

Dealing with doubtful ballot papers at the EU Referendum

Updates to this document

Updated	Description of change	Link to example
June 2016	Updated to correct a typographical error in the explanatory text.	Example 9

Contents

- 1 Introduction
 Managing the adjudication at the referendum

- 2 Principles of adjudication
 Want of official mark
 Voting for both answers
 Writing or mark by which the voter can be identified
 Unmarked ballot papers
 Void for uncertainty
 Decisions of the Counting Officer

- 3 Summary

- 4 Examples
 Case law references
 Allowed votes
 Rejected votes

- Appendix Legislation

1 Introduction

1.1 This booklet is designed to assist Counting Officers in adjudicating doubtful ballot papers at the referendum on the UK's membership of the European Union.



This booklet should be read in conjunction with the general guidance on managing the verification and count contained in [Part E – Verifying and counting the votes](#) of the Chief Counting Officer's guidance for Counting Officers.

1.2 The Counting Officer may delegate the final decision on adjudication to one or more deputies, and this should be done explicitly in writing.

1.3 Because the Counting Officer discharges a statutory function in adjudicating doubtful votes, the Counting Officer or authorised Deputy Counting Officer, and not any other staff employed by the Counting Officer at the count, should carry out this function.

1.4 One of the aims of this booklet is to help to ensure consistency of approach across the whole of the United Kingdom and Gibraltar.

1.5 This booklet is based on doubtful ballot paper guidance that was issued by the Electoral Management Board for Scotland for the Scottish independence referendum in 2014 and on existing guidance issued by the Electoral Commission for elections. It has been developed in consultation with representatives from across the electoral community, including members of the EU Referendum Delivery Group (EURDG)¹ and the EU Referendum Management Board (EURMB)². The Chief Counting Officer is grateful for their assistance throughout this process.

1.6 The Chief Counting Officer will monitor the language used by campaigners and others relating to the referendum and if particular terms or expressions emerge that can clearly be taken to refer to one of the referendum answers – such as the current term 'Brexit' (see Example 24) – the booklet will be updated and Counting Officers notified through a Bulletin.

¹ The EURDG, whose members are nominated by and represent the 11 RCOs and the Chief Electoral Officer for Northern Ireland, works alongside the EURMB and focuses on the practical and workability aspects of planning for and delivering the referendum.

² The EURMB has been established to support the Chief Counting Officer (CCO) in managing the effective delivery of the EU referendum. The Board is chaired by the CCO and its current membership includes the DCCO, the RCO designates for each of the electoral regions in Great Britain and the CO for Northern Ireland.

Managing the adjudication at the referendum

1.7 When undertaking the adjudication of doubtful ballot papers it is important to ensure that the process is carried out in full view of any counting and referendum agents present, as well as in the presence of any Commission representatives and accredited observers in attendance.

1.8 Counting Officers should not wait until towards the end before starting the adjudication process; this should be carried out regularly throughout the count in clear view of those entitled to be present.

1.9 Those ballot papers that have been rejected should be stamped with the word 'rejected' and placed in the appropriate package.³ All other ballot papers must be counted.

1.10 A statement must be prepared showing the number of ballot papers rejected under each of the following headings:⁴

- want of official mark
- voting for both answers
- writing or mark by which the voter could be identified
- unmarked or void for uncertainty

³ Regulation 48(3) - European Union Referendum (Conduct) Regulations 2016

⁴ Regulation 48(4) - European Union Referendum (Conduct) Regulations 2016

2 Principles of adjudication

2.1 Any doubtful ballot papers should be placed in a tray for the supervisor to take to the Counting Officer for adjudication. The whole of the ballot paper needs to be considered when adjudicating doubtful votes and the front of ballot papers should be carefully checked for any marks in case the voter has made any marks outside of the voting boxes.

2.2 The Counting officer may only reject a ballot paper on the following grounds:

- it does not contain an official mark
- a vote for both answers has been given
- the ballot paper is unmarked or the voter's intention is uncertain
- it contains a mark or writing by which the voter can be identified

2.3 A ballot paper must not be rejected because the vote is⁵:

- not marked in the proper place
- marked other than by a cross
- marked by more than one mark

if an intention to give a vote for one answer to the referendum question is apparent on the ballot paper.

