

Part F – After the declaration of the result

Referendum on the UK's membership
of the European Union: guidance for
Counting Officers

Published January 2016 (last updated May 2016)

This guidance uses 'must' when referring to a specific legal requirement; 'should' is used for items considered to be recommended practice, but which are not legal requirements.

Translations and other formats

All of our guidance and resources for this poll are also available in Welsh.

For information on obtaining this publication in another language or in a large-print or Braille version please contact the Electoral Commission:

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Updates to this document

| Updated | Description of change | Paragraph number |
|----------------|--|-------------------------|
| May 2016 | Updated to reflect the final legislation (including confirmation of the date of the poll) and the confirmed Chief Counting Officer directions, and to include legislative references | |

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1 Storage and disposal of documents

1.1 The documentation listed in paragraphs **1.10** to **0** below must be kept securely for one year from the date of the poll¹.

1.2 **In England and Wales**, these documents must be forwarded to the Electoral Registration Officer (ERO) for the voting area².

1.3 If you are not also the ERO for the voting area, you should liaise with them at an early stage to put in place arrangements for the forwarding of the prescribed documents after the declaration of the local totals. You should ensure that all of the documentation is kept secure and accounted for during the process of being forwarded to the ERO.

1.4 **In Scotland**, the Counting Officer must retain the documents for their voting area³.

1.5 **In Northern Ireland**, the Counting Officer for Northern Ireland must retain the documents⁴.

1.6 In any case, you should make sure that the packaging process is as transparent as possible. In either case, you should maintain a clear audit trail when packaging and forwarding the documents as this will help to ensure that anyone wishing to inspect public documents can do so. The packaging and labelling system you use should both provide secure storage and support timely retrieval.

1.7 A clear audit trail and transparent process can be achieved by:

- Producing clear labels for each packet. You must seal all of the relevant documentation in separate packets and mark each packet with a description of its contents, the date of the referendum and the referendum to which it relates⁵. The label must also include the name of the voting area and should state how long the packet is to be kept and when it is to be destroyed unless otherwise directed by the High Court or county court or, in the case of a voting area in Scotland, the Court of Session or sheriff. The labels for documents open to public inspection and for documents that are not open to public inspection should be different. As a minimum, the packets containing documents not open to public inspection should clearly state this fact.
- Ensuring that you have factored the parcelling up of documents into your verification and count planning.
- Covering packing instructions as part of your training for polling station staff and when training postal voting and count supervisors. Providing

written instructions should also help to reduce the risk of documents being packaged wrongly. A [template graphical guide to packaging materials at the close of poll](#) is available, which you could adapt and provide to polling station staff.

- Creating a list of all documents to be forwarded or retained (as appropriate). You should keep a record of all of the materials that you have a duty to send to the ERO (in England and Wales) or to retain (in Scotland and Northern Ireland), and ensure that all of the items are accounted for. Paragraphs **1.10**, **1.11** and **0** below provide lists of documents that you have a duty to forward or retain. When forwarding documents, you should also:
 - record the number of parcels you have despatched
 - record the details of the ERO to whom they have been sent
 - obtain a receipt from the ERO indicating that the parcels have been safely received

1.8 All packets and receptacles containing referendum documents should be held securely before being transferred to the ERO or to storage (as appropriate) so that no unauthorised persons can tamper with them.

The documents that you have a duty to forward or retain

1.9 You have a legal duty to seal up the documents listed below and, on the completion of the counting of ballot papers, must forward these to the ERO in England and Wales, or retain them in Scotland and Northern Ireland⁶.

