



The
Electoral
Commission

Guidance on preventing and detecting electoral fraud in Scotland

March 2017

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1 Purpose – prevention rather than prosecution

1.1 This guidance is designed mainly to support the Police Service of Scotland (Police Scotland) in working with Electoral Registration Officers, Returning Officers, Counting Officers and the Regional Returning Officer/Chief Counting Officer, as well as the Electoral Commission and the Electoral Management Board for Scotland (EMB) to minimise the potential for malpractice in the electoral process. It alerts police to issues that may arise in the run-up to polling day, on polling day itself and at related events. It also offers guidance on factors to consider when carrying out a force risk assessment. This guidance is for Police Scotland and has been developed collaboratively by the Electoral Commission, Police Scotland and the Electoral Management Board for Scotland.

1.2 The Electoral Commission and the Convener of the EMB are committed to ensuring that elections and referendums are conducted in a fair and inclusive manner and in accordance with the law. Police Scotland believes that facilitating peaceful and effective voting is a primary concern for the police service and that electoral malpractice can be prevented or reduced by positive police action.

1.3 Police Scotland, the EMB and the Commission are therefore promoting this guidance throughout Scotland.¹ We have brought this guidance to the attention of Electoral Registration Officers (EROs), Returning Officers (ROs), Counting Officers (COs), political parties and designated organisations, with the recommendation that it is promoted throughout the local area. Police Scotland will also disseminate this guidance through local policing, Divisional Commanders and Divisional Coordination Units (DCUs).

1.4 Each DCU will have a nominated Single Point of Contact (Divisional SPOC) and there will be one Lead SPOC for Police Scotland.



The Lead SPOC for Police Scotland is Emergency, Events & Resilience Planning (West). Contact details for the Lead SPOC are set out at paragraph 1.18 below. Contact details for Divisional SPOCs will be communicated to electoral administrators separately from this guidance.

¹ The Commission has prepared a separate guidance document for England and Wales jointly with the National Police Chiefs' Council and the College of Policing, jointly with the Association of Chief Police Officers (ACPO).

1.5 Electoral Registration Officers, Returning Officers and Counting Officers should use this document in preparing integrity plans that should help them meet the performance standards set out by the Commission and the Chief Counting Officer (CCO) in relation to elections and referendums. This document offers guidance on integrity issues that should be included in joint integrity planning with local Police Scotland contacts.

1.6 Particular attention should be given to:

- the checklist of topics that might be discussed at their meeting with their local Police Scotland contact, which is set out in Chapter 4, 'Preparation, planning and partnership work'
- agreeing trigger points or thresholds for reporting matters to the police and an escalator of issues

1.7 In preparing their integrity plans, Electoral Registration Officers, Returning Officers and Counting Officers should also involve, where possible and appropriate, political parties, independent candidates and registered campaigners.

Elections and referendums

The following elections and referendums are scheduled to take place in the next years:

- On 4 May 2017 there will be Local Government elections in Scotland
- In 2019 there will be an election to the European Parliament
- In 2020 there will be an election to the UK Parliament
- In 2021 there will be an election to the Scottish Parliament

Electoral fraud²

1.8 Occurrences of electoral malpractice are relatively rare; however, such occurrences often attract considerable media attention and can undermine confidence in the electoral process.³ The highest profile cases have been those where substantial postal voting fraud has taken place.

1.9 These are Blackburn (2003),⁴ Birmingham (2004),⁵ Peterborough (2004),⁶ Bradford (2005),⁷ Tower Hamlets (2006)⁸ and Slough (2007).⁹ The investigation of these cases required a huge investment of resources from the police to gather statements and evidence.

1.10 Electoral malpractice has often been attributed, and sometimes mis-attributed, purely to postal voting. For example, *The Times* newspaper was specifically criticised by the judge in the Burnley 2004 case for repeatedly reporting the crime as postal voting fraud when it related to proxy voting.¹⁰

² The term electoral fraud and electoral malpractice is used throughout this document to mean breaches of the Representation of the People Act 1983. It is much wider than voting fraud or other offences involving fraudulent activity. For example, the term includes offences such as bribery, treating, false statements about the personal character of a candidate and failure to display the imprint on election material. However, it does not cover all crime that might be election-related such as assault, vandalism or theft of posters and other election material.

³ See chronology in House of Commons Library standard note: Electoral offences since 2010 (8 December 2015), available at <http://researchbriefings.files.parliament.uk/documents/SN06255/SN06255.pdf> and earlier chronology in House of Commons Library standard note SN3667 Postal Voting and Electoral Fraud 2001-09 (14 March 2012), available at <http://www.parliament.uk/briefing-papers/SN03667>

⁴ *R v Mohammed Hussain* [April 2005] EWCA Crim 1866.

⁵ *Re Local Government Election for the Bordesley Green Ward of Birmingham City Council and Re Local Government Election for the Aston Ward of Birmingham City Council* [April 2005] unreported (Election Ct) Election Court. *Akhtar and others v Jahan and others; Iqbal and others* [2005] All ER (D) 15 (Executive summary).

⁶ *R v Hussain* (Maqbool), Mahmood (Tariq) and Choudhary (Mohammed) [2007] case number U20070492 and *R v Akhtar* (Raja), Razak (Abdul) and Khaliq (Mohammed) [8 October 2008] unreported.

⁷ See *R v Khan* (Jamsted), Khan (Reis), Rafiq (Mohammed), Sultan (Mohammed) [6 September 2010] unreported.

⁸ See for instance 'Police poised to bring charges over postal votes fraud', *Evening Standard*, 22 October 2006. The prosecution of one person on 23 counts of fraudulent applications to vote resulted in a verdict of not guilty. However, the point about high-profile cases and huge resource implications still applies.

⁹ *Re Local Government Election for the Central Ward of Slough Borough Council. Simmons v Khan* [2008] EWHC B4 (QB) (18 March 2008).

¹⁰ *R v Ali* (Mozaquir) and Hussain (Manzur) [September 2006] unreported, Preston Crown Court. 'There is nothing in the facts of this case which could justify criticism of the move to postal voting. On this issue the reporting which appeared in *The Times* after the conviction was again in error and not based on any evidence which was before this Court. Indeed the introduction of postal votes substantially reduced the number of proxy votes in this ward from the numbers at previous non postal elections.' Paragraph 16, Judge's passing of sentence.

Electoral malpractice¹¹ covers much more than absent voting - where the elector votes by post or proxy and does not go to a polling station to vote.¹² Rather than simply focusing on when the vote is cast, all appropriate agencies should give more attention to preventing fraudulent applications both to register and to vote by post or proxy. This requires vigilance throughout the year and not just during the election period. That is why we are pleased that every police force in the UK has a named SPOC for electoral matters in place throughout the year.

1.11 The Electoral Administration Act 2006 (EAA) introduced new safeguards and duties on Electoral Registration Officers and Returning Officers to carry out specific checks.

1.12 An analysis of files opened by the Crown Prosecution Service (CPS) in England and Wales between 2000 and 2006 showed that allegations peaked around 2003 for almost all Representation of the People Act 1983 (RPA 1983) offences. Better preparation, preventative measures such as higher-profile policing, extra vigilance at the local level and, above all, joint working since 2003 have all played their part in this improvement. It is vital that the public has confidence in the integrity of the electoral process.

1.13 Allegations of electoral malpractice may be greater where there is a history of allegations of, or actual, malpractice in an area.

1.14 The risk of actual electoral malpractice may be greater where:

- There is a greater opportunity to influence the outcome of an election or referendum; for example, fewer votes are needed to win a seat at a local government election compared with at a UK or Scottish Parliamentary election or a Scotland or UK-wide referendum.
- There is likely to be a close contest.
- There is a community with limited language or literacy skills who may be more vulnerable to deception or less likely to realise that their vote has been stolen.
- There is a high residential occupancy turnover.

¹¹ See for instance: Hackney 1994–8 – false registration at residential college and proxy voting R v Lieberman (Zev) and R v Zeibowitz (Issac) both [2001] unreported and Wood Green Court; Havant 2000 – false nomination and false proxy and postal votes, R v Race (Rae), R v Hayward (Michael), R v Ennis (Brian) and R v Fox (Timothy) all 2002, unreported and Guildford Crown Court; Burnley 2002 – forged signature of assentors on nomination form; and Bristol 2002 – false proxy applications, R v Astley (John) [September 2004] unreported, Exeter Combined Courts, Judge Jeremy Griggs; Burnley 2010 - R v Manzur (Asif), case number T20117060, [14 July 2011] unreported, Derby 2012 - R v Akhtar (Nasreen), Ali (Nasreen), Ali (Tameena) and Maqsood (Noshiella) [2013], case number T20130244 [26 July 2013] unreported and Woking 2012 - R v Ali (Shaukat), Akhtar (Parveen), Akhtar (Sobia Ai), Ali (Shamraiz), Hussain (Abid), case number T20147101, [9 June 2015] unreported.

Scope of guidance

1.15 This guidance relates to:

- Electoral registration
- Elections
- Referendums

1.16 This document covers guidance and explanations about:

- Recommended action in response to allegations of electoral malpractice
- Preparatory work to prevent and deter electoral malpractice
- Potential offences
- Powers of arrest, maximum penalties and time limits for prosecution
- Access to documents
- The role of different participants
- Electoral registration procedures
- Voting and counting procedures

Police Scotland and the Commission have established a framework for regular and robust reporting of cases of electoral malpractice. The framework provides a database of allegations of electoral malpractice and breaches of electoral legislation in the UK. The Association of Chief Police Officers (ACPO) carried out a preliminary exercise based on local elections in England and Wales in 2008. In 2009, the Commission worked with the Association of Chief Police Officers in Scotland (ACPOS) and ACPO to refine this approach to election-related crime reporting, which was administered by the ACPO Police National Information and Co-ordination Centre (PNICC). In 2010 the project was extended to give a more comprehensive profile of electoral malpractice throughout the year.¹³ This process was repeated in 2011¹⁴, 2012¹⁵ and throughout 2013. The results are published annually.

¹³ Analysis of cases of alleged electoral malpractice in 2010: Associations of Chief Police Officers and Electoral Commission analysis:
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0013/109012/Integrity-report-FINAL-no-embargo.pdf

¹⁴ Analysis of cases of alleged electoral malpractice in 2011: Associations of Chief Police Officers and Electoral Commission analysis:
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0020/147161/Analysis-of-alleged-cases-of-electoral-malpractice-in-2011.pdf

¹⁵ Analysis of cases of alleged electoral fraud in 2012: Summary of data recorded by police forces http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/155336/Analysis-of-cases-of-alleged-electoral-fraud-in-2012.pdf



It is important for the integrity of the database that all allegations of electoral malpractice are properly progressed and the database is accurate and comprehensive. All allegations of electoral malpractice that can be substantiated, where the Returning Officer, Counting Officer, Electoral Registration Officer or another person is prepared to make a statement, should be brought to the attention of the Divisional SPOC.

This guidance sets out many of the issues that are worth considering in preparing a force threat assessment and control strategy. It is based on actions developed from the experience of policing recent elections in Great Britain.



Threat assessment issues are set out in Chapter 4, 'Preparation, planning and partnership work' to help with the design and implementation of an appropriate force-wide response, and a checklist is provided in Appendix G.

1.17 This guidance is not intended to definitively state the law as it may apply to any particular case. Questions of the final interpretation of the law are ultimately a matter for the courts. A court would have regard to any guidance provided by the Commission, Police Scotland and the CCO.

Contacts

1.18 For further advice or comment please contact:

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2 Elections and referendums – an overview

The electoral process

1.19 The electoral process falls into two distinct areas of work – producing the register of electors and the management of elections and referendums.



For the purposes of this guidance, all references to electoral processes should be taken to apply to elections or referendums as appropriate.

Roles

The Electoral Registration Officer

1.20 The Electoral Registration Officer is responsible for compiling and maintaining the register of electors, which contains an entry for everyone who has registered to vote and their eligibility to vote. A register is compiled in Scotland for each of the 32 council areas. The Electoral Registration Officer's responsibilities also include registering applications to vote by post or proxy and applications from people who wish to register to vote anonymously.

1.21 A register is compiled in Scotland for each council area. Registers are published following an annual canvass of all households in the area and monthly updates are published to allow people who have moved during the year to register at their new address.

1.22 The basis of the register of electors in Scotland is the Individual Electoral Registration system (IER) where every potential elector is required to register individually.

The Returning Officer

1.23 The Returning Officer is responsible for the management of an election. For referendums, the Returning Officer becomes the Counting Officer.



To see a full list of Returning Officers in Scotland and their contact details, please see the EMB's website www.electionsscotland.info

1.24 Generally, the duties of the Returning Officer include:

- Receiving nominations and publishing the list of nominated candidates called the *Statement of persons nominated or Notice of poll*.
- Establishing and staffing polling stations and ensuring the safe return of ballot boxes.
- The management of postal and proxy voting
- The verification and counting of ballot papers, and declaring the result

1.25 The Returning Officer is usually a senior council employee and they are generally the Chief Executive. However, while they are undertaking this role they are independent of the local authority and carry personal liability. The decisions of the Returning Officer are final and only subject to challenge by an election petition to the Court of Session or, in the case of a local government election, the Sheriff Principal. A referendum can only be questioned by Judicial Review after the result.

1.26 Some UK and Scottish Parliamentary constituencies include parts of more than one local authority area. In these cases, the Returning Officer requires assistance from other local authorities and one or more Electoral Registration Officer.

1.27 The EMB is responsible for the coordination of the administration of local government elections in Scotland. The EMB is led by a Convener who is also a serving Returning Officer. The Convener can issue directions to ROs and EROs in relation to local government elections to carry out their functions in certain ways.

1.28 The Convener of the EMB usually undertakes a similar role in relation to the European Parliament elections as she is also appointed as the Regional Returning Officer for that election. The Convener also seeks to coordinate and ensure consistency of approach, without statutory provision, in relation to UK and Scottish Parliamentary elections.

1.29 In relation to referendums the Chief Counting Officer has powers to issue guidance and directions in fulfilment of that role.



For the purposes of this guidance, all references to the 'Returning Officer' and their responsibilities, unless specifically stated to the contrary, should be read to include:

- the Returning Officer at a local government election or by-election,
- the Returning Officer at a UK Parliamentary election or by-election,
- the Regional or Constituency Returning Officer at an election to the Scottish Parliament, and

- the Counting Officer at a referendum, except where those references refer to interaction with candidates or parties standing for election (as a referendum is not 'contested').

Types of election and referendum

European Parliamentary elections

1.30 Elections to the European Parliament take place every five years. These elections follow the D'Hondt system where members of the European Parliament are elected from party lists according to the proportion of votes cast for that party in the electoral region. Individual candidates may also stand for election.

1.31 There is a Regional Returning Officer for each of the twelve electoral regions which the UK is divided into for the purposes of the election. Scotland is one electoral region, Northern Ireland another, with nine English regions and one for Wales. They are appointed by the Secretary of State for Political and Constitutional Reform. For the Scottish electoral region the Regional Returning Officer must be a Returning Officer. If a Regional Returning Officer becomes unable to act personally, the role of Regional Returning Officer would remain with the local authority at which the Returning Officer role is held and could not pass to an individual at any other local authority or a member of the EMB.

1.32 At elections to the European Parliament, the Regional Returning Officer has specific responsibility for the nomination process and for collating and announcing the results for their electoral region. Within each electoral region, European Parliamentary elections in Great Britain are administered on a local counting area basis, and the conduct of the poll (including postal and proxy voting) and count in each local counting area is the responsibility of a Local Returning Officer. In Scotland the local counting area is the local authority area. The Regional Returning Officer will have a team to assist them with coordination across the electoral region. This will involve regional briefings and dissemination of information to Local Returning Officers¹⁶.

1.33 It is likely that Local Returning Officers will want to liaise and meet with their Divisional SPOC to get a sense of the level of risk within their electoral region and how it might be addressed. The systems currently used for elections and referendums in Scotland are set out in Appendix M. The appendix sets out how votes are cast in different voting systems and what voting systems are currently in use.

¹⁶ To see a full list of Returning Officers in Scotland and their contact details, please see the EMB's website www.electionsscotland.info

Referendums

1.34 Referendums usually work in a similar way to a first-past-the-post election¹⁷. Voters have one vote to record their preference in answer to the question asked. The result of the referendum will be whichever answer gets the most votes.

1.35 The legal basis for referendums are set out in the Political Parties, Elections and Referendums Act 2000 (PPERA) and will be amended by specific legislation introduced for each referendum by the relevant legislature. The roles at a referendum in accordance with PERA are:

1.36 The CCO is responsible for:

- Ensuring the proper and effective conduct of the referendum
- The conduct of the poll
- The verification and counting of the votes
- Appointing a Counting Officer (CO) for each local government area
- Providing guidance and direction to COs and Electoral Registration Officers (EROs) on the exercise of their functions in relation to the referendum
- Undertaking public awareness activity
- Setting performance measures for COs and monitoring performance on a continuing basis

1.37 The Electoral Commission at the referendum will be responsible for:

- Registering campaigners
- Designating lead campaign organisations
- Regulating campaign spending and donations
- Guidance for campaigners on registration, designation, campaign spending and donations
- Reporting on the referendum
- Promoting public awareness
- Advising the CCO
- Accrediting observers

There are a number of instances where the roles of the CCO and the Commission overlap and they intend to ensure, where those instances arise, measures are put in place to allow for the proper and effective conduct of the referendum in the interests of voters and campaigners. The CCO and the Commission will ensure that their activities do not duplicate, but complement each other's work and that no gaps in the provision of service to voters and campaigners occur.

¹⁷ As described under "General (UK Parliamentary) elections" on the Commission's aboutmyvote website at: www.aboutmyvote.co.uk/how_do_i_vote/voting_systems.aspx.

UK Parliamentary general election or by-election

1.38 For a UK Parliamentary general election or by-election in Scotland, the Returning Officer carries out most of the operational duties aided in certain areas by the ERO.

1.39 If a constituency falls wholly within a particular local authority area, the RO for that council will be the RO for the constituency. If a constituency includes parts of two or more local authority areas, the Secretary of State for Scotland will designate which local authority the RO will come from.

Scottish Parliamentary elections

1.40 The Scottish Parliament is elected by a type of proportional representation called the Additional Member System (AMS)¹⁸. Every elector in Scotland will have two votes. They are:

- one vote for one candidate to be the Member of the Scottish Parliament (MSP) for their local constituency
- one vote for one political party or independent candidate to represent their electoral region

1.41 One MSP is elected from each of the 73 constituencies and seven MSPs are elected from each of the eight electoral regions.

Local government elections

1.42 Elections to all of Scotland's 32 councils take place every five years.¹⁹ By-elections can happen at any time and must take place within three months of a seat becoming vacant unless the vacancy arises less than six months from the next set of scheduled elections.

1.43 For the Local Government election the EMB has a statutory responsibility to coordinate the administration of the elections.

1.44 Since 2007, each council has been divided into a number of wards that are represented by either three or four councillors. Councillors are now elected by the single transferable vote electoral system²⁰, which was introduced by the Local Governance (Scotland) Act 2004.

