

Part F – After the declaration of results

Scottish Parliamentary election:
guidance for Returning Officers

January 2016 (updated April 2021)

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

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

Tel: 020 7271 0500

Email: publications@electoralcommission.org.uk

Updates to this document

Updated	Description of change	Paragraph number
March 2016	Re-published to include legal	N/A
October 2020	Removal of dates replace with generic deadlines. Update to the return of the postal voting statement (Form K)	N/A
December 2020	Update to requirement to publish election return expenses	1.55
February 2021	Amended to include information of notification of results to Scottish Parliament	1.20 and 1.24
April 2021	Correction of email address	1.24

Contents

1	Storage and disposal of documents	1
	The documents that you have a duty to retain	2
2	Post-election activity	5
	Providing notices of the results.....	5
	Delivery of certificates to the Clerk of the Scottish Parliament.....	6
	Notification of the result to the Scottish Parliament.....	6
	Deposits	6
	Statement as to postal ballot papers	7
	Data collection and feedback	8
	Accounting for the election	8
	Payment of creditors	8
	Payment of fees to staff	8
	Return of equipment.....	9
	Candidates' and parties' election spending	9
3	Challenges to the election result	12
	Who can bring an election petition at a Scottish Parliamentary election and on what grounds?	12
	Who is made a respondent?	12
	Deadlines for bringing petitions.....	12
	Judicial determination of disqualification	13
4	Review of election procedures	14
	The review.....	14
5	Freedom of Information requests	16

Storage and disposal of documents

1.1 You should maintain a document retention policy which sets out the period in which you will retain all election documents and your reason for doing so. You should ensure that you do not retain documents for longer than the period specified in your document retention policy and that they are securely destroyed at the appropriate point.

Our [resource](#) on Data Protection legislation contains further information on the storage of personal data and on document retention, including what should be included in a document retention policy.

1.2 The election documentation listed in paragraphs **1.6**, **1.7** and **1.8** below must be kept securely for one year.

1.3 You should make sure that the packing process is as transparent as possible. You should maintain a clear audit trail when packaging the documents as this will help to ensure that retrieval of the documents is facilitated should anyone wish to inspect the public documents. The packaging and labelling system you use should both provide secure storage and support timely retrieval.

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

- Producing clear labels for each packet. You must seal all of the relevant documentation in separate packets and mark each packet with a description of its contents, the date of the election and the name of the constituency in which the votes were given¹.
 - The labels must also state how long the packet is to be kept and when it is to be destroyed (unless otherwise directed by a court order).
 - The labels for documents open to public inspection and for documents that are not open to public inspection should be different. As a minimum, the packets containing documents not open to public inspection should clearly state this fact.²
- Ensuring that you have factored the parcelling up of documents into your verification and count planning.
- Covering packing instructions as part of your training for polling station staff and when training postal voting supervisors and count supervisors. Providing written instructions should also help to reduce the risk of documents being packaged wrongly. A [template graphical guide to](#)

[packaging materials at the close of poll](#) is available, which you could adapt and provide to polling station staff.

- Creating a list of all documents to be retained. You should 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 and delivered securely in accordance with data protection requirements. You should also record the number of parcels you have retained. Paragraphs **1.6**, **1.7** and **1.8** below provide lists of documents that you have a duty to retain.

1.4 All packets and receptacles containing election documents should be stored securely so that no unauthorised persons can tamper with them.

The documents that you have a duty to retain

1.5 You must seal up the election documents listed below on the completion of the counting of ballot papers, and you must retain them for one year.

1.6 From the polling stations:

- the packets containing:³
 - 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
 - list of persons to whom ballot papers are delivered after the correction of a clerical error or as a result of a decision on a court appeal
- marked copies of the register of electors, the marked list of proxies and any marked copy notices issued as a result of the correction of a clerical error or a decision on a court appeal
- the packets containing the completed polling station corresponding number lists
- certificates of employment on duty on polling day

1.7 From the postal vote issues and openings:⁴

- the marked copies of the postal voters' list and proxy postal voters' list
- the packets containing the completed postal vote corresponding number lists
- the packets of postal voting statements accepted as valid
- the packets of rejected postal votes
- the packets of rejected postal ballot paper envelopes

