

## Council elections in Scotland

# Guidance for candidates and agents

## Part 5 of 6 – Your right to attend key electoral events

December 2016

This document applies to the May 2017 council elections in Scotland. Our guidance and resources for other elections can be accessed from our website at: [www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/candidates-and-agents](http://www.electoralcommission.org.uk/guidance/resources-for-those-we-regulate/candidates-and-agents).

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## Essential information

This section of the document contains our guidance on attending key electoral processes at the council elections in Scotland on 4 May 2017.

Supplementary information, which may only be relevant to some candidates, is provided at the back of this document. You can also view this supplementary guidance by clicking on the links within this document or by clicking on the chapter heading on the contents page.

We are here to help, so please contact the Commission's Scotland office if you have any questions. See our [Overview document](#) for contact details.

In this document, we use 'you' to refer to the candidate. We use 'must' when we refer to a specific requirement. We use 'should' for items we consider to be minimum good practice, but which are not legal or regulatory requirements.

We have included relevant deadlines for the Scottish local council elections on 4 May 2017 throughout this document, but you can also find a separate [election timetable](#) setting out all the key dates on our website.

## The opening of postal votes

1.1 You and your election agent or a person appointed by you to attend in your election agent's place are entitled to attend the opening of returned postal votes. Additionally, you and your election agent may appoint agents to attend openings on your behalf. See [Part 2a: Standing as an independent candidate](#) or [Part 2b: Standing as a party candidate](#) for details on how to appoint these agents.

Candidates and agents are not entitled to attend the **issue** of postal votes.

### What is postal voting?

1.2 People aged 16 or over who are registered to vote, or have applied to be registered to vote, can apply to vote by post in the council elections by submitting an application to the Electoral Registration Officer. The application must be received by the Electoral Registration Officer by 5pm on 18 April 2017 (i.e. by 5pm on the eleventh working day before the poll). Those who have been appointed to vote as a proxy on behalf of someone else may also apply for a postal vote by 5pm on 18 April 2017 (i.e. by 5pm on the eleventh working day before the poll). The Electoral Registration Officer has no discretion to extend the deadline for whatever reason.

1.3 The Convener of the Electoral Management Board for Scotland (EMB) has directed that postal ballot packs must be dispatched between 13 and 14 April 2017. There will be a final batch of postal ballot packs issued to electors on 25 April 2017. This will include those electors who registered close to the registration deadline (i.e. close to 17 April 2017).

1.4 Electors will then complete and return their postal votes to the Returning Officer before the close of poll (i.e. 10pm on 4 May 2017).

### What does the postal ballot pack contain?

- **Envelope A** is the envelope that the elector returns their ballot papers in. It is marked with the letter 'A' and the words 'ballot paper envelope'
- **Envelope B** is the envelope that the elector will use to return the ballot paper envelope and the postal voting

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statement. It is marked with the letter 'B' and the address of the Returning Officer

- **The postal voting statement** contains the elector's name, the number of the ballot paper issued to them, instructions on how to vote by post and space for the elector to sign and provide their date of birth
- **The ballot paper**
- **Pictorial instructions** explaining how to complete the postal voting statement and ballot paper and how to return the postal vote stationery in the correct envelopes

## What does a postal voting agent do?

1.5 A postal voting agent is allowed to attend and observe postal vote opening sessions, which are run by the Returning Officer. At each opening session the Returning Officer will decide whether or not the date of birth and signature provided by electors on their postal voting statement matches the signature and date of birth previously provided and held on their records. If there is a mismatch, the postal vote will be rejected.

1.6 A postal voting agent has a right to observe, but not to interfere with, this process. A postal voting agent can, however, object to the decision of a Returning Officer to reject a postal vote. It will not affect the Returning Officer's decision, but the Returning Officer will record any objections by marking the postal voting statement with the words 'rejection objected to'.

1.7 Like your postal voting agents, you and your election agent and the person you may have appointed to attend on your election agent's behalf are also entitled to object to a rejection.

