

# Part A – Context

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# 1 Introduction

1.1 The purpose of this guidance is to assist Returning Officers with particular points of practice and procedure in the running of a local government election in England and Wales. It is issued in accordance with the Electoral Commission's power under Section 10(3) of the Political Parties, Elections and Referendums Act 2000 (PPERA) to provide advice to Returning Officers and is offered as such.

1.2 This guidance is not meant as a comprehensive guide to the relevant election law, but it has been prepared by the Commission in consultation with practitioners.

1.3 No expression of views on the part of the Commission can alter the application of any legislation to any particular case, or substitute any authoritative judicial interpretation of it. The Commission's role is to offer general assistance only, and it must be for the Electoral Registration Officer and Returning Officer, and their own legal advisers, to reach conclusions based on the details of any particular case. This guidance should not be relied on as legally definitive and the Commission cannot accept any responsibility for any errors or omissions, or any act arising from them.

1.4 This guidance principally needs to be read alongside:

- Representation of the People Acts 1983, 1985 and 2000
- Representation of the People (England and Wales) Regulations 2001 (as amended)
- Electoral Administration Act 2006
- Local Elections (Principal Areas) Rules 2006
- Local Elections (Parish and Communities) (England and Wales) Rules 2006



New legislative requirements introduced by and arising out of the Electoral Administration Act 2006 are included in the relevant section in the manual. It is very important to be aware of these provisions.

1.5 The guidance covers:

- **legislative requirements** – a guide to what Returning Officers must do, with reference to the relevant legislative provisions, including new legislation
- **practical advice** – what Returning Officers are advised to do in order to ensure consistency and good practice
- **information** – contextual and background information where no action is required

1.6 This guidance only covers electoral law and practice in England and Wales. It does not cover local government elections in Scotland or Northern Ireland.

## 2 Legislation

2.1 The relevant legislation for local government elections in England and Wales is shown in Table 1 below.

**Table 1: Relevant legislation**

<b>Full title</b>	<b>Abbreviation</b>	<b>Summary</b>
Local Government Act 1972	LGA 1972	This Act includes details of qualifications and disqualifications for candidates at local government elections.
Representation of the People Act 1983 (as amended by the Representation of the People Acts 1985 and 2000)	RPA 1983	This Act contains provisions relevant to the franchise and its exercise, the conduct of elections, the election campaign and legal proceedings.
Representation of the People Act 2000 (Schedule 4)	RPA 2000	This Schedule covers the requirements for absent voting applications.
Political Parties, Elections and Referendums Act 2000	PPERA	This Act, which established the Electoral Commission, covers the registration of political parties, and campaign and election expenses.
Electoral Administration Act 2006	EAA	This Act makes provisions in relation to the registration of electors, the retention of information by the Electoral Registration Officer, standing for election, the administration and conduct of elections and the regulation of political parties.

**Table 1 (cont.): Relevant legislation**

<b>Full title</b>	<b>Abbreviation</b>	<b>Summary</b>
Representation of the People (England and Wales) Regulations 2001 (as amended by the Representation of the People (England and Wales) (Amendment) Regulations 2002, the Representation of the People (England and Wales) (Amendment) Regulations 2006 and the Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006)	RPR 2001	These regulations make provisions in respect of a number of areas, including electoral registration and absent voting.
Representation of the People (Combination of Polls) (England and Wales) Regulations 2004 (as amended by the Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2006 and 2007)	RPR 2004	These regulations make provisions for the combination of a Parliamentary election with another election or referendum.
Local Elections (Principal Areas) (England and Wales) Rules 2006	LEPAR 2006	These rules cover the conduct of principal area local government elections and fully replaced the 1986 version.
Local Elections (Parish and Communities) (England and Wales) Rules 2006	P&C Rules 2006	These rules cover the conduct of parish and community council elections.

2.2 The guidance should be read in conjunction with the legislation referred to in the above table and any other legislation to which it refers, e.g. the RPA 1983 has within it a reference to the Postal Services Act 2000 in relation to the definition of 'universal service provider'.

2.3 All references to the relevant provisions of electoral legislation made throughout the manual will be contained in footnotes, using the abbreviations shown in the above table.

