

Part A – Returning Officer role and responsibilities

Council elections in Scotland:
guidance for Returning Officers

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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
December 2016	Updated to reflect legislation update
November 2021	Updated to reflect data protection legislation, condensed and updated legislation list (1.4) , inclusion of a definition of a procedural error (3.13)

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1 Introduction to this guidance

Purpose

1.1 The purpose of this guidance is to assist Returning Officers (ROs) with the practice and procedure of running a council election in Scotland.

1.2 The guidance has been developed in close consultation with the Electoral Management Board for Scotland (EMB), the UK Electoral Coordination and Advisory Board (ECAB) the Elections, Registration and Referendums Working Group (ERRWG), the Scottish Assessors' Association and the AEA. It reflects what we, the EMB, the ECAB, the AEA and the ERRWG believe that ROs should expect of their staff in preparing for and delivering council elections.

1.3 You should read the guidance in conjunction with any additional guidance and directions issued by the Convener of the EMB. The Convener has the power to give general or specific directions to ROs and EROs relating to the discharge of their functions, and so when acting as RO you must comply with any such directions.¹

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

- Local Government (Scotland) Act 1973
- Representation of the People Acts 1983, 1985 and 2000
- Political Parties, Elections and Referendums Act 2000
- Representation of the People (Scotland) Regulations 2001
- Local Governance (Scotland) Act 2004
- Local Electoral Administration and Registration Services (Scotland) Act 2006
- Representation of the People (Post-Local Government Election Supply and Inspection of Documents)(Scotland) Regulations 2007
- Representation of the People (Absent Voting at Scottish Local Government Elections) Regulations 2007
- Representation of the People (Postal Voting for Scottish Local Government Elections) Regulations 2007
- Political Parties and Elections Act 2009
- Absent Voting at Scottish Local Government Elections (Provision of Personal Identifiers) Regulations 2009
- Scottish Local Government Elections Order 2011
- Local Electoral Administration (Scotland) Act 2011

- Local Electoral Administration (Scotland) Act 2011 (Consequential Amendments) Order 2012
- Electoral Registration and Administration Act 2013
- Scottish Elections (Reduction of Voting Age) Act 2015
- Scotland Act 2016
- The Representation of the People (Variation of Limit of Candidates' Local Government Election Expenses) (Scotland) Order 2016
- Scottish Elections (Franchise and Representation) Act 2020
- Scottish Elections (Reform) Act 2020.

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

1.6 Data protection legislation applies to the processing of all personal data. Returning Officers (ROs) are personally responsible for ensuring that they comply with the requirements of data protection legislation. In addition to the updates made to this guidance, 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.

1.7 You are also required to have regard to the public sector equality duty contained in Section 149 of the Equality Act 2010 when carrying out your duties.²

How to use this guidance

1.8 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](#)

1.9 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 your duties

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

1.11 Should you have any questions about our guidance or any other matter relating to the administration of elections, 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 any scheduled elections. Further information on the provision of our out-of-hours service will be provided through our [Bulletin for electoral administrators in the run up to scheduled elections](#).

2 Context of council elections

2.1 The elections will bring their own particular challenges and it is likely that your work to deliver well-run polls will come under considerable scrutiny – from voters, candidates and political parties, and the media, including through social media. This chapter seeks to highlight some of the particular aspects of context relevant to a council election which you should ensure underpin all aspects of your planning.

Nature of the contests

2.2 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 in your area before.

2.3 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.

2.4 Given the possibility of close and hard fought contests you should be prepared for the integrity of the 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.

2.5 As the council elections are held under the STV voting system, it will be important that voters understand how they can cast their vote in a way that they intended. In particular, additional support may be necessary to ensure that newly enfranchised qualifying foreign nationals and 16 and 17 year olds are able to participate confidently in this poll.³

Scale

2.6 The level of preparatory work you will be able to undertake ahead of an election will vary depending on various factors, including whether it is a scheduled election or a by-election, the extent of the local authority area that will be holding elections and the level of combination of polls, if any.

2.7 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 this 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 elections.

2.8 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 throughout polling day still remains.

2.9 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.

2.10 There is likely to be media focus on the 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

2.11 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.

2.12 Online registration in particular brings greater opportunities for you and the Electoral Registration Officer (ERO) to engage local residents in the democratic process, and to boost the levels of registration amongst under-registered groups. Elections provide a hook for local public engagement activity, and 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.

2.13 The potential for a higher 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 ERO, but will also have implications for the administration of the poll and your plans should ensure you are able to respond effectively.