- the lists of cancelled, lost and spoilt postal ballot papers
- the packet of spoilt postal ballot papers and accompanying documents
- the packet of lost postal ballot papers containing any part of the postal ballot pack that was not lost and which was returned to you before you issued a replacement
- the packet of postal ballot papers, statements and envelopes that have been cancelled
- the packets of unused postal ballot papers
- the unopened postal ballot packs received after the close of poll or returned as undelivered

1.8 You must forward to the ERO(s) for the constituency the relevant parts of the list of postal votes that have failed the identifier checks. You should also forward at the same time your record of any instances where you suspect an offence may have been committed, so that the ERO(s) know in which cases they should not send out a postal vote identifier rejection notice.⁵



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

1.9 From the count, and separately for each of the constituency and regional elections:⁶

- all ballot papers separately stored as:
 - counted ballot papers
 - rejected ballot papers
 - unused ballot papers (both ordinary and tendered) and spoilt ballot papers (placed together)
 - used tendered ballot papers.
- ballot paper accounts, the result of the verification of the ballot paper accounts and the statement of rejected ballot papers

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

1.11 You should ensure you have processes in place to retrieve data and securely destroy it at the appropriate time in accordance with electoral law and with your document retention policy.

Election notices published on your website

1.12 You will need to consider whether it is appropriate or necessary for the various election notices published on your website to remain there beyond the

expiry of the petition period for the election. Where each notice serves a specific purpose, i.e. advising who will be a candidate at the election, once the election is over, and the opportunity to question that election has passed, they serve no further purpose. Therefore, you should either remove such notices published on your website, or remove the personal data contained in these notices, once the petition deadline for that election has passed.

1.13 Data protection legislation does permit personal data to be stored for longer periods if the data will be processed solely for archiving purposes in the public interest, or for scientific, historical, or statistical purposes and subject to the implementation of appropriate safeguards. For election results, for example, you should retain these on your website as they are for public interest and historical and statistical purposes.

Post-election activity

Providing notices of the results

1.14 For the constituency contest you must give public notice of the name of the candidate elected, the total number of votes given to each candidate and the number of rejected ballot papers under each heading. If a candidate is standing for a registered party you must include the description (if any) of each candidate. If a candidate has used their commonly used name to stand in the election, you should use both their full name and the commonly used name on the notice.⁷

1.15 After submitting the regional totals for your constituency to the RRO, you should also give public notice of these totals.

1.16 If you are also the RRO, for the regional contest you must give public notice of:

- the name of each individual regional candidate elected
- the name of each political party which has been allocated a seat and the name of each party list candidate who has been elected
- in the case of a registered party, whether there are candidates remaining on that party's regional list who have not been elected
- by constituency, the number of votes for each individual regional candidate and party, together with the number of rejected ballot papers under each head

1.17 If a candidate has used their commonly used name to stand in the election, the RRO should use both their full name and the commonly used name on the notice.

1.18 The RRO must provide a copy of the notice of result for the regional election to CROs for them to publish locally.⁸

1.19 In all cases, you should ensure that the notices are made available to all those interested as soon as possible, including by publishing it on your local council's website.



To be able to achieve the outcome set out in [performance standard 1](#), you will need to ensure that the results are communicated to voters in a clear and timely way.

To demonstrate that the outcomes can be delivered you will need to have in place arrangements for communicating results to voters.

Return of certificates to the Clerk of the Scottish Parliament

1.20 After the declaration of the constituency election result, you must complete the prescribed certificate of election, stating:⁹

- the full name of the successful candidate
- in the case of a successful party candidate, the name of the political party
- the address of the successful candidate

1.21 If you are also the RRO, after the declaration of the regional result, you must complete the prescribed certificate of election, stating:¹⁰

- the full name of each successful candidate
- in the case of successful party list candidates, the name of the political party
- the address of each successful candidate

1.22 In each case, a copy of the relevant certificate should be sent to the Clerk of the Scottish Parliament as soon as possible.

1.23 The Clerk to the Scottish Parliament has requested that Returning Officers email the certificates required under rules 62 and 65 to spice@parliament.scot as soon as possible after the declaration of results. The Clerk will accept scanned copies of the signed returns certificates on behalf of the Clerk/Chief Executive's Office.