1.8 The Returning Officer will explain the postal vote opening process and may issue information on the procedures to be followed, including instructions on what people attending an opening session can and cannot do. Anyone attending an opening session should comply with any instructions that the Returning Officer has given.

If the election is combined with another poll, the RO may have decided to combine the issue of postal votes.

In that case, the postal ballot pack will also contain the ballot paper for the other electoral event(s).

## Duty to maintain secrecy

1.9 Ballot papers will be kept face down throughout a postal vote opening session. Anyone attending an opening session must not attempt to see how individual ballot papers have been marked. It follows therefore that **keeping a tally of how ballot papers have been marked is not allowed**.

1.10 In addition, anyone attending a postal vote opening must not attempt to look at identifying marks or numbers on ballot papers, disclose how any particular ballot paper has been marked or pass on any such information gained from the session. Anyone found guilty of breaching these requirements can face a fine of up to £5,000, or may be imprisoned for up to a year.

For more information read the [postal voting secrecy requirements](#)

## When are postal votes opened and how will you know when an opening session is taking place?

1.11 It is likely that several opening sessions will take place before polling day, as well as on polling day itself.

1.12 The Returning Officer must give you at least 48 hours' notice of when and where the sessions will take place, and will also set out how many postal voting agents will be allowed to attend each session.

1.13 There will be a final opening session after the polls have closed to open any postal votes handed in to polling stations. This session may be held at the count venue or in another location. The Returning Officer will advise you of the location for the final opening.

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## Flowchart of the opening session process

1.14 The postal vote opening process can be summarised as follows:



- 8 If the statement **or** ballot paper envelope is missing, or the numbers on the statement and ballot paper envelope do not match, the document(s) are set aside, recorded and stored in secure packets
- 9 The Returning Officer will verify the dates of birth and signatures provided on the statements
- 10 The Returning Officer must be satisfied that the dates of birth and signatures on the statements match those previously provided and held on record
- 11 Following verification of the signatures and dates of birth, postal voting statements are removed from the tables
- 12 Staff open the ballot paper envelopes (envelope A) and remove the ballot paper
- 13 Staff check that the numbers on the back of the ballot paper matches the number on the ballot paper envelope (envelope A)
- 14 Valid ballot papers (**not** votes) are counted and the total number is recorded
- 15 All valid ballot papers are placed into ballot boxes and stored securely before being delivered to the count venue for counting after the close of poll

**Valid** ballot papers are those ballot papers whose related postal voting statement has passed the signature and date of birth checks.

Invalid ballot papers are set aside and stored in secure packets.

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## Invalid and rejected postal voting statements

1.15 Unless a waiver has been granted, the Returning Officer will reject a postal voting statement if a signature and/or date of birth is missing or if a signature and/or date of birth does not match that previously provided by the elector and held on record.

1.16 Rejected statements are attached to the relevant ballot paper or ballot paper envelope. They are marked as 'rejected' and shown to any agents present.

1.17 Agents can object to the Returning Officer's decision to reject any postal vote and, if they do, the words 'rejection objected to' are added to it. However, the Returning Officer's decision is final and the postal vote will remain rejected.

## Polling stations

1.18 You and your election agent are entitled to observe proceedings inside polling stations. Additionally, you and your election agent may appoint agents to attend polling stations on your behalf. See [Part 2a: Standing as an independent candidate](#) or [Part 2b: Standing as a party candidate](#) for details on how to appoint polling agents.

## Who can vote at polling stations?

1.19 Most people choose to vote in person at their polling station. Any person on the polling station's electoral register can vote at the polling station, unless:

- they are a registered postal voter
- they are a registered proxy voter and their proxy has already voted for them or has applied to vote on their behalf by post
- they are not 16 years of age or older on polling day
- they are registered as an overseas elector

1.20 Electors will receive a poll card before the election telling them where and when they can vote. Electors do not need to take their poll card to the polling station in order to vote.

The only electors who need to bring a poll card with them to vote are those who have registered anonymously because of risks to their safety.

