

Part F – After the declaration of results

Council elections in Scotland: guidance for Returning Officers

December 2016 (updated November 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

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Updates to this document

Updated	Description of change
November 2021	Updated to take account of updated data protection legislation as amended by the General Data Protection (GDPR) and the Data Protection Act 2018 and to provide clarification of timeframe to return the statement of postal voters to the EC and the requirement to publish notice of the opportunity to inspect spending returns and declarations, as amended by the 2021 Amendment Order

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 relating to the discharge of their functions, and so when acting as RO you must comply with any such directions.

1 Storage and disposal of documents

1.1 The legal responsibility for keeping the election documents listed in paragraphs **1.8**, **1.9**, **1.10** and **1.12** rests with the Proper Officer of the council, who must keep them for a year¹.

1.2 If you are not also the Proper Officer, you must forward the documents to them and the one year starts from the date the Proper Officer receives them². You should liaise with the Proper Officer at an early stage to put in place arrangements for the forwarding of the prescribed documents after the declaration of results. You should ensure that all of the documentation is kept secure and accounted for during the process of being forwarded to the Proper Officer.

1.3 You should maintain a document retention policy which sets out the period in which you will retain all documents and your reasoning 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 time.

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

1.4 In any case, at all times, all packets and receptacles containing election documents should be stored securely so that nobody can tamper with them.

1.5 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.

1.6 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 packets³ and mark each packet with a description of its contents, the date of the election and the name of the ward to which it relates⁴.
 - The labels should 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.
- 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 forwarded. You should keep a record of all of the materials that you have a duty to forward to the Proper Officer, and ensure that all of the items are accounted for. Paragraphs **1.8**, **1.9**, **1.10** and **1.12** and **1.9** below provide lists of documents that you have a duty to forward. You should also:
 - record the number of packets you have despatched
 - record the details of the Proper Officer to whom the packets have been sent
 - obtain a receipt from the Proper Officer indicating that the packets have been safely received

The documents that you have a duty to forward

1.7 You must seal up the election documents listed below and, on the completion of the counting of ballot papers⁵, and you must forward these to the Proper Officer as set out above⁶. The Proper Officer will need to ensure that they have a mechanism in place to record the date of receipt, so they know when to destroy the documents that have been forwarded.

1.8 From the polling stations:⁷

- the packet containing:
 - the list of tendered votes
 - the list of voters with disabilities assisted by companions

- the declarations made by companions of voters with disabilities
 - the list of votes marked by the Presiding Officer
 - the statements relating to votes marked by the Presiding Officer
 - the list of persons to whom a ballot paper is 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

1.9 From the postal vote issues and openings:⁸

- 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

1.10 You must also forward to the Proper Officer of the council, at the same time as you are forwarding all the above election documents, the statement on absent voters⁹.

1.11 You must forward to the ERO, the list of postal votes that have failed the identifier checks.¹⁰ 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) knows in which cases they should not send out a postal vote identifier rejection notice.

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

1.12 From the count:¹¹

- 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
- the ballot paper accounts, the result of the verification of the ballot paper accounts and the statement of rejected ballot papers
- a complete electronic copy of the information stored in the electronic counting system held in a device suitable for the purposes of its storage

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

1.14 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

1.15 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.

1.16 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.

Destruction of home address forms

1.17 For council elections, a candidate must complete a home address form as part of their nomination.

1.18 Home address forms must be kept securely stored for a period of 35 working days after the result has been declared.

1.19 They must be securely destroyed on the next working day after the 35-day period. However, if an election petition relating to the election is presented within the 35 working days, the home address forms must be kept securely until the conclusion of the petition proceedings (including any appeal from such proceedings). They must then be securely destroyed as soon as practicable following the conclusion of the proceedings or appeal.

2 Post-election activity

Providing notices of the results

2.1 You must inform the Proper Officer of the council of the name of each elected candidate once the result is known¹². If a candidate has used their commonly used name, you should use both their full name and their commonly used name when informing the Proper Officer. You should also include the description (if any) of the candidate.

2.2 In addition to informing the Proper Officer of the council of the candidate elected, you must also give public notice of the results. The notice must include:

- the names of the candidates elected (including any commonly used name they may have used)
- the number of first and subsequent preferences for each candidate
- the number of ballot papers transferred and their values at each stage of the count
- the number of votes credited to each candidate at each stage of the count
- the number of non-transferable ballot papers and the number of non-transferable votes at each stage of the count and
- each unique sequence of preference in which voters chose candidates in the ward, with the number of voters who adopted each of those sequences, and for these purposes a 'sequence of preferences' is the