Notification of the result to the Scottish Parliament

1.24 A copy of the notice of the result for the constituency or region (as appropriate) should be sent by email to the Scottish Parliament at spice@parliament.scot as soon as practicable after you have published the notice of the result.

Deposits¹¹

1.25 The £500 deposit made by or on behalf of a candidate in a constituency contest must be returned if the candidate polled more than 5% of the total number of valid votes cast in the constituency. If the candidate is found to have polled equal to or less than 5% of the total number of valid votes cast, the deposit must not be returned.

1.26 If a candidate in the constituency contest has polled more than 5% of the valid votes cast, you must return the deposit to the person who made it no later than the next working day after the result of the election is declared.

1.27 The £500 deposit made by or on behalf of an individual regional candidate or a registered political party in the regional contest must be returned if the individual candidate or party polled more than 5% of the total number of valid votes cast in the region. The deposit will also be returned if a regional list or individual regional candidate is allocated a seat, even if they have not obtained more than 5% of the total number of valid votes cast in the region. Otherwise the deposit is forfeited.

1.28 In the case of an individual regional candidate, the RRO must return the deposit to the person who made it no later than the next working day after the result of the election is declared. In the case of a party list, the RRO must return the deposit to the registered Nominating Officer of the party no later than the next working day after the result of the election is declared.

1.29 In all cases, if you are returning a deposit by cheque, it is treated as being returned on the day on which the cheque is posted.

Forfeited deposits

1.30 Where the deposit is forfeited, it will be paid into the Scottish Consolidated Fund. The Scottish Government will provide information on where to send forfeited deposits. Paragraph **1.39** below contains contact details.

Statement as to postal ballot papers

1.31 You must complete a statement as to postal ballot papers, which covers the postal ballot papers for both the constituency and the regional contests¹².

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



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

1.33 The Commission will produce a [template statement as to postal ballot papers](#), which should be used. The accompanying guidance notes should support you in completing this.

1.34 You must provide a copy of the completed statement to Scottish Ministers and to the Commission. Details of how to provide a copy of the statement to the Commission will be provided through a Bulletin.¹³

1.35 The statement must not be provided before the tenth calendar day after polling day but must arrive no later than the twenty-fifth calendar day after the polling day. If either of these dates are not a working day, the time is extended to the next working day¹⁴.

Data collection and feedback

1.36 You will also be requested to send information and data to the Commission relating to the election.

1.37 Forms for collecting information and data, and accompanying guidance notes for completion, as well as a feedback form, will be circulated separately and will also be [available on the Commission's website](#).

Accounting for the election

1.38 Scottish Parliamentary elections are funded by the Scottish Government. Detailed guidance and instructions for accounting for the election will be provided by the Scottish Government. Claims for fees and charges for the election are administered through the Elections Team. The team can be contacted at:

Elections Team
Area 2 West
St Andrews House
Regent Road
Edinburgh
EH1 3DG

Email: ElectionsTeam@gov.scot

Tel: 0131 244 4153

Payment of creditors

1.39 You should keep receipts before and throughout the period of the election for all services/work provided, and pay all creditors as soon as possible after the election.

Payment of fees to staff

Income tax

1.40 Under tax rules a standard starter checklist, which is issued at the time of appointment, must be completed. It needs to be completed only once rather than be reviewed every year. You will need to issue a P60 form to the employee at the end of the tax year.

HMRC real-time information

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

Automatic enrolment into a workplace pension

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

Return of equipment

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

Candidates' and parties' election spending

1.44 There are legal maximum limits on candidates' and parties' spending at the Scottish Parliamentary election. Candidates standing in a constituency or individual regional list candidates account for their own spending and donations, whereas the party accounts for spending to promote regional party list candidates and the party generally.¹⁵

1.45 The Commission is required by law to monitor the compliance of candidates with rules on spending and donations, and regulates spending and fundraising by parties.

1.46 We have produced guidance for candidates and agents on election spending and the required returns. In addition, candidates and agents can also download the return of candidate election spending form with integrated explanatory notes, the declaration by the election agent as to election spending and the declaration by the candidate as to their election spending. These documents can all be downloaded from [our website](#).



