

# Code of conduct for political parties, candidates, canvassers and campaigners on the handling of postal vote applications and postal ballot papers in Scotland

## Introduction

1. Political parties, candidates, canvassers and campaigners play a vital part in elections and referendums, not least through encouraging voting. With the increasing popularity of postal voting there is a need to ensure that traditional standards of political propriety observed at polling stations are carried through to the postal voting context.
2. All references to Returning Officers in this Code should be taken to refer to Counting Officers for referendums.
3. All references to campaigners in this Code refer to people involved in referendum campaigning, and include:
  - registered campaigners, whether individuals or organisations<sup>1</sup>
  - designated organisations (the 'lead' registered campaigners)<sup>2</sup>
  - a registered campaigner's 'responsible person'<sup>3</sup>
  - an agent appointed by a registered campaigner
  - anyone else working for a registered campaigner

## Key principles

4. All political parties, candidates, canvassers and campaigners handling postal vote applications and postal ballot papers will adhere to the following two key principles:
  - Candidates, campaigners and supporters should assist in the efficient and secure administration of elections and referendums and uphold the secrecy of the ballot
  - no candidate, campaigner or supporter should place themselves in a situation where their honesty or integrity – or that of the party, candidate or campaign – can be questioned

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<sup>1</sup> Any person or organisation intending to spend more than £10,000 campaigning in a referendum must register with The Electoral Commission as a 'permitted participant'. We refer to these campaigners as 'registered campaigners'.

<sup>2</sup> The Commission may designate a lead campaign organisation for each referendum outcome e.g. a 'yes' or a 'no' campaign)

<sup>3</sup> The person nominated by a registered campaigner to be legally responsible for ensuring that they comply with the relevant rules on campaign finance.

## What the law says

5. In an election an individual may only vote once for each contest.
6. In a referendum an individual may only vote once, and only for the number of options specified on the ballot paper (typically one).
7. A voter's signature or mark must always be their own.
8. An individual may not vote for, or as, someone else unless they are formally appointed to act as their proxy. If an individual steals someone else's vote they may be prosecuted for making a false statement or oath, forgery, using, or uttering as genuine, a false instrument or pretending to be someone else (personation).
9. An individual may not exert, or attempt to exert, undue influence to persuade or force someone to vote, not to vote, or to vote a certain way. Someone who prevents or deters the voter from freely exercising their right to vote, or attempts to do so, may be found guilty of undue influence.
10. It is an offence to offer money, food, drink, entertainment or other gifts to persuade someone to vote, or not to vote.
11. It is an offence to falsely apply for a postal or proxy vote as some other person. It is also an offence to otherwise make a false statement or otherwise induce the Returning Officer to either send a postal ballot paper or other election or referendum mail to an address which has not been agreed by the person entitled to the vote, or to cause a postal ballot paper not to be delivered to the intended recipient.<sup>4</sup>

It is an offence to supply false information to the Electoral Registration Officer for any purpose connected with the registration of electors.<sup>5</sup>

## Applications for postal voting

12. If you develop a bespoke application form, it should conform fully with the requirements of electoral law, including all the necessary questions and the options open to electors.
13. Electors should be encouraged to ask for the postal vote to be delivered to their registered home address, unless there are compelling reasons why this would be impractical. This reason must be stated on the application form.

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<sup>4</sup> Section 62A(2) and 115(2), Representation of the People Act 1983 (RPA 1983).

**Please note that all elections and referendums have their own legislation where offences typically mirror those in the RPA 1983. For example, for Scottish Parliamentary elections the section 62A offence under the RPA 1983 appears as Article 27, Scottish Parliament (Elections etc.) Order 2010.**

<sup>5</sup> Section 13D, RPA 1983.

14. Because of the risk of suspicions that the application may be altered and the risk of the application form being delayed or lost in transit, the local Electoral Registration Officer's address should be the preferred address given for the return of application forms.
15. If an intermediary address is used, forms should be despatched unaltered to the relevant Electoral Registration Officer's address within two working days of receipt.
16. If you are given a completed application form, you should forward it directly and without delay to the local Electoral Registration Officer.
17. The Electoral Registration Officer may check the signature on an absent voting application against any other copies of the elector's signature or date of birth which they hold or is held by any authority which they are authorised to inspect.<sup>6</sup>
18. The Electoral Registration Officer must confirm in writing to all successful applicants that they will receive a postal ballot.

