

Part A – Returning Officer role and responsibilities

Scottish Parliamentary election:
guidance for Returning Officers

October 2020

In this guidance we use 'must' when we refer to a specific legal requirement. We use 'should' for items we consider to be recommended practice, but which are not legal requirements.

Translations and other formats

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Updates to this document

Updated	Description of change	Paragraph number
March 2016	Re-published to include legal references.	N/A
October 2020	Updated to take account of the EU General Data Protection Regulation (GDPR) and the Data Protection Act 2018.	

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1 Introduction to this Guidance

Purpose

1.1 The purpose of this guidance is to assist Returning Officers with the practice and procedure of running a Scottish Parliamentary election.

1.2 The Constituency Returning Officer (CRO) is the person who has been appointed as the Returning Officer for local government elections in that area; in the case of a constituency that crosses local council boundaries, the CRO is designated by an Order made by Scottish Ministers.¹

1.3 As CRO you are responsible for administering the nominations of candidates at the constituency contest, the conduct of the poll, the counting of votes for both the constituency election and that part of the regional contest that is included within the constituency. The Regional Returning Officer (RRO) is responsible for administering the nominations of parties and individual candidates at the regional contest and calculating the regional result. The RRO is designated by an Order made by Scottish Ministers and will be one of the CROs from within that electoral region.

1.4 The guidance has been developed in close consultation with the Electoral Management Board for Scotland (EMB), members of the UK Electoral Advisory Board (EAB) and the Elections, Registration and Referendums Working Group (ERRWG). It reflects what we, the EMB, the EAB and the ERRWG believe that ROs should expect of their staff in preparing and delivering the poll.

1.5 Throughout this guidance we generally use 'you' to refer to the CRO. Where we are referring to the RRO, this will be explicitly stated.

1.6 This guidance has been produced based on, and should be read in accordance with, the requirements set out in the following legislation (as amended):

- Representation of the People Acts 1983, 1985 and 2000
- Scotland Acts 1998 and 2012
- Political Parties, Elections and Referendums Act 2000
- Representation of the People (Scotland) Regulations 2001
- Scottish Parliament (Constituencies) Act 2004
- Electoral Administration Act 2006
- Political Parties and Elections Act 2009
- Local Electoral Administration (Scotland) Act 2011
- Scotland Act 2012
- Electoral Registration and Administration Act 2013

- The Scottish Elections (Reduction of Voting Age) Act 2015
- The Scottish Parliament (Elections etc.) Order 2015
- The Scottish Parliament Elections (Regional Returning Officers and Constituency Returning Officers) Order 2016
- The Scottish Parliament Elections (Returning Officer Fees and Charges) Regulations 2016
- Scottish Elections (Franchise and Representation) Act 2020
- The Scottish Parliament (Elections etc.) Amendment Order 2020
- The Scottish Parliament (Elections etc.) Amendment (No.2) Order 2020
- Scottish Elections Reform Act 2020

1.7 The list above includes only the legislation that makes provision in areas that this guidance relates to and the legislation that is currently in force.

1.8 Data protection legislation applies to the processing of all personal data. CROs and RROs are personally responsible for ensuring that they comply with the requirements of data protection legislation. The Commission has published a [resource](#) to support you in meeting your obligations under data protection legislation, as it relates to your electoral administration responsibilities.

1.9 CROs and RROs are also required to have regard to the public sector equality duty contained in Section 149 of the Equality Act 2010 when carrying out their duties.²

How to use this guidance

1.10 The guidance is divided into six areas:

- Part A – Returning Officer roles and responsibilities
- [Part B – Planning and organisation](#)
- [Part C – Administering the poll](#)
- [Part D – Absent voting](#)
- [Part E – Verifying and counting the votes](#)
- [Part F – After the declaration of results](#)

1.11 Each of these parts covers:

- what you are required to do by law ('must')
- what we expect you will need to have in place, and what we would expect to see to be able to be satisfied that the key outcomes of the Commission's performance standards can be delivered
- recommended practice to assist you in understanding and discharging their duties

1.12 This guidance is supplemented by resources which can be accessed through links contained throughout the guidance.

1.13 Should you have any questions about our guidance or any other matter relating to the administration of the election, we are available to provide on-going support. We will also be providing an out-of-hours advice service to deal with urgent electoral administration queries in the run up to and immediately following a Scottish Parliamentary Election. Further information on the out-of-hours service will be provided through our [Bulletin for electoral administrators](#).

