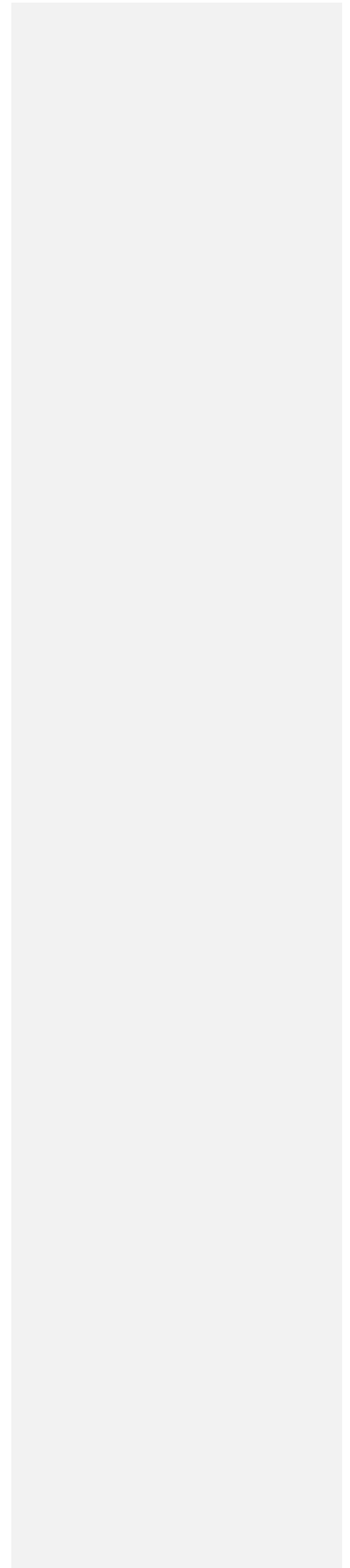


Part F – After the declaration of results

The Scottish Independence Referendum:
guidance for Counting Officers



Translations and other formats

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Comment [A1]: Review and paginate at end of process

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1 Storage and disposal of documents

1.1 As a requirement to meet **performance standard (insert detail if relevant), performance standard 5a— Forwarding and storage of documents**, you must put arrangements in place at an early stage for **packaging and forwarding documentation to the Proper Officer of the local government area in which the votes have been cast. You should also be aware of the legal obligations in relation to disposal of the documents.**

1.1.2 When handling the materials, remember that, as Counting Officer, you must **not open the sealed packets containing the tendered ballot papers, the completed corresponding number lists, the certificates of employment or the marked copies of the Polling List (including any notices of alteration) and the lists of proxies.**

1.1.3 If you are not also the Proper Officer of the **council-Council in respect of storing the election material**, you should liaise with them at an early stage to make arrangements for the forwarding of the prescribed documents after the declaration of results.



To demonstrate that you have met **performance standard (insert detail if relevant), performance standard 5a**, you must **provide the Commission be able to provide the Chief Counting Officer** with confirmation that you have in place arrangements for forwarding documentation.

1.31.4 Even if you are also the Proper Officer, you should make sure that the packaging process is as **transparent-clear** as possible. In either case, in order to meet **performance standard (insert detail if relevant), performance standard 5a**, you must maintain a clear audit trail when packaging and forwarding the documents in order to enable anyone wishing to inspect public documents to do so.



To demonstrate that you have met **performance standard (insert detail if relevant), performance standard 5a**, you must **be able to provide the Commission-Chief Counting with Officer with** confirmation that you have **arrangements** in place **arrangements** to maintain a clear audit trail to cover the packaging and forwarding of documents.

1.41.5 A clear audit trail and transparent process can be achieved by:

- Producing clear labels for each packet. You have a legal duty to seal all of the relevant documentation in separate packets and to mark each packet with a description of its **contents, contents and** the date of the **election-referendum, and the name of the ward to which it relates.** In addition, the labels should state **the date of the election**, for how long the packet is to be kept and when it is to be destroyed. The labels for documents open to public inspection and for

documents that are not open to public inspection should be different. As a minimum, the packets containing documents not open to public inspection should clearly state this fact.