Further details about the spending limits for candidates can be found in [Part 3](#) of our guidance for candidates and agents. We have also

produced [guidance for political parties](#) which contains further information on spending limits for parties.

1.47 Election agents for constituency candidates must deliver a candidate's spending return to you, together with relevant invoices and receipts, within 35 calendar days of the declaration of result of the election.¹⁶

1.48 Election agents for individual candidates at the regional contest must deliver a candidate's spending return to the RRO, together with relevant invoices and receipts, within 35 calendar days of the declaration of result of the election.

1.49 Election agents and candidates must deliver declarations vouching for the candidate's election spending return as follows:

- a constituency candidate and election agent must deliver their declaration to the CRO
- an individual regional candidate and election agent must deliver their declaration to the RRO¹⁷

1.50 In all cases, the election agent's declaration must be delivered at the same time as the return. All candidates' declarations must be delivered within 7 working days of the election agent submitting the return. However, if the candidate is out of the UK when the return is delivered to you, they may make the declaration within 14 days after returning to the UK and deliver it to you as soon as possible.¹⁸

1.51 The CRO and RRO must send copies of election spending returns and declarations to the Electoral Commission as soon as reasonably practicable after the return or declaration is received.¹⁹

1.52 Each regional party list candidate is responsible for delivering a declaration of their personal expenses to the RRO within 35 calendar days of the declaration of the result of the election. Copies of spending returns and declarations should be emailed to candidates@electoralcommission.org.uk. Alternatively, you can post these to:

Party and Election Finance
The Electoral Commission
City Chambers, High Street,
Edinburgh, EH1 1YJ

1.53 Please also supply the following information to enable us to carry out our compliance duties:

- electorate figures for each constituency or region used to calculate the candidates' spending limit

- the candidates' spending limit provided to candidates, if applicable
- a list of all candidates who stood for election, including their party and description (if any) and whether they were elected
- confirmation of who has not delivered a return or declaration, has delivered an incomplete return, or has delivered a late return or declaration and what, if anything, you have already done about such cases
- addresses of election agents for any candidates who failed to deliver returns
- addresses of any candidates on a regional party list who have not completed their declaration

1.54 You must retain a copy of each election spending return and declaration, and any accompanying documents, for a period of two years beginning with the date when the return is delivered and, during that period, make copies available for public inspection without charge. Anyone can also request copies of the returns or declarations and any accompanying documents, which must be supplied on payment of the fee of 20p per side per page. The addresses of individuals who have made donations to candidates must be removed from all inspection copies and copies supplied on request. At the end of the two-year period if the candidate or the relevant election agent requests them, they must be returned to the candidate. Otherwise the returns, declaration and accompanying documents may be destroyed.²⁰

1.55 No later than 10 calendar days after the deadline for spending returns to be submitted, you must publicise the opportunity to inspect the spending returns and declarations (including the accompanying documents) in such manner as you see fit. This notification must also be sent to each election agent.²¹

1.56 If by the time the notice is published there are outstanding returns or declarations, this must be stated in the notice. If the returns/declarations are received subsequently, a revised notice must be published.²²

Spending returns from non-party campaigners

1.57 Under Article 41 of the Scottish Parliament (Elections etc.) Order 2015, individuals and organisations (known as 'local non-party campaigners') may incur spending of up to £500 campaigning for or against one or more candidates in a particular constituency or region, without the authorisation of the election agent. The election agent for the relevant constituency or individual regional candidate that the campaigning benefits must authorise any spending above this amount in writing.

1.58 Where a local non-party campaigner spends above £500, they must submit a return to you declaring the amount of election expenses the candidate's agent has authorised them to spend, along with a copy of the

written authorisation the election agent has given. This return must be submitted within 21 calendar days of the declaration of the result.



[Guidance for non-party campaigners](#) can be found on the Commission's website.

Challenges to the election result

1.59 Election petitions can be used to challenge the result of elections.

Who can bring an election petition at a Scottish Parliamentary election and on what grounds?

1.60 An election petition for a Scottish Parliamentary election can be presented by:

- a person claiming to have been a candidate at the election, or
- a person claiming to have had a right to be elected or returned at the election, or
- a person who voted as an elector at the election or who had a right to vote at the election, except for an elector registered anonymously²³

1.61 The allowable grounds for a petition are that there has been an:²⁴

- undue election, or
- undue return

Who is made a respondent?