1.10 From the polling stations⁷:

- the packet containing:
 - the list of tendered votes
 - the list of voters with disabilities assisted by companions
 - the declarations made by companions of voters with disabilities
 - the list of votes marked by the Presiding Officer
 - the statements relating to votes marked by the Presiding Officer
 - the list of persons to whom ballot papers are delivered after the correction of a clerical error or as a result of a decision on an appeal to the county court or sheriff
- marked copies of the register of electors, the marked list of proxies and any marked copy notices issued as a result of the correction of a clerical error or a decision on an appeal to the relevant court
- the packets containing the completed polling station corresponding number lists
- certificates of employment on duty on polling day

1.11 **In Great Britain**, from the postal vote issues and openings⁸:

- marked copies of the postal voters' list and proxy postal voters' list
- the packets containing the completed postal vote corresponding number lists
- the packets of postal voting statements accepted as valid
- the packets of rejected postal votes
- the packets of rejected postal ballot paper envelopes
- the lists of cancelled, lost and spoilt postal ballot papers
- the packet of spoilt postal ballot papers and accompanying documents
- the packet of lost postal ballot papers containing any part of the postal ballot pack that was not lost and which was returned to you before you issued a replacement
- the packet of postal ballot papers, statements and envelopes that have been cancelled
- unopened postal ballot packs received after the close of poll or returned as undelivered (these can be forwarded at a subsequent date)

1.12 **In Northern Ireland**, from the postal vote issues and openings⁹:

- marked copies of the postal voters' list and proxy postal voters' list
- the packets containing the completed postal vote corresponding number lists
- the packets of spoilt postal ballot papers and cancelled declarations of identity
- the packets of rejected postal votes
- the packets of declarations of identity
- the packets of rejected tendered postal votes
- the lists of spoilt and tendered postal ballot papers
- the statement as to postal ballot papers

1.13 In **Great Britain**, you must also forward to the ERO, the statement as to postal ballot papers and the relevant parts of the list of postal votes that have failed the identifier checks¹⁰. In England and Wales this must be done at the same time as you are forwarding the above documents. You should also forward at the same time as you are forwarding the documents, a record of any instances where you suspect an offence may have been committed, so that the ERO knows in which cases they should not send out a postal vote identifier rejection notice. In **Northern Ireland** the statement as to postal ballot papers is retained by you.



For further information on the contents of the various lists relating to postal voting, see [Part D: Absent voting](#).

1.14 From the count¹¹:

- all ballot papers separately stored as:
 - counted ballot papers
 - rejected ballot papers
 - unused ballot papers (both ordinary and tendered) and spoiled ballot papers (placed together)
 - used tendered ballot papers.

- ballot paper accounts, the result of the verification of the ballot paper accounts and the statement of rejected ballot papers

1.15 [Retention and inspection guidance](#) to assist with the correct handling of the materials is available for download from the Commission's website.

2 Post-referendum activity

Statement as to postal ballot papers

2.1 You have a legal duty to complete a statement as to postal ballot papers for the referendum¹². This document is vital for the accounting of postal votes and for ensuring that voters have confidence that their vote will be counted in the way they intended. The statement should form part of the arrangements that you have in place to maintain a clear audit trail of the postal voting and count processes. You should complete the statement accurately using the figures recorded at the issue, receipt, opening and verification of postal votes.



Further details on record-keeping throughout the administration of the postal voting process are provided in [Part D – Absent voting](#).

2.2 The Commission will provide a template statement as to postal ballot papers for the referendum, which should be used. The accompanying guidance notes should support you in completing this.

2.3 In **Great Britain**, you must forward to the ERO the statement as to postal ballot papers. In England and Wales, this must be done at the same time as you are forwarding the other referendum documents listed in paragraph 1.10, 1.11 and 0. In **Northern Ireland**, the statement is retained by you¹³.

2.4 You must also provide a copy of the statement to the Commission and, for COs in Great Britain, to the Secretary of State¹⁴. The statement must not be provided before the tenth calendar day after the poll, but must arrive no later than the 15th calendar day after the poll.

Data collection and feedback

2.5 You will also be requested to send information and data to support the Commission with reporting on the referendum.

2.6 Forms for collecting information and data, and accompanying guidance notes for completion, as well as a feedback form, will be circulated separately.