1.45 Each voter at a Scottish local government election has one vote and will be asked to rank candidates in order of preference (1, 2, 3, 4, etc.) rather than by making a single choice with a cross (X). Voters may rank as many, or as

¹⁸ As described under "Scottish Parliamentary elections" on the Commission's aboutmyvote website at: www.aboutmyvote.co.uk/how_do_i_vote/voting_systems.aspx

¹⁹ Section 1, Scottish Local Government (Elections) Act 2009.

²⁰ As described under "Local government elections in Scotland" on the Commission's aboutmyvote website at: www.aboutmyvote.co.uk/how_do_i_vote/voting_systems.aspx

few candidates as they wish. If a voter's first choice of candidate has already won enough votes to be elected, then their vote is transferred to their second choice and potentially on to their third choice and so on, until either three or four candidates have been elected, depending on the size of the ward.

1.46 At local government elections in Scotland, the Returning Officer is responsible for the administration of the election and count in their area. The task of managing the election will usually be carried out by the Depute Returning Officer and the Elections Team.

Responding to allegations of electoral malpractice – roles and responsibilities

1.47 The Convener of the EMB, the Electoral Commission, Electoral Registration Officers, Returning Officers and Counting Officers take allegations of electoral malpractice seriously. They report any suspicion deemed worthy of referral to Police Scotland for investigation and assist where possible. This should be subject to any criteria agreed at the pre-election meeting referred to later in Chapter 4, 'Preparation, planning and partnership work'.

1.48 Police Scotland will investigate the allegation until, following consultation with the Crown Office and Procurator Fiscal Service (COPFS), either they are satisfied that no further action is necessary, or they forward the file to COPFS for consideration with a view to prosecution. The Returning Officer, Counting Officer and the Commission should be kept apprised of the general progress of electoral malpractice investigations unless this is deemed inappropriate (for example, where the officer was a witness to an alleged offence).



Electoral malpractice offences under Representation of the People Act 1983 (RPA 1983), together with other relevant legislation, are explored in Chapter 3, 'Electoral offences – key offences and penalties', and Appendix A, 'Schedule of election and referendum-related crimes and penalties'.

Code of conduct for campaigners: postal voting, proxy voting and polling stations.

1.49 In 2013, in conjunction with political parties represented in the Scottish Parliament, the Commission produced a Code of conduct for campaigners. This can be seen at Appendix H. The version updated and extended the one adopted for elections in previous years to cover other integrity matters, such as campaigning outside polling places and complaints and allegations about electoral fraud, while retaining those relating to absent voting. It offers advice about how these individuals should conduct themselves during an election or referendum campaign. In itself, the code does not have the force of law, but it carries weight because the parties represented in the Scottish Parliament have agreed to abide by the provisions of the code. The code is also drawn to the attention of each permitted participant in a referendum.

1.50 The major political parties require candidates to abide by the code of conduct or be subject to disciplinary action, so there should be no need to ask candidates or campaigners to sign up locally to the code. However, where independent candidates, or candidates representing minority parties, are standing for election, there may be merit in obtaining local sign-up to the code by all candidates. This is something for Returning Officers to consider, on a case-by-case basis, to minimise the possibility of electoral malpractice in that specific area.

1.51 A template joint letter from the Returning Officer and Chief Constable is provided at Appendix K to assist where the Returning Officer decides to ask candidates to agree to sign up to the national code on a local basis. You should check with the Returning Officer to see if this has been proposed in your area.

1.52 The Commission has also produced a new A5 quick reference guide for distribution to party workers called *Code of conduct for campaigners: postal voting, proxy voting and polling stations*. Copies will be made available to political parties, and each Returning Officer/Counting Officer will be encouraged to distribute copies locally.

Election and referendum expenses

The Electoral Commission has prescribed powers to investigate and sanction offences by parties and other types of campaigning groups in the Political Parties, Elections and Referendums Act 2000 (PPERA), but does not have the same powers in relation to candidates under the RPA (1983).

If you are in any doubt as to whether an offence has occurred under PERPA or the RPA, please contact the Electoral Commission in the first instance for advice

Candidates' spending and donations

1.53 RPA 1983 or equivalent legislation specifies a series of controls on candidates' expenditure during an election campaign. The role of the Commission is to ensure the transparency and integrity of party and election finance and to provide guidance on standing for election. The Commission has produced guidance for candidates setting out the different requirements of this legislation.²¹

1.54 The eligibility and disqualification criteria for prospective candidates is set out in Part 1 of the guidance for each type of election. And can be found here: <http://www.electoralcommission.org.uk/i-am-a/candidate-or-agent>

²¹ *Guidance for candidates and agents*, available on the Commission's website at <http://www.electoralcommission.org.uk/i-am-a/candidate-or-agent>

Candidates generally appoint an election agent, who takes most responsibility for managing the campaign expenses. A candidate may be their own agent. Expenditure incurred on behalf of a candidate can only be incurred by the candidate, the agent, or a person authorised in writing by the agent to do so. Any payments made for expenses incurred must be made through the agent, with certain exceptions.

Candidates and agents are required to provide a return of the candidate's expenditure during their campaign to the Returning Officer. The return must be provided within a set timescale after the result of the election is declared. They must also provide supporting documentation for the return in the form of invoices and receipts for payments. The return must also include details of any donations received with a value over £50²².

The return must be accompanied by a declaration by the candidate, and the candidate's agent, that the return is true and accurate. Failing to provide the return, either of the declarations, or making a false declaration, are all offences, subject to various caveat provisions. Candidates are also subject to a spending limit for the campaign, and spending in excess of that limit is also an offence.

Please note that Returning Officers are required to provide copies of the election expenses return submitted by candidates to the Electoral Commission, but the RO is the formal holder of the returns and is not required to provide the invoices and receipts to the Commission. You should therefore approach the RO should the original return, invoices, and receipts be required for any police investigation.

The Commission does not however have any formal powers of investigation or sanction in relation to these controls. The Commission will assist the police in considering any investigation but will not generally open an investigation itself unless there are specific public interest reasons to do so.

A protocol between the Commission and the Crown Office and Procurator Fiscal Service describes the role of each of these organisations in the investigation of suspected breaches of these controls. The protocol is included at Appendix J.

Parties' spending and donations

1.55 The Political Parties, Elections and Referendums Act 2000 (PPERA) established restrictions on the source of income received by candidates and political parties. It also requires certain donations to be reported to the

²² For the 2017 Local Government elections candidates do not need to include details about donations they received in their spending return.

Commission to aid the transparency and integrity of party and election finance.

1.56 For the Scottish Parliament election the spending and donations of regional list party candidates are reportable by the party and not the candidates.

1.57 The Commission is responsible for receiving parties' returns and regulating compliance with the legislative controls. The Commission's Party and Election Finance Directorate deals with allegations of election spending or donation offences

Non-Party Campaigning

1.58 Third party (Non-party campaigner) spending for elections falls within two categories:

1.59 Campaigning for or against a particular candidate comes under RPA 1983 and is regulated by the Police.

1.60 RPA or equivalent legislation enforces regulations in relation to third parties who campaign for or against particular **candidate**. This is distinct from third parties who campaign for or against **political parties**, which are regulated under PPERA by the Electoral Commission.

1.61 Non-party campaigning for or against a party, a category of candidates or an issue comes under PPERA and spending and donations to Non-party campaigners are regulated by the Commission. PPERA controls allow a higher level of spending and also limit sources from which third parties can receive donations..

1.62 This advice should complement rather than replace or replicate other sources of information produced by political parties, Returning Officers, electoral administrators or others.

Permitted Participants at referendums

1.63 Referendum campaigners (permitted participants) are regulated by the Commission under PPERA. Campaigners spending more than £10,000 on campaigning for a particular outcome must register with the Commission. There are controls on the permissibility of donations and limits on the spending of campaigners. The Electoral Commission undertakes a number of roles in relation to the regulation of the referendum and is charged with monitoring and securing compliance with the campaign rules. The Commission has produced guidance for campaigners which can be accessed on its website at: <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/campaigners-in-referendums>

3 Electoral offences – key offences and penalties

2.1 Legislation for each referendum will usually mirror the RPA 1983 offences. The Representation of the People Act 1983 (RPA 1983) defines offences for the UK Parliamentary General election and by elections. Legislation for offences relating to Scottish Parliamentary elections, local government elections and referendums will mirror the offences of the RPA 1983 electoral registration and postal voting issues across the UK. Other legislation, such as that relating to forgery and false statements, or common law provisions, may also apply.

Table 1: Key RPA 1983 offences

Brief description of offence	RPA 1983
False registration information	13D(1)
False information in relation to postal/proxy voting	13D(1A)
Personation	60
Voting whilst under a legal incapacity	61(1)
Multiple voting (not as proxy)	61(2)(a–d)
Multiple voting (as proxy)	61(3 & 4)
Offences relating to the applications to register to vote by post and proxy	62A
Breach of official duty	63(1)
Tampering with nomination papers, ballot papers etc.	65(1)
False statements on nomination papers etc.	65A(1)
Requirement of secrecy	66(1–5)
Prohibition on publication of exit polls	66A(1)
Payment of election expenses	73(6)
Incurring of election expenses by unauthorised person	75(5)(a)
Failure to make declaration of expenses	75(5)
Making a false statement in declaration of expenses	75(5)(b)
Exceeding limit on candidate expenses	76(1B)
Exceeding spending limit for pre-candidacy expenses	76ZA(5)
Paying claims received late or after payment deadline	78(3)
Making a false declaration with the expenses return	82(6)
Failing to make a return	84
Imitation poll cards	94(1)
Disturbances at election meetings	97(1)
Officials not to act for candidates	99(1)
Illegal canvassing by police officers	100(1)
False statement of fact as to candidate	106(1)
Corrupt withdrawal from candidature	107
Payments for exhibition of election (referendum) notices	109

Printer's name and address on election publications	110
Prohibition of paid canvassers	111
Providing money for illegal purposes	112
Bribery	113(2–7, ex.4)
Treating	114(2 & 3)
Undue influence	115

2.2 More details of offences under RPA 1983, together with persons liable, type of offence and penalty, are given in Appendix A.

2.3 Most offences under RPA 1983 are classified as corrupt or illegal practices. Corrupt practices are indictable with a maximum penalty of imprisonment for one year and/or a fine, except for the offences of personation and making a false application to vote by post or proxy or interfering with communications relating to postal or proxy votes or containing a postal ballot paper, where the maximum penalty is imprisonment for up to two years and/or a fine.²³ Illegal practices are summary offences and the maximum penalty is a £5,000 fine.²⁴

2.4 Prosecutions under RPA 1983 must be brought within 12 months of the offence being committed. However, if there are exceptional circumstances and there has been no undue delay in the investigation, the time limit may be extended to not more than 24 months after the offence was committed. Any application to extend the deadline must be brought within one year of commission of the offence.²⁵

2.5 Information on some of the more high-profile offences is set out on the next page.

Corrupt practices

Bribery

2.6 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 vote, for a particular candidate or option; or to vote or refrain from voting.²⁶

Treating

2.7 A person is guilty of treating if either before, during or after an election they directly or indirectly give or provide (or pay wholly or in part the expense

²³ Section 168, RPA 1983; Regulation 109, European Parliamentary Elections Regulations 2004 (EPE Regulations 2004) (as amended).

²⁴ Section 169, RPA 1983; Regulation 110, EPE Regulations 2004 (as amended).

²⁵ Section 176, RPA 1983; Regulation 114(3), EPE Regulations 2004 (as amended).

²⁶ Section 113(2), RPA 1983; Regulation 77, EPE Regulations 2004 (as amended); Schedule 7, para 12, SIRA 2013.

of giving or providing) any food, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.²⁷ The lengthier extracts from RPA 1983 on this Section 114 offence in Appendix A point out that treating requires a corrupt intent – it does not apply to ordinary hospitality.²⁸

Undue influence

2.8 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. Undue influence can include threats of harm of a spiritual nature.²⁹ 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.³⁰

2.9 In responding to an allegation of undue influence, consideration should also be given to non RPA offences i.e. assault and breach of the peace .



Advice in relation to maintaining order in the vicinity of a polling place, which includes consideration of undue influence, has been prepared and is set out in Appendix E.

Personation

2.10 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.³¹ Further, the individual voting can be deemed to be 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 their appointment as a proxy is no longer in force. It is also an offence for a person to aid or abet another in committing the above offences.

²⁷ Section 114(2), RPA 1983; Regulation 78, EPE Regulations 2004 (as amended); Schedule 7, para 10, SIRA 2013.

²⁸ This is supported by case law. For example, *Borough of Rochester Case*, 1 December 1892, 4 O'M & H at p. 157: Mr Justice Vaughan Williams in connection with 'a conversazione at which refreshments were provided' stated: 'If people are called together for the purpose of exciting their political enthusiasm, and if the so-called treating is a mere incident of such a gathering, it is not an offence within the Act. It does not make it corrupt treating that a roof or warmth is provided for the meeting, nor is it necessarily corrupt treating if the persons attending the meeting are provided with some sort of refreshment. But if they are gathered together merely to gratify their appetites and so to influence their votes, then it is treating within the Act.'

²⁹ Section 115(2), RPA 1983; Regulation 79, EPE Regulations 2004 (as amended)

³⁰ Sections 115(2) and 115, RPA 1983; Regulation 79, EPE Regulations 2004 (as amended);

³¹ Section 60, RPA 1983; Regulation 23, EPE Regulations 2004 (as amended);

2.11 Appendix C has been produced to help Returning Officers and Counting Officers advise polling station Presiding Officers about personation. It includes a template for recording statements.

False application to vote by post or by proxy

2.12 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.³² Specifically, it is an offence to:

- Apply for a postal or proxy vote as some other person (whether living, dead or fictitious), or otherwise make a false statement in connection with an application for a postal or proxy vote
- Induce an Electoral Registration Officer or a Returning Officer/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

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

Illegal practices

Multiple voting and proxy voting offences

2.14 There are various offences regarding multiple voting and proxy voting, including:

- Voting by post as an elector or proxy when subject to a legal incapacity to vote
- Voting (otherwise than by proxy) more than once to the same elected body or on the same referendum question
- Voting as a proxy for someone while knowing that the person has a legal incapacity to vote
- Inducing or procuring another to commit one of the above offences³³

³² Section 62A, RPA 1983; Regulations 10 and 11, Schedule 2, EPE Regulations 2004 (as amended);

³³ Section 61, RPA 1983; Regulation 24, EPE Regulations 2004 (as amended);

Other electoral offences

Secrecy

2.15 Everyone involved in the electoral process should be aware of the secrecy of the ballot and should not breach it. The Returning Officer/Counting Officer will give everyone who attends the opening or counting of ballot papers, including the opening of postal votes,³⁴ a copy of parts of the relevant legislation.³⁵ Any breach of this legislation is a summary offence with a maximum penalty of six months' imprisonment or a £5,000 fine.

False registration information and false postal or proxy voting application

2.16 It is an offence to supply false information in relation to the registration of electors to the Electoral Registration Officer for any purpose connected with the registration of electors. 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.³⁶ Unlike the Section 62A, RPA 1983 offence, set out in paragraph 3.16, it is not necessary to establish an intention to gain, or deprive another of, a vote, money or property. This is a summary offence with a maximum penalty of six months in prison or a £5,000 fine.³⁷ It may be that the motive for false registration is financial or another, non-electoral crime that would be investigated by Police Scotland's Economic Crime Unit, or similar, rather than the Divisional SPOC. Nonetheless, the RPA offence should at least be considered in the investigation where appropriate.

General imprint rules (PPERA)

The general imprint rules apply to political parties and general non-party campaigners campaigning for or against one or more political party, group of candidates, policy, issue or particular type of candidate.

Section 143 PPERA 2000 requires that imprints must be included on printed election material that can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or oppose

³⁴ There has been instances where candidates and their agents (e.g. two cases in 2010) published information about voting patterns that they obtained at a postal vote openings. This contravenes Section 66, RPA 1983.

³⁵ Section 66, RPA 1983; Rule 34, Part 3, Schedule 1, EPE Regulations 2004 (as amended);

³⁶ Section 13D, RPA 1983.

³⁷ Section 13D, RPA 1983.

particular policies or issues, and is made available to the public or a section of the public.

These requirements are referred to as the general imprint rules. These rules apply to political parties and general non-party campaigners.

The Electoral Commission can impose civil sanctions for offences resulting from a failure to adhere to the imprint requirements of PPERA, without a referral to the police. For more information how the general imprint rules are enforced, visit the Commission's website.

'print' means print by whatever means and 'printer' shall be construed accordingly

'the promoter' in relation to any material to which this section applies, means the person causing the material to be published

'publish' means make available to the public at large, or any section of the public, in whatever form and by whatever means.

Other general offences

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

- Making a false oath under Section 44 of the Criminal Law (Consolidation) (Scotland) Act 1995
- Vandalism under Section 52 of the Criminal Law (Consolidation) (Scotland) Act 1995
- Uttering as genuine a false document under Scots common law, and
- Breach of the peace under common law



Advice in relation to maintaining order in the vicinity of a polling place, which includes consideration of public order offences and other police powers, has been prepared and is set out in Appendix E.

4 Preparation, planning and partnership work

3.1 This chapter focuses on preparing a force threat assessment and control strategy, a risk assessment guide for elections and referendums, and topics that might be discussed at planning meetings between the Returning Officer/ Counting Officer, or named local authority contact, and Divisional SPOC.

3.2 All preparation, planning and partnership work should be conducted with the key stakeholders in mind. These are:

- The Regional Returning Officer for European Parliamentary elections
- The Chief Counting Officer for referendums
- The Electoral Registration Officer for the area
- The Returning Officer for local council elections
- The Returning Officer for UK and Scottish Parliamentary constituencies

3.3 For European Parliamentary elections the relevant Regional Returning Officer will be the key stakeholder. All preparation, planning and partnership work should be conducted with this in mind while not overlooking the need to liaise with Local Returning Officers at a local level. The European Parliamentary election in Scotland is counted by council area.

3.4 The Commission and Police Scotland recommend that Returning/Counting Officers and Electoral Registration Officers give particular attention to the checklist of topics that might be discussed at their meeting with their Divisional SPOC, which is set out on page 36.

3.5 It should be recognised that no two elections or referendums are the same. Some of the reasons why alleged electoral malpractice will vary across different areas and from previous elections are set out in Chapter 1, 'Purpose – prevention rather than prosecution' at paragraph 1.17.

Threat assessment and control strategy

3.6 The following measures and responses adopted at recent elections will help to manage the risk of personation, fraud and other offences that might arise at the next elections and referendums. A checklist of possible options, some or all of which may be helpful, is provided at Appendix G.

