

Notes on access, supply and inspection of referendum documents.

1. Materials to be retained by the Proper Officer

1.1 After the Count, the Counting Officer has a duty to transfer the referendum materials to the Proper Officer of the Council¹. In most councils both roles will be held by the same person. Notwithstanding, the official transfer has to be made.

1.2 The materials to be transferred are as follows:-

a) From the count

- i) the packets of ballot papers in the Counting Officer's possession, including the counted ballot papers, the rejected ballot papers, the tendered ballot papers and the unused and spoiled ballot papers
- ii) the ballot paper accounts, the statements of rejected ballot papers and the verification statement
- iii) the packets containing the tendered votes lists, the assisted voters lists, the marked votes lists, the polling day alterations lists and the companion declarations (made up in a single packet in each polling station and opened and resealed at the count to allow use of the tendered votes list for the verification).

b) From the poll

- i) the packets of the completed corresponding numbers lists
- ii) the packets of the certificates of employment for constables or staff on duty in the polling station
- iii) the packets containing marked copies of the Polling List including any marked copy notices of alteration and of the postal voters list, the lists of proxies and the proxy postal voters lists

c) From the postal voting processes

- i) the packets containing the completed corresponding number lists from the postal vote issuing sessions
- ii) the packets containing spoiled postal votes
- iii) the packets containing any remaining parts of lost postal votes
- iv) the packets containing the superseded postal ballot packs
- v) the marked lists of postal voters and of postal proxy voters

¹ SIRA Schedule 3 Rule 37(1)

- vi) the packets containing retrieved cancelled votes
- vii) the packets containing rejected postal votes not subject to the personal identifier verification procedure
- viii) the packets containing postal voting statements which were accepted as valid but were not subject to the the personal identifier verification procedure
- ix) the packets containing the rejected ballot paper envelopes
- x) the packets containing the lists of spoilt, lost and superseded postal ballot papers
- xi) the packets containing rejected postal votes subject to the the personal identifier verification procedure
- xii) the packets containing postal vote statements subject to the the personal identifier verification procedure and
- xiii) a completed statement in the form prescribed by the Chief Counting Officer giving details of postal ballot papers issued, received, counted and rejected. (The Counting Officer should also send a copy of this statement to the Electoral Commission.)

1.3 Items received after the close of poll must be placed unopened in a sealed packet, endorsed and sent to the Proper Officer on a later occasion². These items are:

- i) covering postal vote envelopes received by the Counting Officer after the close of poll
- ii) any envelopes addressed to postal voters which have been returned as undelivered too late to be re-addressed; and
- iii) any spoilt postal ballot papers returned too late to enable other postal ballot papers to be issued.

1.4 When the deliveries of referendum materials are received from the Counting Officer they should be checked and receipted. They should be stored in a secure area where no unauthorised person can access them.

1.5 Staff who will be expected to deal with these documents should be carefully briefed to ensure that they are aware which ones are restricted and not for public inspection and the circumstances in which other documents can be accessed.

2. Documents not open to inspection³

2.1 The undernoted documents are **not** open for inspection **other than by order of the Court of Session or a sheriff principal**

- a) the packets of the ballot papers in the proper officer's possession
- b) the packets of the completed corresponding number lists
- c) the packets of the certificates of employment.

² SIRA Schedule 2 para 45(2) and (3)

³ SIRA Schedule 3 Rule 40

- 2.2 These documents may be accessed only if the Court or a sheriff principal is satisfied by evidence on oath that the order is required for the purpose of:
- a) instituting or maintaining a prosecution for an offence in relation to ballot papers, or
 - b) judicial review.
- 2.3 The order would be for
- a) the inspection or production of any rejected ballot papers
 - b) the opening of a sealed packet of the completed corresponding number lists or of certificates of employment, or
 - c) the inspection of any counted ballot papers.
- 2.4 The order may subject to such conditions (in relation to persons, time, place and mode of inspection and production or opening) as the Court or sheriff principal may deem necessary.
- 2.5 In making and carrying out an order, care must be taken to ensure that the way in which any particular person voted will not be disclosed until it is proved that such a vote was given and that it has been declared by a competent court to be invalid.
- 2.6 The powers under this rule⁴ can be made by any judge of the Court or by a sheriff principal otherwise than in open court and any appeal from any order of a sheriff principal under this rule is to the Court of Session.
- 2.7 Except as provided by this rule, no person is allowed to inspect any rejected or counted ballot papers in the custody of the Proper Officer or to open any sealed packet of the corresponding number list or of the certificate of employment.
- 3. Inspection of other documents transferred to the Proper Officer by the Counting Officer**
- 3.1 The other referendum documents transferred to the Proper Officer by the Counting Officer must be open to public inspection at such times and in such manner as the Proper Officer determines.⁵ The Proper Officer should decide at an early stage what the arrangements for public inspection should be and should brief staff accordingly.
- 3.2 People inspecting the marked copies of the Polling List are not entitled to make copies of any part of them or to record any information contained in them other than by handwritten notes.⁶ This being the case, the Proper Officer should ensure an appropriate level of supervision when the documents are being inspected.

