
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497 (S.2)) (“the 2001 Regulations”).

In the main, these regulations implement changes made by the Electoral Administration Act 2006, which (amongst other matters) introduced a system of anonymous registration of electors and provided for enhanced anti-fraud measures. Some of these changes are introduced by these Regulations. Further Regulations will be laid for Parliamentary approval in due course to implement other provisions of that Act.

Regulation 2 is a consequential amendment to regulation 3 (interpretation) of the 2001 Regulations.

Regulation 3 repeals the existing offence in regulation 23 of the 2001 Regulations of providing false information in pursuance of a requisition of information by a registration officer. Section 15 of the Electoral Administration Act 2006 (c. 22) (“the 2006 Act”) has amended section 13D of the Representation of the People Act 1983 (c. 2) (“the 1983 Act”), creating a broader offence of providing false information to registration officers.

Regulations 4 and 6 make amendments to the procedure for applications for registration consequential on anonymous registration.

Regulation 5 inserts new regulation 25A in the 2001 Regulations to provide for a reminder to be sent in each year to each person who has an anonymous entry, as the entitlement to registration terminates under section 9C of the 1983 Act after 12 months unless a fresh application is made.

Regulations 7 and 9 amend regulations 27 and 29 of the 2001 Regulations, to make provision for objections made in respect of persons already entered in the register. The amendment made to section 10A of the 1983 Act by section 12(4) of the 2006 Act clarified that such objections could be made. Regulation 9 additionally provides for registration officers to be able to determine objections without a hearing where they are of the opinion that the objection in question is clearly without merit.

Regulation 8 provides that applications for registration, when accompanied by an application for an anonymous entry, will not be available for public inspection.

Regulation 10 inserts new regulation 31A in the 2001 Regulations, to make provision for the determination of objections relating to applications for registration which have been allowed, but where the corresponding changes to the register have not yet taken effect.

Regulation 11 inserts new regulations 31B to 31F in the 2001 Regulations. The 2006 Act, in section 12, amended the provisions of the 1983 Act set out in new regulation 31B, to confer powers on registration officers to make determinations of a person’s entitlement to be registered other than in relation to determining applications for registration and objections. These new regulations provide for how these powers are to be exercised. They provide for the registration officer to undertake a review of a person’s entitlement to registration (new regulation 31D) and to maintain a list of such reviews (new regulation 31E). Provision is made for when such reviews must be heard (new regulation 31D) and how they are to be heard (new regulation 31F). New regulation 31C provides that this procedure does not apply in four specified circumstances, where it is clear that a person has ceased to satisfy the conditions for registration set out in section 4 of the 1983 Act, for the purposes of a determination under section 10A(5)(b) of that Act.

Regulation 12 inserts new regulations 31G to 31J in the 2001 Regulations. The 2006 Act, in section 10 and Part 1 of Schedule 1, provided for persons to apply to be entered in the register

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anonymously, where they show that their safety (or that of another person of their household) is at risk. New regulation 31G governs the procedure for applying for an anonymous entry, which must include a declaration by the applicant. New regulation 31H requires the registration officer to allow the application for an anonymous entry where the application is properly made and he is satisfied that evidence of the prescribed nature has been provided. That evidence can take one of the following forms: First, an order or injunction of a court – of a type specified in new regulation 31I – protecting the applicant (or another person of his household) from harassment or molestation. Secondly, an attestation made by a qualifying officer – such as the chief constable of a police force – that the safety of the applicant (or another person of his household) is at risk (new regulation 31J).

Regulation 13 amends regulation 32 of the 2001 Regulations. Appeals from the decision of the registration officer that a person was not entitled to be registered, or has ceased to satisfy the conditions for registration set out in section 4 of the 1983 Act will be governed by the same prescribed requirements as those which apply to appeals from decisions regarding an application for registration. These requirements are also to apply to appeals from decisions relating to anonymous registration.