## Postal voting ballot papers

19. You should not touch or handle anyone else's ballot paper. If you are asked for assistance in completing a ballot paper, you should always refer the voter to the Returning Officer's staff at the elections office who can arrange a home visit if necessary. Assistance will also be available for electors at polling stations.
20. It is absolutely clear that anyone acting on behalf of a party or campaign should not solicit the collection of any ballot paper. Wherever practical, the voter should be encouraged to post or deliver the completed ballot paper themselves.
21. It is recognised that people working for a party or a campaign may be approached by a voter who is unable to post their ballot paper or make arrangements for it to be returned in time. If you are asked to take the completed ballot paper, you should ensure that the voter has sealed it first and then post it or take it to a polling station or office of the Returning Officer immediately, without interfering in any way with the package.
22. If you are with a voter when they complete their ballot paper, remember they should complete it in secret. Equally, you should ensure that the voter seals the envelopes personally and immediately. If you are asked to give advice, it is acceptable and often helpful to explain the voting process but do not offer to help anyone to complete their ballot paper.

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<sup>6</sup> Regulation 51A, Representation of the People (Scotland) Regulations 2001 (as amended).

23. If you are in any doubt about the probity or propriety of your actions, you should ask yourself the question, **‘What would a reasonable observer think?’** This draft code has been prepared based on this test, as advocated by the Third Report of the Committee on Standards in Public Life.<sup>7</sup>

**See Appendix A: *Policing elections and referendums in Scotland*. This document, designed for issue to police officers on duty over the voting period, sets out offences relating to elections and referendums and more general offences of which you should be particularly aware.**

**Agreed November 2010 and current for elections and referendums in 2011.**

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<sup>7</sup> Committee on Standards in Public Life, *Standards in Public Life: Standards of Conduct in Local Government in England, Scotland and Wales, Third Report*, Chairman Lord Nolan, (1997, London: The Stationery Office).

## **Appendix A: *Policing elections and referendums in Scotland***

## Guidance on policing elections and referendums

**Date of publication:** February 2011

**See:** [www.electoralcommission.org.uk/guidance](http://www.electoralcommission.org.uk/guidance)

### 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 the Procurator Fiscal should be sought if necessary.

All forces have a **Single Point Of Contact (SPOC)** for advice relating to elections and referendums at force level. Your SPOC can be contacted through your force control room.

The Representation of the People Act 1983 (RPA 1983) regulates the conduct of electoral registration and UK Parliamentary elections. Each election and referendum will have its own legislation but offences typically mirror those in the RPA 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 give any money or procure any office to or for 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.

Corrupt practice, Section 113, RPA 1983.

### 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.

Corrupt practice, Section 60, RPA 1983.

### 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.

Corrupt practice, Section 114, RPA 1983.

### 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 act with the intention of impeding or preventing the voter from freely exercising their right to vote.

Corrupt practice, Section 115, RPA 1983.

## 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 the Procurator Fiscal.
- Inform Returning Officer, Counting Officer, Electoral Registration Officer and/or the Electoral Commission as appropriate via police SPOC.

Prosecutions under the Representation of the People Act 1983 must be brought within 12 months of the commission of the offence.

### 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 or abet the commission of the above offences. Corrupt practice, Sections 62A and 62B, RPA 1983.

## 6 Multiple, proxy and other voting offences

It is illegal to vote more than once in an election to the same elected body or more than once 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. These are illegal practices. Section 61, RPA 1983.

## 9 Tampering with nomination/ ballot papers etc.

It is an offence to deface or fraudulently 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.

Summary offence. Section 65, RPA 1983.

## 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 the 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.**

Summary offence, Section 66, RPA 1983.

## 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**

Ensure all crime (as above) is recorded in line with the Scottish Crime Recording Standard. Advice can be found on the Police Information Net for Scotland and through your SPOC.

**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 the access for 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's 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 promote good race relations under the Race Relations (Amendment) Act 2000.

Police presence during voting gives an opportunity for the police to promote excellent community relations in all aspects.

## 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.

Summary offence. Sections 13CA and 13D, RPA 1983.

## 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.

## Individual voluntary declaration

I agree to abide by the *Code of conduct for political parties, candidates, canvassers and campaigners on the handling of postal vote applications and postal ballot papers in Scotland* current for elections and referendums in 2011.

Name: .....

Signature: .....

Date: .....