



Guidance on policing elections and referendums in Scotland

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For more information see:

The Manual of Guidance on Police Scotland's Intranet or www.electoralcommission.org.uk/electoral-fraud-responsibilities

Introduction

The role of the police in elections and referendums must be seen to be impartial and fair.

There are several specific electoral offences and some general offences to which officers should be particularly alert. This is not intended to be a comprehensive list and advice from a senior officer, your Single Point Of Contact or COPFS should be sought if necessary.

All Local Divisions have a **Single Point Of Contact (SPOC)** for advice relating to elections and referendums. Your SPOC can be contacted through your local control room.

It is most likely that officers involved in election or referendum related duties would deal with public order offences.

The regulation of the conduct of electoral registration, elections and referendums is determined by statutes passed by the Scottish Parliament or UK Parliament depending on the type of election the alleged offence occurs at. Consult your local division or SPOC for advice as to the legal basis under which the alleged offence may have occurred.

Each election will have its own legislation but offences typically mirror those in the Representation of the People Act 1983. Most offences are classified as corrupt or illegal practices. Corrupt practices may be tried on indictment or summary proceedings. On indictment, the maximum penalty for most offences is imprisonment for one year, or a fine, or both. For the offences of personation and making a false application to vote by post or proxy, the maximum penalty is two years' imprisonment, or a fine, or both.

Illegal practices are summary offences and the maximum penalty is a £5,000 fine.

1 Bribery

A person is guilty of bribery if they directly or indirectly, by themselves or by someone on their behalf, give any money or procure any office to or for any voter, or on behalf of any voter, in order to induce any voter to vote or not to vote for a particular candidate or referendum answer; or to vote or refrain from voting.

4 Personation

It is an offence for any individual to vote as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed as a person guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force. It is an offence to commit, aid, abet, counsel or procure the offence of personation.

2 Treating

A person is guilty of treating if either before, during or after an election or referendum they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.

3 Undue influence

A person is guilty of undue influence if they directly or indirectly make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This can include threats of harm of a spiritual nature.

A person may also be guilty of undue influence if they impede or prevent, or act with the intention of impeding or preventing, the voter from freely exercising their right to vote.

Suggested action for all cases

- Preserve evidence.
- Respect secrecy of sealed documents and seek advice before opening.
- When election and referendum documents become evidence in a potential crime, the method of preservation by the police should include consultation with the elections and/or electoral registration office to agree a mutually beneficial way forward.
- Act positively
 - Consider Section 13 Criminal Procedure (Scotland) Act 1995 to obtain personal information from suspect and note explaining under caution.
 - Consider Section 14 Criminal Procedure (Scotland) Act 1995 and detain suspect for the purposes of carrying out further investigations.
- Consider advice from a senior officer, your SPOC or COPFS.
- Inform Returning Officer or Counting Officer, Electoral Registration Officer and/or the Electoral Commission as appropriate via police SPOC.

Prosecutions generally must be brought within 12 months of the commission of the offence. Under exceptional circumstances this may be extended to not more than 24 months if there has been no undue delay.

5 False application to vote by post or by proxy

It is an offence to falsely apply to vote by post or proxy with the intention of depriving another person of a vote or gaining a vote or money or property to which a person is not entitled.

Specifically, it is an offence to:

- apply for a postal or proxy vote as some other person (whether living, dead or fictitious)
- otherwise make a false statement in connection with an application for a postal or proxy vote
- induce an Electoral Registration Officer or Returning Officer or Counting Officer to send a

communication relating to a postal or proxy vote to an address that has not been agreed by the voter

- cause such a communication not to be delivered to the intended recipient.

It is also an offence to aid, abet, counsel or procure the commission of the above offences.

6 Multiple, proxy and other voting offences

It is illegal to vote more than once (other than by proxy) in an election to the same elected body or in the same referendum.

It is illegal to vote on behalf of another person unless the person is the officially appointed proxy. It is also illegal for an officially appointed proxy to vote for more than two people who are not close family members in the same election (i.e. same ward or constituency) or the same referendum.

Voting when under a legal incapacity to vote is also an offence.

Inducing or procuring another to commit one of the above offences is also an offence.

9 Tampering with nomination/ ballot papers etc.

It is an offence to fraudulently deface or destroy a nomination paper, a ballot paper, a postal voting statement or an official envelope used in connection with voting by post. It is also an offence to fraudulently take any ballot paper out of the polling station or to forge or counterfeit a ballot paper or the official mark on any ballot paper.

Prevention is better than prosecution

The opportunity to vote is a cornerstone of democracy and a human rights issue.

Facilitating peaceful and effective voting is a primary concern for the police service.

Opportunities for registration and voting offences can be prevented or reduced by positive police action.

7 Secrecy

Everyone involved in the electoral process should be aware of the secrecy of the ballot. The Returning Officer or Counting Officer will give everyone who attends a postal vote opening or counting of ballot papers an extract of the secrecy requirements. Breaching the secrecy requirements is a summary offence with a maximum penalty of six months imprisonment or a £5,000 fine.

Remember this also applies to police. Do not ask how someone has voted or open a sealed ballot paper envelope or a return envelope.

Other offences

There are also some non-electoral offences which may be relevant, such as:

- **perverting the course of justice – taking steps to destroy in advance evidence which might lead to the detection of a serious crime**
- **false accusation – any person who makes a false accusation of crime against a named individual**
- **wasting police time – any person who maliciously makes a false statement to the police with the intention and effect of causing a police investigation**
- **conspiracy to defraud**
- **assault, public order and criminal damage offences**

Know your Presiding Officer: they may call upon a constable to eject someone from a polling station where a person fails to comply with a lawful instruction of a Presiding Officer. Further non-compliance with a consequent police request may constitute obstructing a police officer or a breach of the peace.

Ensure your force SPOC is notified about any election or referendum related crime.

Tellers

It is a well-established practice for candidates, campaigners or their agents to appoint 'tellers', positioned outside the polling place to record who has voted in order to see whether their supporters have turned out. Where tellers, or others, irritate voters, exert undue influence or obstruct access to or egress from the polling place, the Presiding Officer may seek assistance from the police to resolve the matter.

Postal voting

Postal votes: candidates, campaigners, canvassers and agents are discouraged from handling postal votes. They should advise voters who are unable to return or post their ballots in person to use friends or family to convey their vote.

Remember: simple possession of a postal vote belonging to someone else is not illegal. However, where someone other than a member of the Returning Officer or Counting Officer's staff is found to have several or large numbers of these, then potential wrongdoing should not be ruled out.

Other matters

Be aware of the general duty to eliminate discrimination and foster good relations under s.149 of the Equality Act 2010.

Public voting provides an opportunity for the police to promote excellent community relations.

8 False registration information and false postal/proxy voting application

It is an offence to supply false information in relation to the registration of electors to the Electoral Registration Officer for any purpose. It is also an offence to provide false information in connection with an application for a postal or proxy vote. False information includes a false signature.

Unlike the offence of falsely applying to vote by post or by proxy (see 5 overleaf), it is not necessary to establish an intention to gain, or deprive another of, a vote, money or property.

Remember

- preserve evidence (eg CCTV, forensic)
- seek advice of a supervisor or senior officer

Be guided by Presiding Officers and their staff within polling stations.