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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 317**

**REPRESENTATION OF THE PEOPLE**

**The Representation of the People (Absent  
Voting at Local Government Elections)  
(Scotland) Amendment Regulations 2021**

*Made* - - - - *13th September 2021*  
*Laid before the Scottish*  
*Parliament* - - - - *15th September 2021*  
*Coming into force* - - *30th October 2021*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 33 and 61(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and transitional provision**

1.—(1) These Regulations may be cited as the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2021 and come into force on 30 October 2021.

(2) The amendments made by these Regulations do not apply in relation to an election for which the date of poll is on or before 4 May 2022.

**Amendment of the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007**

2. The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007<sup>(2)</sup> are amended in accordance with regulations 3, 4, 5 and 6.

**Emergency applications to vote by proxy on grounds of disability**

3.—(1) In regulation 10, after paragraph (3) insert—

“(3A) Paragraph (3B) applies where—

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(1) 2006 asp 14.

(2) S.S.I. 2007/170, as amended by S.S.I. 2009/35, S.S.I. 2009/94, S.I. 2009/1182, S.I. 2011/211, S.S.I. 2011/399, S.I. 2011/2085, S.I. 2012/1479, S.S.I. 2013/142, S.S.I. 2016/8, S.S.I. 2016/264, S.S.I. 2017/64, S.I. 2019/419, S.I. 2019/1094, S.S.I. 2020/240, and S.S.I. 2021/73, by paragraph 326(2) and (3) of schedule 19 of the Data Protection Act 2018 c. 12, and by paragraph 1(2) and (3) of schedule 1 of the Scottish Elections (Franchise and Representation) Act 2020 asp 6.

- (a) an application under paragraph 4(2) of Schedule 4 is made in the circumstances described in paragraph (2), and
  - (b) the applicant became disabled before 5 p.m. on the sixth day before the date of the poll at the election for which it is made.
- (3B) Where this paragraph applies, the application must state the reasons why the applicant was unable to make the application before 5 p.m. on the sixth day before the date of the poll at the election for which it was made.”
- (2) In regulation 11(4), after sub-paragraph (a) insert—
- “(aaa) on grounds of the applicant’s disability where—
- (i) the applicant became disabled before 5 p.m. on the sixth day before the poll at the election for which it is made; and
  - (ii) by virtue of that disability, the applicant could not reasonably be expected to have made an application before 5 p.m. on the sixth day before that poll;”.

#### **Emergency applications for appointment of a replacement proxy**

4. For regulation 7, substitute—

##### **“Additional requirements for applications for the appointment of a proxy**

7. An application for the appointment of a proxy under paragraph 6 (proxies at election) of schedule 4 must—

- (a) state the full name and address of the person whom the applicant wishes to appoint as the applicant’s proxy, together with that person’s family relationship, if any, with the applicant,
- (b) if it is signed only by the applicant, contain a statement by the applicant that the person so named has been consulted and that that person is capable of being, and willing to be, appointed to vote as the applicant’s proxy,
- (c) if it is also signed by the person to be appointed, contain a statement by that person that they are capable of being, and willing to be, appointed to vote as the applicant’s proxy, and
- (d) in the case of an application to which regulation 11(4B) applies, state the reasons why the circumstances of the proxy on the date of the poll will, or are likely to, be such that they cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the elector.”.

5.—(1) Regulation 11 is amended as follows.

(2) In paragraph (2), for “An application” substitute “Subject to paragraphs (4A) and (4B), an application”.

(3) In paragraph (3), for “Subject to paragraph (4)” insert “Subject to paragraphs (4), (4A) and (4B)”.

(4) After paragraph (4), insert—

“(4A) Paragraph (4B) applies to an application by an elector under paragraph 6 of schedule 4 for an alternative person to be appointed as their proxy where—

- (a) the proxy currently appointed for the elector is not entitled to vote by post at the election, and

(b) the circumstances of the proxy on the date of the poll will, or are likely to, be such that they cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the elector.