## Recent changes to legislation

2.4 The EAA received Royal Assent on 12 July 2006, and made a number of changes to previous electoral legislation. The key changes can be summarised as follows:

- introduced the concept of anonymous registration
- introduced a system of personal identifiers to assist in combating postal and proxy voting fraud, and requiring Returning Officers to undertake checks of these identifiers before accepting postal votes into the count
- allows independent observers at elections
- removed Maundy Thursday from electoral timetables
- reduced the minimum age of candidacy at all elections from 21 to 18
- allows candidates to use their commonly used names on ballot papers
- removed the need for ballot paper counterfoils and introduced corresponding number lists
- removed the absolute need to use a perforating official mark and enabled other printed ballot paper security measures
- replaced the declaration of identity with a postal voting statement, and removed the requirement for authentication by a witness
- enables people to register to vote after an election has been called (up to 11 working days before an election)
- allows Electoral Registration Officers and Returning Officers to actively encourage participation in elections
- improves the process for disabled voters by requiring regular reviews of polling districts, places and stations
- abolished any rule of common law that may have formerly been used to prevent persons with a mental impairment from voting
- enables Returning Officers to provide explanatory election materials and guidance in alternative formats, such as Braille, languages other than English and, in Wales, Welsh, pictorially and in audio
- provides stronger deterrents against electoral fraud, including postal and proxy voting fraud
- increased the length of time available for the police to carry out investigations into electoral fraud
- introduced performance standards for local authority electoral services

2.5 The Representation of the People (England and Wales) (Amendment) (No. 2) Regulations 2006 also made several changes, the key of which can be summarised as follows:

- introduced provisions for the administration of anonymous electoral registration
- introduced provisions for the administration of objections to entries in the register of electors

- amended procedures to be followed in altering the register of electors
- provides the form of the corresponding number list
- introduced provisions for the administration of personal identifiers and the attestation of proxy applications, whereby Returning Officers must check the personal identifiers on at least 20% of postal voting statements in every postal voters ballot box against the identifiers collected on postal voting applications
- makes provision for the cancellation of postal ballot papers
- provides the form of the official poll card
- introduced a procedure for an elector to confirm receipt of their postal vote
- introduced a procedure for access to the marked copy of the postal voters list
- amended procedures for the control of documents following an election

2.6 It is worth noting that the Representation of the People (England and Wales) (Amendment) Regulations 2006 also made several changes to legislation. These key changes can be summarised as follows:

- introduced provision for asking about nationality on the rolling registration form
- changed the deadline for applying for a postal vote
- introduced provisions for emergency proxies on medical grounds
- permits Electoral Registration Officers to check signatures on absent voting application forms against any other signatures that they hold
- introduced a requirement for a reason to be given if an elector wants their postal vote sent to an address other than their registered address
- provides that spoilt and lost postal ballot papers can be replaced up to 5pm on the day of poll
- allows the Returning Officer to arrange for collection of postal votes from polling stations on polling day
- requires Returning Officers to complete Form K – statement as to postal ballot papers – for each ward and send a copy to the Commission in addition to the Secretary of State within 10 to 15 days of the day of poll
- made changes regarding the supply of the full register

2.7 The Local Elections (Principal Areas) Rules 1986 were fully revoked in 2006 and replaced by the Local Elections (Principal Areas) (England and Wales) Rules 2006. One change brought about by these rules was to amend the hours of poll at local government elections, extending these to 7am to 10pm.

## 3 The electoral framework

### Timing of elections

3.1 Local government elections in England and Wales are held on the first Thursday in May every year unless changed by Order of the Secretary of State.<sup>1</sup>

3.2 There are 142 local government elections scheduled in England on 1 May 2008. This includes elections in 36 Metropolitan Boroughs, 19 Unitary Authorities and 87 Districts. In addition, elections will be taking place in the 22 Welsh local authorities.

3.3 In this guidance, for ease of use, the term 'ward' will be used for electoral areas having elections.

3.4 In some areas, mayoral, parish or community council elections will also be held.

### Timetable



A detailed timetable for local government elections on 1 May 2008 is given in Part C, 'Action before the poll', Section 1, 'Timetable'.

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<sup>1</sup> Section 37, RPA 1983.

## 4 Roles and responsibilities

### The Electoral Registration Officer

4.1 The Electoral Registration Officer is the official with responsibility for the preparation and maintenance of the register of electors and lists of absent voters within their area.

4.2 The appointment of the Electoral Registration Officer is prescribed in Section 8 of the RPA 1983. In England, the council of every district and London borough is required to appoint an officer of the council to be Electoral Registration Officer. In Wales, the council of every county or county borough is required to appoint an officer of the council to be Electoral Registration Officer.