Regulation 14 repeals regulation 33 of the 2001 Regulations, which prescribed circumstances for the purposes of section 10A(5)(b) of the 1983 Act. This conferred a power on the registration officer to determine in the circumstances so prescribed that a person had ceased to satisfy the requirements for registration set out in section 4 of that Act. However, the 2006 Act, in section 12(5)(b), substituted a broader power that is now subject to the procedure set out in the new regulations inserted by regulation 11. Consequential amendments are also made to regulations 34 and 36 of the 2001 Regulations.

Regulation 15 inserts new regulation 41A in the 2001 Regulations, which makes provision in relation to the content and location of an anonymous entry in the register. Regulation 16 makes amendments in consequence of anonymous registration.

Regulation 17 amends regulation 44 of the 2001 Regulations, to require the registration officer to include details of the total number of electors who have an anonymous entry in a document setting out information about the register, to be supplied to the Secretary of State, the Scottish Ministers and the Registrar General of Births, Deaths and Marriages for Scotland.

Regulation 18 inserts new regulations 45A to 45G. New regulation 45A requires the registration officer to maintain a record of anonymous entries. This record will contain details about the anonymously registered person, including those normally entered on the register. The registration officer must take proper precautions for the safe custody of the record. New regulations 45B to 45E provide for who is to have access to the record. The record is to be used only for the purposes of registration, elections, referendums, or of the police, security and intelligence services and other related organisations. The record may not otherwise be disclosed, except where this is ordered by a court.

New regulation 45G provides for the registration officer to issue to a person with an anonymous entry a certificate of anonymous registration. Regulation 45G provides that this certificate is the prescribed evidence to allow such persons to make donations to candidates at elections without their personal details being publicly reported.

Regulations 19 to 23 make amendments to the parts of the 2001 Regulations that govern absent voters and the issue and receipt of postal ballot papers in consequence of anonymous registration. Regulations 19 and 20 also remove references to Scottish local government elections that have become redundant, the matters now being covered for those elections by separate regulations.

Regulation 24 amends the 2001 Regulations to make provision in relation to representations made by or on behalf of an elector that the electoral register contains a clerical error. The amendments to regulations 5 and 6 of the 2001 Regulations are to facilitate the use of electronic communications in making representations.

Regulation 25(3) inserts new paragraph (3) to regulation 36 of the 2001 Regulations that specifies the prescribed time for the purposes of section 13B of the 1983 Act. Section 13B of the 1983 Act (as amended by section 11 of the 2006 Act) allows alterations to be made to an electoral register in consequence of a court ruling or in order to correct a clerical error up to a prescribed time on the day of the poll.

Regulation 26 inserts a new regulation 36A into the 2001 Regulations that provides that where a notice of alteration is issued by a registration officer on polling day as a result of a court ruling or to correct a clerical error, the registration officer must communicate the contents of the notice to the presiding officer. Where such communication takes place by way of telephone, the presiding officer is required to make a written record of the contents of the notice.

Regulation 27 amends several of the 2001 Regulations which relate to the supply of the electoral register. The amendments ensure that where a registration officer is required to supply a person with a copy of the electoral register, the register is taken to include any notices of alteration issued by the registration officer under sections 13B(3B) and (3D) of the 1983 Act.

Regulation 28 prescribes the form of corresponding number lists to be used at parliamentary elections at polling stations and for postal ballot papers. This is consequential on sections 30 (ballot paper design) and 31 (replacement of counterfoils) of the 2006 Act.

Regulation 29 removes the requirement to stamp ballots with the official mark in consequence of changes made by the 2006 Act, which enable the official mark to be made in other ways. It also replaces references to counterfoils attached to ballot papers, following the amendments made by section 31 the 2006 Act, which introduce corresponding number lists.

Regulation 30 revises and updates the lists of health care professionals and others who may attest applications for proxy votes so that it also includes persons who may be caring for or treating persons with disabilities of a non-physical nature. It also reflects amendments made by section 73 of the 2006 Act.

Regulations 31 and 32 make provision following section 35 of the 2006 Act. Section 35 amended Schedule 4 to the Representation of the People Act 2000 (c. 2) to remove the embargo on certain detained mental patients voting in person at polling stations. Where a detained mental patient is unexpectedly unable to vote in person (such as where he is refused permission to be absent in order to vote), he can appoint a proxy to vote for him. Such appointments may be made up to 5 p.m. on polling day. Regulation 32 also removes a reference to Scottish local government elections that has become redundant, closing dates for applications at those elections now being covered by separate regulations.

