

# Guidance on assisted applications in Scotland

1.1 This document provides guidance to EROs on the electoral registration process for people who, for reasons of physical or mental incapacity, may need assistance in order to register. The guidance covers:

- what the ERO and their staff (including canvassers) can and can't do to help an applicant
- what one person can do to assist another to make an application
- what someone with a power of attorney can and can't do on behalf of an applicant
- how to follow up non-responses from individuals who are not able to make a 'declaration of truth'

1.2 It also includes some examples of how this guidance can be applied in practice.

## Principles

- Everybody who is eligible should be registered irrespective of any illness or disability they may have<sup>1</sup>
- The ERO does not have the expertise to determine whether a person has mental capacity or not.
- The fact that a person has an incapacity does not mean that they should be regarded as incapable in relation to all matters.
- Only the applicant can make the required declaration as part of an application for registration.

## What the ERO and their staff (including canvassers) can and can't do to assist a person to make an application

1.3 The Electoral Registration Officer (ERO) has a duty to ensure that registration is accessible to all. There is specific provision enabling the ERO (or someone authorised by them), if they choose to do so, to take some or all of the information required in an application in person or by telephone and then transfer the information to a written application (either a paper application form or via the online system).<sup>2</sup>

1.4 Even if they are unable to provide telephone and/or in-person registration for all applicants, EROs should allow applications to be made through these channels in certain circumstances, such as to assist applicants with disabilities in order to meet their equalities obligations.

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<sup>1</sup> Section 73 of the Electoral Administration Act 2006 abolished common law restrictions that a person was subject to a legal incapacity to vote, and therefore to register, due to their mental capacity.

<sup>2</sup> Regulation 26(8) of the Representation of the People (Scotland) Regulations 2001 (as amended) (referred to hereafter as 'RPR 2001').

1.5 Additionally, EROs could consider using trained staff (including canvassers) to help those who may need assistance in completing an application or understanding the registration process. [Part 2: The Registration Framework](#) of our guidance for Electoral Registration Officers contains guidance on training core staff and canvassers.

### **Transferring information to a written application**

1.6 Where the ERO allows the information required in an application to be provided in person or by telephone, the applicant **must** be provided with information about the edited register, and the declaration of truth **must** be made by the applicant. However, this *can* be given (or made) orally. In the case of in-person applications, the means of communicating the declaration could also be by way of a sign, limb movement or any other means of communication open to the applicant, provided their intention is clear.

1.7 Where authorised by the ERO, a canvasser could take some (or all) of the information from an applicant orally (including the declaration of truth) – provided the required information about the edited register was given to the applicant – and the canvasser must then transfer that information into a written application. The ERO should ensure that canvassers who are authorised to accept information in this way are trained appropriately.

1.8 Similarly, telephone staff employed by the ERO directly (e.g. in the electoral registration office) or indirectly (e.g. in a council call centre) can be authorised by the ERO to take information from applicants orally and transfer this to a written application.

## **What one person can do to assist another to make an application**

1.9 There is nothing in legislation to stop a person from **assisting** another to complete an application – whether online or in writing. Legislation does not address in any specific way whether or how someone can be assisted.

1.10 However, the applicant **must** be the one to confirm that the details provided on the application are true, i.e. they must be the one making the declaration.

1.11 For example, if an elector has a physical disability that means they cannot write or type, a person can assist them by doing the typing on their behalf, so long as the elector is present and can communicate that the information provided on the application is true. In the case of a paper application form, the applicant should sign the form, or make their usual mark, themselves; however, where they are unable to do so, the ERO can accept a declaration made in some other way (for example, by telephone or in person) as long as they are satisfied that the declaration is being made by the applicant and is genuine and true.

1.12 Domiciliary and care home staff may be asked to assist those under their care to make registration applications. You should consider sending guidance and/or

making visits to ensure that domiciliary and care home staff are aware that although they may provide help, the declaration must be made by the elector.<sup>3</sup>

## What someone with a power of attorney can and can't do on behalf of an applicant

1.13 A power of attorney is a process by which decisions on financial and certain other affairs can be made on behalf of another person.

1.14 The Adults with Incapacity (Scotland) Act 2000 sets out the matters in relation to which a power of attorney can be granted in Scotland. An attorney can be appointed over a person's property, financial affairs or personal welfare. None of these include registering to vote, or voting. This means that in Scotland, where a person has given another person power of attorney, the attorney **cannot** make an application to register on behalf of the person.