General measures and responses

1. Establish a clear command structure at the earliest opportunity for the entire election and referendum process.
2. Identify a central unit as the lead on election and referendum issues. This will likely be the Police Scotland Economic Crime Unit. However, in case another unit is chosen, the term “appropriate unit” will be used in this document.
3. Prepare a force threat assessment and control strategy to identify where advice should be provided from, during the election or referendum period, for all staff and the public. It should provide named point of contact details at the Economic Crime Unit and DCUs, and should include a strategy for communication with all stakeholders.
4. Make reference to this current guidance at all briefings. This should help to:
 - a. prevent and deter electoral malpractice, and
 - b. encourage the proper responses to any allegations of electoral malpractice
5. Prepare a force media strategy for the election and referendum to cover prevention, investigation and arrest situations. This should include liaison with the Commission’s media relations team as required.
6. The Commission has advised Returning Officers and Counting Officers that they should have an initial meeting with their Divisional SPOC at the earliest opportunity and another meeting following the deadline for nomination of candidates or appointment of registered campaigners when security issues will be clearer.³⁸

³⁸ The deadline for the nomination of candidates at the European Parliamentary elections is set at 19 working days before polling day. An election timetable giving specific dates for 2014 cyclical elections can be found on the Commission’s website at http://www.electoralcommission.org.uk/data/assets/word_doc/0019/163018/EPE-election-timetable-standalone.doc

7. Use the *Guidance on policing elections and referendums* pocket guide for police officers, as produced by Police Scotland and the Commission. It sets out electoral offences, penalties and has been produced for individual officers throughout Scotland. The Lead SPOC for Police Scotland should make arrangements to ensure that every officer on duty over the election and referendum period is issued with a copy of the pocket guide.



Be aware of key events and meetings, especially briefings for candidates, agents and campaigners, any regional or national training events and arrangements for the count. These are all discussed below.

Prevention and reduction measures and responses

8. Identify whether the level of risk locally warrants the creation of a specific task force in the context of elections and referendums. Intelligence gathering has a key role to play in preventing and reducing crime. Electoral administrators, political parties, party officials, registered campaigners and candidates may be able to assist.
9. Consider whether all information or intelligence logs relating to election-related crime should be sent to a designated unit, as part of co-ordinating the flow of intelligence. This unit should be expected to carry out analytical work to help develop appropriate control strategies in conjunction with force intelligence capabilities.
10. Ensure that the appropriate unit acts as a reference or advice point for officers dealing with allegations of electoral malpractice. The unit should ensure that its role and contact details are made known to every DCU.
11. Identify a named contact in each local authority election office and notify each local authority of a Divisional SPOC who will liaise with the appropriate unit.
12. Ensure that the appropriate unit creates a full list of Divisional SPOC contact details and circulate it to all DCUs.
13. Hold a pre-election and referendum planning meeting between the Regional Returning Officer/Chief Counting Officer and/or the Local Returning Officer or the local authority named contact and the relevant Divisional SPOC as soon as possible. Another meeting should be held as soon as practicable after the last date for withdrawal of nominations.

A checklist setting out the topics that might be discussed is included in the 'Divisional SPOC meeting with named local authority contact' section, paragraph 4.9 onwards. The Returning Officer/Counting Officer may also hold pre-election/referendum planning meetings with political party representatives (agents) or registered campaigners. The Regional Returning Officer may invite Divisional SPOCs in their electoral region to attend a meeting where they brief their Local Returning Officers or their representatives.

14. Ensure that the appropriate unit liaises directly on a daily basis with the named local authority contact for each council area, from a mutually agreed date until the count has been concluded.
15. Ensure that a local police officer (preferably the Divisional SPOC) attends and gives input to any briefings for candidates, election agents and registered campaigners given by the Returning Officer/Counting Officer.
16. Ensure that the police ask the Returning Officer/Counting Officer if they will maintain a record of electors who claim not to have voted by post, or not to have requested a postal vote, although official records show them as having done so. The same should apply in relation to voting by proxy. Such records may provide leads for the investigation of potential malpractice.
17. Ensure that the police ask the Returning Officer/Counting Officer if they provide the Presiding Officer at each polling station with a form on which to record details of any attempted or alleged personation, and advice on what action they might take. Ensure that they consider their own safety and that of all others present as a priority (see Appendix C).
18. Ensure that the police ask the Returning Officer/Counting Officer if they provide the Presiding Officer at each polling station with a form on which to record details of any elector arriving to vote who is registered as a postal voter. The Commission and the Chief Counting Officer has recommended that the form includes space for a signature if the elector is willing to give one (see Appendix D).
19. Ensure that the police and the Returning Officer/Counting Officer discuss arrangements for the security of any ballot boxes before, during and after polling. For example, in areas of high risk, consideration should be given to escorting the transfer of ballot boxes from polling places to the count, as well as to the overnight security of ballot boxes where appropriate. The overnight and interim security of European Parliamentary ballot papers should be discussed as the European Parliamentary count will not normally take place until the Sunday after polling day.
20. Prepare a force media strategy to promote confidence in the electoral process, while emphasising fraud prevention measures and the approach to allegations of electoral malpractice.

21. Provide contact details of the spoc or advice on electoral malpractice throughout polling hours on polling day and through to the declaration of the result(s).
22. Raise awareness of security issues by ensuring that the force Student Liaison Officer is invited to assist the Returning Officer/Counting Officer in making the delivery of postal votes to multi-occupied student properties more secure, if appropriate. The force Student Liaison Officer may assist in identifying key contacts who are prepared to take responsibility for ensuring that the postal ballots are delivered to the intended recipients.

Investigation measures and responses

23. Consider setting up a team to proactively follow up issues identified by intelligence and investigate allegations of electoral malpractice identified by intelligence.
24. Consider and state whether allegations of electoral malpractice and complaints will be reported centrally and regionally.
25. Consider what level of resources will be made available to investigate complaints or allegations of different types of electoral malpractice.
26. Decide whether local policing officers the relevant should be expected to make initial enquiries and then, if the nature and extent of the allegations warrant further advice, contact the appropriate unit.
27. The appropriate unit should make arrangements to liaise with the Serious and Organised Crime Division of the Crown Office and Procurator Fiscal Service (COPFS) and ensure that all the electoral and referendum issues that require advice from the Serious and Organised Crime Division are directed via the appropriate unit.
28. Put arrangements in place to ensure that the Lead SPOC completes returns to the National Police Coordination Centre (NPoCC) on time, and ensure that NPoCC is alerted at the earliest opportunity to any major allegation of electoral malpractice.

3.7 The Commission, Police Scotland and NPCC are continuing to develop the election-related crime-reporting framework established in 2009. In order to gather information on allegations of electoral malpractice throughout the year, rather than just during the main election period, since January 2010 we have asked force SPOCs (the Lead SPOC only for Police Scotland) to complete a monthly return with additional reports during the main election period. We intend to continue this approach. The Commission is grateful for the support from police SPOCs in this vital work.

Risk assessment guide for elections and referendums

3.8 The following issue checklist sets out actions for the safe policing response to elections and referendums to enable free and fair elections and referendums. It goes beyond electoral malpractice issues to assist with some wider considerations, such as public order issues. Presented/potential hazards are:

- Potential malpractice
- Breach Of The Peace
- Assault
- Interference with free and fair election and referendum processes
- Protest
- Mobbing and Rioting

Action to be taken to prevent, reduce and control hazards and risks

Pre-commitment planning

1. Ensure nomination of Lead SPOC and Divisional SPOCs.
2. Ensure liaison between Divisional SPOCs, elections offices and electoral registration offices.
3. Agree levels and channels of referral (for example, in the 2005 elections in Birmingham, a police response was generated where any household submitted more than four postal vote applications, or where any street had 30% of households seeking postal votes).
4. Ensure liaison at strategic level between Electoral Registration Officer, Returning Officer, Counting Officer, political parties, registered campaigners and police strategic command.
5. Ensure intelligence distribution systems are effective both internally and externally.
6. Undertake research, including:
 - Previous elections by the parties and candidates
 - Potential of result to change local control of council
 - Location of polling stations and location of count
 - Any other interested party
 - Media interest
 - Local issues of diversity
 - Any high-profile local issue (such as closure of large local employer)

Control and reduction measures

Establish a force command structure.

Ensure availability of Divisional SPOCs.

Allocate roles before the event.

Allocate briefed police officers to polling places/geographic areas.

Identify locations warranting a high-visibility police presence.

Establish suitable contingency reserves in the event of an incident.

Consider high visibility at count locations.

Ensure availability of key network directory.

Ensure officers are in possession of protective equipment.

Specific responsibilities

Establish of command structure.

Appoint Lead SPOC.

Appoint investigation team.

Appoint Divisional SPOCs.

Training requirements

7. The Commission, in partnership with Police Scotland and the Convener of the EMB, will provide:

- Training for Divisional SPOCs
- Pocket guides for staff deployed on election, referendum or related duties

8. Police Scotland should provide:

- Police officers on election or related duty with a basic understanding of electoral offences through the distribution of pocket guides for deployed staff and access to the Divisional SPOCs and/or Lead SPOC.
- Training of any dedicated investigation resource. A variety of different approaches have been adopted to large scale investigations of alleged electoral malpractice.
- Dynamic risk assessment training
- Basic first aid training

Divisional SPOC meeting with named local authority contact

3.9 This section includes a checklist of topics that should be considered at the pre-event planning meeting between Divisional SPOCs and the named local authority contact. The checklist should be used:

- As a basis for discussion at the initial pre-event planning meeting and at a further meeting once the candidates and designated organisations are known.
- to inform the project plan that must be prepared by the Returning Officer to satisfy the performance standards laid out by the Electoral Commission and the CCO. Project plans must include having processes in place to identify any patterns of activity that might indicate potential integrity issues and what steps are to be taken to deal with any such integrity issues.

Background and related documents and publications

3.10 This guidance should be read alongside the force election strategy, including the election media strategy, together with other Commission guidance produced for Returning Officers, Electoral Registration Officers and candidates, agents and campaigners for background. The guidance includes the following:

- Performance standards. Our guidance gives clear direction as to methods EROs and ROs could use to meet the requirements of the performance standards relating to integrity, including how this issue should be addressed within their plans and processes for running registration and elections. The Commission's performance standards can be found at: <http://www.electoralcommission.org.uk/find-information-by-subject/performance-standards>
- European Parliamentary elections: guidance for Returning Officers: <http://www.electoralcommission.org.uk/i-am-a/electoral-administrator/european-parliamentary-elections>
- European Parliamentary elections in Great Britain: guidance for candidates, agents and parties submitting lists of candidates: <http://www.electoralcommission.org.uk/i-am-a/candidate-or-agent/european-parliamentary-elections>
- Guidance for individuals and organisations campaigning at referendums. <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/campaigners-in-referendums>
- Guidance for Electoral Registration Officers: <http://www.electoralcommission.org.uk/i-am-a/electoral-administrator/running-electoral-registration>

Checklist

- Identify named and alternative contacts at the local authority for elections and referendums.
- Establish what cover will be in place for any planned leave, especially in the period after polling day.
- Exchange contact details for all, including out-of-hours numbers and backups.
- Identify and discuss any issues of concern or risk arising from a review of previous elections and any other issues that may need particular attention at the next election or referendum. For example:
 - candidates who are new to the electoral process. These candidates may also have untried and inexperienced supporters. It is more likely that aspects of the legislation will be inadvertently overlooked, including nomination forms, giving rise to allegations of malpractice. The same issues apply to campaigners at referendums
 - closely contested seats, especially where these may affect the overall control of the authority
 - contests in urban and metropolitan wards, where fewer votes are needed to win a seat compared with a UK or European Parliamentary election
 - where there is a community with limited language or literacy skills who may be more vulnerable to deception or less likely to realise that their vote has been stolen
 - cross-boundary absent voter identity checks for UK and European Parliamentary constituencies
 - formal timescales with a large number of last-minute applications to register to vote and/or to vote by post or proxy
 - overnight security of ballots when counting takes place on the day following polling day
- Identify locations that have historically had incidents or currently show potential for being at risk. Ensure that the discussion does not focus exclusively on these areas and that any measures proposed are proportionate across the board.
- Refer substantiated suspicions or allegations. Although elections staff are uniquely placed to identify malpractice and are required to carry out some checking processes as required by electoral law, if there are any suspicions or allegations that can be substantiated and the complainant is prepared to make a statement in writing, then the matter should be referred to the Lead SPOC for investigation. This approach is consistent with that given in the guidance documents listed at the start of paragraph 4.10.

- Agree trigger points or thresholds for where matters should be reported and for where a combination of issues becomes serious enough to warrant more urgent attention.
- Clarify where the Lead SPOC will act (such as allegations of electoral malpractice) and where others may act on operational matters, for example in maintaining order outside polling stations (see Appendix E).

Pre-election and pre-referendum issues

- Registration issues (these are issues that fall within the remit of the Electoral Registration Officer rather than the Returning Officer or Counting Officer):
 - a. Suspicious registration applications. Outside the annual canvass period details of additions and deletions to the register are published each month. Electoral Registration Officers will also be required to publish two additional updates to the register in the run up to an election. This may prompt additional challenges or objections to entries on the register.
 - b. Suspicious postal and proxy applications. Agree triggers for reporting and police response.

It may be that the motive for false registration is financial or another, non-electoral crime that would be investigated by Police Scotland Economic Crime Unit, or similar, rather than the Divisional SPOC. Nonetheless, the RPA 1983 electoral offence should at least be considered in the investigation where appropriate.

Where Parliamentary constituencies cover more than one local authority area, the Divisional SPOC may need to contact the Electoral Registration Officer for each area.

- Candidates/agents/registered campaigners briefing issues:
 - a. will the Divisional SPOC be notified and invited to attend?
 - b. national *Code of conduct for campaigners: postal voting, postal proxy voting, proxy voting and polling stations*³⁹
 - c. *Postal voting – a quick guide for party workers* (an A5-sized guide)
 - d. establish whether a local code of conduct has been agreed that goes beyond the national agreed code of conduct; for example, requiring that party workers should not handle completed ballot papers (note: where a local code of conduct is proposed, no stigma should be attached to any candidate or party not wishing to subscribe to it)

³⁹ See Appendix H

- Media strategy issues: police and council press officers should exchange contact details and briefings as appropriate
- Public order and public safety issues, for example in maintaining order outside polling stations (see Appendix E). For elections on or after 22 May 2014 electors who are queuing in or outside a polling station at the close of poll will be given a ballot paper and allowed to vote. The likelihood that police support may be required at the close of poll and how it might be provided should be discussed.

Election/referendum period issues

- Arrange a meeting after the close of nominations or appointment of designated organisations to review strategy in view of issues particular to the contest and candidates or referendum campaigners.
- Discuss any matters arising from poll card issue.
- Alert the Divisional SPOC to postal ballot delivery issues, including:
 - a. Use of Royal Mail or other means of delivery
 - b. Delivery dates by area
 - c. Royal Mail contact for the election/referendum
 - d. Internal distribution by Royal Mail of *Postal voting – a quick guide for Royal Mail drivers and delivery staff*
- Postal vote opening issues. There is no provision in electoral law specifically enabling a police officer to attend any postal vote opening session. However, we encourage Divisional SPOCs to attend a postal vote opening session to gain an insight into the process. The recommended approach is for the Divisional SPOC to apply to the Commission for accreditation as an official observer at the earliest opportunity. Contact the Electoral Commission's Edinburgh Office for details of how to become accredited as an observer.

It is important that the Divisional SPOC should not become involved in the postal vote opening process. If the need for investigation arises, this should be conducted after the event.

Polling day issues

- Polling place issues:
 - a. the election office should provide a list of polling places and stations
 - b. the Divisional SPOC should discuss the level of police support dedicated to polling places, or mobile support
 - c. availability of personation guidance and statement form

- d. discuss action in relation to a disturbance within a polling place and maintaining order outside a polling place, especially at close of poll (see Appendix E)
 - e. tellers/party workers at polling places – what local arrangements are in place?
- Issue relating to the collection of postal ballots:
 - a. will postal ballots be collected from polling stations during the day?
 - b. are any problems expected and would police support be prudent?
- What arrangements are in place for overnight and interim security of ballot papers/boxes, especially for the European Parliamentary ballot papers until they are counted?
- Issues relating to the count
 - a. when and where will it take place?
 - b. police presence and other security at the venue(s) – in particular, control of access to venue and monitoring who is present
 - c. procedure for dealing with suspicious postal voting statements
 - d. postal ballot papers marked with correction fluid

Post-election issues

- May include:
 - a.allegations of malpractice
 - b.allegations relating to candidate spending
 - c.rejected postal ballot statements
 - d.the Electoral Registration and Administration Act 2013 introduced a duty on Returning Officers to notify every elector whose postal ballot was rejected in the European Parliamentary elections. This may lead to allegations of electoral malpractice. The Divisional SPOC and the Local Returning Officer should clarify the procedure for resolving such allegations. This provision does not apply to the Independence Referendum.
 - e.access to documents
 - f. recording of actions and audit trail
 - g.reporting allegations to NPoCC

5 Action in response to allegations of electoral malpractice

4.1 This chapter offers advice about what to do if an allegation of electoral malpractice is made.

Where malpractice is suspected or alleged

4.2 Electoral staff are uniquely placed to identify malpractice and are required to carry out some checking processes as required by electoral law. The Commission has advised them that:

- if there are any suspicions or any allegations of electoral malpractice or coercion that can be substantiated by their own checks, and
- if someone is prepared to make a statement in writing

they should report the matter without delay to their Divisional SPOC for investigation.

4.3 When a member of the electoral staff is approached with an allegation of electoral malpractice by a voter, elector, candidate, registered campaigner, the media or someone else:

- the Electoral Registration Officer, Returning Officer/Counting Officer or local authority contact should help verify the facts where appropriate, and if an offence is suspected the allegation should be reported without delay by the electoral staff member or the complainant, as appropriate, to the Divisional SPOC for investigation.
- The election staff may help by providing the name of the relevant Divisional SPOC.

4.4 When the police receive an allegation of electoral malpractice directly from the voter, elector, candidate, registered campaigner, the media or someone else:

- The Lead SPOC should be notified.

4.5 The police may contact the Electoral Registration Officer, Returning Officer/Counting Officer or local authority contact to help verify the facts where appropriate and agree the most appropriate course of action.

4.6 In all cases referred to the police, the police will make an assessment as to the level of investigation required and ensure that it is proportionate to the allegation and to the potential effect of the alleged offence on the election or referendum process. The nature and scope of any investigation will be at the discretion of the Chief Constable. Where possible, the police will keep the relevant Electoral Registration Officer, Returning Officer or Counting Officer informed of the progress of any investigation. The police may consider the merit of contacting the local/regional/constituency agent for the particular political party or registered participant.

4.7 Suggested action for all cases:

- preserve evidence
- respect the secrecy of sealed documents and seek advice before opening
- when election documents become evidence in a potential crime, the method of preservation by the police should include consultation with the Electoral Registration Officer, Returning Officer, Counting Officer, or their staff, to agree a mutually beneficial way forward
- consider advice from the Crown Office and Procurator Fiscal Service
- inform the Regional Returning Officer/Chief Counting Officer, Returning Officer/Counting Officer and the Electoral Commission as appropriate via the Lead SPOC
- advise NPoCC in the scheduled return of all allegations and outcomes or immediately if there is a major allegation

4.8 It may be that the motive for false registration is financial or another, non-electoral crime that would be investigated by an Economic Crime Unit, or similar, rather than the Divisional SPOC. Nonetheless, the Representation of the People Act 1983 (as amended) offence, or equivalent, should at least be considered in the investigation where appropriate.