Regulation 33 inserts a new regulation 86A into the 2001 Regulations. Where an elector has reported that he has lost or spoilt his ballot paper and a replacement has been issued to him, the original ballot paper is cancelled. The new regulation 86A sets out the procedure by which a cancelled postal ballot paper should be retrieved from a ballot box.

Regulations 34 and 35 and Schedule 2 to these Regulations substitute a revised form of elector's official poll card and proxy's official poll card and prescribe new forms of official postal poll card to be sent to electors and their proxies.

Regulations 36 to 41 are made in consequence of the introduction of new rule 31A of the elections rules requiring the returning officer to record the return of postal ballots. Regulation 36 makes consequential amendments to the 2001 Regulations. Paragraph 137 of Schedule 1 to the 2006 Act adopted a defined term in relation to the special list relating to postal voters kept under paragraph 5(2) of Schedule 4 to the Representation of the People Act 2000 (c. 2), and this definition is now adopted in the 2001 Regulations.

Regulation 43 and 44 make provision for the supply and inspection of unmarked lists of absent voters in advance of an election. The new regulations require the registration officer to supply copies

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of documents to political parties and candidates and to permit inspection of those documents by members of the public.

Regulation 45 removes paragraph (3) of regulation 114, which had the effect of preventing the transfer of data in the full register to a processor outside the European Economic Area. A person who supplies information in the full register to any processor remains subject to the eighth data protection principle in Schedule 1 to the Data Protection Act 1998 (c. 29).

Regulation 46 replaces the offences in regulation 115 in order to bring the offences for breach of conditions on the use of information in full registers or unmarked special lists into line with that for misuse of documents after an election. It also creates offences in respect of the duties imposed by new regulations 45C to 45E on those who are supplied with the record of anonymous entries.

Regulation 47 inserts a new Part which makes provision requiring sheriff clerks to supply or disclose information in documents that have been used or marked at a parliamentary and places conditions on the use of information in those documents. An offence for breach of those conditions is contained in section 66B the 1983 Act which was inserted by section 41(9) of the 2006 Act.

Regulation 48 removes references in the 2001 Regulations to Maundy Thursday as a day to be ignored in certain electoral timetables, following amendments made by section 20 of the 2006 Act (Omission of references to Maundy Thursday).

Regulation 49 inserts new regulation 51AA in the 2001 Regulations. Where a person in his application for a postal vote asks for the ballot papers to be sent to an address that is different from the address that must be stated in the application, he must set out why his circumstances are such that this is required.

Regulation 50 amends regulation 57 of the 2001 Regulations, so that the registration officer must notify a person when they are removed from the record of proxies who are entitled to vote by post. It qualifies the requirement to give notifications to absent voters under paragraphs (4B) and (4C) of regulation 57 to where this is practicable. It also removes an adaptation of regulation 57 for Scottish local government elections that has become redundant, notification requirements for those elections now being covered for by separate regulations.

Regulation 52 amends regulation 74 of the 2001 Regulations to provide that a ballot paper envelope does not need to be marked with the number of the ballot paper where the ballot paper envelope contains a window through which the number of the ballot paper can be displayed.

Regulation 53 inserts wording into the 2001 Regulations to clarify that where a registration officer is also the returning officer at an election, and therefore has access to the full register without being supplied with a copy of it, restrictions on supply of the register to others and on disclosure of information from it continue to apply to him in his capacity as returning officer.

Regulation 54 makes amendments following the replacement by section 37 of the 2006 Act of the declaration of identity with a postal voting statement. References throughout the 2001 Regulations to declaration of identity, and associated references to a “declaration” are altered to refer, as appropriate, to “postal voting statement” or “statement”.

Regulation 55 provides for new forms of postal voting statement to be used at parliamentary elections taken alone or in combination with certain other elections or referendums.

Regulation 56 makes transitional provision in relation to the attestation evidence that may be provided in support of an application for an anonymous entry.