower or Upper House before the end of its normal term. The classic example of a situation in which the government may avail itself of this option is in the event of a clash between government and Parliament, although dissolution may also be a result of conflict within the cabinet. The dissolution of one of the Houses of Parliament is followed by an election, which is generally conducted in accordance with the same rules as the normal four-yearly elections.

## Statutory regulations

The right to vote is among the fundamental rights embodied in the Constitution, which also contains other basic provisions concerning the franchise. The detailed regulations governing the right to vote for the two Houses of Parliament, the provincial and municipal councils and the European Parliament are set out in the Elections Act and the Elections Decree based upon it.

## The Electoral Council

The Electoral Council advises the government and Parliament on practical matters relating to elections or questions of franchise. It also acts as the central polling station in parliamentary elections and elections to the European Parliament.

## The right to vote and to stand for election

### The right to vote

All Dutch nationals who are aged 18 or over on polling day are entitled to vote in elections. Dutch nationals resident abroad are entitled to vote in elections to the Lower House and the European Parliament. However, in the case of Dutch nationals living in the Netherlands Antilles, certain conditions are attached: they must have previously resided for at least ten years in the Netherlands, or be a Dutch public servant, or be the spouse, partner or child of a Dutch public servant and form part of the same household as that person. Only those resident in a particular province or municipality on the day on which candidates are nominated may vote in the election for the provincial or municipal council concerned.

Non-Dutch nationals are also entitled to vote in municipal elections provided they satisfy a number of requirements. In this respect, a distinction is drawn between EU citizens and other non-Dutch nationals. EU citizens are entitled to vote in municipal elections under the same conditions as Dutch nationals. Other non-Dutch nationals must not only satisfy the same requirements as Dutch nationals on the day on which the parties' lists of candidates for the elections must be submitted, but they must in addition have been legally resident in the Netherlands for a continuous period of at least five years. This means that they must have held a valid temporary or permanent residence permit under article 8, sections a,b,c,d,e or l, of the Aliens Act 2000.

In addition, non-Dutch nationals must hold a valid residence permit in terms of article 8 of the Aliens Act 2000 on the day when the lists of candidates are submitted. Residence under an agreement between an international organisation and the Dutch State concerning the establishment of that organisation in the Netherlands is deemed to constitute possession of such a valid residence permit.

The right to vote is not, however, granted to non-Dutch nationals who are members of staff of diplomatic and consular missions in the Netherlands, or on their spouses, partners or children if the latter form part of the same household.

Since 1994, EU citizens have been entitled to vote in elections to the European Parliament in the Member State in which they live. This means that people resident in the Netherlands and possessing the nationality of any other Member State of the European Union are entitled to vote in Dutch elections to the European Parliament. To do so, however, they must be over the age of eighteen, not be disqualified from voting in the Netherlands or in their own countries, and may not take part in the elections in their own countries.

Conversely, Dutch nationals living elsewhere in the European Union may only vote in Dutch elections to the European Parliament if they do not do so in their country of residence.

#### The right to stand for election

All Dutch nationals aged 18 or over have the right to stand for election. Once elected, they can only take their seat if they reside in the area of the relevant provincial or municipal authority.

Non-Dutch nationals aged 18 and over may also stand for election to municipal councils. The conditions on which they may do so are identical to those stated above in relation to the right to vote, except that they must satisfy them not on the day of nomination but on the day of admission to the municipal council.

Non-Dutch nationals possessing the nationality of any other Member State of the European Union are entitled to stand for election in Dutch elections to the European Parliament, provided they do not stand for election elsewhere. Likewise, Dutch nationals living elsewhere in the European Union are entitled to stand for election to the European Parliament in their country of residence, providing that they do not do so in the Netherlands (or in any other Member State).

#### Voting not compulsory

Voting was compulsory from 1917, when universal male suffrage was introduced, through to 1970. In lifting the obligation to vote, Parliament held that, although there should no longer be a statutory obligation to vote, members of the public should still feel a moral obligation to participate in the democratic election of their representatives.

#### Disqualification

The law provides for certain exclusions from the franchise: persons who have been deprived by a court of the right to vote or who have been declared mentally unfit to manage their own affairs are disqualified from voting and from standing as candidates. Only a limited number of offences, and then only cases where a custodial sentence of at least one year is imposed, may lead to disqualification.

## Voter registration

The names of all voters in a municipality are entered on the electoral roll kept by the municipal executive. To protect personal privacy, the roll is not available for public scrutiny, although every individual may obtain information on his or her own registration as a voter. As a rule, registration as a voter is permanent and is done via the computerised population register known as the GBA.