## The Invitation to Register (ITR) and follow-up processes

### Invitation to Register

1.15 Once a potential elector has been identified, they must be given an ITR and a registration application form within 28 days of being identified.<sup>4</sup>

1.16 The legislation sets out that if a person has not made an application to register within a reasonable time of receipt of the invitation, the ERO must give them a second invitation.<sup>5</sup> The same applies to a third invitation.<sup>6</sup> Also, a personal visit must be undertaken if there has been no response to the third invitation and no personal visit has yet been made.<sup>7</sup> EROs also have a general duty to undertake house-to-house enquiries where necessary throughout the year.<sup>8</sup>

1.17 The legislation also states that an ERO can decide not to issue reminders to ITRs or to carry out a personal visit if they are satisfied that the person is not entitled to be registered or is registered at a different address.<sup>9</sup> The legislation does not, however, specify what an ERO should do where they are satisfied that a person lacks the mental capacity to make the required declaration as part of their application to register.

### Requirement to Register

1.18 EROs have discretion as to whether to issue a requirement to register if there is no response to the third ITR.<sup>10</sup> If they have received information that the reason a person has not responded to an ITR is because they lack mental capacity to complete the declaration of truth this could be a reason not to proceed with a

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<sup>3</sup> The Commission has produced a [factsheet for care home staff](#) which reflects this guidance on assisted applications.

<sup>4</sup> Section 9E(1), RPA 1983 and Regulation 32ZC, RPR 2001.

<sup>5</sup> Regulation 32ZD(1), RPR 2001.

<sup>6</sup> Regulation 32ZD(2), RPR 2001.

<sup>7</sup> Regulation 32ZD(3), RPR 2001.

<sup>8</sup> Section 9A of the Representation of the People Act 1983.

<sup>9</sup> Regulation 32ZD(5), RPR 2001.

<sup>10</sup> Section 9E(4), the 2013 Act

requirement to register. However, the ERO should be satisfied that the person genuinely does lack the required capacity to make the declaration of truth.

1.19 EROs also have discretion to **cancel** a requirement to register if they consider it appropriate to do so.<sup>11</sup> Paragraph 3.30 of Part 4: [Maintaining the register throughout the year](#) states: ‘For example, you may consider it appropriate to cancel the requirement notice if a person is ill and, as a result, will be unable to make a declaration of truth for the foreseeable future.’ Again, the ERO would need to be satisfied that the person lacked the required capacity to make the declaration of truth before deciding to cancel a requirement to register for this reason. A decision would need to be made on a case-by-case basis.

## Following up non-responses from individuals who are not able to make a ‘declaration of truth’

1.20 As part of the ERO’s responsibility to determine registration applications the ERO must decide whether the statutory requirements for an application, including how it may be made and the information it must contain, are met. An ordinary application to register must include a declaration that the contents of the application are true (in practice, on the paper form, this will generally involve the declaration being made by the applicant giving their signature or making their usual mark on the form, although the ERO can accept a declaration made in some other way (for example, by telephone or in person) as long as they are satisfied that the declaration is being made by the applicant and is genuine and true).

1.21 There will be circumstances when an ERO will receive information from a third party (e.g. carer, friend or relative of the potential elector) that suggests that a person lacks the mental capacity to comprehend the registration process and/or make a declaration of truth<sup>12</sup>. It is for the ERO to decide, based on individual circumstances, whether they will accept the assessment from a person (or persons) that a potential elector lacks the mental capacity to be able to make the required declaration. EROs have a power to require information from any person for the purposes of maintaining the register and you can use this power to obtain information (such as checking other records or contacting the person who provided the information) to help you to decide whether to accept the assessment.

1.22 In practice, the legislation does not take account of the sensitivities that may arise around issues such as mental capacity. Legally, the ERO must go through the required steps (reminders / personal visit) where no response is received to an ITR (unless they are they are satisfied that the person is not entitled to be registered or is registered at a different address). However, in cases where an individual lacks mental capacity, the reminder letters with the threat of a fine and a personal visit to encourage registration could be distressing for the individual and those caring for them.