2.4 Therefore the following ballot papers will need to be passed to the Counting Officer for adjudication:

- those that appear to have no official mark (not the unique identifying mark, which is a separate mark)
- those appearing to contain a vote for both answers
- those with any writing or mark by which the voter can be identified
- those where there is no mark
- Those where there is uncertainty as to the vote
- those with additional marks or writing on the ballot paper

2.5 In addition, in order to help maintain the integrity of the referendum, the following ballot papers should be passed to the Counting Officer for further consideration:

- any paper torn or damaged in any way
- any paper with anything unusual about it (for example, any paper that appears to have been altered, either with a clearly different writing instrument or with correction fluid)

⁵ Regulation 48(2) - European Union Referendum (Conduct) Regulations 2016

2.6 In the case of ballot papers that appear to have been altered, you should consider packaging them separately in case of later challenge or investigation.

2.7 Sometimes a voter may include some writing or mark on the face of the ballot paper in addition to a clear vote for one referendum answer. For example, a voter may mark a cross in one of the voting boxes, but also include a comment written across the ballot paper that alludes to a disagreement the voter has with the council. In these instances, provided the writing or mark does not identify the voter and it does not introduce any uncertainty as to the voter's intention to vote for one referendum answer, the additional writing or mark should be disregarded and the vote allowed (see Example 25). However, if the comment casts doubt over the voter's intention – even if a cross has been included in one of the voting boxes – the ballot paper should be rejected (see Example 35).

Want of official mark

2.8 Absence of the official mark must lead to an automatic rejection. The Counting officer has no discretion.

2.9 Counting Officers may come across instances where voters have cut or torn off part of the ballot paper. Whether or not such an extract of a ballot paper can be counted will depend on whether it contains the official mark.

Voting for both answers on the ballot paper

2.10 This is a matter for the Counting Officer's judgement.

2.11 Additional marks must not lead to a rejection if it is clear that those marks were not intended as a vote.⁶

Writing or mark by which voter can be identified

2.12 There are two aspects to this:

- either any writing or mark on the ballot paper which, of itself, identifies the voter, or
- the voter can be identified by such writing or mark

⁶ Woodward v. Sarsons [1875] LR10 CP 733

2.13 It is important to bear in mind that the legislation states that the voter **can** be, not may be or might possibly be, identified (which does not include the ballot paper number and unique identifying mark on the back of the ballot paper).

Writing or mark which, of itself, identifies the voter

2.14 A ballot paper should be rejected if:

- the electoral number of the voter written on the ballot paper unequivocally identifies the voter
- it may reasonably be held to bear the name (or signature) or unique address of the voter on its front.

The voter can be indirectly identified by any writing or mark on the ballot paper

2.15 The Counting Officer is not required to investigate the matter or require evidence to be produced to identify the writing or mark, but the Counting Officer should consider any evidence that is given to them at the time.

2.16 Where there is doubt about the identity of the person who marked the ballot paper, Counting Officers should allow rather than reject the ballot paper.

Unmarked ballot papers

3.13 Unmarked ballot papers should be rejected.

3.14 A ballot paper marked by means other than a pencil should not be rejected simply because of that.

3.15 Marks other than a cross, however faint, may still be valid.

Void for uncertainty

2.17 Establishing voter intention is crucial when determining doubtful ballot papers.

2.18 The key phrase in the Regulations is: 'A ballot paper [...] is not to be treated as void [...] if the voter's intended answer to the referendum question is apparent.'

2.19 Each ballot paper should be considered on its own merits and decisions should be taken on a case-by-case basis.

2.20 The key question a Counting Officer should ask is whether the voter has indicated their intention with certainty to vote for either 'Remain' or 'Leave' on the face of the paper.

Decisions of the Counting Officer

2.21 The decision of the Counting Officer is final, subject only to judicial review⁷.

⁷ Regulation 50 - European Union Referendum (Conduct) Regulations 2016

3 Summary

3.1 The principles to be applied are set out above. In practical terms, the **general approach** can be summarised as follows:

- always be clear and consistent
- take time to ensure that a considered decision is given in every case
- determine whether the intention of the voter appears on the ballot paper. As part of this, Counting Officers will need to:
 - consider the whole of the ballot paper
 - consider whether the way a ballot paper has been marked means that a voter's intention to vote for one of the answers to the referendum question is apparent

4 Examples

4.1 The examples provided here are based on previous case law on elections or taken from the specific regulations for the European Referendum. Ultimately, the decision on any particular ballot paper, including the question as to whether a voter's intended answer to the referendum question is apparent, rests with the Counting Officer. References are to the European Union Referendum (Conduct) Regulations 2016.

Case law references

4.2 Abbreviated case law references have been used throughout this booklet. The following table lists the full case law references.

