

Code of conduct for political parties, candidates and canvassers on the handling of postal vote applications and postal ballot papers in Scotland

Introduction

1 Political parties, candidates and canvassers play a vital part in elections, not least through encouraging voting. With the increasing popularity of postal voting there is a need to ensure that traditional standards of political propriety observed at polling stations are carried through to the postal voting context.

Key principles

2 All political parties, candidates and canvassers handling postal vote applications and postal ballot papers will adhere to the following two key principles:

- Candidates and supporters should assist in the efficient and secure administration of elections and uphold the secrecy of the ballot.
- No candidate or supporter should place themselves in a situation where their honesty or integrity – or that of their party or candidate – can be questioned.

What the law says

3 An individual may only vote once for each contest in an election.

4 A voter's signature or mark must always be their own.

5 An individual may not vote for, or as, someone else unless they are formally appointed to act as their proxy. If an individual steals someone else's vote they may be prosecuted for making a false statement, forgery, using a false instrument or pretending to be someone else (personation).

6 An individual may not exert, or attempt to exert, undue influence to persuade or force someone to vote, not to vote, or to vote a certain way. Someone who prevents or deters the voter from freely exercising their right to vote, or attempts to do so, may be found guilty of undue influence.

7 It is an offence to offer money, food, drink, entertainment or other gifts to persuade someone to vote, or not to vote.

8 It is an offence to falsely apply for a postal or proxy vote (absent vote) as some other person. It is also an offence to otherwise make a false statement or otherwise induce the Returning Officer to either send a postal ballot paper or other election mail to an address which has not been agreed by the person entitled to the vote, or to cause a postal ballot paper not to be delivered to the intended recipient.¹

9 It is an offence to supply false information to the Electoral Registration Officer for **any** purpose connected with the registration of electors.²

See section on ‘Election offences and penalties’ (page 4) for further information on specific electoral and general offences of which you should be particularly aware.

Applications for postal voting

10 If you develop a bespoke application form, it should conform fully with the requirements of electoral law, including all the necessary questions and the options open to electors.

11 Electors should be encouraged to ask for the postal vote to be delivered to their registered home address, unless there are compelling reasons why this would be impractical. This reason must be stated on the application form.

12 Because of the risk of suspicions that the application may be altered and the risk of the application form being delayed or lost in transit, the local Electoral Registration Officer’s address should be the preferred address given for the return of application forms.

13 If an intermediary address is used, forms should be despatched unaltered to the relevant Electoral Registration Officer’s address within two working days of receipt.

14 If you are given a completed application form, you should forward it directly and without delay to the local Electoral Registration Officer.

15 The Electoral Registration Officer may check the signature on an absent voting application against any other copies of the elector’s signature which they hold or is held by any authority which they are authorised to inspect.³

16 The Electoral Registration Officer must confirm in writing to all successful applicants that they will receive a postal ballot.

¹ Section 62A(2) Representation of the People Act (RPA) 1983, as amended by Section 40 Electoral Administration Act (EAA) 2006 and Section 15 of the Local Electoral Administration and Registration Services (Scotland) Act 2006.

² Section 13D RPA 1983, as amended by Section 15 EAA 2006.

³ Regulation 51A Representation of the People (Scotland) Regulations 2001 as amended by the Representation of the People (Scotland) (Amendment) Regulations 2006.

Postal voting ballot papers

17 You should not touch or handle anyone else's ballot paper. If you are asked for assistance in actually completing a ballot paper, you should always refer the voter to the Returning Officer's staff at the elections office who can arrange a home visit if necessary. Assistance will also be available for electors at polling stations.

18 It is absolutely clear that anyone acting on behalf of a party should not solicit the collection of any ballot paper. Wherever practical, the voter should be encouraged to post or deliver the completed ballot paper themselves.

19 It is recognised that people working for a party may be approached by a voter who is unable to post their ballot paper or make arrangements for it to be returned in time. If you are asked to take the completed ballot paper, you should ensure that the voter has sealed it first and then post it or take it to a polling station or office of the Returning Officer immediately, without interfering in any way with the package.