4.9 Documents that are open to public inspection and may be examined without a court order, together with those that will or may require a court order, are set out in Appendix F. The appendix includes advice about the length of time documents may be retained.

Contacts

Crown Office and Procurator Fiscal Service

Head of Serious and Organised Crime Division
25 Chambers Street
Edinburgh
EH1 1LA

Electoral Commission

Senior Adviser Elections and Campaigners
The Electoral Commission
Lothian Chambers
59-63 George IV Bridge
Edinburgh EH1 1RN
Tel: 0131 225 0209
Fax: 0131 225 0205
mchristensen@electoralcommission.org.uk

Head of Electoral Commission, Scotland
The Electoral Commission
Lothian Chambers
59-63 George IV Bridge
Edinburgh EH1 1RN
Tel: 0131 225 0201
Mob: 07917 038 549 (24 hours)
Fax: 0131 225 0205
aoneill@electoralcommission.org.uk

Election or referendum spending and donations

4.10 The Political Finance and Regulation Directorate at the Electoral Commission should be informed if it appears that an offence has been committed relating to election spending or donations reporting by a candidate or political party.

4.11 The Commission should be contacted via the Enforcement Team Manager at:

The Electoral Commission
3 Bunhill Row
London EC1Y 8YZ
Tel: 0207 271 0616
pef@electoralcommission.org.uk

Media

4.12 As part of a force media strategy, there may be merit in issuing a joint statement at the start of the election campaign endorsed by all candidates and parties, the Returning Officer and the police. In the past this has proven effective in providing a clear and cohesive joint approach. However, this should be a voluntary agreement and no stigma should be attached to any party or candidate not wishing to be included. The Commission is willing to assist as a point of reference for news releases, especially prior to any arrest or prosecution.

4.13 The force press officer may wish to make contact with:

Senior Officer – Communications
The Electoral Commission
Lothian Chambers
59-63 George IV Bridge
Edinburgh EH1 1RN
Tel: 0131 225 0204
Email: smackie@electoralcommission.org.uk

Out of office press enquiries can be made to: 07789 920 414

For the Electoral Management Board for Scotland

Secretary to the Electoral Management Board for Scotland
The City of Edinburgh election office
Room 9/50
City Chambers
High Street
Edinburgh
EH1 1YJ
Tel: 0131 469 3126
Mobile: 07568 102648
chris.highcock@edinburgh.gov.uk

Further advice or comment

Police Scotland

4.14 For further advice or comment relating to the overall guidance, please contact.

Events West
Clyde Gateway
2 French Street
Dalmarnock
G40 4EH
01786 896240
Police Scotland
OSDEventsWest@scotland.pnn.police.uk

Appendix A – Schedule of election and referendum-related crimes and penalties

The offences under the Representation of People's Act 1983 (RPA) are mirrored in the subsequent legislation for each election and referendum. The table on Page 22 of this guidance includes references for the key sections of the RPA 1983..

Table A1: Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law¹

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
13D(1) as amended by EAA Section 15(7)	False registration information (1) Providing, for any purpose connected with the registration of electors, false information to a registration officer	Any person		Six months' imprisonment and/or a fine not exceeding level 5 on the standard scale (currently £5,000)
13D(1A) as amended by EAA Section 15(7)	False information in relation to postal/proxy voting (1A) Providing false information in connection with an application to which any of the following apply: <ul style="list-style-type: none"> a. Where a person applies to the registration officer to vote by post at Parliamentary elections, whether for an indefinite period or for a particular period specified in their application, or b. Where a person applies to the registration officer to vote by proxy at Parliamentary elections, 	Any person		Six months' imprisonment and/or a fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	whether for an indefinite period or for a particular period specified in their application), paragraph 3(1) or (2), Schedule 4, RPA 2000			
	c. Where a person applies to the registration officer to vote by post at a particular Parliamentary election, or where a person applies to the registration officer to vote by proxy at a particular Parliamentary election, paragraph 4(1) or (2), Schedule 4, RPA 2000			
	d. Where a person applies to the registration officer to vote by post:			
	i. as proxy at Parliamentary elections, whether for an indefinite period or for a particular period specified in their application or			
	ii. as proxy at a particular Parliamentary, paragraph 7(4), Schedule 4			
	A person does not commit an offence under Section 13D(1) or (1A) if they did not know, and had no reason to suspect, that the information was false			

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
60	Personation Votes in person or by post as some other person, or votes in person or by post as proxy for a person they know/have reasonable grounds to assume is dead/fictitious or their proxy is no longer in force	Any person (who commits, aids, abets, counsels or procures the commission of the offence of personation)	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or two years' imprisonment
61(1)	Voting whilst under a legal incapacity e. Voting, or applying to vote, knowing that they are subject to a legal incapacity f. Applying to appoint a proxy knowing that either the elector or proxy is subject to a legal incapacity g. Voting as a proxy for a person they know is subject to a legal incapacity	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
61(2)(a)	Multiple voting Voting as elector other than by proxy either: i. more than once in the same constituency at any Parliamentary election, or more than once in the same electoral area at any local government election, or			

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	<p>ii. in more than one constituency at a Parliamentary general election, or in more than one electoral area at an ordinary election of councillors for a local government area which is not a single electoral area, or</p> <p>iii. in any constituency/electoral area (which is not a single electoral area) when there is in force an appointment of a person to vote as their proxy at the election in some other constituency/electoral area</p>	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
61(2)(b)	<p>Multiple voting Voting as elector in person at a Parliamentary or local government election at which you are entitled to vote by post</p>	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
61(2)(c)	<p>Multiple voting Voting as elector in person at a Parliamentary or local government election, knowing that a person appointed to vote as your proxy at the election either has already voted in person or is entitled to vote by post</p>	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
61(2)(d)	Multiple voting Applying for a person to be appointed as a proxy to vote for you at Parliamentary elections without applying for the cancellation of a previous appointment of a third person then in force or without withdrawing a pending application for such an appointment	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
61(3)	<p>Multiple voting</p> <p>h. Voting as a proxy for the same elector either:</p> <p>i. more than once in the same constituency at any Parliamentary election, or more than once in the same electoral area at any local government election, or</p> <p>ii. in more than one constituency at a general election, or in more than one electoral area at an ordinary election of councillors for a local government area which is not a single electoral area, or</p> <p>i. Voting in person as a proxy for an elector at a Parliamentary or local government election at which they are entitled to vote as a proxy by post, or</p> <p>d. Voting in person as a proxy for an elector at a Parliamentary or local government election knowing that the elector has already voted in person at the election</p>	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
61(4)	Multiple voting Voting at a Parliamentary election in any constituency (or local government election in any electoral area) as proxy for more than two persons of whom they are not the husband, wife, parent, grandparent, brother, sister, child or grandchild	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
61(5)	Multiple voting Knowingly inducing or procuring some other person to do an act which is, or but for that other person's want of knowledge would be, an offence by that person under the relevant subsection of Section 61	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
62(1)	<p>Offences as to declarations</p> <p>Making a declaration of local connection or a service declaration:</p> <ul style="list-style-type: none"> iv. when a person is not authorised to do so by Section 7B(1) or Section 15(10) v. except as permitted by this Act, when they know that they are subject to legal incapacity to vote, or vi. when they know that it contains a statement which is false, or <p>Attesting a service declaration when a person knows:</p> <ul style="list-style-type: none"> vii. that they are not authorised to do so, or viii. that it contains a false statement as to any particulars required by regulations under Section 16 	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
62A added by EAA Section 40	<p>Offences relating to applications for postal and proxy votes</p> <p>Engaging in one of the following acts with the intention, by doing so, to deprive another of an opportunity to vote or to make for themselves or another a gain of a vote, to which they or the other are not otherwise entitled, or a gain of money or property:</p> <ul style="list-style-type: none"> j. applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person) k. otherwise making a false statement in, or in connection with, an application for a postal or proxy vote l. inducing the Registration Officer or Returning Officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote m. causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient 	Any person (who commits, aids, abets, counsels or procures the commission of the offence)	Corrupt practice	Up to two years' imprisonment and/or an unlimited fine

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
63(1)	Breach of official duty Any person to whom this section applies, acting without reasonable cause, will be in breach of his official duty by any act or omission	This section applies to: Clerk of the Crown or their deputy; Registration Officer, Returning Officer or Presiding Officer; any official designated by the universal postal service provider or their deputy		A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
65(1)	<p>Tampering with nomination papers, ballot papers etc.</p> <p>At a Parliamentary or local government election:</p> <ul style="list-style-type: none"> n. fraudulently defacing or fraudulently destroying any nomination papers, or o. fraudulently defacing or fraudulently destroying any ballot paper, or the official mark or any ballot paper, or any postal voting statement or official envelope used in connection with voting by post, or p. without due authority supplying any ballot paper to any person, or q. fraudulently putting any paper into any ballot box, other than the ballot paper authorised by law to be put in, or r. fraudulently taking out of the polling station any ballot paper, or s. without due authority destroying, taking, opening, or otherwise interfering with the ballot box or packet of ballot papers then in use for the purpose of the election, or t. fraudulently or without due authority attempting to do any of the previously mentioned acts 	Any person	Offence	<p>On summary conviction: a fine not exceeding the statutory maximum and/or imprisonment for a term not exceeding six months</p> <p>On indictment, a fine and/or imprisonment for a term not exceeding two years</p> <p>On summary conviction: a fine not exceeding the statutory maximum and/or imprisonment for a term not exceeding six months</p>

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
65B(2)	<p>False statements in nomination papers etc.</p> <p>At a local government election, a person causing or permitting to be included in a document delivered or otherwise furnished to the Returning Officer for use in connection with the election:</p> <ul style="list-style-type: none"> u. a statement of the name or home address of a candidate at the election which they know to be false in any particular, or v. anything which purports to be the signature of an elector who proposes, seconds or assents to the nomination of such a candidate which they know: <ul style="list-style-type: none"> ix. was not written by the elector x. if written by the elector, was not written by them for the purpose of signifying that they were proposing, seconding or assenting to the nomination 	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment
65A(1A)	False statements by candidates on nomination papers	Any candidate	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	<p>In any Parliamentary election, a candidate makes a false statement in any document in which their consent is given for nomination, regarding:</p> <ul style="list-style-type: none"> y. their date of birth z. their qualification (that they are or will be qualified for being elected, and to the best of their knowledge or belief, they are not disqualified from being elected), or aa. that they are not a candidate at an election for any other constituency where the poll is to be held on the same day as the poll at the election to which the consent relates 			On indictment: fine or one year's imprisonment
66(1)	<p>Requirement of secrecy</p> <p>Every Returning Officer and Presiding Officer or clerk and every candidate, election agent or polling agent attending a polling station shall maintain and aid in maintaining the secrecy of voting and unless authorised by law shall not communicate to any person before the poll is closed information as to:</p>	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000), or a term of imprisonment not exceeding six months

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	<ul style="list-style-type: none"> xi. the name of any elector or proxy who has or has not applied for a ballot paper or voted at the polling station xii. the number on the register of electors of any electors who or whose proxy has or has not applied for a ballot paper or voted at the polling station, or xiii. the official mark 			
66(2)	<p>Requirement of secrecy Every person attending a polling station at the counting of the votes shall maintain and aid in maintaining the secrecy of voting and shall not:</p> <ul style="list-style-type: none"> bb. ascertain or attempt to ascertain at the counting of the votes the number on the back of any ballot paper cc. communicate any information obtained at the counting of the votes as to the candidate for whom any vote is given on a particular ballot paper 	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000), or a term of imprisonment not exceeding six months

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
66(3)	<p>Requirement of secrecy No person shall:</p> <ul style="list-style-type: none"> dd. interfere with or attempt to interfere with a voter when recording their vote ee. otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted ff. communicate at any time to any person any information obtained in a polling station as to the candidate for whom the voter is about to vote or has voted, or as to the number on the back of the ballot paper given to that voter at that station gg. directly or indirectly induce a voter to display their ballot paper after they have marked it so as to make known to any person the name of the candidate for whom they have or have not voted 	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000), or a term of imprisonment not exceeding six months
66(4)	<p>Requirement of secrecy Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post shall maintain and aid in maintaining the secrecy of the voting and shall not:</p>	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000), or a term of imprisonment not exceeding six months

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	hh. unless authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark, or			
	ii. unless authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number on the back of the ballot paper sent to any person			
	jj. unless authorised by law, ascertain or attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number on the back of any ballot paper, or			
	kk. attempt to ascertain at the proceedings in connection with the receipt of ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings			

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
66(5)	Requirement of secrecy No person having undertaken to assist a blind voter to vote shall communicate at any time to any person any information as to the candidate for whom that voter intends to vote or has voted, or as to the number on the back of the ballot paper	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000), or a term of imprisonment not exceeding six months
66A(1)	Prohibition on publication of exit polls At a Parliamentary election, no person shall publish before the poll is closed: <ul style="list-style-type: none"> ll. any statement relating to the way in which voters have voted at the election where a statement is (or could reasonably be taken to be) based on the information given by voters after they have voted, or mm. any forecast as to the result of the election which is (or could reasonably be taken to be) based on information so given 	Any person		A fine not exceeding level 5 on the standard scale (currently £5,000), or a term of imprisonment not exceeding six months

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
66B	<p>Failure to comply with conditions relating to supply etc. of certain documents</p> <p>Failure to comply with election document retention conditions under Rule 57 of the Parliamentary Elections Rules (hold all election documents for one year and then have them destroyed) by:</p> <p>pp. any person, unless they have an appropriate supervisor and have complied with the requirements set by their supervisor, or</p> <p>qq. an appropriate supervisor who has failed to take appropriate steps</p> <p>Any other person is not guilty of an offence if they take all reasonable steps to comply with the conditions</p>	Electoral Registration Officer or supervisor	Offence	On summary conviction: a fine not exceeding level 5 on the standard scale
73(6)	<p>Payment of election expenses</p> <p>The making of payments towards a candidate's election expenses by any person which are not made through the election agent is an offence.</p> <p>Some exceptions are set out in s74:</p> <ul style="list-style-type: none"> • Candidate personal expenses (subject to the limit set out in the Act) • Expenses paid by the candidate prior to appointing an election agent <p>A person authorised by the election agent may pay petty expenses to an agreed limit</p>	Any person	Illegal practice	An unlimited fine

75(5)(a)	<p>Incurring of election expenses by unauthorised person</p> <p>No expenses may be incurred with a view to promoting or procuring the election of a candidate at an election by any person other than the candidate, election agent and persons authorised in writing by the election agent.</p> <p>This does not restrict publication relating to the election in a newspaper, periodical, or public service broadcast. It also excludes expenses incurred in travelling or living away which do not exceed the permitted sum and are not incurred as part of a concerted plan of action.</p> <p>It is an offence for a person to incur, or aid, abet counsel or procure any other person to incur, any expenses in contravention of this rule.</p>	Any person (other than those specified)	Corrupt practice	<p>On summary conviction: an unlimited fine and/or up to six months' imprisonment.</p> <p>On indictment: an unlimited fine and/or up to twelve months' imprisonment</p>
75(5)(b)	<p>Making a false statement in declaration of expenses incurred by a person authorised by the agent</p> <p>A person (other than a person engaged or employed for payment or promise of payment by the candidate or his election agent) authorised to incur expenditure by the agent must deliver a return of the amount of those expenses to the appropriate office, accompanied by a declaration verifying the return and given particulars of the matters for which the expenses were incurred.</p> <p>It is an offence to knowingly make the declaration falsely.</p>	Any person, authorised by the election agent, who is not engaged or employed for payment or promise of payment by the candidate or the election agent	Corrupt practice	<p>On summary conviction: an unlimited fine and/or up to six months' imprisonment.</p> <p>On indictment: an unlimited fine and/or up to twelve months' imprisonment</p>
75(5)	Failure to make declaration of expenses incurred	A person, authorised	Illegal practice	An unlimited fine

	<p>by a person and authorised by the agent</p> <p>A person (other than a person engaged or employed for payment or promise of payment by the candidate or his election agent) authorised to incur expenditure by the agent must deliver a return of the amount of those expenses to the appropriate officer, stating the election at which and the candidate in whose support they were incurred. This must be done within 21 days after the day on which the result of the election is declared.</p>	to incur expenses by the election agent, who is not engaged or employed for payment or promise of payment by the candidate or the election agent		
	It is an offence to fail to deliver a direction as required.			
76(1B)	<p>Exceeding limit on candidate expenses</p> <p>Any candidate or election agent who incurs, or authorises the incurring of, election expenses in excess of the permitted amount and knew or ought reasonably to have known that the expenses would be incurred in excess of that amount (excluding personal expenses) commits an offence.</p> <p>The candidate's personal expenses are excluded at a parliamentary, Authority or local government (in England and Wales) election.</p>	Candidate or election agent	Illegal practice	An unlimited fine
76ZA(5)	<p>Exceeding spending limit for pre-candidacy expenses</p> <p>Any candidate or election agent who incurs, or authorises the incurring of, election expenses in excess of the permitted amount and knew or ought reasonably to have known that the expenses would be incurred in excess of that amount (excluding personal expenses)</p>	Candidate or election agent	Illegal practice	An unlimited fine

commits an offence.

This offence only applies in specific circumstances - where

a) a Parliament is not dissolved until after the period of 55 months beginning with the day on which that Parliament first met ("the 55-month period"),

(b) election expenses are incurred by or on behalf of a candidate at the parliamentary general election which follows the dissolution, and

(c) the expenses are incurred in respect of a matter which is used during the period beginning immediately after the 55-month period and ending with the day on which the person becomes a candidate at that election.

78(3)

Paying claims received late or after payment deadline

Every claim for payment against a candidate or his election agent in respect of election expenses must be sent no longer than 21 days after the day on which the result of the election is declared.

All election expenses shall be paid not later than 28 days after the day on which the result of the election is declared.