1.21 Registered postal voters cannot be issued with a ballot paper at the polling station, but they can return their completed postal ballot pack to their polling station on polling day. Alternatively, they may return their postal vote to any polling station in the council area or by hand to the Returning Officer at the elections office.

1.22 Postal ballot packs returned to polling stations must be handed to polling station staff and not placed in the ballot box.

Where the postal ballot pack contains a ballot paper for another electoral event happening on the same day, the Returning Officer will provide information on where voters can return their postal ballot pack to.

## Polling station opening hours

1.23 Polling stations will be open on polling day between 7am and 10pm.

Any voters waiting in a queue for their polling station at 10pm will be allowed to vote, even if they haven't been issued with a ballot paper.

## Finding the location of polling stations

1.24 The Returning Officer must give public notice of the location of polling stations as soon as practicable after 4pm on 29 March 2017 (i.e. as soon as practicable after 4 pm on the twenty-third working day before the poll). They will give a copy of this notice to election agents soon after this.

## What does a polling agent do?

1.25 Polling agents have a number of important roles to play on polling day. They can:

- be present in the polling station before the opening of the poll to watch the Presiding Officer show the empty ballot box before it is sealed
- detect personation and prevent people voting more than once in the election (other than as proxies)
- be present when the Presiding Officer marks a ballot paper at the request of an elector who needs assistance marking their ballot paper because of a disability or an inability to read or write
- report to you and your election agent any improper activities and keep notes, if required, for giving evidence in court

While a polling agent can observe the poll, they do not have to be present in a polling station for polling and related procedures to take place.

**Personation** is when an individual votes as someone else (whether that person is living or dead, or is a fictitious person).

Polling agents' seals cannot be attached to ballot boxes at the start of or during the poll.

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- be present at the close of poll when the various packets of documents are sealed
- attach their seal to any packets made up by the Presiding Officer at the close of poll, including the ballot box

1.26 You and your election agent can also do anything that a polling agent is entitled to do.

## Maintaining the secrecy of the ballot

1.27 Anyone attending a polling station has a duty to maintain the secrecy of the ballot. In particular, the following information must not be disclosed:

- the name or electoral number of who has or has not voted
- the number or other unique identifying mark on the ballot paper

1.28 Anyone attending a polling station must also not try to ascertain how a voter has voted or who they are about to vote for.

1.29 A polling agent can mark off on their copy of the register of electors those voters who have applied for a ballot paper. If the polling agent leaves the polling station during the hours of polling, they must leave the marked copy of the register in the polling station to ensure that secrecy requirements are not breached.

1.30 Any person found guilty of breaching the secrecy requirements can face a fine of up to £5,000, or may be imprisoned for up to a year.

For more information see: [the secrecy requirements for the poll](#)

## What is the normal voting process?

1.31 The normal voting process at a polling station is straightforward and can be summarised as follows:

### Polling station staff will...

- ask voters for their name and address, and make sure they are eligible to vote
- mark a straight line against the voter's entry on the register of electors
- call out the number and name of the elector
- write the elector number on a list next to the number of the ballot paper to be issued
- ensure the ballot papers includes the official mark (e.g. a barcode or watermark)
- fold the ballot paper and then hand it to the voter **unfolded** so that they can see all of the options on the ballot paper

### The voter will...

- mark the ballot paper in private in the polling booth
- fold the ballot paper and show the ballot paper number and unique identifying mark on the back of the ballot paper to the Presiding Officer
- place the ballot paper in the ballot box and leave the polling station

1.32 The Presiding Officer can assist anyone who is unable to mark the ballot paper themselves. Alternatively, a voter may bring along someone they know and trust to assist them in marking their vote. The person assisting the voter must either be a close relative aged 16 or over, or be a person entitled to vote at the election. A person can only assist a maximum of two voters at the election.

## Collection of postal ballots from the polling station

1.33 The Returning Officer may arrange for the collection of any postal votes that electors have handed in at polling stations throughout polling day. The Presiding Officer must

Where the election has been combined with another electoral event, polling station staff will be issuing the ballot papers for all electoral events.