However, Dutch nationals resident abroad have to register with the municipality of The Hague for each individual parliamentary or European election. They may do so at any point between six months and six weeks before the day on which the relevant election is due to be held, by submitting an application for registration to the head of the consular mission in whose consular area they are resident (except in the Netherlands Antilles and Aruba, where such applications must be submitted to the Governor's office.) The application is then forwarded to the municipal executive in The Hague. Those who have applied to vote in one parliamentary or European election automatically receive a voter registration form for the next election to the same assembly.

Nationals of other Member States of the European Union wishing to take part in Dutch elections to the European Parliament can apply to be registered as voters in the municipality in which they live. If they then move to another municipality, the registration moves with them. The 1994 European elections were an exception in that non-Dutch nationals who were entitled to vote were automatically sent a polling card.

## Proportional representation

A system of proportional representation is used in all Dutch elections, under which the distribution of seats in a representative assembly corresponds to the distribution of votes in the entire constituency. In other words, a party obtaining 10% of the votes cast also obtains 10% of the seats. In distributing the seats between the parties, the whole country, province or municipality, depending on the type of election, is treated as a single constituency.

## Electoral districts

For elections to the Lower House of Parliament the country is divided into 19 electoral districts. This division is of a purely technical nature, and is primarily designed to allow the political parties to put up candidates who are well known in a particular part of the country. In determining the results of an election, however, the votes cast for a particular political party in the various electoral districts are all counted together.

In provincial council elections the provinces may also be divided into electoral districts, but every municipality forms a single electoral district for the purposes of municipal council elections. The country is not divided up for elections to the European Parliament. The 12 provinces form the electoral districts for the indirect elections to the Upper House.

## Political parties

In practice, political parties play a key role in elections, although they figure less prominently in the Elections Act, where the underlying principle is that lists of candidates for election are to be submitted by groups of individual voters. Since 1956, however, the role of political parties has been recognised in the Act, which now allows them to field a list of candidates under the party banner. Moreover, the Act accords parties availing themselves of this opportunity and already represented in the assembly to which an election is being held a number of facilities in relation to the nomination of candidates.

If a party is to field a list of candidates under its name, it must register that name with the central polling station for the election in question. Only parties which are legal persons are eligible for registration. This means that the party's constitution must be embodied in a notarial act and a deposit must be paid which is returned if a valid list of candidates is submitted for the forthcoming election. The amount of the deposit is €450 for parliamentary or European elections, €225 for provincial elections and €112,50 for municipal elections. A name registered with the Electoral Council for use in parliamentary elections may also be used in elections for provincial and municipal councils; likewise, a name registered for use in provincial council elections may also be used in municipal elections in the same province.

The central polling station decides whether the party's name is acceptable; for example, a name may not resemble that of another party too closely as this would confuse the voters. Nor may a party use a name which is wholly or largely the same as that used by a group which has been banned by a court. The decision of the central polling station is based solely on the name. An application for registration cannot be turned down on the grounds of a party's objectives or conduct.

A political party which is registered under a particular name may request a change of name. Such a request is assessed in the same way as an application for initial registration.

The Electoral Council keeps a separate register of names for use in elections to the European Parliament and the Upper House. Names entered in the register for Lower House elections may also be used in elections to the Upper House.

After every election the central polling station cancels the names of parties which fielded no candidates.

## Nomination of candidates

### *Dates*

Elections are preceded by the nomination of candidates. In the case of normal full-term elections to the Lower House and provincial and municipal council elections, nomination day is the Tuesday between 18 and 24 January, 43 days before voting is to take place. If a normal Lower House election falls in the same year as provincial or municipal council elections, the parliamentary election is postponed for two months and candidates are nominated on the Tuesday between 22 and 28 March.

Candidates for election to the Upper House are nominated on the Tuesday between 19 and 25 April, with voting taking place 34 days later.

If the Upper or Lower House is dissolved before the end of the four-year term, a Royal Decree sets the date for the nomination of candidates, which must fall within 40 days of the issue of the dissolution decree.

### *Submission of a list of candidates*

On the date appointed for the nomination of candidates, voters may hand in lists of candidates at the main polling station in each electoral district. In the case of a provincial council election in a province which is not divided into electoral districts and in that of municipal council elections, a main polling station is set up for the whole province or municipality. No more than 30 names may appear on each list of candidates unless the party holds more than 15 seats in the assembly for which the election is being held. In that event the list may contain twice as many names as the party holds seats, up to a maximum of 80.

