**31 May 2024**

**UKPGE 2024: FURTHER RECOMMENDATION FROM THE CONVENER OF THE EMB - ABSENT VOTE DETERMINATION DEADLINE**

Following discussion of this matter at the meeting of the EMB on 30 May 2024 and a reflection on the experience at the recent elections in England and Wales on 2 May, the Convener of the EMB is making a **recommendation**.

The law is silent on a determination deadline for absent votes, which is different from the position regarding *registration* applications.    The [Electoral Commission guidance](https://links.uk.defend.egress.com/Warning?crId=6659b87ba97d988ec2eb0255&Domain=edinburgh.gov.uk&Lang=en&Base64Url=eNqNzFEOAjEIBNATUf69Te2SSqTQAGuvb7Mx-uvnzLzMI3PGDXGtVUiopXmVZmNwBJsW817OJ_qpytrhS8Cpc6TX3ApIu1Q9sN6DNOFluTFOi9zykw5K8sHXzW8hqHMKt-sn_kLQxGJXG4i8AWIOSzg%3D&@OriginalLink=www.electoralcommission.org.uk) on this matter states:

“If an elector applying for a postal vote close to the deadline for a poll fails the DWP check, their application can be determined using the exceptions or attestation process **up to and including polling day**. However, whilst the processing of applications is the responsibility of the ERO, the RO is responsible for the issuing of postal ballot packs and producing polling station registers. You should liaise with the RO (where you are not also the RO) to establish the latest **practicable** point for determination of postal vote applications for that poll so they can plan the subsequent issuing of overseas and domestic postal votes and produce complete and accurate polling station registers.”

*Practicable* could be interpreted to mean different time points and it is understood that for the elections on 2 May there were a variety of interpretations made including: 5pm six working days before the poll ; the point at which polling station registers were printed; the point at which ballot boxes were collected/dispatch to polling places;  5pm on the day before polling day when presiding officers could still be contacted and late amendments made to polling registers; and up until 10pm on polling day.

 While it is always our wish to apply the general principle that the interests of the voter must be upheld and where possible preferred, that must be balanced against the practical constraints of making very late changes to polling registers and communicating such changes, and the potential risk to integrity were the postal vote be granted at a point on polling day by which the voter could already then have voted in person.  Indeed, it would generally be simpler for a voter to go to their polling station on polling day rather than attending the RO’s office to be issued with a postal vote pack to be completed and handed back immediately, which would not be consistent with the definition of an “absent” vote.

 **The EMB’s view on this matter and the recommendation of the Convener is that:**

1. **There should if at all possible be consistency of approach across Scotland and certainly within a constituency; and**
2. **The deadline for the determination of absent votes by the ERO should be no later than 12 noon the day before the poll;  this would allow time for the RO to make and communicate any changes to the polling register before polling begins.**

It should be noted that this approach applies to both postal **and** proxy votes.  For electors trying to appoint a proxy just before the deadline, where their identification verification fails, they will also need sufficient opportunity to provide documentary evidence or an attestation.  Emergency proxy applications are not affected as they are not subject to identity verification.

Usual practice should continue in that EROs should continue to determine absent vote applications as soon as possible following receipt of sufficient information to allow determination.  Applications should be determined on an ongoing basis with details and associated images sent to the RO on a daily basis; this recommendation concerns those few that remain undetermined close to the end of the timetable.  Any absent vote applications not determined by noon the day before the poll should be determined based on the information in the possession of the ERO at that time.  The ERO should as soon as practicable after the final absent vote has been determined produce the final postal and proxies voter lists as required under S61(6) of the RoP(S) Regs 2001.  RO’s should, as always, ensure that reasonable arrangements are in place to allow an elector to receive/collect any postal vote pack.

I hope that this advice is helpful; as ever if there are issues of clarity where further explanation would be helpful, please do not hesitate to contact either the Convener or me directly.

Regards

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