3 Roles and responsibilities

3.1 Every council in Scotland must appoint an officer of the council to be the RO for the election of councillors to their council.⁴

Your role and responsibilities

3.2 As RO, 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 a positive one. You should set out at an early stage what you want to achieve and what success would look like for you.

3.3 As RO you are personally responsible for the administration of the council election, including:

- publishing the notice of election⁵
- administering the nominations process⁶
- printing the ballot papers
- publishing the notice of poll and notice of situation of polling stations⁷
- the provision of polling stations⁸
- appointing Presiding Officers and Poll Clerks⁹
- managing the postal voting process¹⁰
- verifying and counting the votes¹¹
- declaring the result¹²
- complying with any directions issued by the Convener of the EMB¹³

3.4 Your duties as RO are separate from your duties as a council officer. As RO you are not responsible to the council but are directly accountable to the courts as an independent statutory office holder.¹⁴

3.5 While you can appoint one or more persons to discharge any or all of your functions¹⁵, 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](#).

Your skills and knowledge

3.6 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.

3.7 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 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
- maintain an effective working relationship with the Convener of the EMB
- maintain an effective working relationship with the ERO
- 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

3.8 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 vote, you will need to agree the timing and method of the various transfers of the necessary postal voting data.

Electoral Management Board for Scotland

3.9 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 council elections through the promotion of good practice by providing information, advice or training. The Convener of the EMB has the power to issue directions to ROs and to EROs in relation to council elections.¹⁶

Breach of official duty and power to correct procedural errors

3.10 As RO, you are subject to breach of official duty provisions. This means that if you or your appointed deputies are, without reasonable cause, guilty of

any act or omission in breach of official duty they (and/or your deputies) are liable on summary conviction to a fine not exceeding £5,000¹⁷.

3.11 You have the power to take such steps as you think appropriate to remedy acts or omissions that arise in connection with any function of the election for which you are responsible and that are not in accordance with the rules.¹⁸

3.12 This power allows you to correct procedural errors that are made by you as RO, an Electoral Registration Officer, a Presiding Officer (or any deputies of any of these) or a person providing goods or services to you/them.

3.13 A procedural error refers to an error someone has made during the process of planning or delivering the election, which may affect the election process or result. For example, incorrect information being produced on poll cards or ballot papers, or postal or polling station ballot papers being issued in error or not issued when they should have been. The above examples are not exhaustive and you should contact your [local Commission team](#) for support and advice if you think you may have made a mistake that could be corrected using this power.

3.14 Where you remedy an act or omission in full by using your power to correct a procedural error, you will not be guilty of an offence of breach of official duty. You should remember that the power to correct procedural errors does not enable you to recount the votes once the result has been declared.¹⁹As you are personally liable for the conduct of the election you should ensure that you have insurance cover 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.

4 Performance standards

4.1 The Electoral Commission sets standards and monitors and reports on the performance of ROs²⁰. The performance standards for ROs 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 ROs 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 ROs 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 Section 5(3), Local Electoral Administration (Scotland) Act 2011 (LEAS 2011).
 - ² Section 149(2), Equality Act 2010.
 - ³ Scottish Elections (Reduction of Voting Age) Act 2015.
 - ⁴ Section 41(1), Representation of the People Act 1983 (RPA 1983).
 - ⁵ Rule 3, Schedule 1, Scottish Local Government Elections Order 2011 (Local Government Rules 2011).
 - ⁶ Rules 4 to 11, Local Government Rules 2011.
 - ⁷ Rule 20, Local Government Rules 2011.
 - ⁸ Rule 22, Local Government Rules 2011.
 - ⁹ Rule 23, Local Government Rules 2011.
 - ¹⁰ Rule 21, Local Government Rules 2011 and the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007.
 - ¹¹ Rules 41 to 55, Local Government Rules 2011.
 - ¹² Rule 56, Local Government Rules 2011.
 - ¹³ Section 5(3), LEAS 2011.
 - ¹⁴ Section 63 and 127, RPA 1983
 - ¹⁵ Section 41(2), RPA 1983.
 - ¹⁶ Section 5(1) and 5(2), Local Electoral Administration (Scotland) Act 2011.
 - ¹⁷ Section 63(1), RPA 1983 and section 225, Criminal Procedure (Scotland) Act 1995
 - ¹⁸ Section 4, Local Electoral Administration and Registration Services (Scotland) Act 2006 (LEARS 2006).
 - ¹⁹ Section 4(2), LEARS 2006
 - ²⁰ Sections 9A and 9B, Political Parties, Elections and Referendums Act 2000.