

Referendum on the voting system for
UK Parliamentary elections and
Northern Ireland Assembly and local
government elections – 5 May 2011

After the declaration of results

This document sets out the Chief
Counting Officer's instructions to the
Chief Electoral Officer for Northern
Ireland

Translations and other formats

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1 Overview

Background

1.1 The Parliamentary Voting System and Constituencies Bill¹ makes provision for a referendum to be held on the voting system for UK Parliamentary elections. It is expected that this referendum will be held on 5 May 2011. There will also be Northern Ireland Assembly and local government elections on 5 May 2011.

1.2 The referendum will be held under the framework provided by the Political Parties, Elections and Referendums Act 2000 (PPERA), while the administrative arrangements are set out in the PVSC Act.

1.3 The Assembly election to be held on 5 May 2011 will be run under the rules contained in the Northern Ireland Assembly Elections Order 2001 (as amended) and the local government elections will be run under the rules contained in the Local Elections (Northern Ireland) Order 1985 (as amended), each with modifications as set out in the Schedule 8 of the PVSC Act.

1.4 As Counting Officer you are responsible for the administration of the referendum. In addition, you are responsible for the election-related functions which are taken on by the Counting Officer where polls are combined. As Returning Officer you are responsible for the non-combined aspects of the election, which includes nominations and the counting of votes at the Northern Ireland Assembly and local government elections.

1.5 As the legislation provides that the Chief Electoral Officer will be the Counting Officer and the Returning Officer, you will be personally responsible for the effective running of the referendum and elections across Northern Ireland.

1.6 A referendum held under the Political Parties, Elections and Referendums Act 2000 (PPERA) has a different management and accountability structure compared to any election. It requires a Chief Counting Officer, who will be responsible for certifying the overall result, which at this referendum will be one UK-wide result aggregated from all of the totals produced locally by individual Counting Officers. The Chair of the Electoral Commission, Jenny Watson, will be the Chief Counting Officer at this referendum.

1.7 The Chief Counting Officer has the power to give general or specific directions to Counting Officers relating to the discharge of their functions, including directions requiring Counting Officers to take specified preparatory

¹ Hereinafter referred to as the PVSC Act. All references to the PVSC Act are references to the Parliamentary Voting System and Constituencies Bill as at 23 December 2010. These instructions and the directions contained within them are subject to the passage and commencement of the Bill.

steps or to provide any information that they have or are entitled to have.² Given the UK-wide nature of the referendum, the Chief Counting Officer intends to use this power to ensure that the referendum and combined polls are conducted to the same standards and principles in all voting areas, and to ensure that Counting Officers can deliver the main aims for the polls, which are as follows:

1. that the polls are consistently administered
2. that the process is transparent
3. that the polls are professionally delivered
4. that they produce accurate results in which all stakeholders are confident
5. that all voters have a good experience, with any person who is entitled to vote being able to do so

Instructions

1.8 The Chief Counting Officer has issued a series of instruction documents to assist you, as Counting Officer, in the discharge of your functions and to ensure consistency of practice in delivering the referendum and combined polls. These instructions refer to your duties under the legislation and contain directions that are issued by the Chief Counting Officer under Paragraph 5(5) of Schedule 1 of the PVSC Act. As Counting Officer, if you are given a direction you must comply with it,³ unless you have been granted an exception.

1.9 As the Chief Counting Officer's power of direction applies to the functions of a Counting Officer, irrespective of whether they relate to the referendum or an election, the power of direction will therefore also apply to any election-related functions which are conferred on the Counting Officer. The Chief Counting Officer's power of direction does not apply to those election-related functions that are not taken on by the Counting Officer. As Returning Officer you should, however, interpret these directions, as well as the other instructions contained in this document, as guidance by the Commission in relation to non-combined functions.

1.10 The Chief Counting Officer's directions are set out at the start of each instruction module and also appear in boxes at the start of each chapter. You are being formally directed by the Chief Counting Officer to follow these directions. Also, wherever the instructions state that a task 'must' be completed, this constitutes a direction.

1.11 The instructions also include recommended practice ('shoulds') and background information, both of which are included to assist you in understanding and discharging your duties. The recommended practice, background information and legislative references are not issued as formal directions.

² Paragraph 5(5), Schedule 1, PVSC Act.

³ Paragraph 5(8), Schedule 1, PVSC Act.

1.12 Counting Officers are personally responsible for the conduct of the referendum in their area and for complying with all directions given by the Chief Counting Officer.⁴ For this reason, you will need to think carefully about how the Chief Counting Officer's directions will work in Northern Ireland.

1.13 If, as Counting Officer, you consider that you have a legitimate reason for not following these directions, you must apply directly to the Chief Counting Officer for an exception. You may only deviate from these directions if an exception has been granted. The exceptions process is not applicable should you decide in your role as Returning Officer to proceed in a manner that does not comply with any instruction set out in this document.

