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STATUTORY INSTRUMENTS

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**2016 No. 219**

**The European Union Referendum (Conduct) Regulations 2016**

**PART 2**

**REGULATIONS FOR THE CONDUCT OF THE  
REFERENDUM IN THE UNITED KINGDOM**

*Counting of votes*

**Attendance at the count**

**45.**—(1) The counting officer must make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll.

(2) The counting officer must give the counting agents notice in writing of the time and place at which the counting of votes will begin.

(3) A person may be present at the counting of the votes only if—

- (a) the person falls within paragraph (4), or
- (b) the person is permitted by the counting officer to attend.

(4) The persons within this paragraph are—

- (a) the Chief Counting Officer, the Regional Counting Officer (where the voting area is in a region for which a Regional Counting Officer is appointed) and the counting officer;
- (b) the counting officer's clerks;
- (c) the referendum agents;
- (d) the counting agents;
- (e) persons who are entitled to attend by virtue of any of sections 6A to 6D of the 2000 Act.

(5) The counting officer may give a person permission under paragraph (3)(b) only if—

- (a) the officer is satisfied that the person's attendance will not impede the efficient counting of the votes, and
- (b) the officer has consulted the referendum agents or thinks it impracticable to do so.

(6) The counting officer must give the counting agents—

- (a) whatever reasonable facilities for overseeing the proceedings, and
- (b) whatever information with respect to the proceedings,

the officer can give them consistently with the orderly conduct of the proceedings and the discharge of the officer's duties.

(7) In particular, where the votes are counted by sorting the ballot papers according to the answer for which the vote is given and then counting the number of ballot papers for each answer, the counting agents are entitled to satisfy themselves that the ballot papers are correctly sorted.

**The count**

- 46.—(1) The counting officer must—
- (a) in the presence of the counting agents open each ballot box and count and record the number of ballot papers in it;
  - (b) in the presence of the referendum agents verify each ballot paper account;
  - (c) count the postal ballot papers that have been duly returned and record the number counted.
- (2) The counting officer must not count the votes given on any ballot papers until—
- (a) in the case of postal ballot papers, they have been mixed with the ballot papers from at least one ballot box;
  - (b) in the case of ballot papers from a ballot box, they have been mixed with the ballot papers from at least one other ballot box.
- (3) In England and Wales and Scotland, a postal ballot paper is not to be taken to be duly returned unless—
- (a) it is returned in the manner prescribed by the relevant postal voting provisions and reaches the counting officer or a polling station in the appropriate area before the close of the poll,
  - (b) the postal voting statement, duly signed, is also returned in the manner prescribed by the relevant postal voting provisions and reaches the counting officer or such a polling station before that time,
  - (c) the postal voting statement also states the date of birth of the elector or proxy (as the case may be), and
  - (d) in a case where an elector’s or proxy’s date of birth and signature are to be verified in accordance with the relevant postal voting provisions, the counting officer verifies the date of birth and signature of the elector or proxy (as the case may be).

In paragraph (a) “the appropriate area” means the voting area containing the address in respect of which the elector is registered.

(4) A postal ballot paper or postal voting statement that reaches the counting officer or a polling station on or after the close of the poll is treated for the purposes of paragraph (3) as reaching that officer or polling station before the close of the poll if it is delivered by a person who, at the close of the poll, is in the polling station, or in a queue outside the polling station, for the purpose of returning it.

- (5) In Northern Ireland a postal ballot paper is not to be taken to be duly returned unless—
- (a) it is returned in the proper envelope so as to reach the counting officer before the close of the poll and is accompanied by the declaration of identity duly signed and authenticated, and
  - (b) in the case of an elector, the declaration of identity states the elector’s date of birth and the counting officer is satisfied that the date stated corresponds with the date supplied as the elector’s date of birth in pursuance of section 10(4A)(b), 10A(1A)(b) or 13A(2A)(b) of the 1983 Act.
- (6) In the case of an elector in Northern Ireland, unless section 10(4B), 10A(1B) or 13A(2B) of the 1983 Act(1) applies, the declaration of identity referred to in paragraph (5) is not to be taken to be duly signed unless the counting officer is satisfied that the signature on the declaration corresponds

(1) Section 10 was substituted, and sections 10A and 13A were inserted, by paragraphs 1, 4 and 6 of Schedule 1 to the Representation of the People Act 2000 (c.2). Subsection (4B) of section 10, subsection (1B) of section 10A and subsection (2B) of section 13A were inserted by section 1 of the Electoral Fraud (Northern Ireland) Act 2002 (c.13). Sections 10(4B) and 10A(1B) were amended by paragraphs 104, 105 and 106 of Schedule 1 to the Electoral Administration Act 2006 (c.22).

with the signature supplied as the elector's signature in pursuance of section 10(4A)(a), 10A(1A)(a) or 13A(2A)(a) of that Act.

(7) The counting officer must not count any tendered ballot papers or (in Northern Ireland) tendered postal ballot papers.

(8) The counting officer, while counting and recording the number of ballot papers and counting the votes, must—

- (a) keep the ballot papers with their faces upwards, and
- (b) take all proper precautions for preventing anyone from seeing the numbers or other unique identifying marks printed on the back of the papers.