- order in which a voter gave their preferences to the candidates on the ballot paper, starting with their first preference
 - the number of rejected ballot papers under each head shown in the statement of rejected ballot papers
- 2.3 Within one week following the declaration of results you must also give public notice of the breakdown of results for each polling station as follows:¹³
- the number of first and subsequent preferences for each candidate
 - the number of ballot papers transferred and their values at each stage of the count
 - the number of votes credited to each candidate at each stage of the count
 - the number of non-transferable ballot papers at each stage of the count
 - The number of rejected ballot papers under each head shown in the statement of rejected ballot papers
- 2.4 If fewer than 200 votes were cast in a polling station, the breakdown per polling station must not be given in order to preserve the secrecy of the ballot¹⁴. In that case, the data must be aggregated with that of at least one other polling station¹⁵.
- 2.5 If fewer than 200 votes were cast in a ward, no public notice of the information is given. For the purposes of analysis, the e-count software will automatically consolidate ballot boxes containing less than 200 votes cast,
- 2.6 You must also provide the information listed in the bullets above for postal ballot papers¹⁶. However, where fewer than 200 postal votes have been cast in a ward, you must only publish the total number of postal votes cast¹⁷.
- 2.7 In all cases, you should ensure that the notices you are responsible for are made available to all those interested as soon as possible, including by publishing them on your 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.

Statement on absent voters

2.8 You must complete and forward to the Proper Officer a statement on absent voters for each ward, in the prescribed form.

2.9 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.

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

The Commission has produced a [template statement on absent voters](#) for the elections, which should be used. The accompanying guidance notes should support you in completing this.

2.10 You must provide a copy of the completed statements to the Electoral Commission¹⁸. For the Electoral Commission this information is collected via our dedicated Portal. Further instructions on how to provide this information to the Commission ahead of scheduled elections will be provided in a Commission EA Bulletin at the time of that poll.

2.11 The required information must not be provided before the tenth working day after polling day but must arrive no later than the twenty fifth calendar day after polling day¹⁹. If either of these days is not a working day, the time is extended to the next working day.

Data collection and feedback

2.12 At scheduled elections you will be requested to send information and data to the Commission relating to the election.

2.13 Forms for collecting information and data at scheduled elections, and accompanying guidance notes for completion, as well as a Commission feedback form, will be [available on the Commission's website](#).

Accounting for the elections

2.14 The costs for running a local election are paid for by the local council²⁰. The local council will provide you with instructions for accounting for the elections.

Payment of creditors

2.15 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 elections.

Payment of fees to staff

Income tax

2.16 Under tax rules a standard starter checklist, which is issued at the time of appointment, must be completed. It needs only be done once rather than 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

2.17 All election payments will be subject to HMRC's real-time information tax payment system. You should ensure that you liaise with your local authority's finance and HR departments as soon as possible 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

2.18 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

2.19 You should make arrangements to return any equipment, such as polling booths, to storage.

Candidates' election spending

2.20 Agents and candidates at these elections must follow rules about how much they can spend and what they must report after the election²¹. Failure to follow the rules could lead to them committing an offence²².

Candidates and agents can download the return of candidate election spending forms with explanatory notes, the declaration by the election agent as to election spending and the declaration by the candidate as to their election spending, from [our website](#)

2.21 All election agents must submit a spending return to the Proper Officer of the council together with relevant invoices and receipts within 35 calendar days of the declaration of result of the election (unless the last day of the period falls on a weekend or bank holiday, in which case the last day moves to the next working day)²³.

2.22 The legislation also requires election agents and candidates to submit declarations confirming the candidate's election spending return is complete

and correct²⁴. The election agent's declaration must be submitted at the same time as the return²⁵. The candidate's declaration must be submitted at the same time or within seven working days of the election agent submitting the return²⁶. However, if the candidate is out of the UK when the return is submitted to you, they must make the declaration within 14 days of coming back to the UK (unless the last day of the period falls on a weekend or bank holiday, in which case the last day moves to the next working day) and submit it to you as soon as possible²⁷. In order to ensure a clear audit trail, the Proper Officer should keep a record of when these documents are received.

2.23 The Proper Officer must retain a copy of each spending return and declaration, and any accompanying documents, for a period of two years beginning with the date when the return is received and, during that period, make copies available for public inspection without charge²⁸. Anyone can also request copies of the returns and accompanying documents, which must be supplied on payment of the fee of 20p per side²⁹. The addresses of individuals who have made donations to candidates must be removed from all inspection copies and copies supplied on request.

2.24 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 the Returning Officer considers appropriate. This notification must also be sent to each election agent³⁰.

2.25 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 within 10 days of the return or declaration being received.³¹

2.26 At the end of the two-year period, if the candidate or the relevant election agent requests them, they must be returned to the candidate³². Otherwise the returns and accompanying documents may be destroyed³³.

3 Challenges to the election results

Election petitions

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

Who can bring an election petition and on what grounds?

3.2 A petition can be presented by³⁴:

- a person claiming to have been a candidate at the election, or
- four or more persons who voted as electors at the election or had a right to vote at the election, except for electors registered anonymously

3.3 The allowable grounds for a petition are that³⁵:

- the person whose election is questioned was not duly elected
- the person whose election is questioned was disqualified at the time of the election
- the election was avoided by corrupt or illegal practices or on the grounds specified in Sections 164 and 165 of the Representation of the People Act 1983 (as amended)

Who is made a respondent?