2 Scottish Parliamentary elections

2.1 A Scottish Parliamentary election is a significant event which brings with it its own particular challenges. Your work to deliver a well-run poll will come under considerable scrutiny – from voters, candidates and political parties, and the media, including through social media.

2.2 Even if you have worked as a CRO or RRO before, there have been changes in legislation – and landscape – since the last Scottish Parliamentary election which make this poll different from any other Scottish Parliamentary election you may have delivered previously.

2.3 This chapter seeks to highlight some of the particular aspects of context relevant to this poll which you should ensure underpin all aspects of your planning.

Nature of the contests

2.4 The election will likely be hard-fought, with many close contests possible across Scotland. The evolving political landscape could mean that even in places where there have traditionally been large majorities this may no longer be the case, meaning the focus and circumstances could be different from anything experienced at a Scottish Parliamentary election in your area before.

2.5 There may be a significant number of new or less experienced political parties, candidates and agents who are unfamiliar with the practices and processes of an election and who will need your assistance to be able to participate effectively.

2.6 Particularly given the likelihood of close and hard-fought contests, you should be prepared for the integrity of this election to be scrutinised. Allegations and cases of electoral fraud will not only have a negative impact on the confidence of electors and campaigners, but they may also have a significant impact on your capacity to manage the election process effectively. It is therefore crucial that you put in place detailed and robust plans for monitoring and maintaining the integrity of the election in your area. You should work closely with the local police, ensuring you have in place good lines of communication for referring any allegations.

2.7 The extension of the franchise to vote at Scottish Parliamentary elections will see qualifying foreign nationals able to participate in this poll. This will not only increase the overall size of the electorate but will also expand the pool of those who may be voting for the first time and so who may need more support to be able to cast their vote in the way they intended.

Scale

2.8 The level of interest in the Scottish Parliamentary election is likely to be high. This will likely manifest itself in different ways – from a high turnout to intense scrutiny by the media and through social media.

2.9 Many aspects of planning for the election will need to reflect assumptions as to the likely turnout. Establishing such assumptions at an early stage in planning is of key importance as the scope for adjusting plans is limited at a later stage in the process. There are always challenges with developing such planning assumptions, with it often being difficult to predict in advance of the election period what the levels of engagement in the particular polls are likely to be. Given the potential for high levels of interest and engagement in the election, some of which may not emerge until close to the poll, the potential for a high turnout needs to be reflected in all aspects of planning for the poll.

2.10 For example, higher turnout will mean more voters at polling stations, and it is vital that appropriate provision is made, with the numbers of stations and the numbers of staff within them sufficient to deal with the number of electors allocated to them. Although the legislation allows any voters in a queue at their polling station at 10pm to vote, the need to ensure that voters do not face undue delays in voting and can receive a high-quality service still remains.

2.11 As the poll becomes closer, the context will continue to evolve as the campaigns pick up pace. You will need to be prepared to react to events which could have an impact on the effective delivery of the poll, and this will include having robust contingency plans in place that you can turn to where required. If, for example, there are televised Leaders' debates, these could conceivably result in a late surge of registration and absent voting applications, as well as having an impact on turnout and could alter the traditional pattern of when completed postal votes are returned.

2.12 It is vital that appropriate provision of polling stations is made, with the numbers of stations and the numbers of staff within them sufficient to deal with the number of electors allocated to them. Although any voters in a queue at their polling station at 10pm are able to vote, the need to ensure that voters do not face undue delays in voting and can receive a high-quality service remains.

2.13 It is likely that there will be media focus on the verification, count and declaration of results and it will be important to manage expectations, not only of the media but of all with an interest in the results, by consulting on your proposed approach and subsequently communicating clearly what you expect to deliver and by when.

Registration of electors

2.14 The focus on the numbers of those registered and not registered is as high profile as it's ever been, and this is set to continue.

2.15 The potential for a high number of registration applications close to the deadline for the election should be anticipated and built into your plans, reflecting lessons learnt from the experience of recent polls. The impact of such applications and related questions from residents about their registration status is not only relevant to the Electoral Registration Officer, but will also have implications for the administration of the poll and your plans should ensure you are able to respond effectively.

2.16 Online registration has also brought greater opportunities to engage local residents in the democratic process and to boost the levels of registration among under registered groups, with a Scottish Parliamentary election providing a strong hook for your local public engagement activity. And you do not need to do this on your own – opportunities for working with local partners who can reach out to voters in under-registered groups in your area could be a valuable part of your engagement work locally and should be sought out and seized.