1.15 The instruction documents are supplemented by a set of resources, which can be accessed on the Commission's website at www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/referendums/combined-elections-and-referendums-in-northern-ireland. Where the Chief Counting Officer has directed the use of a particular resource by you as Counting Officer, this will be explicitly stated in the summary of directions at the start of the instruction module and in the directions box at the start of the relevant chapter.

⁴ Paragraph 5(2) and (8), Schedule 1, PVSC Act.

2 Directions

2.1 This module covers the tasks that you will need to undertake after the declaration of the referendum local total and the results of the Northern Ireland Assembly and local government elections, and includes instructions on the preparations that you will need to make to allow you to carry out these tasks.

2.2 As Counting Officer, you must follow the directions given below. These directions are supplemented by further recommendations provided in chapters 3–7 of this document.

2.3 The overarching aim of the directions in this module is to ensure that a clear audit trail is established. The directions seek to ensure that the packaging and forwarding of documents is as transparent as possible, and that anyone who wishes to inspect public documents after the polls is able to do so.

Storage and disposal of documents

Seal up and retain the prescribed paperwork as directed.

- Plan at an early stage for the storage of the documentation.
- Maintain a clear audit trail from packaging the documents through to storage of the documents.
- Ensure that you have systems in place to securely store the sealed packets.
- Produce labels for each packet, stating what electoral event the packet relates to, the date of the electoral event, how long the packet is to be kept, when it is to be destroyed and, if it is not to be available for public inspection, that fact.
- Keep a record of all of the materials that you have a duty to retain, and ensure that all of the items are accounted for by recording the number of parcels retained and the details of where they will be retained.
- Obtain and apply the Commission's guidance on the retention and inspection of documents.

Data returns and feedback

- Provide any further data as requested by the Chief Counting Officer.

3 Storage and disposal of documents

Directions

Seal up and retain or, as appropriate, forward the prescribed paperwork to the proper officer as directed:

- Plan at an early stage for the storage of the documentation.
- Maintain a clear audit trail from packaging the documents through to storage of the documents.
- Ensure that you have systems in place to securely store the sealed packets.
- Produce labels for each packet, stating what electoral event the packet relates to, the date of the electoral event, how long the packet is to be kept, when it is to be destroyed and, if it is not to be available for public inspection, that fact.
- Keep a record of all of the materials that you have a duty to retain, and ensure that all of the items are accounted for by recording the number of parcels retained and the details of where they will be retained.
- Obtain and apply the Commission's guidance on the retention and inspection of documents.

3.1 You must plan at an early stage for the packing, transporting and storage of the prescribed documents after the announcement of the results. You should make sure that the packaging process is as transparent as possible. You must maintain a clear audit trail in order to enable anyone wishing to inspect public documents to do so. You can achieve this by:

- Producing clear labels for each packet. You have a legal duty to seal all of the relevant documentation in separate packets and to mark each packet with a description of its contents and the name of the voting/electoral area to which it relates. In addition, the labels must state what electoral event the packet relates to, the date of the electoral event, how long the packet is to be kept and when it is to be destroyed. 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 must clearly state this fact.
- Ensuring that you have factored in the parcelling up of documents to your 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. The Commission has developed a template graphical guide to packaging materials at the close of poll, which you could adapt and provide to polling station staff.

- Creating a list of all documents to be retained. You must keep a record of all of the materials that you have a duty to retain, and ensure that all of the items are accounted for. The Commission has produced a checklist you can use for this purpose. You must also:
 - record the number of parcels you have retained
 - record the details of where the items will be stored
 - obtain a receipt from whoever is storing the parcels on your behalf

3.2 You must ensure that you have systems in place to securely store the sealed packets at all times so that no unauthorised persons can tamper with them.

3.3 The Commission has developed guidance on the retention and inspection of documents which you must obtain and apply during the period of retention.

3.4 On completion of the counting of the referendum ballot papers, you as Counting Officer have a legal duty to seal up the counted and rejected referendum ballot papers into separate packets and to retain them, alongside the other relevant documents.

3.5 On completion of the counting of the Northern Ireland Assembly and local government elections ballot papers, you as Returning Officer are required by law to seal up the counted and rejected election ballot papers into separate packets and to retain these, alongside the other relevant documents.