4.3 Councils may approve a Deputy for the Electoral Registration Officer and the Deputy can carry out any of the duties and powers of the Electoral Registration Officer.<sup>2</sup> In addition, the council is required to provide officers to assist the Electoral Registration Officer in carrying out their functions.<sup>3</sup>

4.4 If an Electoral Registration Officer is found guilty of any act or omission in breach of their official duty, they shall be liable on summary conviction to a fine not exceeding £5,000.<sup>4</sup>

### The Returning Officer

#### Appointment of Returning Officers

4.5 In England, every district council is required to appoint an officer of the council to be the Returning Officer for the election of district councillors and for the election of councillors of any parishes within the district.<sup>5</sup>

4.6 In Wales, every county or county borough is required to appoint an officer of the council to be the Returning Officer for the election of councillors to the local authority and for the election of councillors for any communities within the principal area.<sup>6</sup>

4.7 A Returning Officer has the power to appoint Deputies to carry out any of their functions.<sup>7</sup> Where separate counts are held, a Deputy should be appointed to run each count.

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<sup>2</sup> Section 52(2), RPA 1983.

<sup>3</sup> Section 52(4), RPA 1983.

<sup>4</sup> Section 63(1), RPA 1983.

<sup>5</sup> Section 35(1), RPA 1983.

<sup>6</sup> Section 35(1A), RPA 1983.

<sup>7</sup> Section 35(4), RPA 1983.

## Discharge of duties of the Returning Officer

4.8 The duties of the Returning Officer are separate from their duties as a local government officer. The Returning Officer is personally liable for the conduct of the election.

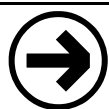
### Breach of official duty

4.9 If the Returning Officer (or Deputy) is, without reasonable cause, guilty of any act or omission in breach of their official duty, they are liable on summary conviction to a fine not exceeding £5,000.<sup>8</sup> A Returning Officer is, in respect of any breach of their official duty, liable only to the fine imposed by that section. No action for damages lies against the Returning Officer or their staff in respect of a breach of official duties.<sup>9</sup>

4.10 The EAA introduced provisions to allow Returning Officers to correct procedural errors made by themselves, an Electoral Registration Officer, a Presiding Officer, a person providing goods or services to the Returning Officer and any Deputy or authorised assistant of any of the above.<sup>10</sup> Where a Returning Officer remedies an act or omission by using this power, they will not be guilty of an offence of breach of official duty, except where any conviction for such a breach is made before the act or omission has been remedied in full.<sup>11</sup>

### Appointment of Presiding Officer and Poll Clerks

4.11 The Returning Officer is required to appoint and pay a Presiding Officer and such Poll Clerks as may be necessary to attend at each polling station.<sup>12</sup> Presiding Officers and Poll Clerks are liable to be convicted for an offence if they are found, without reasonable cause, to have committed a breach of official duty.<sup>13</sup>



For further information on the Returning Officer's staff, see Part B, 'Preparing for a local government election', Section 6, 'Staffing'.

<sup>8</sup> Section 63(1), RPA 1983.

<sup>9</sup> Section 63(2), RPA 1983.

<sup>10</sup> Section 46, EAA.

<sup>11</sup> Section 63(4) and (5), RPA 1983.

<sup>12</sup> Rule 24(1), LEPAR 2006.

<sup>13</sup> Section 63(1) and (3), RPA 1983.

## 5 The role of other organisations

### The Electoral Commission

#### Background

5.1 The Electoral Commission is an independent body, established by the UK Parliament in November 2000. The Commission reports directly to the UK Parliament through a committee chaired by the Speaker of the House of Commons, known as the Speaker's Committee.

#### Statutory functions

5.2 The Electoral Commission has a number of statutory functions and powers in relation to elections, and these are set out in PPERA. These include:

- setting and publishing performance standards for electoral services and collecting information on the costs of electoral services from Electoral Registration Officers, Returning Officers and referendum Counting Officers<sup>14</sup>
- attending at certain election proceedings<sup>15</sup>
- preparing and publishing a code of practice on the attendance at elections of representatives of the Commission, accredited observers and nominated members of accredited organisations, and managing a scheme for the accreditation of electoral observers<sup>16</sup>
- promoting public awareness of electoral matters<sup>17</sup>
- publishing reports on the administration of elections and referendums<sup>18</sup>
- conducting reviews of the law and practice relating to elections and referendums<sup>19</sup>
- giving advice and assistance to those involved in the electoral process, including political parties and electoral administrators<sup>20</sup>
- being consulted by the UK government on proposals to amend electoral law<sup>21</sup>
- being consulted on the allocation of party political broadcasts<sup>22</sup>
- maintaining, monitoring and making available for reasons of transparency a register of political parties, and the registration of political party descriptions where parties wish to field candidates standing under the party name or a description other than 'Independent' on the ballot paper<sup>23</sup>

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<sup>14</sup> Sections 9A to 9C, PPERA, as inserted by Section 67, EAA.