(9) The counting officer must—

- (a) verify each ballot paper account by comparing it with the number of ballot papers recorded by the officer, and the unused and spoilt ballot papers in the officer's possession and the tendered votes list and, in Northern Ireland, the tendered postal votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the lists);
- (b) draw up a statement as to the result of the verification.

(10) Any counting agent present at the verification may copy the statement drawn up under paragraph (9)(b).

(11) Once the statement is drawn up the counting officer must—

- (a) in the case of a voting area in a region for which a Regional Counting Officer is appointed, inform the Regional Counting Officer of the contents of the statement;
- (b) in the case of any other voting area, inform the Chief Counting Officer of the contents of the statement.

(12) The counting officer must so far as practicable proceed continuously with the counting of votes, allowing only time for refreshment, except that—

- (a) the officer may, with the agreement of the counting agents, exclude the whole or any part of the period between 7pm and 9am on the next day;
- (b) the officer may exclude a day mentioned in regulation 7(1).

(13) During the time so excluded the counting officer must—

- (a) place the ballot papers and other documents relating to the referendum under the officer's own seal and the seals of any of the counting agents who want to affix their seals, and
- (b) otherwise take proper precautions for the security of the papers and documents.

(14) For the purposes of paragraph (12)(a) the agreement of a referendum agent is effective as the agreement of his or her counting agents.

### **Re-count**

**47.—**(1) A person within paragraph (2) who is present at the completion of the counting (or any re-count) of the votes in a voting area may require the counting officer to have the votes for that area re-counted (or again re-counted), but the counting officer may refuse to do so if in the officer's opinion the requirement is unreasonable.

(2) The persons within this paragraph are—

- (a) referendum agents;
- (b) counting agents who, in relation to the count (or re-count), are designated under regulation 23(2).

(3) No step is to be taken on the completion of the counting (or any re-count) of the votes until the persons within paragraph (2) present at its completion have been given a reasonable opportunity to exercise the right conferred by this regulation.

(4) A counting officer may not conduct a re-count once a direction has been given under regulation 49(3)(b).

### **Rejected ballot papers**

**48.**—(1) Any ballot paper—

- (a) that does not bear the official mark, or
- (b) on which a vote is given for both answers to the referendum question, or
- (c) on which anything is written or marked by which the voter can be identified (except the printed number and other unique identifying mark on the back), or
- (d) which is unmarked or does not indicate the voter’s intention with certainty,

is void and not to be counted.

(2) But a ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place, or
- (b) otherwise than by means of a cross, or
- (c) by more than one mark,

is not to be treated as void for that reason if the voter’s intended answer to the referendum question is apparent, and the way the paper is marked does not itself identify the voter and it is not shown that the voter can be identified by it.

(3) The counting officer must endorse the word “rejected” on any ballot paper which under this regulation is not to be counted, and must add to the endorsement the words “rejection objected to” if an objection is made by a counting agent to the officer’s decision.

(4) The counting officer must draw up a statement showing the number of ballot papers rejected under each of the following heads—

- (a) no official mark;
- (b) both answers voted for;
- (c) writing or mark by which voter could be identified;
- (d) unmarked or void for uncertainty.

(5) Once the statement is drawn up the counting officer must—

- (a) in the case of a voting area in a region for which a Regional Counting Officer is appointed, inform the Regional Counting Officer of the contents of the statement;
- (b) in the case of any other voting area, inform the Chief Counting Officer of the contents of the statement.

### **Direction to conduct re-count**

**49.**—(1) On the completion of the counting of the votes (including any re-count under regulation 47), and on the completion of any re-count under this regulation, the counting officer must draw up a statement showing—

- (a) the total number of ballot papers counted, and
- (b) the number of votes cast in favour of each answer to the question asked in the referendum.

(2) Once the statement is drawn up the counting officer must—

- (a) in the case of a voting area in a region for which a Regional Counting Officer is appointed, inform the Regional Counting Officer of the contents of the statement;
  - (b) in the case of any other voting area, inform the Chief Counting Officer of the contents of the statement.
- (3) The Regional Counting Officer or Chief Counting Officer must then either—
- (a) direct the counting officer to have the votes re-counted, or
  - (b) direct the counting officer to make the certification under section 128(5) of the 2000 Act.
- (4) The Regional Counting Officer or Chief Counting Officer may give a direction under paragraph (3)(a) only if the officer thinks that there is reason to doubt the accuracy of the counting of the votes in the counting officer's voting area.
- (5) A counting officer who is given a direction under paragraph (3)(a) must—
- (a) begin the re-count as soon as practicable, and
  - (b) if the officer does not begin the re-count immediately, notify the counting agents of the time and place at which it will take place.
- (6) A counting officer may not make the certification under section 128(5) of the 2000 Act until directed to do so under paragraph (3)(b).

#### **Decisions on ballot papers**

**50.** The decision of the counting officer on any question arising in respect of a ballot paper is final (subject to review in accordance with paragraph 19 of Schedule 3 to the 2015 Act).