Different electoral events may have different franchise requirements, so sometimes an elector will not be entitled to vote at all of the polls taking place.

Where polls are combined, a single ballot box may be used for all of the contests or one ballot box may be used for each separate contest.

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seal any returned postal votes in a packet before they are collected. Any candidates or agents present can add their own seal to the packet if they wish.

## Tellers

1.34 Tellers are people who stand outside polling places and record the elector numbers of electors who have voted. They can then identify likely supporters who have not voted and encourage them to vote before the close of poll.

1.35 Tellers have no legal status and voters can refuse to give information to them.

1.36 We have produced a factsheet of [tellers' dos and don'ts](#), as well as more comprehensive [guidance on the activities of tellers](#). The guidance aims to ensure that everyone knows precisely what is and is not acceptable and is designed to promote appropriate standards of conduct. The Returning Officer may also provide their own guidance to tellers.

The Returning Officer is in charge of the conduct of the election. If they are concerned by the activities of tellers, they can ask tellers to comply with agreed behaviour or leave the polling place.

## What happens after polls close?

1.37 Once all voters who have been issued with a ballot paper have voted, the ballot box is sealed by the Presiding Officer and candidates or agents can add their own seal if they wish. After the Presiding Officer has completed all of the paperwork, the sealed ballot box is taken to the count venue.

## The count

1.38 The council elections in Scotland on 4 May 2017 will be counted electronically.

## Who can attend the count?

1.39 You and your election agent are entitled to observe the count. Additionally, you can invite one other person to attend the count. You and your election agent may also appoint agents to attend the count on your behalf.

1.40 See [Part 2a: Standing as an independent candidate](#) or [Part 2b: Standing as a party candidate](#) for details on the number of counting agents you may appoint and how to appoint them.

## What does a counting agent do?

1.41 Counting agents have a number of important roles to play at the count:

- they observe the counting process and make sure that it is accurate
- they can draw to the attention of count staff any doubtful ballot papers
- if they disagree with a decision by the Returning Officer to reject a ballot paper, they can ask the Returning Officer to mark the ballot paper “rejection objected to”
- if a count is suspended for any reason or there is a break in the proceedings, counting agents can add their seals when the Returning Officer seals the ballot boxes and envelopes

1.42 You and your election agent can do anything that a counting agent is allowed to do.

## When and where will the count take place?

1.43 The Convener of the EMB has directed that Returning Officers must ensure that the first ballot boxes are opened between 8am and 9:30am on Friday 5 May 2017. The Returning Officer will notify you of the exact time and location.

1.44 As part of the count process some Returning Officers must count any unused ballot papers and check ballot paper accounts. Some Returning Officers may do this overnight after the close of poll. Anyone who is entitled to attend the count is also entitled to attend this process. The Returning Officer will notify you of the exact time and location for these proceedings.

## What to expect at the count

1.45 As set out in paragraph **1.38**, the votes will be counted electronically using specially designed software.

1.46 The e-counting process can be summarised as follows:

- all ballot papers will be scanned and the number verified against records of ballot papers issued at the polling station or against records of returned postal ballot papers
- the system will count all of the voting preferences on each paper
- the system will calculate the results and allocate seats (paragraph **1.50** provides information on the formula used to allocate seats)

1.47 All ballot papers will pass through this process, but different batches of ballot papers will be at different stages of the count at different times.

1.48 Screens will be available for candidates, agents and observers showing the progress of the count.

## How are the seats allocated?

1.49 The voting system used at council elections in Scotland is the Single Transferable Vote.

1.50 This means that voters will mark their ballot paper by ranking the candidates in order of preference. They will be asked to write the number 1 in the voting box next to their first choice candidate, a number 2 next to their second choice, 3 next to their third choice and so on. Voters can make as many or as few choices as they wish.

If the poll is combined with another poll, there may be a single ballot box for all elections or separate boxes for each. In any case, ballot papers will be sorted into the separate contests.

Any ballot paper found in the 'wrong' ballot box is still valid and will be moved to the correct box during verification.