1.23 For example, where an ITR/application form is returned and is marked to indicate that the person invited lacks mental capacity to register, the ERO should

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<sup>11</sup> Regulation 32ZE(6), RPR 2001.

<sup>12</sup> As required by Regulation 26(1)(j) of the RPR 2001

make further enquiries and explain the purpose of registration and the help that can be given to assist the person to make an application to register (for example, information being taken in person or by phone – depending on the options offered by the ERO).

1.24 If the ERO is satisfied that the person is not able to register – i.e. the person lacks mental capacity and their condition will not improve or is degenerative – the ERO will need to consider whether it is appropriate, taking into account all of the particular circumstances, to continue with the follow-up processes at that time.

1.25 They should also document whether they have accepted that person's assessment and whether the individual's incapacity is likely to be permanent or may fluctuate. It is reasonable for an ERO to assume that potential electors who have a degenerative condition and lack mental capacity, will continue to do so in future. However, where a person's condition may improve, the ERO should record this information to enable them to follow-up at a later time.

1.26 Any such decisions must be taken on a case-by-case basis and must be fully documented. In all cases, EROs should ensure they keep an audit trail of the communications they have had with a person (or persons) about a potential elector's lack of mental capacity.

## Scenarios

### Scenario 1

An ITR and application form sent to a potential elector has been returned uncompleted by her husband with the following comment: ***“My wife is suffering from Alzheimer's and is totally confined to bed, a fact which can be verified by Dr....”***

1.27 You will need to consider in each individual case whether you will accept an assessment that a potential elector lacks mental capacity and is therefore unable to make the declaration of truth required as part of an application to register. In this case, you should contact the husband to explain the purpose of registration and the help that can be given to aid registration. You should also sensitively probe the information provided on the returned form, and ascertain whether the lack of mental capacity is permanent or whether it fluctuates.

1.28 You should ensure that you keep an audit trail of the communications you have, and also document whether you have accepted the person's assessment and whether the incapacity is likely to be permanent or fluctuate.

1.29 Depending on your assessment and the circumstances, you could either support the husband in helping his wife to register, or consider whether it is appropriate to cease follow up processes. You should also consider whether it would be appropriate to review your decision at a later date.

## Scenario 2

An ITR and application form sent to a potential elector has been returned completed with the following comment **“Signed and filled in by (parent). D is unable to complete independently”**.

1.30 A person may assist another person in completing the registration provided that the applicant themselves makes the declaration of truth. However, in this case, the parent has clearly signed the form on behalf of the applicant and this cannot be accepted as submitted.

1.31 The applicant (or their parent) should be contacted to explain this and advised that only the applicant can make the declaration of truth.

1.32 If the application is made online, the parent may assist the applicant by doing the typing on their behalf, so long as the applicant is present and can communicate that the information provided on the application is true. In the case of a paper application form, the applicant should sign the form, or make their usual mark, themselves; however, where they are unable to do so, the ERO can accept a declaration made in some other way (for example, by telephone or in person) as long as they are satisfied that the declaration is being made by the applicant and is genuine and true.

## Scenario 3

An ITR and application form sent to a potential elector has been returned completed and **signed by the elector** and **with a supporting signature from a support worker**.

1.33 Even though the elector has had assistance completing the form, it is clear that they have signed it. People can be given assistance to register, provided the declaration of truth is made by the applicant themselves. Therefore this application would be acceptable, and you should process it in the usual way.

## Scenario 4

Mrs X is 100, has dementia and sight/hearing loss. She lives in residential care and her daughter visits her often and deals with her affairs, and has a power of attorney. Mrs X has had an ITR and application form. Her daughter has asked: **“Can I complete the form on my mother’s behalf? I’m worried about the prospect of a fine.”**

1.34 A person with power of attorney **cannot** make an application to register on behalf of another person. The daughter may assist in completing an online application by doing the typing on her mother’s behalf, so long as her mother is present and can communicate that the information provided on the application is true (i.e. make the declaration of truth). On the paper application form the mother would need to make the declaration of truth and while this would normally be demonstrated by her signing or making her usual mark on the application form, the ERO may accept a declaration made in some other way (for example, by telephone or in person) as long as they are satisfied that the declaration is being made by the

applicant and is genuine and true. If the mother is unable to make the declaration, you will need to take the action outlined in scenario 1.