20 If you are with a voter when they complete their ballot paper, remember they should complete it in secret. Equally, you should ensure that the voter seals the envelopes personally and immediately. If you are asked to give advice, it is acceptable and often helpful to explain the voting process but do not offer to help anyone to complete their ballot paper.

21 If you are in any doubt about the probity or propriety of your actions, you should ask yourself the question, '**What would a reasonable observer think?**' This code has been prepared based on this test, as advocated by the Third Report of the Committee on Standards in Public Life.⁴

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⁴ Committee on Standards in Public Life, *Standards in Public Life: Standards of Conduct in Local Government in England, Scotland and Wales, Third Report*. Chairman Lord Nolan. (1997, The Stationery Office, London).

Election offences and penalties

There are a number of specific electoral offences and some general offences of which candidates, agents and supporters should be particularly aware during their campaign. This is not intended to be a comprehensive list and independent legal advice should be sought if necessary. Details are given in brackets about how the offence may be tried and the maximum penalty. Prosecutions under the Representation of the People Act 1983 must be brought within 12 months of the declaration of an election result.⁵

Bribery

A person is guilty of bribery if they directly or indirectly give any money or procure any office to or for any voter, in order to induce any voter to vote, or not vote, for a particular candidate; or to vote or refrain from voting.⁶ (Corrupt practice: offence may be tried summarily or on indictment. One year on indictment).

Treating

A person is guilty of treating if either before, during or after an election they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.⁷ (Corrupt practice: offence may be tried summarily or on indictment. One year on indictment).

Undue influence

A person is guilty of undue influence if they directly or indirectly make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote.⁸ **The offence can also apply where an attempt to exert undue influence is unsuccessful.** (Corrupt practice: offence may be tried summarily or on indictment. One year on indictment).

Secrecy

Everyone involved in the electoral process should be aware of the secrecy of the ballot. The Returning Officer will give everyone who attends the opening or counting of ballot papers a copy of extracts from Article 32 of the Scottish Parliament (Elections etc.) Order 2007.⁹ Any person found guilty of breaching the secrecy requirements set out in this article may face a fine of up to £5,000 or imprisonment for up to six months. (Summary offence only).

⁵ Section 176 RPA 1983.

⁶ Article 75 Scottish Parliament (Elections etc.) Order 2007 and Section 113 RPA 1983.

⁷ Article 76 Scottish Parliament (Elections etc.) Order 2007 and Section 114 RPA 1983.

⁸ Article 77 Scottish Parliament (Elections etc.) Order 2007 and Section 115 RPA 1983.

⁹ The secrecy requirement for Scottish local government elections is contained in Section 66 RPA 1983.

Personation

It is an offence to commit, aid, abet, counsel or procure the offence of personation.¹⁰ This is where any individual votes as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed as a person guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force. (Corrupt practice: offence may be tried summarily or on indictment. Two years on indictment).

False registration information

It is an offence to supply false information or fail to supply information to the Electoral Registration Officer.¹¹

False application to vote by post or by proxy

It is an offence to falsely apply to vote by post or proxy or to cause postal or proxy voting materials not to be delivered to the intended recipient.¹² (Corrupt practice).

Multiple voting and proxy voting offences

There are various offences regarding multiple voting and proxy voting including voting by post as an elector or proxy when subject to a legal incapacity to vote; voting more than once in the same, or in more than one, local election area; applying for a proxy without cancelling a previous proxy appointment and inducing or procuring another to commit one of the above offences.¹³ (Illegal practice: summary offence only).

Other offences

There are also a number of non-electoral offences which may be relevant, for example:

- making a false statement under the Perjury Act 1911
- forgery
- using a false instrument under the Forgery and Counterfeiting Act 1981
- conspiracy to defraud
- perverting the course of justice

¹⁰ Article 26 Scottish Parliament (Elections etc.) Order 2007 and Section 60 RPA 1983.

¹¹ Section 13D RPA 1983, as amended by Section 15 EAA 2006.

¹² Article 28 Scottish Parliament (Elections etc.) Order 2007 and Section 62A RPA 1983.

¹³ Article 27 Scottish Parliament (Elections etc.) Order 2007 and Section 61 RPA 1983.