3 Roles and responsibilities

3.1 Every council must appoint an officer of the council to be the Returning Officer for any elections of councillors to the council. By virtue of being the local government RO, you will also act as CRO for the Scottish Parliamentary election.

Your role and responsibilities

3.2 You play a central role in the democratic process. Your role is to ensure that the election is administered effectively and that, as a result, the experience of voters and those standing for election is positive. Effective working between the RRO and all CROs in the electoral region will be a critical factor in ensuring the delivery of a consistent, high-quality experience for all voters and candidates in the region.

3.3 You should set out at an early stage what you want to achieve and what success would look like for you.

3.4 As CRO, you are personally responsible for the following:

- the publication of the notice of election for the constituency contest³
- the nomination process for the constituency contest⁴
- the publication of the statement of persons nominated and the notice of poll for the constituency contest⁵
- the postal vote process for both contests⁶
- the provision of polling stations⁷
- the appointment Presiding Officers and Poll Clerks⁸
- the equipment of polling stations⁹
- the verification and counting of the votes for both the constituency contest and that part of the regional contest that falls within the constituency¹⁰
- the declaration of the constituency result¹¹
- the transmission of the results of the constituency contest and that part of the regional contest that falls within the constituency to the RRO¹²

3.5 The RRO is personally responsible for the following:

- the publication of the notice of election for the regional contest¹³
- the nomination process for the regional contest¹⁴
- the publication of the statement of persons and parties nominated and the notice of poll for the regional contest¹⁵
- the collation and calculation of the number of votes given for each political party and individual candidate in the regional contest, and the allocation of seats for the electoral region¹⁶
- the declaration of the regional result¹⁷

3.6 Your duties, whether as CRO or RRO, are separate from your duties as a local government officer. As CRO or RRO you are not responsible to the council but are directly accountable to the courts as an independent statutory office holder.

3.7 While you can appoint one or more persons to discharge any or all of your functions as CRO or RRO, you cannot delegate your personal responsibility for delivering the election. Further information on the appointment of deputies can be found in [Part B – Planning and Organisation](#)

Breach of official duty and power to correct procedural errors

3.8 The CRO and RRO are subject to breach of official duty provisions. This means that if they or their appointed deputies are, without reasonable cause, guilty of any act or omission in breach of official duty they (and/or their deputies) are liable on summary conviction to a fine not exceeding £5,000¹⁸.

3.9 The CRO and RRO have the power to take such steps as they think appropriate to remedy acts or omissions that arise in connection with any function of the election for which they are responsible and that are not in accordance with the rules.

3.10 This power allows the CRO and RRO to correct procedural errors that they, an ERO, a Presiding Officer or a person providing goods or services to them (or any deputies of any of these) make.

3.11 Where a CRO or RRO remedies an act or omission in full by using your power to correct a procedural error, they will not be guilty of an offence of breach of official duty¹⁹. You should remember that the power to correct procedural errors does not enable you to recount the votes once the constituency result has been declared or once you have published the statement showing the votes given at the regional contest in your constituency, nor does it enable the RRO to recalculate the result for the region once the result has been declared.²⁰

3.12 As CRO you are personally liable for the conduct of the election in your constituency and you should ensure that you have insurance cover and that it is up-to-date. If you are also the RRO, you should check to ensure that you have insurance cover for your RRO responsibilities too and that it is up-to-date. You should be prepared to demonstrate robust planning and decision-making processes in the event of any challenge to the election and a claim against you. The team at your council dealing with insurance may be able to help determine what existing cover is in place and available, and to provide advice as to whether it should be extended.

Your skills and knowledge

3.13 You should have a working knowledge of the legislation governing the conduct of the election. This means that, in addition to having a clear understanding of your particular statutory functions, you should have an overview of what the legislation contains and an understanding of how it affects the administration of the election, so that you can review, question where necessary, and quality-assure the whole process.