Parties wishing to put up candidates throughout the country for election to the Lower House must submit a list in every electoral district. The same applies to parties wishing to take part in provincial council elections in provinces which are divided into electoral districts. However, parties which already hold seats in the Lower House or a provincial council and which took part in the last election for either assembly with a recognised name at the head of their list of candidates may submit all their lists to the central polling station instead of submitting them separately in each electoral district. In the case of elections to the Lower House, the lists are submitted to the main polling station of the electoral district in which The Hague is situated, and in provincial council elections to the main polling station of the electoral district in which the provincial capital lies. This process is subject to the condition that the party is putting up candidates in all the electoral districts and that the same names appear in the same order on all the lists. However, a party which is permitted to enter more than 30 names on its list may vary the last five names. Where all the lists are identical, only one copy need be submitted.

Candidates for European Parliament elections are likewise nominated by voters, in lists submitted to the Electoral Council. Members of provincial councils may submit lists of candidates for Upper House elections to the Queen's Commissioner of the relevant province.

The lists put forward by a particular party in the various electoral districts are automatically grouped together, counting as a single list when it comes to allocating seats. The votes cast for a particular party in the various electoral districts are added together.

Every list of candidates must be accompanied by a declaration to the effect that the candidates accept nomination and a copy of a valid identity document for every candidate who has not already been a member of the assembly to which the election is being held.

No name may appear more than once on lists submitted in an electoral district, although parties may if they wish field the same candidates in different electoral districts. The political party must therefore decide for itself whether it wishes to put up lists which are entirely or partly identical or completely different in the various electoral districts. In making this decision, the possible effects on the central nomination of candidates have to be taken into account.

#### *Deposit and declarations of support*

When a list of candidates is submitted, a deposit must be lodged - €11.250 for Lower House or European elections, €1.125 for provincial council elections and €225 for municipal council elections. The amount of the deposit is not related to the number of electoral districts in which the list is being submitted and parties are exempted from payment if they already hold seats in the assembly to which the election is being held and fielded candidates in the last election under the same party name.

The deposit is refunded if the party obtains at least 75% of the electoral quota (arrived at by dividing the number of valid votes cast by the number of seats at stake). Failure to obtain this proportion of the quota means that the deposit is forfeited to the State, the provincial capital or the municipality, depending on the type of election. In the case of European elections, the deposit is forfeited to the State.

Each list must be accompanied by declarations of support signed by a number of voters registered in the electoral district concerned. In the case of elections to the Lower House, the European Parliament, provincial councils or municipal councils with at least 39 members, the list must be supported by at least 30 voters. In the case of municipal councils with between 19 and 39 members, the minimum number is 20, and for municipal councils with fewer than 19 members it is 10. Declarations of support may be signed in the week preceding nomination at the secretariat of the municipality in which the voter is registered. The obligation to submit declarations of support applies equally to new parties and to those already holding seats in the assembly to which the election is being held.

#### *Examination of the lists*

The main polling station in each electoral district must decide whether the lists of candidates submitted are valid, in other words whether they meet the statutory requirements, and whether the names of all the candidates can be accepted. The polling station must also decide whether the party name at the head of the list can be used. This means ascertaining whether it has been registered and whether the person authorised to do so by the party has stated that the person

submitting the list is entitled to place the name at its head. Before taking these decisions, the main polling station offers the person submitting the list an opportunity to remedy any omissions.

#### *Linking lists*

As explained above, all the lists put forward by the same party automatically form a group, which is regarded as a single list for the purposes of seat allocation. Different parties may also opt to link their lists in this way for the same purpose. This is done by submitting a declaration at the main polling station on nomination day. Only parties which have registered their name may combine their lists in this way. If the election involves electoral districts, the combination must include all the lists submitted by the same parties in every electoral district.

#### *Numbering the lists*

The main polling station assigns a number to each list, with the groups counting as single lists to ensure that one party's list has the same number in every electoral district. The first numbers are assigned to parties which are already represented in the assembly concerned, on the basis of the number of votes they obtained at the previous election. In other words, the party which came top of the poll becomes no. 1, and so on. Numbers are then assigned to the other parties on the basis of a draw.

## Voting

#### *Polling districts and polling stations*

Each municipality is divided into one or more polling districts, each with its own three-member team of assessors. Well before the election, the municipal executive appoints sufficient numbers of assessors and deputies. Some 10,000 such teams are involved in every election. The municipal executive designates suitable premises in every district for use as polling stations. These polling stations are equipped with polling booths to ensure that voting takes place in secret. As many of the polling stations as possible must be accessible to the disabled, and these are announced well in advance of polling day.