⁴ SIRA Schedule 3 Rule 40

⁵ SIRA Schedule 3 Rule 38(2)

⁶ SIRA Schedule 3 Rule 38(3)

3.3 Anyone who makes a copy of the marked Polling List or records any information in them otherwise than by handwritten notes commits an offence and is liable on summary conviction to a fine of £5,000.⁷

4. Supply of the marked Polling List etc

4.1 Only the two designated organisations (Yes Scotland and Better Together) are entitled to receive, on request, copies of the following:

- (a) the marked copy of the polling list
- (b) the marked copy of any notice of alteration
- (c) the marked copy of the postal voters list
- (d) the marked copy of the list of proxies, and
- (e) the marked copy of the proxy postal voters list.⁸

4.2 The legislation provides that such requests should be made to the Counting Officer (rather than to the Proper Officer). Any request by the above designated organisations for any of these documents must:

- a) be made in writing
- b) specify the documents requested
- c) state whether they require a printed or a data copy, and
- d) state the purposes for which the documents will be used and why the supply of unmarked copies would be inadequate for those purposes.

4.3 The Counting Officer must supply the documents requested if

- a) the officer is satisfied that the organisation needs to see the marks on the marked copies of the documents in order to achieve the purpose for which they were requested, and
- b) the officer has received payment of the appropriate fee.

However, the legal obligation on the Counting Officer is to supply the data only in the form in which it is held.

4.4 Before supplying the documents, the Proper Officer should be satisfied that the designated organisation will use the information from the marked lists only for:

- a) purposes in connection with their campaign identified in the declaration that they made under paragraph [2 of Schedule 4 of the Scottish Independence Referendum Act 2013](#), or

⁷ SIRA Schedule 3 Rule 38(4)

⁸ SIRA Schedule 2 para 56

- b) the purposes of complying with the controls on donations and regulated transactions in that schedule, and
- c) subject to any conditions that would apply to the use of the unmarked copies of the documents by virtue of paragraph [50 of Schedule 2 of the Act](#).

4.5 The fee to be paid is £10 plus-

- c) for a printed copy, £2 for every 1,000 entries (or remaining part of 1,000 entries) covered by the request, and
- d) for a data copy, £1 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request.

A request for a copy of the whole or the same part of a document in both printed and data form may be treated as two separate requests.⁹

5. Period for retention of documents

5.1 The obligation on the Proper Officer is to retain all referendum documents received for a period of one year¹⁰ and after the expiry of that time to ensure their secure disposal unless otherwise directed by an order of the Court of Session or a sheriff principal.¹¹

5.2 The legislation further requires that **any** person holding a copy of

- a) the polling lists, notices of alteration and records of anonymous entries
- b) the postal voters lists, lists of proxies or the postal proxy voters lists
- c) the edited polling list, relative notices of alteration, lists of postal voters, proxies, or postal proxies, or
- d) the full latest register of local government electors, relative notices of alteration and lists of postal voters, proxies and postal proxies

must ensure that these are securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.¹²

5.3 Any person who fails to comply with this rule commits an offence and is liable on summary conviction to a fine of £5,000.

5.4 The Counting Officer/Proper Officer should ensure that the designated organisations, when they apply for copies of these documents, are reminded of the above deadline and of the penalties which will apply if that deadline is not observed.

⁹ SIRA Schedule 2 para 57

¹⁰ SIRA Schedule 3 Rule 38(1)

¹¹ SIRA Schedule 3 Rule 38(5)

¹² SIRA Schedule 2 para 55