3.14 There are management responsibilities attached to your role. For example, you should:

- command the required staff and resources to deliver a well-run election
- draw in the necessary support, skills and expertise from across your own local council
- oversee the planning, project management and risk management of the election and incorporate any lessons learnt from previous polls
- identify and oversee any actions necessary to mitigate any issues arising
- ensure that staff are appropriately trained to deliver the roles required of them
- support the staff administering the election and provide appropriate oversight of their work
- provide direction to staff, monitor progress and receive regular feedback on activities
- if you are not also the RRO, maintain an effective working relationship with the RRO
- maintain an effective working relationship with the ERO
- maintain an effective working relationship with the CROs in your electoral region to help to ensure that electors across the region receive a consistent, high quality experience
- in the case of cross-boundary constituencies, seek advice and assistance from the CRO and staff at the other local council
- maintain an effective working relationship with your police Single Point of Contact (SPOC)
- ensure that election accounts are completed in a timely manner

Electoral Registration Officer

3.15 You should ensure that you are in regular contact with the ERO and that they are able to provide the relevant registration and absent voting data for the election. For example, to ensure that you are able to issue postal ballot packs as soon as practicable after the close of nominations and to ensure that voters have the maximum time available to receive, complete and return their postal pack, you will need to agree the timing and method of the various transfers of the necessary postal voting data. You will also need to liaise with the ERO to agree the timing and method for the transfers of the registration data to enable you to issue poll cards as soon as practicable after the notice of election has been published and following the publication of the election notices of alteration.²¹

If you are a CRO for a constituency which crosses local council boundaries and it is covered by more than one ERO, you will need to work with both EROs and their relevant staff.

Electoral Management Board for Scotland

3.16 The Electoral Management Board for Scotland (EMB) seeks to ensure that the interests of the voter are kept at the centre of all elections planning and administration. The EMB undertakes this by assisting ROs and EROs in relation to devolved Scottish elections through the promotion of best practice by providing information, advice or training.

3.17 The EMB Convener has the power to issue directions to ROs and to EROs in respect of both local government and Scottish Parliamentary elections.²² The Convener's directions are issued following consultation with the Electoral Commission.

3.18 The directions or recommendations issued by the EMB Convener are available on their website and their aim is to achieve consistency in delivery across Scotland.

3.19 ROs and EROs must follow any directions issued by the EMB Convener.

4 Performance standards

4.1 The Electoral Commission sets standards and monitors and reports on the performance of Returning Officers. The performance standards can be found at [Appendix A – Performance standards for Returning Officers](#).

4.2 The framework was developed around the key outcomes from the perspective of voters and those who want to stand for election, and in particular whether Returning Officers are taking the necessary steps to deliver the following outcomes:

- Voters are able to vote easily and know that their vote will be counted in the way they intended
- It is easy for people who want to stand for election to find out how to get involved, what the rules are, and what they have to do to comply with these rules, and they can have confidence in the management of the process and the result

4.3 [Parts B to F](#) of this guidance include what we expect Returning Officers will need to have in place, and what we would expect to see to be able to be satisfied that the key outcomes of the standards can be delivered.

Appendix A – Performance standards for Returning Officers in Great Britain

Performance standard 1: Voters		
Ensuring that planning for and delivery of the poll enables voters to vote easily and know that their vote will be counted in the way they intended		
Outcome	What does the RO need to do to achieve the outcome	What will demonstrate how the outcome has been met
Voters receive the information they need, in an accessible format and within time for them to cast their vote	<ul style="list-style-type: none"> • Develop and implement robust project management processes • Evaluate planning for and delivery of previous polls and identify lessons learnt, updating plans as required • Put in place arrangements to manage contractors and suppliers to ensure that the work is delivered as required by the specification • Ensure robust processes are in place for ensuring that there are no errors on voter materials, notice of poll and notice of election • Ensure poll cards are received by voters as soon as possible so that 	<ul style="list-style-type: none"> • Project planning documentation which is kept under regular review • Planning documentation reflecting lessons learnt • Arrangements in place for the management of contractors and suppliers • Processes for the proof-checking of voter materials, notice of poll and notice of election • Information on the method for delivery of poll cards, including an estimation of when poll cards will be delivered

	<p>voters have the maximum amount of time to act on the information</p> <ul style="list-style-type: none"> • Ensure information on the poll, including the notice of election and notice of poll, is easily accessible to voters, such as through the local authority website 	<ul style="list-style-type: none"> • Information on the poll easily accessed through the local authority website
<p>Voters receive a high-quality service</p>	<ul style="list-style-type: none"> • Ensure that access needs are taken into account when planning for and setting up polling stations • Decide on the allocation of electors and staff to polling stations to ensure polling stations are properly staffed so that voters receive a high-quality service, giving consideration to the factors set out in Commission guidance • Ensure polling station staff are trained to set-up polling stations in such a way that takes account of voter needs • Ensure postal ballot packs are received by voters as soon as possible so that voters have the maximum amount of time to act on the information 	<ul style="list-style-type: none"> • Assessment regarding access needs, identifying any problems and actions taken to remedy these • Approach taken to allocating electors and staff to polling stations • Guidance/training provided to polling station staff • Information on the method for delivery of postal ballot packs, including an estimation of when postal ballot packs will be delivered