Accounting for the referendum

2.7 A Fees and Charges Order has been made for the referendum which sets out how much money you will be able to claim. The Commission has also provided detailed guidance and instructions for accounting for the referendum.



[The Referendum on the UK's Membership of the European Union \(Counting Officers' and Regional Counting Officers' Charges\) Regulations 2016](#)

set out the maximum amounts recoverable by Counting Officers and Regional Counting Officers for their services and expenses in relation to the referendum.

We have produced [Counting Officers' expenses guidance notes](#) and an [FAQ document on Fees and Charges](#) which are available on our website together with [Counting Officers' Expenses Claim Forms](#).

We have also made [The Counting Officers', Regional Counting Officers' and Chief Counting Officers' Accounts \(European Union Referendum\) Regulations 2016](#) which specifies the date by which claims must be received as 23 December 2016.

Payment of creditors

2.8 You should keep receipts throughout the period of the referendum for all services/work provided, and pay all creditors as soon as possible after the poll.

Payment of fees to staff

Income tax

2.9 Changes to income tax arrangements include cessation of the current non-liability to tax declaration (P527) to be replaced by a standard starter checklist which is issued at the time of appointment, and needs only be done once rather than be reviewed every year as with the P527. The P528 form, currently issued in lieu of a P60 will also no longer be used, but you will need to issue a P60 form to the employee at the end of the tax year.

HMRC real-time information

2.10 All referendum payments made in the tax year beginning in April 2016 will be subject to HMRC's real-time information tax payment system. You should ensure that you liaise with your local authority's finance and HR departments to ensure that you can comply with the tax rules for all your employees, including any temporary and short-term contract staff. Further guidance is available from [HMRC](#).

Automatic enrolment into a workplace pension

2.11 All employers with staff working in the UK must comply with automatic enrolment requirements. Further guidance is available from the [Pensions Regulator](#).

Return of equipment

2.12 You should make arrangements to return any equipment, such as the empty ballot boxes, to storage.

3 Challenging the referendum

3.1 The number of ballot papers counted or votes cast in the referendum, as certified by the Chief Counting Officer (CCO), an RCO or a CO, can only be challenged by an application for judicial review¹⁵.

3.2 The applicant would have to demonstrate to the Court that they have a sufficient interest (known as 'standing') in the outcome of the referendum, and it would be for the Court to determine whether the applicant has standing.

3.3 The applicant must lodge an application for judicial review within six weeks of the certification that is being challenged being made.

3.4 The applicant would have to challenge a particular decision, act or omission that the applicant claims was unlawful and led to an incorrect certification.

3.5 If the Court rules that a particular decision, act or omission was unlawful, it may order the certification to be set aside or, in some cases, the Court may declare the correct result.

3.6 Any person who contacts you enquiring about challenging the referendum should be advised to seek their own independent legal advice. If you receive any such enquiries, you should notify your RCO.

4 Review of referendum procedures

4.1 You should carry out a thorough evaluation of all processes outlined in your project plan, seeking feedback from appropriate stakeholders, and produce a lessons learnt document which should be used to inform the project plan and risk register for future electoral events.

4.2 The [template project plan](#) contains some sample objectives and suggested tools that will allow you to measure the extent to which the conduct of the referendum has been successful. It also contains an evaluation plan to assist you with the review process.

The review

4.3 The scope of the review should cover all aspects of the referendum. Your project plan should be used as the starting point for the review, and each process that was planned for and carried out should be reviewed.

4.4 A key part of the review will be the consideration of the aims and objectives set out in your project plan and measuring your performance against these.