Abbreviation	Full reference
Berwick-upon-Tweed case	Berwick-upon-Tweed case [1880] 3O'M&H 178
Buckrose case	Buckrose case, Sykes v. McArthur[1886] 5 O'M&H 110
Cirencester case	Lawson v. Chester Master [1893]
Cornwell v Marshall	Cornwell v. Marshall [1977] 75 LGR 676 DC
Eley v Durant	Eley v. Durant [1900] 4SJ 430
Levers v Morris	Levers v. Morris [1971] 3 All ER QBD
Rowe v Cox	Rowe v. Cox [2001] QBD, Case M/294/01
Ruffle v Rogers	Ruffle v. Rogers [1982] QB 1220
South Newington case	South Newington case, Lewis v. Shepperdson [1948] 2 All ER 503
West Bromwich case	West Bromwich case, Hazel v. Viscount Lewisham [1911] 6 O'M&H 256
Woodward v Sarsons	Woodward v. Sarsons [1875] LR10 CP 733

Allowed votes

The following are suggested examples of allowed votes

Example 1:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, in using a tick, they have indicated a clear intention to vote for the 'Remain' option.

Example 2:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input checked="" type="checkbox"/>

Allow for 'Leave' - vote marked elsewhere than in the proper place. Berwick-upon-Tweed case and Regulation 48(2)(a).

Although the cross in the 'Leave' box strays into the row with the 'Remain' option, the intersection of the cross is still clearly in the 'Leave' box, indicating a clear intention to vote for the 'Leave' option.


Example 3:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
<input checked="" type="checkbox"/> Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked by more than one mark. Regulation 48(2)(c).

Although the ballot paper has been marked by more than one mark, both indicate the voter's intention to vote for the 'Remain' option.

Example 4:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
 Leave the European Union	<input type="checkbox"/>

Allow for 'Leave' - vote marked elsewhere than in the proper place. Regulation 48(2)(a).

Although the cross is outside the 'Leave' voting box, it is included within the row for 'Leave' and therefore indicates the voter's intention to vote for the 'Leave' option.

Example 5:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked otherwise than by means of a cross and marked elsewhere than in the proper place. Regulation 48(2)(a) and (b).

By circling the 'Remain' answer, the voter has indicated their intention to vote for the 'Remain' option.

Example 6:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Leave' – vote marked by more than one mark. Cirencester case, Eley v Durant and Regulation 48(2)(c).

Although the ballot paper is marked with more than one mark, the marks in the 'Remain' voting box clearly indicate a crossing out. It is clear that the voter did not intend for the 'Remain' option, but meant to vote for the 'Leave' option instead.

Example 7:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked by more than one mark. Woodward v Sarsons and Regulation 48(2)(c).

In drawing a line through the 'Leave' answer and placing a cross in the 'Remain' voting box, the voter has indicated a clear intention to vote for the 'Remain' option.

Example 8:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input checked="" type="checkbox"/>

Allow for 'Leave' - vote marked by more than one mark. Woodward v Sarsons and Regulation 48(2)(c).

In this example, the voter has used crosses for two different purposes. The first elongated cross clearly represents a crossing out, whereas the 'Leave' voting box has been marked with a cross in accordance with the instructions. Despite the use of two crosses, the voter has indicated a clear intention to vote for the 'Leave' option only.

Example 9:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked by more than one mark. Woodward v Sarsons and Regulation 48(2)(c).

In this example, the voter has used crosses for two different purposes. The cross over the word 'Leave' clearly represents a crossing out, whereas the 'Remain' voting box has been marked with a cross in accordance with the instructions. Despite the use of two crosses, the voter has indicated a clear intention to vote for the 'Remain' option only.

Example 10:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input checked="" type="checkbox"/>

Allow for 'Leave' - vote marked by more than one mark. Woodward v Sarsons and Regulation 48(2)(c).

In this example, the marks over the whole of the 'Remain' answer clearly represent a crossing out and have been used to re-inforce the 'Leave' option. The 'Leave' voting box has been marked with a cross in accordance with the instructions. The voter has indicated a clear intention to vote for the 'Leave' option.

Example 11:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' – vote marked otherwise than by means of a cross. *Levers v Morris* and Regulation 48(2)(b). See also Schofield's Election Law, Volume 5, Appendix E, E20, (Shaw & Sons, 2008 as updated by supplement issue no.1).

Although this ballot paper has not been marked with a cross, by drawing a line through the 'Leave' answer, the voter has indicated their intention to exclude that option. The voter has therefore indicated a clear intention to vote for the 'Remain' option.

Example 12:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Leave' - vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, in using a 'smiley', they have indicated support for that option. The voter has therefore indicated a clear intention to vote for the 'Leave' option.

Example 13:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/> <i>yes</i>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, the word 'yes' in the voting box for the 'Remain' option affirms the voter's choice and therefore indicates a clear intention to vote for the 'Remain' option.