<sup>15</sup> Section 6A, PPERA, as inserted by Section 29, EAA.

<sup>16</sup> Sections 6C, 6D and 6F, PPERA, as inserted by Section 29, EAA.

<sup>17</sup> Section 13, PPERA.

<sup>18</sup> Section 5, PPERA.

<sup>19</sup> Section 6, PPERA.

<sup>20</sup> Section 10, PPERA.

<sup>21</sup> Section 7, PPERA.

<sup>22</sup> Section 11, PPERA.

<sup>23</sup> Sections 23, 28, 28A and 28B, PPERA.

- maintaining, reviewing and publishing for reasons of transparency a register of donations made to registered political parties and others regulated by the legislation<sup>24</sup>
- reviewing and publishing the annual statements of accounts of political parties<sup>25</sup>
- reviewing and publishing the returns of campaign expenditure incurred by political parties in respect of their election campaign<sup>26</sup>
- reviewing returns of donations and loans to, and the expenditure by and on behalf of, candidates and their agents<sup>27</sup>
- receiving from Returning Officers copies of candidates' returns of election expenses<sup>28</sup>

## Provision of advice

5.3 Section 10 of PPERA allows the Commission to provide advice and assistance to Electoral Registration Officers, Returning Officers and registered political parties. The Commission cannot, however, give a definitive legal view on any subject as this is ultimately a matter for a court to decide in any particular case.

### **Devolved and English offices**

5.4 The first point of contact for any queries should be either the Commission's office in Wales or the Commission's English regional office covering the Returning Officer's electoral area, as appropriate.

#### **Wales Office**

Joanne Nelson  
 Tel: 029 2034 6803  
 Email: jnelson@electoralcommission.org.uk

#### **North of England Office**

North East and Yorkshire & the Humber  
 Sarah Seavers  
 Tel: 01904 567994  
 Email: sseavers@electoralcommission.org.uk

#### **North West**

Sandra Hardy  
 Tel: 01904 567993  
 Email: shardy@electoralcommission.org.uk

#### **Midlands Office**

East Midlands and West Midlands  
 Chris Hinde

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<sup>24</sup> Section 69, PPERA.

<sup>25</sup> Section 46, PPERA.

<sup>26</sup> Sections 84 and 145, PPERA.

<sup>27</sup> Section 145, PPERA.

<sup>28</sup> Section 87A, RPA 1983.

Tel: 02476 820092  
Email: chinde@electoralcommission.org.uk

**South of England Office**

South East and London  
Mechelle Ross  
Tel: 020 7271 0706  
Email: mross@electoralcommission.org.uk

Eastern and London  
Claire Sherer  
Tel: 020 7271 0660  
Email: csherer@electoralcommission.org.uk

**South West Office**

South West  
Elizabeth Gorst  
Tel: 01392 332878  
Email: egorst@electoralcommission.org.uk

5.5 Electoral Administration staff in the Commission's head office are no longer responsible for dealing with frontline enquiries. However, they continue to provide expert advice on dealing with malpractice, fraud and related integrity issues.

Richard Jordan  
Senior Practice Adviser – Integrity  
Tel: 020 7271 0562

Kate Sullivan  
Head of Electoral Administration  
Tel: 020 7271 0567

**Registration of political parties and election expenses**

5.6 PPERA requires political parties to register with the Electoral Commission in order to field candidates at an election.<sup>29</sup> Parties can also register up to 12 descriptions with the Commission.<sup>30</sup> A candidate may contest a local government election as an independent candidate and need not be a member of a registered political party, although in such circumstances the candidate may only use the description 'Independent' (and/or 'Annibynol' in Wales), or use no description on the ballot paper.

5.7 For advice on registration and political parties, contact:

Party and Election Finance  
Tel: 020 7271 0500  
Email: pef@electoralcommission.org.uk

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<sup>29</sup> Section 22, PPERA.

<sup>30</sup> Section 28A, PPERA, as inserted by Section 49, EAA.



The Commission's guidance on the registration of political parties can be obtained from the Commission's website at [www.electoralcommission.org.uk](http://www.electoralcommission.org.uk) or by phoning 020 7271 0520.