- Ensuring that you have factored in the parcelling up of documents to your count planning.
- Covering packing instructions as part of your training for polling station staff and when training postal voting and count supervisors. Providing written instructions should also help to reduce the risk of documents being packaged wrongly. The ~~Commission Chief Counting Officer~~ has developed a *template graphical guide to packaging materials at the close of poll*, which you could adapt and provide to polling station staff.
- Creating a list of all documents to be forwarded. You should keep a record of all of the materials that you have a duty to send to the Proper Officer and ensure that all of the items are accounted for. *Paragraph 1.8* below provides a list of documents that you have a duty to forward. You should also:
 - record the number of parcels you have despatched
 - record the details of the Proper Officer to whom they have been sent
 - obtain a receipt from the Proper Officer indicating that the parcels have been safely received

~~1-51.6~~ All packets and receptacles containing ~~election-referendum~~ documents should be stored securely before being transferred to the Proper Officer so that no unauthorised persons can tamper with them.

~~1-61.7~~ On completion of the counting of the ballot papers, you have a legal duty to seal up ~~a complete electronic copy of the information stored in the electronic counting system (if the election was counted electronically) and~~ the counted and rejected ballot papers into separate packets and to forward these, alongside the other relevant election documents, to the Proper Officer.

~~1-71.8~~ The documents that you have a duty to forward are:

- ~~a complete electronic copy of the information stored in the electronic counting system (unless the election was not counted electronically)~~
- all ballot papers, which include counted ballot papers, rejected ballot papers, unused ballot papers (both ordinary and tendered), spoiled ballot papers and used tendered ballot papers
- ballot paper accounts, the result of the verification of the ballot paper accounts and the statement of rejected ballot papers

- list of tendered votes
- list of voters with disabilities assisted by companions
- declarations made by companions of voters with disabilities
- list of votes marked by the Presiding Officer
- statements relating to votes marked by the Presiding Officer
- statement as to postal ballot papers
- marked copies of the register of electors polling lists, including the marked list of persons to whom ballot papers are delivered after the correction of a clerical error or as a result of a decision on an appeal to the sheriff
- the marked list of proxies
- marked copies of the postal voters list and proxy postal voters list
- the packets containing the completed polling station and postal vote corresponding number lists
- certificates of employment for constables or polling staff on duty on polling day referendum day
- the packets of postal voting statements accepted as valid which were subject to the verification procedure
- the packets of rejected postal votes which were subject to the verification procedure
- any packets of postal voting statements accepted as valid which were not subject to the verification procedure
- any packets of rejected postal votes which were not subject to the verification procedure
- the packets of rejected postal ballot paper envelopes
- the lists of lost postal ballot papers and spoilt postal ballot papers
- the packet of spoilt postal ballot papers and accompanying documents

- the packet of lost postal ballot papers containing any part of the postal ballot pack that was not lost and which was returned to you before you issued a replacement
- unopened postal ballot packs received after the close of poll or returned as undelivered (these can be forwarded at a subsequent date)

Consultation and disposal

1.8 Arrangements for consultation and disposal of the election materials are the responsibility of the Proper Officer. However, given that many Counting Officers also fulfil this function. It is appropriate to deal with these issues in the context of this guide.

1.9 The Proper Officer of the Council must retain all the referendum papers transferred for a period of one year.

1.10 Those papers, except ballot papers, completed corresponding number lists and the certificates of employment, are to be made available for consultation at such times and in such manner as the Proper Officer may determine.

1.11 A person inspecting marked copies of the Polling List may not make copies of any part of them, nor record any particulars included in them except by taking handwritten notes.

1.12 A person who makes a copy of marked copies of the Polling List, or records any particulars included in them, otherwise than by making handwritten notes, commits an offence and is liable on summary conviction to a fine not exceeding £5,000 (level 5 on the standard scale).

1.13 After the expiry of one year, the Proper Officer must ensure that the papers are securely destroyed, unless otherwise directed by an order of the Court of Session or a sheriff principal.

2 ~~Post-election~~ referendum activity

Providing notice of the results

2.1 ~~As soon as practicable after the Count you must give public notice of: -~~

- ~~_____ the number of ballot papers counted in the area~~
- ~~_____ the number of votes cast in the area in favour of each answer to the referendum question; and~~
- ~~_____ the total number of rejected ballot papers and the number under each head as shown in the statement of rejected ballot papers.~~

~~(The Chief Counting Officer has prepared a [template notice for this purpose](#) which is available on the EMB website.)~~

Comment [A2]: [hyperlink](#)

~~2.1— You are obliged to inform the Proper Officer of the council, who may be the chief executive or some other senior officer, of the name of each candidate elected. You must also give public notice of the name of each candidate elected and the following detailed voting information for each ward[‡]:~~