An election agent may not pay a claim received after the 21 day period, or make a payment later than the 28 day period (except where the claim period is extended by leave of court)

Election agent
(including candidate
where they act as
their own agent)

Illegal practice An unlimited fine

82(6) making false declaratio n accompan ying expenses return	<p>Making a false declaration with the expenses return</p> <p>A candidate must deliver a return containing a statement of all election expenses and all payments made by the election agent, supported by bills and invoices, as well as donations accepted to the Returning Officer within 35 days after the election result is declared (70 days for a Mayoral election and 70 days after the last declaration for London Assembly elections).</p> <p>The return must be accompanied by a declaration from the election agent that the return is complete and accurate. Within 7 days the candidate must make a similar declaration (or 14 days if outside the UK). The form for the declaration is prescribed by the Act.</p> <p>It is an offence for either the candidate or the agent to make a false declaration</p>	Candidate or election agent	Corrupt practice	<p>On summary conviction: an unlimited fine and/or up to six months' imprisonment.</p> <p>On indictment: an unlimited fine and/or up to twelve months' imprisonment</p>
84	<p>Failing to make a return</p> <p>Failing to deliver a candidate return or declaration which is compliant with the requirements.</p> <p>Where a candidate or election agent has apply to court for relief where the failure is due to illness, death, absence, the misconduct of another (election agent, previous election agent, sub-agent, clerk or office), or there is a reasonable excuse, the court may make an order allowing an authorised excuse.</p>	Candidate or agent	Illegal practice	An unlimited fine

94(1)	Imitation poll cards No person shall for the purposes of promoting or procuring the election of a candidate at a Parliamentary election issue any poll card or document so closely resembling an official poll card as to be calculated to deceive	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
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Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
97(1)	Disturbances at election meetings Acting or inciting others to act in a disorderly manner for the purpose of preventing the transaction of business for which the meeting was called	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
99(1)	Officials not to act for candidates Acting as a candidate's agent in the conduct or management of an election	Returning Officers at a Parliamentary or local government election, an officer or clerk appointed under the Parliamentary Rules, or the Rule under Section 36	An offence	A fine not exceeding level 4 on the standard scale (currently £2,500)
100(1)	Illegal canvassing by police officers No member of the police force shall by word, message in writing or in any other manner endeavour to persuade any person to give or dissuade any person from giving their vote by proxy or as an elector at any Parliamentary election for a constituency or local government election for any electoral area wholly or partly within the police area	Members of the police force		A fine not exceeding level 3 on the standard scale (£1,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
106(1)	False statements of fact as to candidates Making or publishing false statements of fact in relation to the candidate's personal character or conduct, unless there are reasonable grounds for believing the statement is true	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
107	Corrupt withdrawal from candidature Corruptly inducing or procuring any other person to withdraw from being a candidate at an election, in consideration of any payment or promise of payment, and any person in pursuance of the inducement or procurement	Any person	Illegal payment	A fine not exceeding level 5 on the standard scale (currently £5,000)
109	Payments for exhibition of election notices No payment or contract for payment shall for the purposes of promoting or procuring the election of a candidate at an election be made to an elector or their proxy on account of the use of any house, land, building or premises for the exhibition of any address, bill or notice unless: rr. it is the ordinary business of the elector, and ss. the payment is made in the ordinary course of that business	Any person	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
110	Printer's name and address on election publications Where any material, which can reasonably be regarded as intending to promote or procure the election of a candidate, is published without containing the name and address of the promoter of the material and the name and address of any person on whose behalf the material is being published.	A candidate or election agent	Illegal practice	A fine not exceeding level 5 on the standard scale (currently £5,000)
111	Prohibition of paid canvassers The person engaging or employing them and the person so engaged or employed for payment or promise of payment as a canvasser	Any person	Illegal employment	
112	Providing money for illegal purposes	Any person	Illegal payment	
113(2)	Bribery Directly or indirectly, by themselves or by any other person on their behalf: tt. gives any money or procures any office to or for any voter or to or for any other person on behalf of any voter or to or for any other person in order to induce any voter to vote or refrain from voting uu. corruptly does any such act as mentioned above on account of any voter having voted or refrained from voting, or	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	<p>vv. makes any such gift or procurement as mentioned above to or for any person in order to induce that person to procure, or endeavour to procure, the return of any person at an election or the vote of any voter,</p> <p>or if upon or in consequence of any such gift or procurement they procure or engage, promise or endeavour to procure the return of any person at an election or the vote of any voter</p>			
113(3)	<p>Bribery If they advance or pay or cause to be paid any money to or for the use of any other person with the intent that that money or any part of it shall be expended in bribery at any election, or knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election</p>	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment
113(5)	<p>Bribery If before or during an election they directly or indirectly by themselves or by any other person on their behalf</p>	Any voter	Corrupt practice	On summary conviction: statutory maximum fine or six months'

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
	receive, agree, or contract for any money, gift or loan of valuable consideration, office, place or employment for themselves or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting			imprisonment. On indictment: fine or one year's imprisonment
113(6)	Bribery If after an election they directly or indirectly by themselves or by any other person on their behalf receive any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment
113(7)	Bribery A person's ineligibility to vote does not necessarily prevent an act being bribery	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment
Case law <i>R v Vaughan</i> (1769) 4 Burr 2494	Bribery A common law offence of bribery as extends to attempt to bribe at an election	Any person	Corrupt practice	

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
RPA 202(1)	Bribery The RPA defines 'voter' as a person voting at an election and includes a person voting by proxy. This means the definition of bribery extends to proxy voting	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment
114(2)	Treating If they corruptly, by themselves or by any other person, either before, during or after an election, directly or indirectly give or provide, or pay wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person: ww. for the purpose of corruptly influencing that person or any other person to vote or refrain from voting, or xx. on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment
114(3)	Treating Every elector who corruptly accepts or takes any meat, drink or entertainment or provision	Any elector or their proxy	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On

Table A1 (cont.): Representation of the People Act 1983 (RPA 1983), Electoral Administration Act 2006 (EAA) and case law

RPA 1983 Section	Summary of offence	Person or persons liable	Type of offence	Penalty
				indictment: fine or one year's imprisonment
115	<p>Undue influence Where they directly or indirectly make use of or threaten to make use of force, violence or restraint, or inflict or threaten to inflict any temporal or spiritual injury, damage or harm in order to induce or compel any voter to vote or refrain from voting</p> <p>Impeding or preventing the free exercise of the franchise of an elector. Interfering with a voter when they are recording their vote</p>	Any person	Corrupt practice	On summary conviction: statutory maximum fine or six months' imprisonment. On indictment: fine or one year's imprisonment

Table A2: Offences under Representation of the People Act 2000 (RPA 2000)

RPA 2000	Summary of offence	Person or persons liable	Type of offence	Penalty
Schedule 4(8)	<p>Absent voting – offences</p> <p>yy. making a false statement within any relevant declaration or form, or</p> <p>zz. attesting an application (under paragraph 3 or 4, Schedule 4) when they know they are not authorised to do so or that it contains a statement which is false</p>			A fine not exceeding level 5 on the standard scale (currently £5,000)

Appendix B – The election and referendum process

Electoral registration

1. Electoral registration is the responsibility of the Electoral Registration Officer (ERO) for each council area. In Scotland, the ERO must be appointed by the local authority. The person appointed must be either an officer of that council or an adjoining council or an officer appointed by a combination of local authorities.

Individual Electoral Registration (IER)

Since 19 September 2014 Individual Electoral Registration (IER) has been the registration process in Scotland, and have been introduced in order to modernise the way people register to vote, help to tackle electoral fraud and improve confidence in the electoral register.

People in Scotland are able to apply to register to vote online, using a single website: www.register-to-vote.gov.uk. EROs will also be able to accept applications to register to vote over the telephone, although they will not be required to do so. When registering they will need to provide their National Insurance Number and date of birth, which will be verified against Department for Work and Pensions (DWP) records. People who do not have a National Insurance Number will still be able to apply to register to vote, using an exceptions process requiring other documentary proof of identity.

Where an existing elector's details cannot be confirmed against DWP records, the ERO will send an electoral registration application form to that individual, to collect their National Insurance number and date of birth. This information will be compared with records held by the DWP in order to confirm their identity.

Where an individual's identity cannot be confirmed against DWP records, including where they cannot provide their National Insurance number or date of birth, they will need to provide additional documentary evidence of their identity or have their application attested by another registered elector.

Rolling registration

1. Since 2001 it has been possible to register to vote at any time, which allows people who move house to voluntarily supply updated details. The process is called 'rolling registration'. To be eligible to vote at a particular election, applications to register must be received no later than 12 working days before polling day.

2. It is possible for some electors, such as students and Members of Parliament, to register at more than one address if they spend a substantial amount of time at each property, however discretion to allow electors to do so sits with the Electoral Registration Officer for each relevant area. There is also a restriction that prevents electors who are registered at more than one address from voting more than once in an election to the same body.
3. Electoral Registration Officers and Returning Officers/Counting Officers must make information available in English. They may also make information available in minority languages and in written, Braille, pictorial, graphical and audio tape formats.
4. It is an offence to supply false information to an Electoral Registration Officer for any purpose connected to electoral registration.⁴⁰ In this case, it is not necessary to establish an intention to gain or deprive another of a vote.⁴¹
5. False registration occurs where an attempt is made to unlawfully register a person. While the purpose may be to affect the outcome of an election, false registration may arise for non-electoral motives. For example, it may be part of an attempt to commit financial fraud or to establish an identity for an illegal immigrant. Fraudulent voting may be a by-product of such practices. If the Electoral Registration Officer has good reason to suspect that fraudulent registration has taken place, they have been advised to inform the police. An early, positive and well-publicised response may help to deter other attempts.

Voting Franchise

There are two different registers in Scotland corresponding to the two voting franchises that applies to Scotland.

The local government register includes the electors for the Scottish Parliament election and local government elections. The voting franchise starts at 16 years at these elections, and includes European citizens, provided they have registered to do so.

In order to vote in the European Parliamentary elections in the UK, European citizens must complete an additional registration form. This removes their right to vote in their home state for the European elections. Any European citizen

⁴⁰ Section 13D, Representation of the People Act 1983 (RPA 1983)

⁴¹ Unlike the offence under Section 62A, RPA 1983 or Regulation 11, Schedule 2, EPE Regulations 2004 (as amended).

who does not complete this form will not be able to vote in the European Parliamentary elections in the UK.

The parliamentary register covers the UK Parliamentary General election and some referendums. The voting franchise starts at 18 years old and excludes European citizens but counts overseas voters.

Poll cards

6. Returning Officers and Counting Officers will send out poll cards as soon as practicable after the publication of the Notice of Election or Notice of Referendum. They must send poll cards to all electors whether they are registered to vote in person, by post or by proxy. Every elector who is registered to vote by post will receive a poll card confirming that their postal ballot pack will be delivered to them, with an indication as to when it is likely to arrive. A proxy poll card must also include the proxy's name and address and details of the elector for whom the proxy is voting. Neither the voter nor the proxy needs to bring their poll card with them to the polling station in order to vote.

Anonymous registration

7. The Electoral Administration Act 2006 (EAA) provided an opportunity from 1 April 2007 for people to legally register to vote anonymously. Applicants must give a qualifying reason. The test is that 'the safety of the applicant for an anonymous entry or that of any person of the same household would be at risk if the register contains the name of the applicant or their qualifying address'.⁴² The application must be supported by either documentary evidence or an attestation.
8. Guidance on anonymous registration has been produced by Police Scotland in consultation with the Electoral Commission. The Representation of the People (Amendment) Regulations 2009 amended the list of qualifying officers who are entitled to complete anonymous registration attestations with effect from 17 March 2009. For the police, the job titles granting qualifying officer status have been widened to any police officer of or above the rank of superintendent in any police force in the United Kingdom.
9. Anonymous registration is much less susceptible to fraud than most other forms of registration because the application must be attested. An

⁴² Section 9B(10), RPA 1983; Regulation 31G, Representation of the People (Scotland) Regulations 2001 and Sch 1, part 3, Scottish Independence Referendum (Franchise) Act 2013.

elector who is registered as an anonymous voter must bring their polling card with them to the polling station if they decide to vote in person.

Absent voting

10. The term 'absent voting' describes the two ways in which an elector may vote other than in person at a polling station on polling day. These are proxy voting and postal voting. Both options require the elector to make an official application in writing to the Electoral Returning Officer. The person appointed to vote as a proxy may also apply to vote by post.
11. The Electoral Registration Officer in their area is responsible for processing applications for absent votes and maintaining lists of proxy and postal voters in addition to maintaining the register of electors. The Returning Officer/Counting Officer is responsible for issuing postal votes to electors and for administering proxy votes.
12. To avoid double voting, where the Returning Officer/Counting Officer is satisfied that two or more entries in the absent voters list or in the list of postal proxies or in each of those lists relate to the same person, only one ballot paper will be issued in respect of that elector at any one election or referendum.
13. A security measure first introduced for the May 2007 elections is a requirement that the Electoral Registration Officer must maintain a record of the name, signature and date of birth of anyone applying to vote by proxy or by post.⁴³ The only exception to recording the signature is where a waiver has been agreed on the grounds of the person's incapacity to provide a signature.⁴⁴ Where a waiver is sought, the applicant must provide reasons along with the name and address of any person who has assisted them with the completion of the application.⁴⁵ Although no evidence of misuse of this facility has been reported, electoral administrators have expressed concerns that the waiver procedure may affect the integrity of the electoral process.

⁴³ Schedule 4, Representation of the People Act 2000 (RPA 2000); Regulation 18, Schedule 2, EPE Regulations 2004 (as amended); Schedule 2, para 4, Scottish Independence Referendum Act 2013.

⁴⁴ Regulation 17(2) (f) and Regulation 18, Schedule 2, EPE Regulations 2004 (as amended); Schedule 2, para 7, Scottish Independence Referendum Act 2013.

⁴⁵ Regulation 17(2)(f), Schedule 2, EPE Regulations 2004 (as amended); Schedule 2, para 7, Scottish Independence Referendum Act 2013.

Proxy voting

14. An elector may appoint a person to vote on their behalf – this person is known as a proxy. A proxy vote may be requested for all elections or for a specific election. An application for a proxy vote on a permanent basis must be attested by someone with the authority to vouch for the elector's inability to vote in person. An application to vote by proxy for a single occasion must state why a proxy is needed but does not need to be attested; for example, if the elector knows that they will be abroad when ballot papers are due to be issued and it is unlikely that a postal vote could be despatched and returned before the close of poll. To obtain a proxy vote, the elector must sign the application form. Then the person chosen to act as proxy must sign to state that they agree to do so, or the applicant can sign to that effect.
15. Written confirmation of the proxy voting arrangement must be sent to both the elector and the proxy. This is an important anti-fraud requirement. Electoral Registration Officers have been advised to monitor not only any notifications that are returned stating that the elector has not applied for the facility but also any returned marked 'not known at this address'. Where their suspicions are aroused, Electoral Registration Officers have been advised to notify the police.
16. A provision introduced in May 2006 permits electors to apply to vote by proxy if they become physically incapacitated between six working days before polling day (the deadline for ordinary proxy applications) and 5pm on polling day.⁴⁶ This will allow an elector who is hospitalised or has an accident to appoint a proxy. Applications under this provision must be attested by a qualified person and the date when the incapacity started must also be stated. The Commission has suggested that the proxy of any voter whose emergency application has been accepted should be given a letter of authorisation to that effect. However, there is no requirement in law that the proxy needs to present that letter to the Presiding Officer at the appropriate polling station. The Commission has suggested that every effort is made by Electoral Registration Officers to alert the appropriate Presiding Officer to the new appointment. Returning Officers/Counting Officers will be alert to any abuse of this facility.

⁴⁶ An election timetable giving specific dates for the European Parliamentary elections in May 2014 can be found on the Commission's website at http://www.electoralcommission.org.uk/_data/assets/word_doc/0019/163018/EPE-election-timetable-standalone.doc

Postal voting

17. More and more electors are applying to vote by post since postal voting became available on demand in 2001. The Commission recognises that this is an area which requires constant vigilance.
18. Electors may apply for a postal vote for a particular election, a specified period or permanently. The following steps are intended to deal with problems that may arise.
19. To apply for a postal vote the elector must give certain information in writing. This can be by letter, by fax or on an application form. The information needed to register for a postal vote is:
 - the full name of the applicant
 - the address where the applicant is or will be registered
 - the address to which the ballot paper should be sent, and a reason for redirection if this address is not the elector's registered address
 - whether it is for an indefinite or definite period or for one election only
 - whether it is for Parliamentary elections, local elections or both
 - the date of birth of the applicant, and
 - the date the application is made
 - the application must also be signed and the signature provided in a way that can be electronically scanned by the Electoral Registration Officer.
20. Following receipt of the application, the elector must be sent confirmation that they have applied for a postal vote and the outcome of that application. If they have also requested that the postal vote be directed to another address, the written confirmation will also include details of the address to which the ballot pack is to be directed. These measures are intended to prevent someone seeking to commit fraud by applying for a postal vote without the knowledge of the voter.
21. Electoral Registration Officers, Returning Officers and Counting Officers must make information available in English. They may also make information available in other languages and in written, Braille, pictorial, graphical and audio tape formats.
22. In order to show vigilance and combat potential fraud, election officials will monitor the instances of new applications for postal votes that ask for the ballot papers to be sent to an address other than where the elector is registered. Where several postal votes are redirected to a single property and there is no reasonable explanation as to why this has occurred, the Electoral Registration Officer should conduct initial checks of the information to which they have access and immediately refer the matter to the police for an investigation if deemed appropriate. A speedy and well-publicised police response at this stage may serve to demonstrate the seriousness with which such matters are regarded.

23. Although the Electoral Registration Officer may refer such requests to the police, the Returning Officer must still issue the ballot paper as soon as practicable.⁴⁷

Existing postal voters seeking to redirect their postal ballot packs

24. Electors who are already registered to vote by post can request that their postal ballot pack be sent to an address that is not their registered address; however, they must give a reason for the redirection request. Following receipt of a redirection request, confirmation that the postal ballot will be sent to another address must be sent to the elector at their registered address. This may help prevent someone seeking to commit fraud by redirecting a postal vote without the knowledge of the elector. However, with many applications arriving at the last minute, this confirmation may not reach the elector until after election day.
25. Some EROs have adopted a standard form which contains a declaration that the individual will be at the address where the ballot paper is to be redirected; however, while this is seen as an aid to security, the completion of such a form is not required by law.
26. In order to show vigilance and combat potential fraud, Electoral Registration Officers have been advised to monitor the instances of postal vote redirection requests. In the same way as for new applications to vote by post, where several postal votes are redirected to a single property and there is no reasonable explanation as to why this has occurred, the Electoral Registration Officer has been advised to conduct initial checks of the information to which they have access and refer the matter to the police for an investigation if deemed appropriate. The Electoral Registration Officer may also monitor the reasons given for redirection if a pattern appears evident. A speedy and well-publicised police response at this stage may serve to demonstrate the seriousness with which such matters are regarded.
27. Although the Electoral Registration Officer may refer such requests to the police, the postal ballot pack must still be issued as soon as practicable.⁴⁸

⁴⁷ Regulation 71, Representation of the People (Scotland) Regulations 2001.

⁴⁸ Regulation 71, Representation of the People (Scotland) Regulations 2001.