1.62 The person whose election is questioned will most probably be made a respondent to the petition. If the petition relates to the conduct of the election, the relevant Returning Officer(s) (whether CRO or RRO) may also be a respondent to the petition.

Deadlines for bringing petitions

1.63 A petition at a Scottish Parliamentary election must normally be presented within 21 calendar days of the name of the elected candidate being

returned to the Clerk of the Parliament. Further time may be allowed in certain circumstances.²⁵

1.64 Any person who is considering presenting an election petition should be advised to take their own legal advice. For any questions relating to election petitions and the process for submitting petitions, including to confirm the deadlines, you should contact the Elections Petitions Office:

The Election Petitions Office
Court of Session
Parliament House
Parliament Square
Edinburgh EH2 1RQ

Email: supreme.courts@scotcourts.gov.uk

Tel: 0131 225 2595

Fax: 0131 240 6711

Judicial determination of disqualification

1.65 Any person may apply to the Court of Session for a declaration that a Member of the Scottish Parliament is, or at any time since being elected has been, disqualified from being a Member of the Scottish Parliament.

1.66 Any person who is considering applying for a judicial declaration of disqualification should be advised to take their own legal advice.

Review of election procedures

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

1.68 The Commission has 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 election has been successful. The Commission has also provided an evaluation plan as part of the template project plan to assist you with the review process.



To be able to achieve the outcome set out in [performance standard 1](#), you will need to evaluate planning for and delivery of previous polls and identify lessons learnt, updating plans as required.

To demonstrate that the outcomes can be delivered you will need to have in place planning documentation reflecting lessons learnt.

The review

1.69 The scope of the review should cover all aspects of the election. 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.

1.70 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.

1.71 You should pay particular attention to reviewing:

- your project planning
- whether you were able to secure adequate resources
- if your constituency crosses a local council boundary, what worked well and what could be improved when working with elections staff from the other local council/councils
- what worked well and what could be improved when working with the ERO
- if you are not also the RRO, what worked well and what could be improved when working with them
- how contractors have been managed and whether they delivered work to the required specification
- the equipment and stationery used
- recruitment and training of staff
- the suitability of venues used

- the management of 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 election

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

1.73 You should seek feedback from the following:

- your staff and, if your constituency crosses a local council boundary, elections staff from the other local council/councils
- if you are not also the RRO, the RRO and their staff
- electors
- candidates, agents and political parties
- local organisations of disabled people, older people and minority ethnic groups, and the council's access officers

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

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

Freedom of Information requests

1.76 Following the election you may receive requests under the Freedom of Information (Scotland) Act 2002. CROs, RROs and EROs are not a public authority under this Act and, as such, are exempt from the disclosure requirements imposed by it.

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

¹ Scottish Parliament (Elections etc) Order 2015 (SP Rules 2015) sch 2 rule 67

² SP Rules 2015 sch 2 rule 68

³ SP Rules 2015 sch 2 rule 68

⁴ SP Rules 2015 sch 4 rules 12,13,14,15,18,20,27,30

⁵ SP Rules 2015 sch 4 rule 30

⁶ SP Rules 2015 sch 2 rule 68

⁷ SP Rules 2015 sch 2 rule 62

⁸ SP Rules 2015 sch 2 rule 65

⁹ SP Rules 2015 sch 2 rule 62

¹⁰ SP Rules 2015 sch 2 rule 65

¹¹ SP Rules 2015 sch 2 rule 66

¹² SP Rules 2015 sch 4 rule 30

¹³ SP Rules 2015 sch 4 rules 29

¹⁴ SP Rules 2015 sch.4 Rule 29(4)

¹⁵ SP Rules 2015 art 47

¹⁶ SP Rules 2015 art 47

¹⁷ SP Rules 2015 art 47, 48,49

¹⁸ SP Rules 2015 art 48

¹⁹ SP Rules 2015 art 55

²⁰ SP Rules 2015 art 57

²¹ SP Rules 2015 art 56(1) and (2)

²² SP Rules 2015 art 56(3)

²³ RPA 83 s121

²⁴ RPA 83 s120

²⁵ RPA 83 s122