- ~~● the number of first and subsequent preferences given to each candidate~~
- ~~● the number of ballot papers transferred and their transfer values at each stage of the count~~
- ~~● the number of votes credited to each candidate at each stage of the count~~
- ~~● the number of non-transferable ballot papers and the number of non-transferable votes at each stage of the count~~
- ~~● the number of rejected ballot papers as shown in the statement of rejected ballot papers.~~

~~2.2— If the election was counted electronically, you must also give public notice of the first and subsequent preferences for each candidate for each polling station and for the postal ballot papers, which are to be treated as if they were all cast at a further polling station. If less than 200 votes were cast at a particular polling station, you must aggregate the information with that of at least one other polling station in the ward so that the information is given in respect of 200 votes or more.~~

~~[‡] If less than 200 votes were cast in the whole ward, none of this information is to be publicly given~~

~~2.3~~ As soon as practicable after you have given public notice of this information, you must destroy the electronic voting data in a secure and confidential manner.

~~2.2~~ The Chief Counting Officer will supply you with a copy of the public notice declaring the number of votes counted in Scotland as a whole, the total number of votes cast in favour of each answer to the referendum question, and the total number of rejected papers which you can display alongside your local notice.

~~2.42.3~~ You should ensure that the ~~se~~ notices of results for the ~~local elections~~ referendum and the detailed voting information are made available to all interested parties as soon as possible, including by publishing them on the local authority's website.

Statement as to postal ballot papers

~~2.52.4~~ You have a legal duty to complete a statement as to postal ballot papers for the ~~election~~ referendum. The statement as to postal ballot papers is also evidence to demonstrate that you have met ~~performance standard (insert detail if relevant), Performance standard 3b – Issuing of postal votes and performance standard (insert detail if relevant), Performance standard 3c – Receiving and opening postal votes.~~

~~2.62.5~~ This statement provides an audit trail for the postal voting process throughout the ~~election~~ referendum. You should complete this statement accurately using the figures obtained during the issue, receipt, opening and verification of postal votes.

~~2.6~~ This document is vital for the accounting of postal votes and for ensuring confidence in the results. To ensure accuracy, the data used to complete the forms should be gathered systematically at relevant points in the postal voting process.

A Further details on record-keeping throughout the administration of the postal voting process are provided in *Part D – Absent voting*.

~~2.7~~ The ~~Commission~~ Chief Counting Officer has produced a *template statement as to postal ballot papers* for the ~~election~~ referendum. The accompanying guidance notes should support you in completing this.

You have a legal duty to forward a copy of the completed statement to the Proper Officer of the council at the same time as you forward the other ~~election~~ referendum documents listed in paragraph **1.8** above. You also have a legal duty to provide a copy of the statement to the Electoral Commission. ~~The statement must not be provided before the tenth day after polling day but must arrive no later than the fifteenth day after polling day.~~

Comment [A3]: End of this sentence can hide below box - reads - should be gathered systematically at relevant points in the postal voting (last word missing - guess process?)

Data collection and feedback

~~2.8~~ You will also be requested to send information and data to the relating to the elections as part of the Commission's duty to report on ordinary Scottish local government elections. After the event, the Chief Counting Officer will require a return of data and information on the referendum. This information will be shared with the Electoral Commission to facilitate the preparation of their post-referendum report.

~~2.9~~ 2.9 In some circumstances, the Commission may also contact you directly for information which you must provide.

~~2.10~~ 2.10 Forms for collecting information ~~and data~~ and accompanying guidance ~~notes for completion, as well as a Commission feedback form, will~~ notes will be circulated separately and will also be available on the Commission's website ~~EMB's website~~ at www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/local-elections-in-scotland.

Comment [A4]: hyperlink

Accounting for the ~~election~~ referendum

~~2.11~~ 2.11 The local authority will provide the Returning Officer with instructions for ~~accounting for the elections~~. The Fees and Charges Order for the Referendum sets out how much money you will be able to claim. You should read the Order carefully and be aware of the restrictions and limits on expenditure when preparing your project plan. ~~The Scottish Government will produce accompanying guidance on how to account for the referendum and will prepare forms to record your claims.~~

Comment [A5]: Check that this is accurate. AV referendum had the Commission doing this.

~~2.12~~ 2.12 You are entitled to a fee for your services in conducting the referendum in respect of your local authority area. Provision for this will also be made in the Fees and Charges Order.