The postal ballot pack

28. The Returning Officer/Counting Officer will send every elector who has registered to vote by post a postal ballot pack. Each pack will contain:
 - a ballot paper
 - an envelope, marked with the letter 'A'
 - a postal voting statement
 - a larger envelope, marked with the letter 'B'
 - a set of instructions for the voter
29. The ballot paper and the postal voting statement issued to each postal voter will both display unique identifying marks, such as a barcode. The mark on the postal voting statement will enable the production of the list of returned postal voting statements. The mark on the ballot paper will help to verify that the ballot paper has been issued correctly and will assist if the result is challenged. In addition, each ballot paper must bear the official mark. This was, and still may be, a perforation through the ballot paper made when it is issued. However, it need only be a device, such as a watermark, heat sensitive dot or grey-shaded design, selected by the Returning Officer/Counting Officer.
30. In Scotland, the ballot paper can look very different from election to election. If voting is taking place for more than one body, the ballot paper(s) for each body will be a different colour. In the event of a UK Parliamentary general election, white ballot papers are customarily used. Returning Officers/Counting Officers have to consider the possibility of a UK Parliamentary general election when allocating ballot paper colours for combined elections.
31. Once the voter has made a mark on the ballot paper against the name of their preferred candidate or candidates (or party in the case of some Scottish or European Parliamentary elections) or their preferred option in a referendum, the ballot paper(s) should be put in envelope 'A' and sealed. The voter should write their date of birth on the postal voting statement and sign the document. The postal voting statement should then be placed, together with envelope 'A', into the return envelope 'B'. Envelope 'B' should be sealed and sent back to the Returning Officer/Counting Officer. The return envelope may be marked with purple flashes to make it more visible. Electors can also hand their completed postal ballot in at any polling station in the council area at local government elections or in the constituency at other elections. However, if electors choose to hand their completed postal ballot in to a polling station.
32. The Divisional SPOC may wish to seek information from the Returning/Counting Officer about when the postal ballot packs are scheduled for delivery, to which parts of the constituency or local government area and who will be delivering them, so that consideration

may be given to appropriate measures to deter any attempt to intercept them or remove them from letterboxes. Claims have been made, and allegations would suggest, that the period immediately following the delivery of the postal ballots is when malpractice, especially attempts to persuade electors to hand over their unopened ballot papers to another person, is most likely to occur.

33. Royal Mail may be approached by the Divisional SPOC to see what assistance they can give in identifying and preventing possible postal voting malpractice. For example, they may alert the police where large numbers of postal ballots are directed to a single or questionable address, and ensure that their local collection mailboxes are emptied more frequently during the period when most postal ballots are returned to avoid them overflowing. A procedure should be agreed in the event of a mailbox that possibly contains completed postal ballots suffering an arson attack.

Replacement ballots

34. A replacement postal ballot pack may be issued by the Returning Officer/Counting Officer where the original postal ballot paper is spoilt (i.e. the elector has made a mistake), lost or not received, up until 5pm on polling day.
35. Replacement postal ballot packs may be issued by post, where time allows, or by hand. The Returning Officer/Counting Officer may ask the applicant to call in person at the office, where possible, for security purposes.
36. Before issuing a replacement for a postal ballot paper that has not been received or has been lost, the Returning Officer/Counting Officer may consider asking the elector to confirm in writing that the ballot paper is lost or has not been received, and should maintain a list of any proof of identity required.
37. Before issuing a replacement postal ballot pack, the Returning Officer/Counting Officer must be satisfied as to the voter's identity. The Commission has circulated guidance on what proof of identity may be appropriate and has advised each Returning Officer/Counting Officer to set down in writing, prior to the election, which of the measures in the guidance will be adopted locally.⁴⁹ These will usually be one form of photo-document showing the elector's name or two documents linking

⁴⁹ Guidance on this is available at www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators

the applicant's name and address with the current entry on the register of electors.

38. Where a ballot paper or postal voting statement has been spoilt, all postal voting documentation must be returned to the Returning Officer/Counting Officer before a replacement pack is issued by post or by hand. Although there is no provision in law for the same level of proof of identity as in the case of lost postal ballot papers, Returning Officers/Counting Officers may wish to follow the Commission's guidance procedure for the replacement of lost ballot papers.

The postal voting statement

39. The postal voting statement is an important document. The elector must sign it to say that they are the person to whom the ballot paper was sent and give their date of birth.
40. The Returning Officer/Counting Officer is required to check every returned postal voting statement against the personal identifiers held on file from postal voting applications. The Returning Officer/Counting Officer may consider discussing with the Divisional SPOC what level of satisfaction will be adopted with regard to signature matching and whether there would be merit in having the police in attendance during these opening sessions.
41. The elector must complete their postal ballot in secret. The elector should contact the local elections team if they need assistance to complete their ballot paper. This advice is included in the postal ballot pack.

Reducing the risk of undue influence

42. Postal voters may deliver their voting papers on polling day to a polling station in their electoral area (council or constituency) if they so choose.

Tracking returned postal ballots

43. Postal voters are now able to ask the Returning Officer/Counting Officer whether their postal ballot papers have been returned. The Returning Officer/Counting Officer will be able to confirm if a postal voting statement has been marked returned in their system. Returning Officers/Counting Officers must establish a system for doing this, and have been advised to also consider monitoring such requests for any suspicious patterns. If a pattern raises any suspicion of malpractice that can be substantiated, Returning Officers/Counting Officers have been advised to refer the matter to the police for investigation.
44. Returning Officers/Counting Officers are required to compile a list of returned postal voting statements and separate lists of unmatched postal

voting statements and unmatched ballot papers. If allegations of postal voting malpractice are made, these lists may be of assistance to Returning Officers/Counting Officers and the police when they are made available after the election for public inspection.

Polling places and stations

Police support

45. Voting takes place within buildings designated as polling places. Each polling place contains at least one polling station, but may contain more. Each polling station has its own ballot box, polling booths and staff comprising a Presiding Officer and at least one Poll Clerk. If a polling place contains several polling stations, the Returning Officer/Counting Officer may request that the principal Presiding Officer assumes responsibility for monitoring the surrounding areas. However, other Presiding Officers would retain responsibility for their particular polling stations.
46. The local police Divisional Commander will decide the level of police support required at polling places and Returning Officers/Counting Officers may offer useful advice and information. Returning Officers are required to appoint Presiding Officers and poll clerks to run the polling stations and manage the voting process. Police officers may be present on duty in the polling station at any time, although it is the Presiding Officer's duty to maintain order within the polling station. In many areas, it is now common practice to provide mobile policing support to polling stations. It is important that the Presiding Officer and the police work together to maintain order within and around the polling station.

Who can be present in polling stations?

47. The law restricts who may be present inside a polling station. In addition to members of the Returning Officer/Counting Officer's staff, only the following people may be present:
 - Voters and persons under 16 who are accompanying them⁵⁰
 - Companions of voters with disabilities
 - Candidates at the elections
 - Candidates' election agents, referendum agents and polling agents appointed to the specific polling station
 - Police officers on duty
 - Observers accredited by the Electoral Commission

- Electoral Commission representatives⁵¹
 - For the Scottish Referendum, in addition, specified Members of Parliament, Scottish Parliament, European Parliament and members of the council for the electoral ward in which the polling station is situated.
48. Voters and their companions may enter a polling place in connection with casting a vote. They must vote without undue delay and leave the polling place as soon as they have put their ballot paper into the ballot box. Electors can also visit the polling place to hand in completed postal ballots. The Presiding Officer may instruct a person to leave, and may instruct their removal by the police or by a person appointed by the Returning Officer/Counting Officer.

Candidates, election agents and polling agents

49. Candidates, their election agents, specifically appointed polling agents and accredited observers may enter polling stations to observe proceedings, but cannot interfere with the voting process nor influence voters. If such action takes place the Presiding Officer can ask for them to be excluded.

Tellers

50. It is a well-established practice for candidates or their agents to appoint 'tellers', **positioned outside a polling place**, to record the names of electors who have voted. Tellers should not be confused with party agents, whose appointment and duties are described in legislation, although they may wear rosettes to indicate on whose behalf they are working. The role of the teller is to assist party workers to identify potential supporters who have yet to vote. This is usually done by asking voters for their poll card or electoral number as they enter or leave the polling station. Voters are under no obligation to provide this information.
51. Tellers play an important role in encouraging turnout but they have no legal standing. Tellers must not attempt to induce, influence or persuade an elector how or whether to vote. They have been advised to ensure that their conduct does not give rise to allegations of undue influence, such as discussing voting intentions, party affiliations, candidate's history and party campaigns, or undertake any other activity particularly associated with one party or candidate.
52. Presiding Officers have responsibility for ensuring that electors are given an opportunity to cast their vote in secret. Any decision regarding the

⁵¹ Accredited representatives will be issued with photographic identification which they must show on request.

location or behaviour of tellers is a matter for the Presiding Officer and Returning Officer. Should tellers, or anyone else, intimidate voters, cause a nuisance or obstruct the polling station, and should the Presiding Officer be unable to resolve the matter, the agent of the party or independent candidate they are representing should be informed. If the situation persists, further assistance from the political parties and/or the police may be sought.

53. The Commission has issued more detailed guidance relating to tellers in its *Tellers guidance for campaigners at elections and referendums*.⁵² Although this has no standing in law, it reinforces good practice. Political parties are encouraged to bring this guidance to the attention of their tellers.

Campaigning in the environs of polling places

54. While it is clear that campaigning cannot happen within a polling place, there is no legal clarity on activities around polling places. The overriding purpose of a polling place is for electors to have a place in which to quietly and privately cast their vote free of any intimidation (whether real or perceived) and where the secrecy of the ballot will be respected. They should be able to enter and leave the surrounding area in the same manner.
55. It is accepted that the Returning Officer/Counting Officer will not allow any campaign activity such as the display and distribution of election material to be undertaken in the polling place itself.
56. There should be no long-term parking of vehicles used for campaign purposes, for example displaying election materials or using loudspeakers, immediately outside entrances to polling places. Cars being used in campaigns that are also used to transport voters may need to wait for the voter while they are at the polling station, but the wait should not be unduly prolonged. It should be noted that driving an elector to the polling place to cast their vote is a generally accepted practice that does not constitute the offence of 'treating'.
57. The Presiding Officer will not allow large groups of a candidate's supporters or detractors to gather in the environs of the polling place. They will be particularly alert to actions that may lead to electors feeling intimidated or influenced. Influencing includes deterring an elector from voting as well as influencing them to vote or not to vote for a particular candidate or party or outcome in a referendum.

⁵² *Tellers guidance for campaigners at elections and referendums*, www.electoralcommission.org.uk/_data/assets/pdf_file/0005/102839/fact-tellers-guidance-rc-ca.pdf.

58. It is for the Returning Officer/Counting Officer and Presiding Officer to take a view on whether particular campaign activities conducted in the environs of a polling place are acceptable, bearing in mind the requirement to balance the competing needs of campaigners and electors. The Returning Officer/Counting Officer may then need to call upon party, candidate or campaign representatives or the police to ensure that public order is maintained at or near polling places.

Personation

59. Personation (fraudulently purporting to be a voter) is an offence. Incidents of personation are few; however, the law provides for specific actions where the Presiding Officer, candidate or agent, polling agent or referendum agent present in the polling station suspects personation.
60. At a polling station, if suspicions of personation are aroused when issuing a ballot paper, the Presiding Officer may put two statutory questions to a person applying for a ballot paper.⁵³ The wording is prescribed. The first question asks if the voter is the person registered in the register of electors for the election under the name shown on the register. The second question asks whether the person has already voted at the election, other than as a proxy for some other person.⁵⁴
61. If the voter confirms that they are the person named on the register and says that they have not already voted, the Presiding Officer must issue the person with a ballot paper. No proof of identity or poll card has to be produced. The only exception is in the case of an anonymous elector who must show their poll card in order to vote.
62. Variants of these questions are specified for use where a person requesting a ballot paper as a proxy is suspected of personation. Cases of personation of a proxy voter are extremely rare.
63. If the Presiding Officer has reason to believe that the offence of personation has been committed, or if a candidate, election agent or polling agent declares to the Presiding Officer that they believe this to be the case and is prepared to substantiate the charge in court, the Presiding Officer should refer the matter to the Returning Officer/Counting Officer or directly to the police. Before the introduction of the Electoral Administration Act 2006, the Presiding Officer had the

⁵³ Rule 35(1), Schedule 1, RPA 1983; Rule 39, Schedule 1, EPE Regulations 2004 (as amended);

⁵⁴ Rule 35(1A), Schedule 1, RPA 1983; Rule 39, Schedule 1, EPE Regulations 2004 (as amended);

power to order a police officer to arrest a person suspected of personation. This special facility no longer applies.

64. It should be noted that the person must be allowed to vote if they answer the prescribed questions satisfactorily even if they are subject to an allegation of personation by a candidate or their election agent or if they are arrested on the grounds that they are suspected of committing or of being about to commit such an offence.⁵⁵
65. The Commission has produced a template giving advice and a form that may be used where personation is alleged at a polling station. It has encouraged Returning Officers/Counting Officers to supply this to all Presiding Officers. A copy of the advice and template is included at Appendix C.
66. Candidates and agents, polling agents and referendum agents may require the Presiding Officer to put the statutory questions set out above to an elector or proxy when they apply for a ballot paper. They may make allegations of personation.

Absent voters seeking to vote at a polling station

67. The register at each polling station will be marked to show where an elector has chosen to vote by post. These electors cannot be issued with a further ordinary ballot paper at the polling station. An elector may claim not to have applied for a postal vote despite being recorded as having done so.
68. Where an elector who is registered as a postal voter arrives at a polling station claiming not to have received their postal ballot, the Presiding Officer may issue a pink tendered ballot paper to them. The Commission has advised Returning Officers/Counting Officers and Presiding Officers that where this situation arises early enough on polling day, the elector should be encouraged to call in person at the offices of the Returning Officer/Counting Officer before 5pm, so they can be issued with a replacement postal ballot pack.
69. The Commission has also encouraged Returning Officers/Counting Officers to supply each Presiding Officer with a form on which to record the details of electors claiming not to have applied for a postal or proxy vote. They may also encourage Presiding Officers to ask the aggrieved elector to sign the form so that their signature can be checked after polling day against the one on the application form held at the elections

⁵⁵ Rule 36, Schedule 1, RPA 1983; Rule 40, Schedule 1, EPE Regulations 2004 (as amended); Section 13, Criminal Procedure (Scotland) Act 1995; Schedule 3, paragraph 20, Scottish Independence Referendum Act 2013.

office. A template form issued by the Commission is shown in Appendix D. In the vast majority of cases, electors forget that they have applied for a postal vote for all elections and there is no malpractice.

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70. If there is a pattern of tendered ballot paper requests which appears suspicious and warrants investigation, the Returning Officer/Counting Officer may wish to draw this to the attention of the police.

Postal vote opening, the verification and the count

71. Once the Returning Officer/Counting Officer takes delivery of returned postal ballot envelopes, they must be kept in a secure place and the process thereafter is closely scrutinised.



72. Everyone who attends either the opening of the postal votes or the verification and count is bound to secrecy.⁵⁶ Nobody is allowed to reveal how any elector has voted should they inadvertently gain such information. Only the Returning/Counting Officer and their staff are allowed to touch the ballot papers.

73. The opening of returned postal ballot envelopes may take place on several occasions in the days before polling day, as well as during polling day and at the count following the close of poll. Candidates/registered campaigners and/or their agents will be advised of the date and time when these openings will take place and will be invited to observe the proceedings.
74. A formal procedure is set out for the opening of returned postal ballot envelopes. At the opening, the postal voting statement is checked to see that all fields have been completed and that the number on the postal voting statement tallies with that on the ballot paper envelope. This is called the postal voting verification process and no votes are counted at this stage.
75. Returning Officers/Counting Officers are now obliged to check every returned postal voting statement. This check requires a comparison of the signature and date of birth provided on the statement against the personal identifiers collected before the election. The Commission has advised Returning Officers/Counting Officers that:
- they should check 100% of returned postal voting statements

⁵⁶ Section 66, RPA 1983; Regulation 34, EPE Regulations 2004 (as amended).

- they may wish to seek advice from the police or other services on their signature-checking plans
 - if identifiers provided on the postal voting statement do not match those supplied at application, they consider whether referral to the police for investigation is warranted
76. Electoral Registration Officers are now required to write to electors whose postal vote was rejected because they were not satisfied that the postal voting statement was duly completed and state the reason. If fraud is suspected, this should be discussed directly with the police.
 77. The verification and count will usually take place at one or more central locations. The contents of each ballot box from the polling stations are first checked to verify that the number of ballot papers they contain matches the number of ballot papers issued by the Presiding Officer.
 78. Once the number of ballot papers in a box is verified, they are then mixed with the contents of other verified boxes and the counting of the votes cast for each candidate or proposition in a referendum then takes place.
 79. At a general election to Scottish local government, the count will usually be conducted electronically and different rules apply. Ballot boxes are not mixed together and ROs are required to publish certain data in respect of each polling station.
 80. An issue has previously arisen as to the validity of (postal) ballot papers that appear to be altered, either with a clearly different writing instrument or with correction fluid. Returning Officers/Counting Officers have been advised that any such ballot papers should be treated by count staff as 'doubtful' at first count, and put forward for adjudication. This is where the Returning Officer/Counting Officer decides on their validity in the presence of candidates and agents. While such ballot papers may still be counted if they otherwise meet the requirements for validity, the Returning Officer/Counting Officer may consider packaging them separately in case of later challenge.

Appendix C – Advice for Presiding Officers on personation

1. By the day of the election a Presiding Officer should understand the level of police presence and police response that a polling station may expect.
2. Where an incident occurs at a polling place that a Presiding Officer believes may constitute an offence, then they may consider calling the police and asking those involved to await the arrival of a police officer.
3. Where there is confrontation, or a reasonable expectation of confrontation, then the Presiding Officer should consider their own safety and the safety of all other people present as a priority.
4. In such circumstances, confrontation should be avoided but consideration may be given to other ways of supporting a police investigation, such as:
 - 1) recording a full description of the suspect:
gender; ethnicity; colour; height;
any individual or distinctive features including their clothing
 - 2) recording details of accomplices
 - 3) recording registered numbers of vehicles
 - 4) preserving items touched by a person involved in an incident, if it is safe to do so, until the arrival of a police officer
5. The form on the reverse of this advice may be used to record events.
6. If possible, the Presiding Officer should seek corroboration from another person to what they have witnessed, especially the description of the suspect in the event the suspect leaves before police arrival. All written or otherwise made notes should be signed, timed and dated by all staff witnessing the incident.
7. ROs/COs also need to consider how to treat the ballot box and its contents should personation be suspected so that the count can be completed while preserving evidence and maintaining the secrecy of the ballot. The EMB has produced guidance on this area

Statutory questions

Where personation may be suspected, Presiding Officers and poll clerks are strongly advised to refrain from asking anything other than the two statutory questions. Asking other questions may constitute an informal interview and jeopardise the possibility of bringing a successful prosecution.

No other questions may be asked of the voter by election staff.

If further investigation is deemed necessary, the matter should be referred to the police.

Statement supporting an allegation of personation

Statement of (print name in block capitals)

This statement, consisting of page(s), each signed by me, is true to the best of my knowledge and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated (insert day, month and year)

On (insert day, month and year) I was in attendance
at polling station, at
..... (address)
in the following capacity:

Presiding Officer/Poll Clerk/Candidate/Agent/Police Officer (please delete as appropriate) or other (please state)

At am/pm, I/the Presiding Officer asked the person seeking to vote the statutory questions:

1. In response to the first statutory question (regarding the person's identity being the same as the person named on the register of electors)
The person (who I know/believe to be) replied
'.....'