Example 14:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/> <i>yes</i>

Allow for 'Leave' - vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, the word 'yes' in the voting box for the 'Leave' option affirms the voter's choice and therefore indicates a clear intention to vote for the 'Leave' option.

Example 15:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/> <i>no</i>

Allow for 'Remain' - vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, the word 'no' in the voting box for the 'Leave' option shows their disagreement with that option. The voter has therefore indicated a clear intention for the 'Remain' option.

Example 16:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/> <i>no</i>
Leave the European Union	<input type="checkbox"/>

Allow for 'Leave' - vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, the word 'no' in the voting box for the 'Remain' option shows their disagreement with that option. The voter has therefore indicated a clear intention for the 'Leave' option.

Example 17:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/> <i>yes</i>
Leave the European Union	<input type="checkbox"/> <i>no</i>

Allow for 'Remain' - vote marked otherwise than by means of a cross and by more than one mark. Regulation 48(2)(b) and (c).

In this example, the voter has used 'yes' and 'no' to show their agreement and disagreement with the options on the ballot paper. The word 'yes' in the voting box for the 'Remain' answer affirms the voter's choice, while the 'no' in the 'Leave' box reinforces it by disagreeing with the 'Leave' answer. The voter has indicated a clear intention to vote for the 'Remain' option.

Example 18:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox" value="1"/>

Allow for 'Leave' – vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross, the number '1' in the voting box for the 'Leave' option can reasonably be taken to mean the voter's first and only choice. The voter has indicated a clear intention to vote for the 'Leave' option.

Example 19:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/> 1
Leave the European Union	<input type="checkbox"/> 2

Allow for 'Remain' - vote marked otherwise than by means of a cross and by more than one mark. Regulation 48(2)(b) and (c).

Although the voter has not marked the ballot paper with a cross, the number '1' in the voting box for the 'Remain' option can reasonably be taken to mean the voter's first choice and the number '2' as their second choice. In ranking both options, the voter has indicated a clear intention to vote for the 'Remain' option.

Example 20:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union? <u>Leave</u>	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Leave' - vote marked otherwise than by means of a cross and elsewhere than in the proper place. Regulation 48(2)(a) and (b).

Although the voter has not marked the ballot paper with a cross, they have responded to the question being asked on the ballot paper by writing in the word 'Leave' and therefore indicated a clear intention to vote for the 'Leave' option.

Example 21:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked otherwise than by means of a cross and elsewhere than in the proper place. Regulation 48(2)(a) and (b).

Although the voter has not marked the ballot paper with a cross, they have responded to the question being asked on the ballot paper by writing in the word 'Remain' and therefore indicated a clear intention to vote for the 'Remain' option.

Example 22:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Allow for 'Leave' - vote marked otherwise than by means of a cross and elsewhere than in the proper place. Regulation 48(2)(a) and (b).

Although the voter has not marked the ballot paper with a cross, they have responded to the question being asked on the ballot paper by writing in the word 'Leave'. Although this is written across the 'Remain' voting box, in the absence of any other mark on the ballot paper, the voter's intention is still clear. The voter has indicated a clear intention to vote for the 'Leave' option.

Example 23:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

STAY!

Allow for 'Remain' - vote marked otherwise than by means of a cross and elsewhere than in the proper place. Regulation 48(2)(a) and (b).

Although the voter has not marked the ballot paper with a cross or used the words 'Remain' or 'Leave' as provided in the question and the answers, they have responded to the question being asked on the ballot paper by writing in the word 'Stay!' and therefore indicated a clear intention to vote for the 'Remain' option.

Example 24:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/> BREXIT

Allow for 'Leave' – vote marked otherwise than by means of a cross. Regulation 48(2)(b).

Although the voter has not marked the ballot paper with a cross or used the words 'Remain' or 'Leave' as provided in the question and the answers, they have responded to the question being asked on the ballot paper by writing in the term 'Brexit', which is widely used to mean 'British exit' from the European Union. The voter has therefore indicated a clear intention to vote for the 'Leave' option.

Example 25:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
<i>No wind farm in Blankshire!!!</i> Leave the European Union	<input type="checkbox"/>

Allow for 'Remain' - vote marked by more than one mark. Regulation 48(2)(c).

In this example, the voter has marked their ballot paper with a cross, but also included a comment that alludes to a disagreement the voter has with the council. Given that this additional comment does not identify the voter and does not introduce any uncertainty as to the voter's intention to vote for the 'Remain' option, the comment should be disregarded. The voter has indicated a clear intention to vote for the 'Remain' option.