4.5 You should pay particular attention to reviewing:

- your project planning
- cooperation between you and the RCO
- whether you were able to secure adequate resources
- how contractors have been managed and whether they delivered work to the required specification
- the equipment and stationery used
- recruitment and training of staff
- the suitability of venues used
- the management of polling stations, the absent voting process, and the verification and count
- the processing and handling of queries
- any issues affecting the security/integrity of the referendum

4.6 As part of the review you should seek feedback from appropriate stakeholders.

4.7 You should seek feedback from the following:

- your staff
- the RCO
- electors

- referendum campaigners and their agents
- local organisations of disabled people, older people and minority ethnic groups, and the council's access officers

4.8 To obtain feedback from your staff, for example, you should consider inviting a number of them, including polling station staff, to a discussion in order to address all aspects of the polling station process, from training and briefing sessions through to dealing with difficult situations on polling day. You could also take into account any feedback provided in reports returned by Presiding Officers and polling station inspectors.

4.9 Once you have reviewed all aspects of the referendum and sought feedback from appropriate stakeholders you should produce a lessons learnt document. The lessons learnt document should include an analysis of what practices were successful and where these could be used elsewhere, what you would do again or do differently, and key recommendations. The lessons learnt report should then be used to inform the project plan and risk register for future electoral events.

5 Freedom of Information requests

5.1 Following the referendum you may receive requests under the Freedom of Information Act 2000 or Freedom of Information (Scotland) Act 2002. COs, RCOs and EROs are not a public authority under this Act and, as such, are exempt from the disclosure requirements imposed by it.

5.2 However, where possible, COs, RCOs and EROs should disclose the requested information, provided this information is already in the public domain, or the information requested does not include personal data. An example of non-personal data would be statistical data providing the total number of electors registered in your area or the turnout of postal voters.

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- ¹ Rule 58(1) European Union Referendum (Conduct) Regulations 2016
- ² Rule 56(1)(a) European Union Referendum (Conduct) Regulations 2016
- ³ Rule 56(1)(b) European Union Referendum (Conduct) Regulations 2016
- ⁴ Rule 102 European Union Referendum (Conduct) Regulations 2016
- ⁵ Rules 55 and 56(1) European Union Referendum (Conduct) Regulations 2016
- ⁶ Rule 55(1) European Union Referendum (Conduct) Regulations 2016
- ⁷ Rule 56 European Union Referendum (Conduct) Regulations 2016
- ⁸ Rule 91 Representation of the People (England and Wales) Regulations 2001 as amended by Rule 48 Schedule 3 European Union Referendum (Conduct) Regulations 2016, Rule 91 Representation of the People (Scotland) Regulations 2001 as amended by Rule 49 Schedule 3 European Union Referendum (Conduct) Regulations 2016
- ⁹ Representation of the People (Northern Ireland) Regulations 2008, Rule 91 as amended by Rule 102, schedule 3 European Union Conduct Regulations.
- ¹⁰ Rule 91(3A) Representation of the People (England and Wales) Regulations 2001 as amended by rule 48 Schedule 3 European Union Referendum (Conduct) Regulations 2016, rule 91A(1) Representation of the People (Scotland) Regulations 2001 as amended by Rule 50 Schedule 3 European Union Referendum (Conduct) Regulations 2016
- ¹¹ Rule 56(2)(a) and (b) Schedule 1 European Union Referendum (Conduct) Regulations 2016
- ¹² Rule 91(1)(b) Representation of the People (England and Wales) Regulations 2001 as amended by Rule 48 Schedule 3 European Union Referendum (Conduct) Regulations 2016, Rule 91(1)(b) Representation of the People (Scotland) Regulations 2001 as amended by Rule 49 Schedule 3 European Union Referendum (Conduct) Regulations 2016
- ¹³ Rule 56(2)(h) European Union Referendum (Conduct) Regulations 2016
- ¹⁴ Rule 91(5) Representation of the People (England and Wales) Regulations 2001 as amended by Rule 43 Schedule 3 European Union Referendum (Conduct) Regulations 2016, Rule 91(5) Representation of the People (Scotland) Regulations 2001 as amended by Rule 49 Schedule 3 European Union Referendum (Conduct) Regulations 2016
- ¹⁵ Para 19 Schedule 3 European Union Referendum Act 2015