3.6 The documents that you have a duty to retain are such of the documents below that, as Counting Officer or Returning Officer, you are responsible for sealing up:

- all ballot papers, which include counted ballot papers, rejected ballot papers, unused ballot papers (both ordinary and tendered), spoilt ballot papers and used tendered ballot papers
- ballot paper accounts, the result of the verification of the ballot paper accounts and the statement of rejected ballot papers
- list of tendered votes
- list of voters with disabilities assisted by companions
- declarations made by companions of voters with disabilities

- list of votes marked by the Presiding Officer
- statements relating to votes marked by the Presiding Officer
- statement as to postal ballot papers
- marked copies of the register of electors, including the marked 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
- the marked list of proxies
- marked copies of the postal voters list and proxy postal voters list
- the packets containing the completed referendum and combined polling station and postal vote corresponding number lists
- certificates of employment on duty on polling day
- the packet of rejected votes
- the packet of valid declarations of identity
- the packet of rejected declarations of identity
- the packet of spoilt postal ballot papers and accompanying documents
- unopened postal ballot packs received after the close of poll or returned as undelivered

3.7 For the local elections, you are legally required to retain any combined corresponding number lists, the tendered votes lists, the lists of voters with disabilities assisted by companions, the lists of votes marked by the Presiding Officer, the related statements, the declarations made by companions, the packets containing the marked copies of the registers and lists of proxies. All other documents must, by law, be forwarded to the proper officer of the council.

3.8 Where the above documents are specifically for the referendum or the elections, they must by law be packaged and sealed separately.

4 Data returns and feedback

Directions

- Provide any further data as requested by the Chief Counting Officer.

Statement as to postal ballot papers

4.1 You have a legal duty to complete a statement as to postal ballot papers for the referendum and for each election. These statements provide an audit trail for the postal voting process throughout the referendum and elections. You must complete these statements accurately using the figures obtained during the issue, receipt and opening of postal votes.

4.2 These documents are vital for the accounting of postal votes and for ensuring confidence in the results. To ensure accuracy, the data used to complete the forms should be gathered systematically at relevant points in the postal voting process.



Further details on record-keeping throughout the administration of the postal voting process are provided in Module 3 – Absent voting.

4.3 You have a legal duty to retain the completed statements in the same manner as you retain the other documents listed in paragraph 3.6 above. You also have a legal duty to provide a copy of the statements to the Commission. The statements must not be provided before 16 May 2011 but must arrive no later than 31 May 2011.

Reporting

4.4 If requested, as Counting Officer you are required by law to give the Chief Counting Officer any information and data relating to the referendum that you have or are entitled to have. As Returning Officer, you may also be requested to send information and data to the Electoral Commission relating to the elections.

4.5 It would also be helpful for reporting purposes if you could provide the Commission with any general feedback on the referendum and the elections and submit this alongside your data return, so that it can be used to inform the Commission's statutory reports on the referendum and the Assembly election.

4.6 Forms for collecting the data and accompanying instructions, as well as a Commission feedback form, will be circulated separately and made available on the Commission's website.

5 Post-referendum/elections activity

5.1 Beyond the post-referendum/elections activities that you are required to conduct by legislation and the Chief Counting Officer's directions, there are also other activities that you should undertake.

Accounting for the referendum

5.2 There will be a Fees and Charges Order for the referendum, which will set out how much money you will be able to claim. The Electoral Commission will produce accompanying guidance on how to account for the referendum, as well as forms to record your claims.

Payment of creditors

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

Payment of fees to staff

5.4 Staff should be paid as soon as possible after the polls.

Return of equipment

5.5 You should make arrangements to return any equipment, such as the empty ballot boxes, to storage. This should be covered in your project plan.

6 Challenging the referendum

6.1 The result of the referendum, as certified by the Chief Counting Officer, a Regional Counting Officer or a local Counting Officer, can only be challenged by an application for judicial review.

6.2 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 is for the Court to determine whether the applicant has standing.

6.3 The applicant must lodge an application for judicial review within six weeks of the certification of the result by the Counting Officer whose certification is being challenged.

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

6.1 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.

6.2 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 the Chief Counting Officer.

7 Review of referendum and elections procedures

7.1 You should carry out an evaluation of the conduct of the referendum and elections in order to identify any improvements for future electoral events. You should look back at the objectives you identified for the administration of the polls and assess the extent to which you have been successful in meeting them.

7.2 The Chief Counting Officer and the Electoral Commission have provided, as part of the template project plan, some sample objectives and suggested tools that will allow you to measure the extent to which the conduct of the referendum and elections has been successful. The Chief Counting Officer and the Commission have also provided an evaluation plan as part of the template project plan to assist you with the review process.

7.3 The information collected through such a review can then be used to inform the project plan and risk register for future electoral events.

The review

7.4 The scope of the review should cover all aspects of the referendum and elections. 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.

7.5 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.

7.6 You should pay particular attention to reviewing:

- your project planning
- whether you were able to secure adequate resources
- the equipment and stationery used
- how contractors have been managed and whether they delivered work to the required specification
- recruitment and training of staff
- the suitability of venues used
- the management of nominations, 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/elections

As part of the evaluation you should also consider inviting a number of staff, 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. It would also be beneficial to involve in the review voters and organisations with an interest in the conduct of the polls (such as, for example, disability organisations). Feedback from candidates and agents and permitted participants and their referendum agents should also be sought.