(4B) An application to which this paragraph applies must be refused where the application is received after 5 p.m. on the day of the poll at the election for which it is made.”.

#### **Applications to vote by proxy on grounds of detention**

6.—(1) In Regulation 10, for paragraphs (5E) and (5F) substitute—

“(5E) Where an application under paragraph 4(2) of Schedule 4 is made on grounds relating to the applicant’s detention in a penal institution, the application must state the name of the penal institution at which the applicant is detained.”.

(2) In Regulation 11(4), after sub-paragraph (b) insert—

“(c) by a person to whom section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies,”.

St Andrew’s House,  
Edinburgh  
13th September 2021

*JOHN SWINNEY*  
A member of the Scottish Government

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations are made under powers in section 33 and 61(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (“the 2006 Act”). These Regulations amend the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (“the 2007 Regulations”) to provide procedures for emergency applications to vote by proxy at a local government election or to appoint a proxy to vote at a local government election. These emergency absent voting applications are made after 5 p.m. on the sixth day before the election but before 5 p.m. on the date of the election.

Section 31 of the 2006 Act enables the Scottish Ministers to make provision with respect to the procedure to be followed in the preparation of any special lists of records required by the Representation of the People Act 1983 (“the 1983 Act”) in connection with a Scottish local government election. Section 12 and schedule 4 of the Representation of the People Act 2000 (“the 2000 Act”) make provision for absent voting at Scottish local government elections and the keeping of lists and records of absent voters. Paragraph 1(2) of schedule 4 of the 2000 Act provides that the 1983 Act and schedule 4 are to have effect as if schedule 4 were contained in Part 1 of the 1983 Act. The 2007 Regulations are made under sections 33 and 61(2) of the 2006 Act and create procedures for absent voting applications under schedule 4 of the 2000 Act – lists of absent voters being required under the 1983 Act by virtue of paragraph 1(2) of schedule 4 of the 2000 Act.

Regulation 3 amends regulation 10 of the 2007 Regulations so that if a person is applying for a vote by proxy on the grounds of disability, and the application does not meet the deadline in regulation 11(3) of the 2007 regulations, the application must state the reasons why the applicant was unable to meet that deadline. This is an additional requirement to what already exists in regulation 10 of the 2007 Regulations.

Regulation 3 also amends regulation 11(4) of the 2007 Regulations to add a further ground on which an emergency application to vote by proxy (under paragraph 4(2) of schedule 4 of the 2000 Act) can be made. Regulation 3 enables an emergency application to vote by proxy on grounds of the applicant’s disability to be made where the applicant’s disability arose prior to the deadline which is set in regulation 11(3) of the 2007 Regulations but, by reason of the disability, the applicant could not reasonably be expected to have made the application before then.

Regulation 4 replaces regulation 7 of the 2007 Regulations to clarify the additional requirements for applications for the appointment of a proxy under paragraph 6 of schedule 4 of the 2000 Act. An additional requirement is made in new regulation 7(d) whereby an emergency application to appoint a proxy is made as the appointed proxy cannot reasonably be expected to vote in person. In these circumstances the application must state the reasons why the appointed proxy cannot reasonably be expected to vote in person.

Regulation 5 amends regulation 11 of the 2007 Regulations to provide a deadline for an emergency application to appoint a proxy under paragraph 6 of schedule 4 of the 2000 Act where the appointed proxy cannot reasonably be expected to vote in person. An emergency application in these circumstances is not subject to the deadline set in regulation 11(2) or (3) and is instead subject to a deadline of 5 p.m. on the day of the election.

Regulation 6 amends regulation 10 of the 2007 Regulations so as to provide that where an application is made under paragraph 4(2) of schedule 4 of the 2000 Act on grounds of a person’s detention, the application must state where the applicant is being detained. Regulation 6 also amends regulation 11 of the 2007 Regulations to provide that an application made by a detained person under paragraph

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4(2) of schedule 4 of the 2000 Act must be refused where it is made after 5 p.m. on the day of the election.