## Ministry of Justice

5.8 The Ministry of Justice (MoJ) is the central government department with responsibility for the legislative framework for UK Parliamentary elections, European Parliamentary elections and national referendums, including franchise, conduct and funding. The MoJ also has responsibility for policy on the conduct of local government elections and mayoral and local government referendums, and has responsibility for all issues covered by PPERA. These include generic issues associated with national and regional referendums, the registration of political parties, rules on donations to political parties and third-party donations.

5.9 The Electoral Policy Division is the part of the MoJ with responsibility for issues concerning the conduct of elections. The division currently has five branches: the Franchise, Boundaries and Conduct branch; the Electoral Registration and Implementation branch; the Electoral Modernisation branch; the Political Parties and Referendums branch; and the Democratic Engagement branch.

5.10 The Franchise, Boundaries and Conduct branch has responsibility for policy on the conduct of English and Welsh local government elections. It can be contacted on 020 7210 8225.

5.11 Further information on the MoJ can be found at [www.justice.gov.uk](http://www.justice.gov.uk)

## Communities and Local Government

5.12 Communities and Local Government (CLG) is the government department that deals with national policy on local government in England, including what it does, how well it works and how it is funded. It is responsible for setting the cycle of local government elections in England and also has responsibility for the legislation that governs the review and updating of electoral arrangements within local authorities, work which is a statutory duty of the Electoral Commission.

5.13 Further information can be found at [www.communities.gov.uk](http://www.communities.gov.uk)

## National Assembly for Wales

5.14 The National Assembly for Wales has no direct role or function with respect to local government elections. It does, however, coordinate the All Wales election planning group.

## Local Government Association

5.15 The Local Government Association (LGA) is a voluntary lobbying organisation that promotes the interests of all English and Welsh local authorities. Members include county councils, metropolitan district councils, English unitary authorities, London boroughs, shire district councils and Welsh unitary authorities. The LGA also represents fire authorities, police authorities, national park authorities and passenger transport authorities.

5.16 The LGA's purpose is to promote better local government, and it aims to put local councils at the heart of the drive to improve public services and to work with government to ensure that the policy, legislative and financial context in which they operate supports that objective.

5.17 Further information can be found at [www.lga.gov.uk](http://www.lga.gov.uk)

## Welsh Local Government Association

5.18 The Welsh Local Government Association (WLGA) is part of the LGA but retains full autonomy in dealing with Welsh affairs and representing the interests of local government and promoting local democracy in Wales. It represents the 22 local authorities in Wales, and the four police authorities, three fire and rescue authorities and three national park authorities are associate members.

5.19 Further information can be found at [www.wlga.gov.uk](http://www.wlga.gov.uk)

## National Association of Local Councils

5.20 The National Association of Local Councils (NALC) represents the interests of town and parish councils in England, a total of around 8,500 councils. NALC is actively involved in lobbying government at a national level to advance and protect the interests of these councils and their communities.

5.21 NALC provides guidance to its members and has produced, in partnership with the Electoral Commission, an election resource pack for candidates at parish council elections. The booklet, *All about parish and town councils*, details the roles of parish and town councillors, answers frequently asked questions on candidacy, and provides information on how to stand as a candidate for a local council.

5.22 Further information can be found at [www.nalc.gov.uk](http://www.nalc.gov.uk)

## One Voice Wales

5.23 One Voice Wales is a representative organisation for community and town councils throughout Wales. It provides advice and guidance services to its member councils and aims to promote a wider understanding and awareness of the role and contribution of town community councils.

5.24 Further information can be found at [www.onevoicewales.org.uk](http://www.onevoicewales.org.uk)

## Election Petitions Office

5.25 Petitions challenging the result of a local government election must be filed with the Election Petitions Office at the Queen's Bench Master's Secretary's Department at the Central Office of the Royal Courts of Justice. Contact details for the Petitions Office can be found in Part G, 'After the declaration of result', Section 4, 'Election petitions'.

## Royal Mail

5.26 Royal Mail performs a number of functions at local government elections, and may be engaged throughout the electoral process, from delivering poll cards to handling postal ballot packs. Further information may be obtained at [www.royalmail.com](http://www.royalmail.com)

## 6 Resources

### Contact details for ordering Electoral Commission forms and leaflets



Throughout this guidance we refer to forms and leaflets produced by the Commission and available from our distributor:

**Tel: 0845 8500 501**

**Fax: 020 8867 3225**

**Email: [ecpublications@ecgroup.co.uk](mailto:ecpublications@ecgroup.co.uk)**

For a complete, up-to-date listing of all the forms and leaflets available for order, please refer to the public awareness materials on the Commission's website at **[www.electoralcommission.org.uk](http://www.electoralcommission.org.uk)**