2. In response to the second statutory question (regarding whether the person had already voted other than as a proxy voter)
The person (who I know/believe to be) replied
'.....'

Signature of the person making the statement

Witnessed by (signature)
.....

(print name)

Further comments or personal descriptions may be added on the reverse of this form or on another piece of paper. Please make sure each sheet is signed and witnessed.

Appendix D – Polling station log for electors arriving to vote but shown as absent voters

Polling station log

Polling station number:

Electors marked as absent voters who claim not to have requested a postal or proxy vote

Date

Polling station address:

.....

.....

.....

(to be completed by the Presiding Officer)

This log will not be looked at until after the election.

The purpose of this log is to provide additional information that can help elections office to improve the service we provide.

Thank you for completing this log.

Please hand this log to the reception staff at the count.

Signature of Presiding Officer

Electors marked as absent voters who claim not to have requested a postal or proxy vote

Please log the elector's number, address and name.

The Presiding Officer cannot insist on an elector signing the sheet; however, it will help to take forward their complaint that they have not requested a postal vote if they give their signature to allow checks to be made after polling day.

Elector number	Address	Name (please print in block capitals)	Signature

Appendix E – Maintaining order outside polling stations

Background

8. The Commission, the Convener of the EMB, the Chief Counting Officer and Police Scotland believe that good order should be maintained outside polling places. However, on occasion, incidents which result in complaints or allegations being made to the police or Returning/Counting Officer do arise in the vicinity of polling places. This appendix is designed to help the police think about how best to approach the issue and offers some practical steps to help them reduce the likelihood of problems arising and deal with any that occur.
9. This appendix is addressed to the Lead SPOC and Divisional SPOCs, but may be of use to the Returning Officer, Presiding Officers, Poll Clerks and other staff of the Returning/Counting Officer. It is issued jointly by the Electoral Commission and Police Scotland.
10. This Appendix should be read alongside Section 3: Campaigning outside polling places of the *Code of conduct for campaigners: postal voting, proxy voting and polling stations*. A copy can be seen at Appendix H.

Underlying principle/priority

11. The priority for the police is to protect the right of voters to freely cast their votes, and also the right of campaigners to campaign. Any police action should be clear that these priorities are protected.
12. The process of going in person to a polling station to cast a vote is seen by many as not only a civic duty but also a social event. It is an opportunity to meet friends, neighbours and even a candidate or an agent before or after casting their vote. This interaction is a natural part of a democratic society and should not be discouraged. This should be a primary consideration for the Presiding Officer, Returning Officer, candidate, agent, teller or police officer before action is taken to disperse people who may congregate outside a polling place.
13. To some people a group of people outside a polling place may seem to be entirely innocent and without malicious intent; however, others may perceive this as threatening and obstructive. The situation may become aggravated where there is close political rivalry with one side being suspicious of the actions of another or simply wishing to present the

other party in a bad light. It is difficult to decide how best to respond to such a situation without offending one side or the other. The clearest guide is that the interests of the voter should take priority.

Potential offences

14. While there is an offence of undue influence (set out in this guidance in Chapter 3 and at Appendix A), there is a range of other powers available to the police when considering how to address such incidents. Some examples are listed below:
 - Section 53, Civic Government (Scotland) Act 1982 – obstruction by pedestrians
 - Regulation 103, The Roads Vehicles (Construction and Use) Regulations 1986 – obstruction of the road
 - Section 52, Criminal Law (Consolidation) (Scotland) Act 1995 - vandalism
 - Common law power of arrest in relation to breach of the peace
 - Common law power of arrest in relation to assault

Working to prevent incidents outside polling places

15. Those standing for election or campaigning and their supporters should be committed to do all they can to encourage electors to turn out and vote. The Commission recommends that the Returning/Counting Officer arranges a meeting with candidates, agents, tellers and campaigners at the earliest opportunity following the publication of the notice of election or referendum to communicate the same message to all concerned. This will ensure that everyone is aware of the local circumstances and conducts their campaign within the same guidelines. It may pre-empt problems by discussing campaigning in and around polling places and the conduct of tellers, and reaching consensus amongst those present as to what is acceptable, especially with regard to whether to gather elector numbers as voters either enter or leave the polling place. Guidance should be distributed at pre-election/referendum meetings.
16. Specific preparations that may help to prevent or deal with issues are listed below:
 - The Lead SPOC/Divisional SPOC should agree the approach to be adopted and the standards of acceptable behaviour with the election office contact, parties, candidates and campaigners before the election.

- The Lead SPOC/Divisional SPOC may ask the election office contact to see whether Presiding Officers can monitor and advise on alleged incidents outside their polling station.
- If they are unable to speak to all participants at a meeting organised by the Returning Officer, the Lead SPOC/Divisional SPOC may contact agents for each party, candidate or campaign before the poll to seek their advice in helping to prevent issues involving their supporters that may arise before or during the poll and on what they are prepared to do to speedily resolve any issue that does arise.
- The Lead SPOC/Divisional SPOC should agree with the election contact how quickly operational support should be deployed to resolve an incident at or in the vicinity of a polling place. This may vary according to the identified level of risk.

What to do when there are concerns about maintaining order outside a polling place

17. Everyone should be alert to whether voters are affected by the behaviour outside polling places.
18. Tellers are an established part of the democratic process although they have no standing in law. They are usually volunteers for candidates, parties or campaigns who are positioned outside a polling place to ask voters for their elector number to see whether their supporters have turned out. Voters who have not yet been to vote during polling day may then be contacted and persuaded to vote, which may help to increase turnout. However, tellers may be seen as impeding, obstructing or intimidating electors on their way into the polling place. Any decision regarding the location or behaviour of tellers is a matter for the Presiding Officer and Returning Officer/Counting Officer; tellers must comply with their instructions.
19. Any complaint about behaviour in the vicinity of a polling place should be directed to the relevant Presiding Officer in the first instance so that the matter can be dealt with and monitored by the polling station staff. However, while Presiding Officers have responsibility for ensuring that electors are given an opportunity to cast their vote in a free and fair manner, their power to act does not go beyond the polling place.
20. If it is not possible to contact the Presiding Officer, or the matter cannot be resolved by the Presiding Officer to the complainant's satisfaction, contact should be made with the Returning/Counting Officer or a member of their staff.
21. The Returning/Counting Officer or their staff may try to resolve the matter by a direct approach to those causing concern. If this is not possible, the Returning/Counting Officer or their staff should contact the

candidate, the candidate's agent or, if the candidate is standing for election on behalf of a political party, that party's officers, and advise the police. In the case of a referendum, representatives of the relevant campaign organisation should be contacted.

22. It may be that a complaint is made directly to the Divisional SPOC or the police locally. If the informal actions outlined above do not resolve the problem, it would be appropriate to consider the use of the powers set out above or indeed ask people to move.
23. The evidence we have gathered supports the view that no person has been prosecuted for undue influence during the last 10 years. It is most likely that remedial action by the police, for example by asking people to move, has had the desired effect without the need to resort to prosecution, especially where there was no intention to cause undue influence.
24. Presiding Officers, Returning Officers and Counting Officers have been advised that if they are in doubt, they should consider: 'What would a reasonable observer think?' This consideration should be applied to the actions of anyone in the vicinity of a polling place.

Appendix F – Access to election and referendum documents, documents open to public inspection and documents requiring a court order

Introduction

25. Early and regular contact between the Divisional SPOC and the elections office should foster a greater understanding of each other's role. This is essential should an issue arise later in relation to electoral law and procedures.

Basis for storage of records

26. After each election, the Returning Officer/Counting Officer has to seal into packets the documents used in the election or referendum. These packets are then kept in storage for at least one year and retained locally.
27. The legislation allows some of these documents to be made available for public inspection, but others would only be available for inspection after obtaining a court order. In broad terms, documents are available for public inspection unless they are ballot papers and corresponding number lists or are such that inspecting them might lead someone to see how an elector has voted.
28. In addition to the election and referendum documents specified, there are other documents used in the electoral process, such as electoral registration forms and application forms for postal votes, both of which are kept by the Electoral Registration Officer, and candidates' nomination papers, which need some detailed explanation. For some of the forms in this group, the law does not specify whether they are available for public inspection. The three lists of documents below show:
 - those which are specified in law as available for public inspection

- those which are specified as not available for public inspection and therefore only available for inspection following a court order
- those over which there is some doubt about whether they are available for inspection or not, or where some comment is needed

Access to documents

Election and referendum documents available for public inspection⁵⁷

29. The prescribed documents are:

- the ballot paper accounts (the record by each Presiding Officer of the ballot papers issued for each polling station), statements of rejected papers, and result of verification of ballot paper accounts
- the tendered votes list (the list showing where a different coloured ballot paper is issued to an elector because the polling station register is marked as if that elector has already voted or the elector claims never to have received their postal ballot, or where the elector claims not to have applied to vote by post)
- the lists of voters with disabilities
- the votes marked by the Presiding Officer
- the declarations made by voters with disabilities
- the packets containing marked copies of the registers and lists of proxies
- the marked copies of the absent voters list and the list of postal proxies
- the postal voting statements
- the postal ballot paper envelopes

Election and referendum documents not available for public inspection⁵⁸

30. Legislation designed to protect the secrecy of voting requires an application to the courts to inspect the prescribed election documents. However, if there is an election petition then the application must be to the Sheriff Principal in the case of a local government election or the Court of Session for any parliamentary election. In relation to the Independence Referendum a Sheriff Principal or The Court of Session may make such an order. The prescribed documents are:

⁵⁷ Rule 57, Schedule 1, RPA 1983; Regulation 69 and 70, Schedule 1, EPE Regulations 2004 (as amended); Schedule 3, paragraph 38, Scottish Independence Referendum Act 2013.

⁵⁸ Rule 57, Schedule 1, RPA 1983; Regulation 69 and 70, Schedule 1, EPE Regulations 2004 (as amended) Schedule 3, paragraph 38, Scottish Independence Referendum Act 2013.

- the packets of ballot papers (a separate packet each for counted, rejected, spoilt and unused, and tendered ballot papers)
- the corresponding number list (by which an elector could be identified)
- the postal ballot papers marked 'rejected' (those rejected at the opening of the postal ballot envelopes because they did not have a matching postal voting statement or other reason)
- the certificates of employment on duty on day of poll

Other electoral and referendum documents

31. The documents described in this section are those that might be useful in any investigation of malpractice, but about which electoral law is silent as to whether they are available either for public inspection or for inspection by others.

Electoral registration forms and rolling registration forms

32. There is nothing in electoral legislation that specifically mentions whether these forms can be inspected by the public or law enforcement agencies. However, because they contain information that does not appear on the published electoral register – for example, the signature of the householder, information about nationality and information about service voters – most Electoral Registration Officers treat them as being confidential between the householder or applicant and the Electoral Registration Officer and will not allow them to be inspected without a court order.
33. There may be an issue about how long electoral registration forms and rolling registration forms are kept. Although the law does not specify a period of time, good practice suggests that these forms be kept for at least one year to match the period of time the electoral register they relate to is in force, or maybe for two years given that a name cannot be deleted from the register unless no form has been received from a property for two years. Many authorities now scan forms into an electronic form, making storage much less of a problem, so some may keep at least an image for more than two years. The length of time electoral registration forms are kept depends on the procedures, facilities and storage space of each local authority. If an investigation is launched, early consideration should be given to what papers, if any, need to be retained for longer than is normal practice for the authority. If necessary, the powers set out in the previous paragraph may be used in this case.

Applications for absent votes

34. Again, the law does not specify whether these forms should be made available for public inspection, but most Electoral Registration Officers would be reluctant to make them available for confidentiality reasons. These forms are to be kept for one year after the application has expired or been cancelled. It is likely that the forms would be kept for at least as long as the absent vote is in force.

Candidates' nomination papers

35. These papers will be useful in any investigation because they contain the details of the candidate and the person who witnessed the candidate's consent to nomination. In the case of a UK Parliamentary election, they also contain the signatures and electoral numbers of the electors who have subscribed the nomination paper in support of the candidate. Electoral legislation about the ability to inspect nomination papers varies for different elections.
36. For local government elections, the nomination papers are open to public inspection during normal office hours, beginning 24 hours after the close of nominations and ending on the day before the election. The law does not specify what should happen to nomination papers after polling day. The Commission has recommended that ROs should keep all nomination papers for one year. It is likely that they would be kept with the rest of the election documentation, but practice will vary between local authorities and some ROs may decide to destroy them immediately.
37. For European, UK and Scottish Parliamentary elections, there is no right of public inspection of nomination papers. Certain categories of people are allowed to inspect the nomination papers during the nomination period but, again, the law does not specify how long they should be retained by the relevant RO.

Appendix G – Threat assessment and control strategy checklist

	Action	Lead officer	Completion date	
			Target	Actual
General measures and responses				
38.	Establish a command structure at the earliest opportunity for the entire election and referendum process.			
39.	Identify a central unit as the lead on election and referendum issues. This is likely to be the Economic Crime Unit. However, in case another unit is chosen, the term 'appropriate unit' will be used in this document.			
40.	Prepare a force threat assessment and control strategy to identify where advice should be provided during the election or referendum period for all staff and the public. It should provide named point of contact details at the appropriate unit and force levels. This should include a strategy for communication with all stakeholders.			
	Make reference to this current guidance at all briefings. This should help to prevent and deter electoral malpractice and encourage the proper responses to any allegations of electoral malpractice.			

	Action	Lead officer	Completion date	
			Target	Actual
41.	Prepare a force media strategy for the election and referendum to cover prevention, investigation and arrest situations. This should include liaison with the Commission's media relations team as required and the staff of the Chief Counting Officer in relation to the Independence Referendum.			
42.	The Commission has advised Returning Officers and Counting Officers that they should have an initial meeting with their Divisional SPOC at the earliest opportunity and another following the deadline for nomination of candidates or appointment of registered campaigners when security issues will be clearer.			
43.	Issue to all officers <i>Guidance on policing elections and referendums</i> pocket guide. It sets out electoral offences, penalties and contact details and has been produced for individual officers throughout Scotland. It will be despatched to officers through DCUs in advance of the elections and referendum. The Lead SPOC should make arrangements to ensure that every officer on duty over the election and referendum period is issued with a copy of the pocket guide.			
Prevention and reduction measures and responses				
44.	Identify whether the level of risk locally warrants the creation of a specific task force in the context of the election or referendum.			

	Action	Lead officer	Completion date	
			Target	Actual
	Intelligence gathering has a key role to play in preventing and reducing crime. Electoral administrators, political parties, party officials, registered campaigners and candidates may be able to assist.			
45.	Consider whether all information or intelligence logs relating to election-related crime should be sent to a designated unit, as part of co-ordinating the flow of intelligence. This unit should be expected to carry out analytical work to help develop appropriate control strategies in conjunction with force intelligence capabilities.			
46.	Ensure that the appropriate unit acts as a reference or advice point for officers dealing with allegations of electoral malpractice. The unit should ensure that its role and contact details are made known to the relevant DCU.			
47.	Identify a named contact in each election office and notify each office of a Divisional SPOC who will liaise with the appropriate unit.			
48.	Ensure that the appropriate unit creates a full list of contact details and circulate it as appropriate.			
49.	Hold a pre-election/referendum planning meeting between the Returning Officer/Counting Officer or the local named contact and the Divisional SPOC as soon as possible. Another			

	Action	Lead officer	Completion date	
			Target	Actual
	meeting should be held as soon as practicable after the last date for withdrawal of nominations. A checklist setting out the topics that might be discussed is included in the 'Divisional SPOC meeting with named local authority contact' section, paragraph 4.9 onwards. The Returning Officer/Counting Officer may also hold pre-election/referendum planning meetings with political party representatives (agents) or registered campaigners.			
50.	Ensure that the appropriate unit liaises directly on a daily basis with the named local elections contact for each council area, from a mutually agreed date until the count has been concluded.			
51.	Ensure that a local police officer (preferably the Divisional SPOC) attends and gives input to any briefings for candidates, election agents and registered campaigners given by the Returning Officer/Counting Officer. As a guide, for the elections in May, this will tend to take place between March and April.			
52.	Ensure that the police ask the Returning Officer/Counting Officer if they maintain a record of electors who claim not to have voted by post or not to have requested a postal vote although official records show them as having done so. The same should apply in relation to voting by proxy. Such records may provide leads for the			

	Action	Lead officer	Completion date	
			Target	Actual
	investigation of potential malpractice.			
53.	Ensure that the police ask the Returning Officer/Counting Officer if they provide the Presiding Officer at each polling station with a form on which to record details of any attempted or alleged personation, and advice on what action they might take. Ensure that they consider their own safety and that of all others present as a priority (see Appendix C).			
54.	Ensure that the police ask the Returning Officer/Counting Officer if they provide the Presiding Officer at each polling station with a form on which to record details of any elector arriving to vote who is registered as a postal voter. The Commission has recommended that the form includes space for a signature if the elector is willing to give one (see Appendix D).			
55.	Ensure that the police and the Returning Officer/Counting Officer discuss arrangements for the security of any ballot boxes before, during and after polling. For example, in areas of high risk, consideration should be given to escorting the transfer of ballot boxes from polling stations to the count, as well as to the overnight and interim security of ballot boxes especially for the European Parliamentary elections as the votes will not normally be counted until the Sunday after polling day.			

	Action	Lead officer	Completion date	
			Target	Actual
56.	Prepare a force media strategy to promote confidence in the electoral process, while emphasising fraud prevention measures and the approach to allegations of electoral malpractice.			
57.	Establish a direct police hotline, via the command structure, for advice on electoral malpractice throughout polling hours on polling day and through to the declaration of the result(s).			
58.	Raise awareness of security issues by ensuring that the force Student Liaison Officer is invited to assist the Returning Officer/Counting Officer in making the delivery of postal votes to multi-occupied student properties more secure, if appropriate. The force Student Liaison Officer may assist in identifying key contacts who are prepared to take responsibility for ensuring that the postal ballots are delivered to the intended recipients.			
Investigation measures and responses				
59.	Consider setting up a team to proactively follow up issues identified by intelligence and investigate allegations of electoral malpractice identified by intelligence.			
60.	Make arrangements for this team to be available out of hours for advice, with contact routed via the police force control room.			
61.	Consider and state whether			

	Action	Lead officer	Completion date	
			Target	Actual
	allegations of electoral malpractice and complaints will be reported both centrally and regionally.			
62.	Consider what level of resources will be made available to investigate complaints or allegations of different types of electoral malpractice.			
63.	Decide the criteria under which allegations will be dealt with by the police division and/or centrally by the appropriate unit.			
64.	The appropriate investigating unit should make arrangements to liaise with the Procurator Fiscal to ensure co-ordination in investigation and case reporting.			
65.	Put arrangements in place to ensure that the Lead SPOC completes returns to NPoCC on time, and ensure that NPoCC is alerted at the earliest opportunity to any major allegation of electoral malpractice.			

Appendix H – Code of conduct for campaigners: postal voting, proxy voting and polling places

The Code of conduct was revised, extended and agreed for use in 2013 by political parties and is set out on the following pages. It is still current for elections and referendums.