<p>Voters have confidence that their vote will be counted in the way they intended</p>	<ul style="list-style-type: none"> • Maintain a clear audit trail of the issue, receipt and opening of postal ballot packs • Have in place processes to identify any patterns of activity that might indicate potential integrity problems, including what steps are to be taken to deal with any such problems • Maintain the secure storage of ballot papers and postal ballot packs at all times • Put in place appropriate resources to ensure the verification and count is timely • Ensure the results are communicated to voters in a clear and timely way • Ensure count processes are designed and managed to secure an accurate result, with a clear audit trail 	<ul style="list-style-type: none"> • Arrangements to maintain a clear audit trail of the issue, receipt and opening of postal ballot packs • Processes for dealing with integrity problems • Arrangements for securely storing ballot papers and postal ballot packs • Information on how the verification and counting is to be organised and managed, including the process you followed to arrive at your decision • Arrangements for communicating results to voters • Arrangements in place to maintain a clear audit trail of the count processes
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Performance standard 2: Those who want to stand for election

Ensuring that planning for and delivery of the poll enables people who want to stand for election to find out how to get involved, what the rules are, and what they have to do to comply with these rules, and enables them to have confidence in the management of the process and the result

Outcome	What does the RO need to do to achieve the outcome	What will demonstrate how the outcome has been met
People who want to stand for election receive all the information they need to take part	<ul style="list-style-type: none"> • Ensure information on the election process and spending is easily available for candidates and agents, including through providing briefing sessions and ensuring they are issued with written guidance • Ensure that candidates have the opportunity to have their nomination papers informally checked prior to their formal submission 	<ul style="list-style-type: none"> • Written guidance issued to candidates • Date(s) of briefing sessions and briefing resources • Arrangements in place for candidates to have their nomination papers informally checked prior to formal submission
Candidates have confidence that the process is well-managed, and have confidence in the results	<ul style="list-style-type: none"> • Ensure that those entitled to attend postal vote opening sessions are able to follow what is happening, where and when • Ensure count processes are transparent, with everything at the verification and count carried out in clear view of all those entitled to 	<ul style="list-style-type: none"> • Layout plan of postal vote opening sessions • Information provided to attendees at postal vote opening sessions • Layout plan of the count • Information provided to attendees at the count

	<p>attend, with information provided to attendees on the processes to be followed</p> <ul style="list-style-type: none"> • Ensure count processes are designed and managed to secure an accurate result, with a clear audit trail • Have in place processes to identify any patterns of activity that might indicate potential integrity problems, including what steps are to be taken to deal with any such problems 	<ul style="list-style-type: none"> • Arrangements in place to communicate progress at the count • Arrangements in place to maintain a clear audit trail of the count processes • Processes for dealing with integrity problems
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¹ Arts.14(a) and (b) respectively.

² Equality Act 2010 s.149(2).

³ Scottish Parliament (Elections etc.) Order 2015, Sch.2 para.3.

⁴ Sch.2 paras. 4, 8, 11, 14, 17.

⁵ Sch.2 paras.18 and 33.

⁶ Sch.2 para. 34.

⁷ Sch.2 paras. 35 and 38.

⁸ Sch.2 para. 36.

⁹ Sch.2 paras. 37 to 53.

¹⁰ Sch.2 paras. 54 to 60.

¹¹ Sch.2 para. 62.

¹² Sch.2 para. 61 and para 62(3).

¹³ Sch.2 para. 3.

¹⁴ Sch.2 paras. 5-8, 12, and 15-17.

¹⁵ Sch.2 paras. 19 and 33.

¹⁶ Sch.2 para. 64.

¹⁷ Sch.2 para. 65.

¹⁸ Art.28(1) and Criminal Procedure (Scotland) Act s.225.

¹⁹ Scottish Parliament (Elections etc.) Order 2015 Art.90(1) and (4).

²⁰ Art.90(2).

²¹ Sch.2 para. 37.

²² Local Electoral Administration (Scotland) Act 2011 s. 4A and 5