Payment of creditors

~~2.13~~ 2.13 You should keep receipts throughout the period of the ~~election~~ referendum for all services/work provided, and pay all creditors as soon as possible after the ~~election~~ referendum.

Payment of fees to staff

~~2.14~~ 2.14 Staff should be paid as soon as possible after the ~~election~~ referendum.

National Insurance

~~2.15~~ 2.15 The Social Security (Categorisation of Earners) Regulations 1978 (SI 1978/1689) provide that there is no liability for National Insurance contributions for employment as or by the ~~Returning Counting~~ Officer. Therefore, National Insurance should not be deducted.

Income tax

~~2.16 Since April 2013, employers have been required to report PAYE information to HMRC in real time. This is referred to as Real Time Information (RTI). This new system will involve significant change in the way election payments are made, reported and taxed.~~

~~2.142.17 It is anticipated that guidance for the application of RTI in relation to election payments will be forthcoming from HMRC in due course. It is recommended, however, that, income tax should be deducted at the basic rate of tax except where employees are able to complete a 'P527 Certificate of taxable income'. In such cases, fees can be paid gross. In addition, employees may wish to have income tax deducted from their fees at the higher rate, if applicable. In order to ensure that the procedures you adopted are acceptable, you should consider consulting the Inspector of Taxes for your area.~~

Return of equipment

~~2.152.18 You should make arrangements to return any equipment, such as the polling booths, to storage. This should be covered in your project plan.~~

~~Candidates' Referendum campaign~~ election spending

~~2.18 Referendum spending by campaigners is monitored and regulated by the Electoral Commission. Any enquiries you receive on this subject should be referred to the Commission's office in Scotland.~~

Comment [A6]: Check tel contact details to apply

~~Candidates' returns — election spending~~

~~2.16 By law, all election agents must submit a candidate's spending return to the Proper Officer of the council, together with relevant invoices and receipts, within 35 calendar days of the declaration of result of the election.~~

~~2.17 Election agents and candidates are also required to submit declarations vouching for the candidate's election spending return. The election agent's declaration must be submitted at the same time as the return and within 35 calendar days of the election result being declared. The candidate's declaration must be submitted within seven working days of the election agent submitting the return, except where the candidate is outside of the UK, in which case the declaration must be submitted within 14 days of the return to the UK.~~

~~2.18 The Proper Officer must retain a copy of each local government election spending return for a period of two years and, during that period, make copies available for public inspection without charge. Anyone can request copies of the~~

~~returns and accompanying documents, which should be supplied on payment of the relevant fee, which is 20p for each side of a page. At the end of the two year period if the candidate or the relevant election agent requests them, they should be returned to the candidate. Otherwise the returns and accompanying documents may be destroyed.~~

~~2.19 The Commission has produced guidance for candidates and agents on their legal requirements regarding accounting for their spending; in addition, candidates and agents can also download the return of candidate election spending form with integrated explanatory notes, the declaration by the election agent as to election spending and the declaration by the candidate as to their election spending. The Commission has also published guidance for Proper Officers to help them deal with outstanding candidate spending returns.~~

~~2.20 As the Commission does not regulate party finance at Scottish Local Government elections, no copies of documents should be forwarded to the Commission.~~

3 Challenging ~~es to~~ the result of the election referendum

3.1 Election petitions can be used to challenge the result of local elections. The number of ballot papers counted or votes cast at the referendum, as certified by a Counting Officer or the Chief Counting Officer, can only be challenged by a petition for judicial review.

Comment [A7]: This section is from the CCO's guidance for the AV referendum with some small amendments.

3.2 The applicant would have to demonstrate to the Court of Session that he/she has a sufficient interest (known as "standing") in the outcome of the referendum and it is for the court to determine whether the petitioner has standing.

3.3 The petition for judicial review must be lodged within six weeks of the final certification of the result by the Counting Officer or Chief Counting Officer (depending whose certification is being challenged).

3.4 The petitioner would have to challenge a particular decision, act or omission that he/she claims was unlawful and led to an incorrect certification.

3.5 If the Court of Session rules that a particular decision, act or omission was unlawful, it may order the certification to be set aside, or, in some cases, the Court may declare the correct result.

~~3.13.6~~ Any person who contacts you enquiring about challenging the referendum should be advised to seek their own independent legal advice. If you receive any such enquiries, you should notify the Chief Counting Officer without delay.