In addition to the ordinary polling stations, the municipal executive may set up a mobile polling station to enable physically handicapped people and the elderly to cast their vote closer to home. Voters wishing to use a mobile polling station must produce a voter's identity card (see below). Another option is the establishment of special polling stations in busy areas like shopping centres and stations. Here too voters must produce voter's identity cards.

#### *Polling cards and the voting procedure*

At least two weeks before polling day, all voters receive a card from the mayor addressed to them in person, inviting them to vote between 7.30 and 21.00 hours on that day at the polling station in the district in which they live.

Most municipalities now use voting machines, to which voters are given access after presenting a polling card. The decision to use voting machines in elections is taken by the council of the

municipality concerned. Only voting machines of a kind approved by the Minister of the Interior may be used in elections.

In municipalities which do not use machines, voters present their polling card and receive a ballot paper from the presiding officer at the polling station. The ballot paper is printed with the lists of candidates and votes are cast by using a red crayon to colour in a white circle in a black square preceding the name of the preferred candidate.

Voting by proxy, voting at a polling station of the voter's choice, postal voting. Voters who are unable to vote in person may authorise another voter to do so for them. They can do this either by transferring the polling card to a voter from the same electoral district or by authorising someone living in another electoral district to vote on for them. This is done by applying to the mayor. No reason need be given for the request. The proxy simply receives a special card from the mayor authorising him or her to vote on behalf of the applicant.

Voters who cannot attend their local polling station may arrange to vote elsewhere, by applying to the mayor for a voter's identity card which enables them to vote anywhere in the area for which the election is being held.

Voters living abroad may apply to vote by post in parliamentary and European elections. They then receive their voting papers from the municipality of The Hague.

#### *Postal polling stations abroad*

Under the Elections Act, postal polling stations may be set up at Dutch diplomatic missions abroad. This is regular practice in the Netherlands Antilles and Aruba. Dutch voters living in a country where a postal polling station has been set up send their voting papers to the station. Others send them to the municipality of The Hague.

## Determining the result and allocating the seats

### *Counting the votes at the polling stations*

After the polling stations close at 21.00 hours, the votes cast are counted by the staff of each polling station. Any voter who wishes to do so may attend the count. The total number of valid and invalid votes are counted, as well as the number for each list and candidate. (Ballot papers on which no circle has been coloured red or on which more than one has been coloured are invalid.) Voters are entitled to register objections during the count and these must then be included in the official report drawn up by the polling station staff. At polling stations where voting machines are in use, the votes are not counted by hand since the machine provides figures for the total number of votes cast, per list and per candidate, and for the number of invalid votes (abstentions). These data are then incorporated in the polling station's official report.

On the evening of polling day, the Netherlands News Agency (ANP) produces an unofficial calculation of the result on the basis of the figures it receives directly from all municipalities.

### *The role of the main polling station*

The mayor of each municipality passes on the official reports from the polling stations to the main polling station of the electoral district. In the case of provincial elections with a single constituency and in that of municipal council elections, the polling stations send their reports to the main polling station in the provincial capital or in the municipality concerned. Two days after polling day the main polling station announces at a public session the total number of votes cast and the number of votes cast for each list and each candidate. Voters attending this session may also register objections, which are included in the official report.

### *The role of the central polling station*

Each main polling station forwards a copy of this official report to the central polling station, unless it is serving as the central polling station itself, as is the case in provincial council elections where the province forms a single electoral district, and in municipal council elections. The central polling station then uses these reports to calculate the election result, which is announced as soon as possible at a public session. An official report is drawn up of this session, containing the election result and any objections registered by voters.

### *Allocation of seats*

The central polling station begins by allocating seats to lists, treating the lists submitted by the same party and the combined lists as single lists. The total number of valid votes cast in the entire constituency (country, province or municipality) is divided by the number of seats to be allocated (150 in the Lower House, 27 in the European Parliament, and varying numbers in the provinces and municipalities). The number of votes cast in the Lower House election of 1994 was 8,974,813. The electoral quota was therefore  $8,974,813 \div 150 = 59,832 \frac{13}{150}$ . The number of votes cast for each list is divided by the electoral quota and the quotient determines the number of seats initially allocated to that list. Before seats can be allocated to a combined list, a calculated is made to determine whether the constituent parts of the list would have won a seat on their own. The parties that would not have done so are excluded from the combination when the result is calculated.

After the first round of allocations, there are usually some seats still available, and these are then allocated (except in the case of municipalities with fewer than 19 members) using the method of the highest average: the number of votes cast for each party is divided by one more than the number of seats already allocated to it, the averages thus calculated are ranked in descending order and the remaining seats are allotted to the parties accordingly.