It is available as a stand-alone document on our website at:

<http://www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/integrity-guidance/electoral-events>

Section 3 on *Campaigning outside polling places* should be read alongside Appendix E – Maintaining order outside polling stations on page 85.

Code of conduct for campaigners: postal voting, proxy voting and polling stations

Campaigners are an essential element of a healthy democracy, and their right to put their arguments to voters should be supported and protected. It is equally important, however, to ensure that the activities of campaigners do not bring into question the integrity of the electoral process.

This Code provides a guide for campaigners, electoral administrators and police forces to what is, and is not, considered acceptable behaviour at polling stations and in the community during the lead-up to polling day.

As a guiding principle, if there is any doubt about a particular activity, campaigners should ask themselves “What would a reasonable observer think?”

More detailed guidance about electoral offences can be found in the full guidance published jointly by the Electoral Commission and Police Scotland, which is available on our website at:

<http://www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/integrity-guidance/electoral-events>

This Code has been agreed by the political parties represented on the House of Commons Parliamentary Parties Panel and the panels for the Scottish Parliament and the National Assembly for Wales, and is endorsed by the members of the Electoral Commission’s UK Electoral Advisory Board of senior Returning and Electoral Registration Officers and Electoral Integrity Roundtable.

The Code has been sent to all registered political parties in Great Britain, and Returning Officers will draw it to the attention of all candidates and parties contesting elections.

Scope of this code

This code covers all those actively involved in campaigning in elections or referendums in Great Britain. All references to campaigners in this code include:

- Candidates standing at an election, their agents and their staff and supporters
- Political party officers, members and supporters campaigning at an election
- Other people and organisations campaigning for or against a candidate, a group of candidates or a party at an election
- People and organisations campaigning for or against a particular outcome at a referendum

Compliance with this code

Any concerns that this code has been breached should be raised first with the candidate, political party or campaigner in question.

Any further concerns should be drawn to the attention of the Electoral Commission. The Commission will raise them with the relevant party or campaigner if appropriate, and will agree appropriate actions to remedy or prevent a reoccurrence of any breach.

1 Postal and proxy vote applications

- 1.1 Campaigners should ensure that any bespoke postal or proxy voting application forms conform fully to the requirements of electoral law, including all the necessary questions and the options open to electors.**
- 1.2 Campaigners should always explain to electors the implications of applying to vote by post or appointing a proxy.**

It is important that electors understand that they will not be able to vote in person on polling day if they or their proxy apply for and are granted a postal vote, and will not be able to vote in person if their appointed proxy has already voted on their behalf. To avoid duplication and unnecessary administrative pressures for Electoral Registration Officers, campaigners should try to ensure that electors who are included in current postal or proxy voter lists, or have already applied for a postal or proxy vote for a particular poll, do not submit an additional application.

Postal vote applications

1.3 Campaigners should not encourage electors to have their postal ballot pack redirected to anywhere other than the address where they are registered to vote.

Electors should take care to protect their ballot paper and postal ballot pack, and they will be best able to do so at their home address unless there are compelling reasons why receiving the postal ballot pack at the address where they are registered to vote would be impractical. Electors must state on the application form the reason why they need their postal ballot pack sent to another address.

1.4 Campaigners should ensure that the local Electoral Registration Officer's address is provided as the preferred address for the return of absent vote application forms.

To minimise the risk of suspicions that completed applications could be altered or destroyed, campaigners should always provide the relevant Electoral Registration Officer's address as the preferred return address, even if an alternative address is also given.

1.5 Campaigners should send on unaltered any completed application forms given to them to the relevant Electoral Registration Officer's address within two working days of receipt.

To minimise the risk of absent vote applications being refused because completed forms arrive with the Electoral Registration Officer after the statutory deadline before a poll, campaigners must ensure that there is no unnecessary delay in forwarding on application forms which have been received directly.

Proxy vote applications

- 1.6 Electors should be encouraged to explore other options for people to act as a proxy – including relatives or neighbours, for example – before a campaigner agrees to be appointed as a proxy.**

To minimise the risk of suspicions that campaigners may be seeking to place undue pressure on electors, electors should not be encouraged to appoint a campaigner as their proxy.

2 Postal voting ballot papers

- 2.1 Campaigners should never 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 may be able to arrange a home visit if necessary. Assistance will also be available for electors at polling stations.

- 2.2 Campaigners should never observe voters completing their ballot paper. If you are with a voter when they complete their ballot paper, remember they should always complete it in secret.**

Equally, you should ensure that the voter seals both envelopes personally and immediately after completing their ballot paper and postal voting statement. 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.

- 2.3 Campaigners should not ask or encourage voters to give them any completed ballot paper or ballot paper envelope.**

Wherever practical, the voter should be encouraged to post or deliver the completed ballot paper themselves. While campaigners may be approached for help by a voter who is unable to post their ballot paper or make arrangements for it to be returned in time,

other options for delivering the postal ballot pack – including relatives or neighbours, for example – should be explored before a campaigner agrees to deliver a postal ballot pack.

2.4 If asked by a voter to take a completed postal ballot pack on their behalf, campaigners should immediately post it or take it directly to the office of the Returning Officer or to a polling station.

To ensure completed postal ballot papers are received by the Returning Officer before the close of poll, and to minimise the risk of suspicions that they could be altered or destroyed, campaigners should ensure that there is no delay in forwarding on postal ballot packs which have been given directly to them. Campaigners should not allow large numbers of completed postal ballots to accumulate before forwarding them to the Returning Officer or handing them in at an appropriate polling station.

3 Campaigning outside polling places

3.1 Campaigners should be allowed to put their messages to voters on polling day, including in public spaces outside polling places.

Polling station staff and police officers should not seek to discourage or remove campaigners who are otherwise peacefully communicating with voters, as long as they are not within or impeding access to the grounds of the polling place. Campaigners should be careful, however, to ensure that their approach is proportionate and should recognise that groups of supporters may be perceived as intimidating by voters.

3.2 Campaigners should keep access to polling places and the pavements around polling places clear to allow voters to enter.

The Presiding Officer is responsible for maintaining order in the polling place, and campaigners who appear to be impeding access by voters to a polling place may be asked to move by polling station staff or police officers.

4 Complaints and allegations about electoral fraud

4.1 Campaigners should be prepared to give the police a statement and substantiate any allegations of electoral fraud they make.

The police will investigate allegations where someone is prepared to provide evidence or a statement in support of the complaint, but unsubstantiated claims about electoral fraud have the potential to damage confidence in the integrity of the electoral process. Campaigners should ensure they are confident that evidence can be provided to the police before considering whether it is appropriate to publicise any specific allegation.

4.2 Campaigners who are concerned or think that electoral fraud may have taken place should raise the matter with their election agent or local party, or with the relevant Electoral Registration Officer or Returning Officer for the area.

They may be able to explain whether or not an election-related crime has been committed, and refer it to the police if appropriate or provide details of the police contact for the relevant area so that campaigners can report their allegation. Concerns about breaches of the political finance rules should be raised directly with the Electoral Commission.


4.3 Any campaigner who has actual evidence of an electoral offence having been committed should report it directly and without delay to the police.

If appropriate, the police will investigate the matter. Every police force has designated a Single Point of Contact (known as a SPOC) to lead on election matters and who will deal directly with the matter or give advice to local police officers. The Electoral Commission can help provide contact details for local police force SPOCs.

Agreed and effective from March 2013

Appendix I – Guidance on policing elections and referendums – a police pocket guide

This version, published in March 2016, set out on the following pages:

 <p>Guidance on policing elections and referendums in Scotland</p> <p><small>Date of publication: February 2016 For more information see: The Manual of Guidance on Police Scotland's Internet or www.electoralcommission.org.uk/electoral-fraud-responsibilities</small></p>	<p>1 Bribery</p> <p>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.</p>	<p>2 Treating</p> <p>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.</p>	<p>3 Undue influence</p> <p>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.</p> <p>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.</p>
<p>Introduction</p> <p>The role of the police in elections and referendums must be seen to be impartial and fair.</p> <p>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.</p> <p>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.</p> <p>It is most likely that officers involved in election or referendum related duties would deal with public order offences.</p>	<p>4 Personation</p> <p>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.</p>	<p>Suggested action for all cases</p> <ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> – 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. <p>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.</p>	
<p>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.</p> <p>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.</p>		<p>5 False application to vote by post or by proxy</p> <p>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.</p>	<p>Specifically, it is an offence to:</p> <ul style="list-style-type: none"> • 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. <p>It is also an offence to aid, abet, counsel or procure the commission of the above offences.</p>

6 Multiple voting and proxy 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.

Remember:

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

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

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 apply:

- 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

See also s97(1) RPA 1983 Disturbances at election meetings.

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.

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 s149 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.

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.

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.

A printable version of the pocket guide can be found here:

http://www.electoralcommission.org.uk/_media/guidance/electoral-fraud/police-pocket-guides-2016/PPG_2016_Scotland_WEB.pdf

Appendix J – Protocol between the Electoral Commission and the Crown Office and Procurator Fiscal Service

- 66. The following protocol was agreed between The Electoral Commission and The Crown Office and Procurator Fiscal Service (COPFS) in 2013 and is still current.
- 67. The protocol will be reviewed annually.
- 68. Chapter 5 of this guidance contains the current COPFS contact details for responding to allegations of electoral malpractice.



PROTOCOL
between
THE ELECTORAL COMMISSION
and
THE CROWN OFFICE AND
PROCURATOR FISCAL SERVICE

Aims of the agreement

- 1.1 To confirm the steps that the Electoral Commission (“the Commission”) should take in the event that it identifies criminal activity that might have occurred in Scotland.
- 1.2 To outline the nature of the relationship between the Commission and the Crown Office and Procurator Fiscal Service (“the Crown”) in relation to such criminal activity, including any subsequent prosecution.
- 1.3 To ensure that the Commission does not in any way, in the course of its work, prejudice any investigation or prosecution by the Crown, ensuring at the same time that the Commission is able to fulfil its compliance functions.
- 1.4 To confirm the steps that the Crown should take in the event that it receives information suggesting the occurrence of a breach of legislative provisions that the Commission is responsible for monitoring.

The role of the Commission

- 2.1 The Commission has responsibility for monitoring and securing compliance with provisions of the Political Parties, Elections and Referendums Act 2000 (“the Act”), and with provisions in other legislation in relation to the election expenses of and donations to candidates.
- 2.2 The Commission has the power to issue civil sanctions for prescribed offences and other contraventions in the Act. In respect of all offences in the Act and in the other relevant legislation, the Commission may refer cases to the relevant law enforcement or prosecuting authorities for criminal investigation or a decision on prosecution.

The role of the Crown Office and Procurator Fiscal Service

- 3.1 The Crown is the sole public prosecuting authority in Scotland, which, in the public interest, ensures that all crimes made known to the Procurator Fiscal are investigated and that effective and consistent use is made of the range of prosecution options.
- 3.2 Decisions whether to investigate any allegation of a crime made known to the Procurator Fiscal and whether to prosecute such cases are within the sole discretion of the Crown.

Interaction between the Commission and the Crown

- 4.1 In cases where allegations of failure to comply with the provisions of the Act are reported to law enforcement officers in Scotland, or to the Crown, complainants will be informed that the Commission is the responsible body for monitoring compliance with the Act and they will then be referred to that body.
- 4.2 When information is discovered by a law enforcement officer in the course of his or her duty, or by an official of the Crown, which indicates that a breach may have been committed under the Act, details will be recorded and the Commission notified in writing of the following information:
- (a) the nature of the alleged breach that may have been committed;
 - (b) full details of any individuals or bodies that are believed to have caused the breach to arise;
 - (c) any background information available including a summary of the circumstances of the discovery of the alleged breach.
- 4.3 There may also be cases when law enforcement officers, in the course of their investigations, discover that breaches intrinsically linked with the offence under investigation have been committed under the Act. In these cases, law enforcement officers will consult with the Commission as to the best means by which the investigation into breaches of the Act will be pursued. Such consultation will also involve the Crown.
- 4.4 In cases where the Commission identifies conduct that, if proved, would constitute a criminal offence under the Act in Scotland, the Commission will notify the Crown as soon as possible. The Commission will consult with the Crown as to the best means by which any inquiries or investigation will be pursued. Whenever such a potential offence is identified, the Commission will report the matter to the Head of the Serious and Organised Crime Division at Crown Office, Edinburgh. In particular, the Commission will furnish the Head of the Serious and Organised Crime Division with the following information:
- (a) the nature of the alleged conduct;
 - (b) full details of any individuals or bodies that are believed to have permitted the conduct;
 - (c) details of the Commission representative responsible for conducting the case.
- 4.5 Where the Commission has conducted inquiries into a case, and considers that there remains evidence that a criminal offence under the Act has been committed in Scotland, and that a criminal prosecution is

the most appropriate means of dealing with the matter, it will refer the matter to the Crown Office. The referral will include a written summary of the Commission's findings.

- 4.6 In any case where the Commission considers imposing a civil sanction under Schedule 19C to the Act in respect of a prescribed offence that appears to have occurred in Scotland, the Commission will first ask the Crown whether the Crown may wish to pursue criminal proceedings in respect of that offence. The Crown will inform the Commission of its intentions within a reasonable time period, usually no more than 7 calendar days, subject to any requirement by the Crown to instruct the Police Service of Scotland to carry out further enquiries to inform this decision making. The Commission will not impose a civil sanction in respect of such a prescribed offence until it has received a response from the Crown, unless a reasonable time period has elapsed and the Commission needs to act urgently.
- 4.7 Should the Crown, or any law enforcement authority in Scotland acting on the instruction or advice of the Crown, require access to or recovery of any part of one or more of the Commission's files, the Head of the Serious and Organised Crime Division, or a senior officer from the relevant law enforcement body, will make a request in writing specifying the particular documents required.
- 4.8 During the course of any criminal investigation arising from a referral by the Commission, the Crown and law enforcement should liaise with the Commission representative in order to secure the best means of investigating breaches of the Act.
- 4.9 In any case where the Crown is dealing with a case referred by the Commission, the Crown will maintain communications with the Commission and give advance notice of any final decision on the case and consequent public statement.

General provisions

- 5.1 This Protocol will not affect any arrangements currently in place for undertaking investigations under the Representation of the People Act 1983, the Scottish Parliament Act 2006 (Interest of Members) or the Scottish Parliamentary Standards Commissioner Act 2002.
- 5.2 This Protocol will be subject to periodic review. The parties will meet periodically with dates and the frequency of such meetings to be agreed, to discuss the operation of the Protocol and other issues of mutual interest.

Signed

On behalf of the Electoral Commission:

Peter Horne Date: 7/6/2013
Peter Horne
Director, Party and Election Finance, The Electoral Commission

On behalf of the Crown Office and Procurator Fiscal Service:

Catherine Dyer Date: 17/6/2013
Catherine Dyer
Crown Agent

Appendix K – Template Chief Executive/Chief Constable letter for candidates, agents and campaigners to agree to abide by the national code of conduct

This is set out on the following pages.

Our Ref: /Your Ref: /Please Contact: /

Telephone: Fax: E-mail:

Date: []

To

All candidates, agents and campaigners

[List election and/or referendum and date]

Dear Candidate or Agent

[Title of election and/or referendum and date]

From the Chief Constable of the Police Service of Scotland (Police Scotland) and the Returning/Counting Officer

We are writing jointly to all candidates (*if applicable*) and agents in the forthcoming [Title of election and/or referendum and date]. We wish to underline the need for high standards of conduct to be maintained by all concerned.

You are, with this objective in mind, invited to sign the voluntary declaration, which appears at the end of the attached *Code of conduct for campaigners: postal voting, proxy voting and polling stations* (the Code) which has been endorsed by the political parties represented in the Scottish parliament, confirming that you and your supporters will comply with the Code. The Returning Officer/Counting Officer would be pleased to receive a signed copy from you.

Police Scotland and the Electoral Commission have once again this year jointly agreed *Guidance on preventing and detecting electoral fraud* (the Guidance) for use at elections and referendums in Scotland, which has been endorsed by the Convener of the Electoral Management Board for Scotland. The police and the Returning/Counting Officer's staff have a well-established close working relationship and will work determinedly within the Guidance to prevent and detect any wrongdoing.

You are encouraged to make yourself familiar with the Code and ensure that anyone who works for you in any capacity during the elections follows the Code strictly. You should, therefore, ensure that your campaign workers are familiar with its contents.

We wish to make it absolutely clear that any abuse of the arrangements for postal voting is very likely to constitute an offence under the Representation of the People Act 1983/Scottish Independence Referendum Act 2013 (*whichever applies*) and will not be tolerated. All candidates, agents and campaigners are expected to do all within their power to ensure that their campaign workers and supporters do not engage in any abuse of the system for postal voting or any other aspect of the arrangements for the election/referendum.

\Continued ...[Title of election and/or referendum and date]

Any suspicion of unlawful conduct should be reported to the Returning/Counting Officer or the police. The Returning/Counting Officer may in turn refer the matter to the police. Police Scotland and the Crown Office and Procurator Fiscal Service will consider any evidence of unlawful conduct and, if necessary, prosecutions will be brought against offenders.

Of the instances where fraud has been substantiated and where court proceedings were initiated, most have resulted in the offenders being given significant prison sentences.

Please be assured that we are committed to doing all we can to prevent any increase in the number of cases of alleged electoral fraud at forthcoming elections and referendums and that where allegations are made we will investigate and prosecutions may result.

Yours sincerely

(E-signature)

(E-signature)

(Name)

(Name)

Returning/Counting Officer

Chief Constable

Only the following slip should be completed and forwarded to the Returning Officer

Please complete and forward to Returning Officer

I, (print name)standing as a

candidate/acting as an agent/campaigner for

.....(print ward/division/other) agree to abide by the

national Code of conduct for campaigners: postal voting, proxy voting and polling stations

Signed

Date

Appendix M – Elections and voting systems used in Scotland

This appendix sets out:

- how votes are cast in different voting systems, and
- what voting systems are currently used in elections and referendums across Scotland

Type of election	Voting system used	Method of voting
Scottish Parliamentary	Additional member system (AMS): <ul style="list-style-type: none"> • Constituency: FPTP • Regional: Closed list 	1 mark (X) for the constituency candidate of your choice and 1 mark (X) for the party of your choice
UK Parliamentary	First-past-the-post (FPTP)	1 mark (X) for the candidate of your choice
Local council elections	STV	Numbering candidates in order of preference (e.g. by writing 1, 2, 3...) You may vote for as few or as many of the candidates on the ballot paper as you wish
European Parliamentary	England, Wales, Scotland: Closed list Northern Ireland: Single transferable vote (STV)	1 mark (X) for the party or independent candidate of your choice
Referendums	The voting system in referendums will depend of the legislation for that referendum. I.e. the referendum on independence for Scotland, the outcome will be the answer ("Yes" or "No") which receives the most votes over the whole of Scotland	The method of voting will depend on the legislation for the referendum, but most commonly it will be 1 mark (X) for the outcome of your choice