1.51 Candidates who reach a minimum number of votes known as the quota will win a seat. The quota is calculated by using the formula below.

$$\left[ \frac{\text{Total number of valid ballot papers}}{\text{Number of councillors to be elected} + 1} \right] + 1$$

1.52 The number of valid first preferences given to each candidate will be counted. If any candidates have received a number of votes that is equal to or more than the quota, they will be deemed **elected**. In this case, the surplus of each of those candidates will be transferred to the voters' next choice candidate.

1.53 If there are still seats to fill after all the surpluses have been transferred, the candidate with the fewest votes will be **excluded**. Their votes will be transferred to the voters' next choice candidate who has not been elected or excluded.

1.54 The process of transferring surpluses and excluding candidates will continue until all of the seats have been filled.

1.55 There may come a point where the number of remaining candidates is equal to the number of vacancies that are unfilled. Where this is the case, the remaining candidates are deemed to be elected.

1.56 These calculations are carried out by the e-counting software. The reports generated by the system will provide a detailed analysis of the calculations at each stage of the count and will be shared with candidates and agents.

## What if the vote on a ballot paper is not clear?

1.57 A ballot paper will not be counted if it:

- is unmarked
- does not bear a unique identifying mark in a form that is capable of being read by electronic means
- does not contain a first preference for any candidate
- contains first preferences for more than one candidate

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- contains any mark or writing that can identify the voter
- does not indicate the voter's intention with certainty

1.58 The Returning Officer must draw up a statement showing the number of ballot papers rejected for these reasons.

1.59 If the voter's intention is clear on a ballot paper and the voter cannot be identified by any mark or writing, it will not be void if a vote is marked:

- elsewhere than in the proper place
- by other means than a figure (e.g. a tick or cross), or
- by more than one mark

1.60 A ballot paper can be partially accepted if some preferences are expressed validly, but not all. For example, if a voter marked their ballot paper 1, 2, 3, 4, 6 (i.e. without a fifth preference) the ballot paper will be adjudicated as good for the first four preferences, but will become a non-transferable ballot paper thereafter.

1.61 The Returning Officer must mark the rejected ballot paper "rejected". They must add the words "rejection objected to" if a counting agent objects to the Returning Officer's decision. For more details on the adjudication of doubtful ballot papers, see paragraph **1.67**.

## Recounts

1.62 You and your election agent (not your counting agents) can ask the Returning Officer for a recount. The Returning Officer will discuss the procedure for this with you prior to the count.

1.63 The Returning Officer may conduct a recount, but can also refuse a request if they believe it to be unreasonable.

## Declaration of results

1.64 The Returning Officer will give you provisional notice of the result and an opportunity to ask for a recount. If there are no recounts, or once they have been completed, the Returning Officer will publicly declare the successful candidates to be elected.

Some Returning Officers allow candidates to make speeches after the result is declared. Please check arrangements with your Returning Officer.

1.65 The Returning Officer will also publish a notice with the name of each candidate elected, the number of first and subsequent preferences cast for each candidate at each stage of the count and the number of rejected ballot papers. More detailed information will be published by the Returning Officer in the week following the election.

## What happens to the paperwork after the result is announced?

1.66 The Returning Officer must seal all election documentation, add a description of the contents to each packet and forward them to the Proper Officer of the council.

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## Supplementary information

### Doubtful ballot papers

1.67 To assist Returning Officers, we have produced guidance on how to adjudicate votes on ballot papers that may appear doubtful. This guidance is contained in our booklet [Dealing with doubtful ballot papers](#) which Returning Officers may refer to at the count. We have also produced a [doubtful ballot paper placemat](#) with examples of allowed and rejected votes for quick reference. The Convener of the EMB may have also issued additional examples.

1.68 The examples given in these documents are based on the election rules or are taken from previous case law. Please note that while they provide guidance for Returning Officers, each Returning Officer is ultimately responsible for making a decision on individual ballot papers. Their decision to reject a particular ballot paper during the count or recount is final and can be reviewed only at an election petition after the declaration of the result. For more details on election petitions, see [Part 6 – After the declaration of results](#).