3.4 The person whose election is questioned will most probably be made a respondent to the petition³⁶. If the petition relates to the conduct of the election, the Returning Officer may also be a respondent to the petition³⁷.

Deadlines for bringing petitions

3.5 A petition at a local council election must normally be presented within 21 calendar days after the day on which the election was held³⁸. Further time may be allowed in certain circumstances³⁹.

3.6 A petition must be presented to the sheriff principal of the sheriffdom in which the election took place⁴⁰. Where the council area is situated within more

than one sheriffdom, the petition must be presented to all the sheriffs principals of the sheriffdoms covered by the council area⁴¹.

3.7 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 sheriff court. Contact details are available at: <https://www.scotcourts.gov.uk/the-courts/sheriff-court/find-a-court>

4 Review of election procedures

4.1 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 polls.

4.2 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

4.3 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.

4.4 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.

4.5 You should pay particular attention to reviewing:

- your project planning
- whether you were able to secure adequate resources
- what worked well and what could be improved when working with the ERO
- 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

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

4.7 You should seek feedback from the following:

- your staff
- the ERO
- electors
- candidates, agents and political parties
- local organisations of disabled people, older people and minority ethnic groups, and the council's access officers

4.8 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.

4.9 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 polls.

5 Freedom of Information requests

5.1 Following the election you may receive requests under the Freedom of Information (Scotland) Act 2002. ROs and EROs are not a public authority under this Act and, as such, are exempt from the disclosure requirements imposed by it⁴².

5.2 However, where possible, ROs 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 council area or the turnout of postal voters.

¹ Rule 58, Schedule 1 to the Scottish Local Government Elections Order 2011

² Rule 58, Schedule 1 to the Scottish Local Government Elections Order 2011

³ Rule 29(1) and 57(1), Schedule 1 to the Scottish Local Government Elections Order 2011

⁴ Rule 58, Schedule 1 to the Scottish Local Government Elections Order 2011 and Regulation 31 of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007

⁵ Rule 57, Schedule 1 to the Scottish Local Government Elections Order 2011

⁶ Rule 60, Schedule 1 to the Scottish Local Government Elections Order 2011

⁷ Rule 40 and Rule 58, Schedule 1 to the Scottish Local Government Elections Order 2011

⁸ Regulation 31 of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007, as amended by the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2016

⁹ Regulation 31(1)(b) of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007, as amended by the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2016

¹⁰ Regulation 91A(1) of the Representation of the People (Scotland) Regulations 2001; Regulation 32 of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007, as amended by the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2016

¹¹ Rule 58, Schedule 1 to the Scottish Local Government Elections Order 2011

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- ¹² Rule 56(b), Schedule 1 to the Scottish Local Government Elections Order 2011
- ¹³ Rule 56(c) and 61, Schedule 1 to the Scottish Local Government Elections Order 2011
- ¹⁴ Rule 61(6), Schedule 1 to the Scottish Local Government Elections Order 2011
- ¹⁵ Rule 61(3), Schedule 1 to the Scottish Local Government Elections Order 2011
- ¹⁶ Rule 61(4), Schedule 1 to the Scottish Local Government Elections Order 2011
- ¹⁷ Rule 61(5), Schedule 1 to the Scottish Local Government Elections Order 2011
- ¹⁸ Regulation 31(4) of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007
- ¹⁹ Regulation 91(5) Representation of the People (Scotland) Regulations 2001
- ²⁰ Section 42, Representation of the People Act 1983
- ²¹ Sections 76 and 81, Representation of the People Act 1983
- ²² Sections 76(1B) and 84, Representation of the People Act 1983
- ²³ Section 81(1), Representation of the People Act 1983
- ²⁴ Section 82, Representation of the People Act 1983
- ²⁵ Section 82(1), Representation of the People Act 1983
- ²⁶ Section 82(2), Representation of the People Act 1983
- ²⁷ Section 82(3), Representation of the People Act 1983
- ²⁸ Section 89(1)(a), Representation of the People Act 1983
- ²⁹ Section 89(1)(b), Representation of the People Act 1983
- ³⁰ Section 88A Representation of the People Act 1983
- ³¹ Section 88A(2) Representation of the People Act 1983
- ³² Section 89(2)(b), Representation of the People Act 1983
- ³³ Section 128(1) and (2), Representation of the People Act 1983
- ³⁴ Sections 128, 164 and 165, Representation of the People Act 1983
- ³⁵ Section 127, Representation of the People Act 1983
- ³⁶ Section 128(2), Representation of the People Act 1983
- ³⁷ Section 129(1), Representation of the People Act 1983
- ³⁸ Section 129(1) to (5), Representation of the People Act 1983
- ³⁹ Section 128(3)(b), Representation of the People Act 1983
- ⁴⁰ Section 89(2)(a), Representation of the People Act 1983
- ⁴¹ Section 128(3)(b) Representation of the People Act 1983
- ⁴² Section 3 and Schedule 1 to Freedom of Information (Scotland) Act 2002