In elections to the Lower House and the European Parliament, only parties which have attained the electoral quota may take part in this process. In provincial and municipal council elections, however, parties which do not attain the electoral quota may still be eligible for allocation of unfilled seats. In small municipalities where the councils have fewer than 19 seats, unfilled seats are allocated according to the highest surplus. In other words, the first unfilled seat goes to the party which has the most votes after the seats have been allocated to parties which attained the electoral quota, and so forth. This applies only to parties which have gained at least 75% of the quota. If seats are still left unfilled after this process, the system of the highest average comes into play, and the 75% threshold then no longer applies.

If a party has submitted different lists in different electoral districts, the seats are subsequently divided among these lists, using a group quota obtained by dividing the total number of votes cast for the group of lists by the number of seats allocated to that group. Any remaining seats are then allocated under the highest surplus system. Seats allocated to a combination of lists are first divided among the parties making up the combination, on the basis of a combined list quota and then the system of the highest surpluses. If the participating parties submitted different lists in different electoral districts, the seats are subsequently allocated to the lists of the relevant parties.

#### *Allocation of seats to candidates*

Once the seats have been allocated to the parties it is time to decide which candidates have been elected. Votes cast for individual candidates are called preferential votes. Candidates who receive a set minimum number of preferential votes are automatically elected unless the group for which they are standing has been allocated too few seats or none at all. The minimum number in elections to the Lower House, provincial councils or municipal councils with at least 19 seats is 25% of the electoral quota. In elections to municipal councils with fewer than 19 members, the figure is 50% of the electoral quota and in those to the European Parliament 10%. If candidates elected by preferential votes appear on more than one list, they are deemed to be elected for the list on which they have obtained the most votes. To determine whether a particular candidate receiving preferential votes has been elected, all the votes cast for him/her in the entire constituency (all electoral districts) are totalled up. The remaining seats allocated to the relevant list are then allocated to the candidates in the order in which their names appear on the list. Candidates allocated a seat for more than one list are deemed to represent the list on which they obtained the most votes.

## The Upper House of Parliament

Members of the Upper House are elected for a four-year term by the members of the provincial councils. Elections to the Upper House are normally held in the same year as provincial council elections. The team of assessors comprises the Queen's Commissioner for the province and three members appointed by the Queen's Commissioner from the members of the provincial council. The votes are counted by the team and an official report is drawn up of the number of votes cast for each list and for each candidate. On the same day the reports are conveyed to the Electoral Council, which acts as the central polling station and calculates the result. For this purpose, the votes from the various provinces are weighted by dividing the province's population on 1 January of election year by the number of members in the provincial council. During the Upper House elections of 1995, for example, a vote cast by a member of the provincial council of South Holland counted for 401 votes, whereas one cast by a member of the Zeeland council counted for 78. Seats are allocated to groups or combinations of lists and to lists and candidates in the same way as in direct elections. The minimum number of preferential votes in elections to the Upper House is 50% of the electoral quota.

## Filling vacancies

Candidates are elected for four years to all the representative assemblies except the European Parliament, where the term is five years. However, circumstances may arise in which someone is unable or unwilling to continue as a member of the representative assembly to which he or she has been elected. It then falls to the presiding officer of the central polling station for elections to that assembly to appoint someone to fill the resulting vacancy, generally the candidate whose name appears next on the same list as the departing member, making due allowance for candidates who have already been elected or have indicated that they no longer wish to be considered. If the end of the list has been reached, the vacancy is not filled, although if the list formed part of a group or combination of lists the seat will be transferred to another list. In small municipalities with 9 or 11 council members, a seat may not be left vacant and if the relevant list has been exhausted and is not part of a combination the seat will be allocated to the party that would have gained the seat if it had been available at the original election.

## Disputes

Disputes arising about matters such as the validity of lists of candidates, a person's eligibility to vote or the interpretation of election results are settled by the Administrative Law Division of the Council of State. However, the Upper and Lower Houses have the final say in the interpretation of elections to their own assemblies and on the admission of their members.

## Offences under electoral law

The Elections Act and the Criminal Code list a number of offences relating to the conduct of elections. It is an offence, for example, to copy or forge election material, such as ballot papers, with a view to using them oneself or allowing others to use them. The use of such copied or forged material is also an offence unless the person using it was unaware that it was copied or forged. It is an offence to bribe a voter to vote in a particular way or to sign a proxy, and likewise an offence to accept such a bribe. Finally, the use of force or threats to prevent anyone from exercising their right to vote freely and without hindrance is an offence, as are systematic attempts to persuade people to surrender their polling cards.

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