Example 26:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input checked="" type="checkbox"/>

Allow for 'Leave' - vote marked by more than one mark. Regulation 48(2)(c).

In this example, the voter has marked their ballot paper with a cross, but also included a dash in the 'Remain' box. Given the voter has followed the instructions to mark the ballot paper with cross in the voting box for 'Leave', the dash is unlikely to represent a vote for 'Remain'. The voter has therefore indicated a clear intention to vote for the 'Leave' option.

Rejected votes

The following are suggested examples of rejected votes

Example 27:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input checked="" type="checkbox"/>

Reject – voted for both answers. Regulation 48(1)(b).

Example 28:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Reject – voted for both answers. Regulation 48(1)(b).

Example 29:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Reject – voted for both answers. Regulation 48(1)(b).

Example 30:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
Leave the European Union	<input checked="" type="checkbox"/>

Reject – voted for both answers. Regulation 48(1)(b).

Example 31:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
<i>7. Brown, 7 Poppy Drive</i> Leave the European Union	<input checked="" type="checkbox"/>

Reject – voter can be identified. Woodward v Sarsons and Regulation 48(1)(c).

Example 32:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Reject – void for uncertainty. Rowe v Cox and Regulation 48(1)(d).

Example 33:

Referendum on the United Kingdom's membership of the European Union	<i>yes</i>
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Reject – void for uncertainty. Regulation 48(1)(d).

In this example, it is not clear which option the voter intended to vote for as 'yes' is not a response to the question being asked. This is different to Example 13, where the word 'yes' in the voting box is used to affirm the voter's choice.

Example 34:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union? <i>no</i>	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Reject – void for uncertainty. Regulation 48(1)(d).

In this example, it is not clear which option the voter intended to vote for as 'no' is not a response to the question being asked. This is different to Example 15, where the word 'no' in the voting box is used to express disagreement with one of the answers.

Example 35:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input checked="" type="checkbox"/>
<i>We need to leave the EU!</i> Leave the European Union	<input type="checkbox"/>

Reject – void for uncertainty. Regulation 48(1)(d).

In this example, it is not clear which option the voter intended to vote for as the comment added to the ballot paper undermines the cross in the voting box for the 'Remain' option. Equally, the cross in the voting box for 'Remain' undermines the comment added to the ballot paper.

Example 36:

Referendum on the United Kingdom's membership of the European Union	
Vote only once by putting a cross <input checked="" type="checkbox"/> in the box next to your choice	
Should the United Kingdom remain a member of the European Union or leave the European Union?	
Remain a member of the European Union	<input type="checkbox"/>
Leave the European Union	<input type="checkbox"/>

Reject – ballot paper is unmarked. Regulation 48(1)(d).

Appendix - Legislation

4.3 The relevant regulations are the European Referendum (Conduct) Regulations 2016 and are as follows:

Rejected ballot papers

Regulation 48 - (1) Any ballot paper —

- (a) that does not bear the official mark, or
- (b) on which a vote is given for both answers to the referendum question, or
- (c) on which anything is written or marked by which the voter can be identified (except the printed number and other unique identifying mark on the back), or
- (d) which is unmarked or does not indicate the voter's intention with certainty,

is void and not to be counted.

Regulation 48 - (2) But a ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place, or
 - (b) otherwise than by means of a cross, or
 - (c) by more than one mark,
- is not to be treated as void for that reason if the voter's intended answer to the referendum question is apparent, and the way the paper is marked does not itself identify the voter and it is not shown that the voter can be identified by it.

Regulation 48 - (3) The counting officer must endorse the word "rejected" on any ballot paper which under this regulation is not to be counted, and must add to the endorsement the words "rejection objected to" if an objection is made by a counting agent to the officer's decision.

Regulation 48 - (4) The counting officer must draw up a statement showing the number of ballot papers rejected under each of the following heads —

- (a) no official mark;
- (b) both answers voted for;
- (c) writing or mark by which voter could be identified;
- (d) unmarked or void for uncertainty.

Regulation 48 - (5) Once the statement is drawn up the counting officer must—

(a) in the case of a voting area in a region for which a Regional Counting Officer is appointed, inform the Regional Counting Officer of the contents of the statement;

(b) in the case of any other voting area, inform the Chief Counting Officer of the contents of the statement.

Decisions on ballot papers

Regulation 50 - The decision of the counting officer on any question arising in respect of a ballot paper is final (subject to review in accordance with paragraph 19 of Schedule 3 to the 2015 Act).⁸

⁸ European Union Referendum Act 2015 – may be subject to a claim for judicial review