3.2—An election petition can be issued by:

- four or more persons who voted as electors at the election or had a right to vote (except for anonymous electors); or
- a person claiming to have been a candidate at the election

3.3—The allowable grounds for a petition are that:

- the person whose election is questioned was disqualified at the time of the election; or
- the person whose election is questioned was not duly elected; or the election was avoided by corrupt or illegal practices, general corruption or corrupt agents

3.4—The person whose election is questioned by the petition will most probably be made a respondent to the petition. You will also most probably be a respondent to the petition if the petition relates to the conduct of the election.

3.5— A petition must be presented within 21 days after the day on which the election was held and can be issued at any time up to, but not later than, midnight on the last day. If, however, the petition complains of corrupt or illegal practices involving the payment of money or other reward that have taken place since the election, or an illegal practice relating to election expenses, further time may be allowed.

3.6— Any person who is considering submitting an election petition should be advised to take their own legal advice. Further information about the process of submitting a petition can be obtained from the sheriff clerk for the sheriff court that covers the area of the ward. Contact details for sheriff courts can be found on <http://www.scotcourts.gov.uk/locations/index.asp>.

4 Review of ~~election~~ referendum procedures

4.1 As a requirement to meet performance standard (insert detail if relevant), performance standard 5b—Review of election procedures, you must carry out a thorough evaluation of all processes outlined in your project plan, seeking feedback from appropriate stakeholders, and produce a lessons ~~learnt~~ learned document which will be used to inform the project plan and risk register for future electoral events.

4.2 The ~~Commission~~ Chief Counting Officer has provided, as part of the template project plan, some sample objectives and suggested tools that will allow you to measure the extent to which the conduct of the election referendum has been successful. We have also produced an Excel version of the template project plan. The ~~Commission~~ Chief Counting Officer has also provided an evaluation plan as part of the template project plan to assist you with the review process. It is not a requirement for you to use this particular template in order to meet the standards.



To demonstrate that you have met performance standard (insert detail if relevant), performance standard 5b, you must ~~provide the Commission~~ be able to provide the Chief Counting Officer with confirmation that your project plan for this election referendum includes a plan to evaluate procedures post-election referendum. For further information on preparing a project plan see Part B – Planning and organisation.

In addition, you ~~are also required~~ should be able to provide the ~~Commission~~ Chief Counting Officer with confirmation that you have produced a lessons ~~learnt~~ learned document ~~in~~ in order to demonstrate that you have met performance standard (insert detail if relevant), performance standard 5b.

The review

4.3 The scope of the review should cover all aspects of the election referendum. Your project plan should be used as the starting point for the review, and each process that was planned for and carried out should be reviewed.

4.4 A key part of the review will be the consideration of the aims and objectives set out in your project plan and measuring your performance against these.

4.5 You should pay particular attention to reviewing:

- your project planning
- whether you were able to secure adequate resources
- the equipment and stationery used

- how contractors have been managed and whether they delivered work to the required specification
- recruitment and training of staff
- the suitability of venues used
- the management of ~~nominations~~, polling stations, the absent voting process, and the verification and count
- the processing and handling of queries
- any issues affecting the security/integrity of the ~~election~~referendum

4.6 As part of the review, in order to meet performance standard (insert detail if relevant),~~performance standard 5b~~, you must seek feedback from appropriate stakeholders.

4.7 You should seek feedback from the following:

- staff
- electors
- ~~candidates, referendum agents, permitted participants, designated organisations and any other campaigners who made themselves known to you locally and political parties~~
- local organisations of disabled people, older people and minority ethnic groups, and the council's access officers

4.8 To obtain feedback from staff, for example, you should consider inviting a number of staff, including polling station staff, to a discussion in order to address all aspects of the polling station process, from training and briefing sessions through to dealing with difficult situations on ~~polling-referendum~~ day. You could also take into account any feedback provided in reports returned by Presiding Officers and polling station inspectors.

4.9 Once you have reviewed all aspects of the ~~election~~referendum and sought feedback from appropriate stakeholders, in order to meet performance standard (insert detail if relevant),~~performance standard 5b~~, you must produce a lessons ~~learnt~~learned document. The lessons ~~learnt~~learned document should include an analysis of what practices were successful and where these could be used elsewhere, what you would do again or do differently, and key recommendations. The lessons ~~learnt~~learned report should then be used to inform the project plan and risk register for future electoral events.