

SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

EXPLANATORY NOTES

COMMENTARY

Voting etc.

Schedule 2: Further provision about voting in the referendum

Part 1: Manner of voting

14. [Paragraph 1](#) of schedule 2 sets out the various ways to vote in the referendum, giving voters an entitlement to vote in person at polling stations unless they have opted to vote by post, in which case they may do so. A voter may also vote by using a proxy. Offences related to voting are set out in schedule 7.
15. Sub-paragraph (5) allows someone who is working for a counting officer or is a police constable on duty on the day when polling is taking place to vote at any polling station in the same local council area as the polling station at which they would normally vote (provided they have a certificate as described under rule 15(6) of schedule 3).
16. Sub-paragraph (6)(a) allows voters who have been detained in a mental or psychiatric hospital to vote in person at the polling station if they have permission to do so or to vote by post or proxy if they are entitled to do so. Sub-paragraph (6)(b) permits someone remanded in custody, and to whom section 7A of the Representation of the People Act 1983 applies, to vote only by post or proxy.
17. The Act uses the term ‘absent voter’ to describe both postal voters and proxy voters. Paragraph 2 grants an absent vote in the referendum to postal and proxy voters already on the relevant lists for Scottish local government or Scottish Parliamentary elections. Such voters are referred to as ‘existing postal voters’ and ‘existing proxy voters’.
18. [Paragraph 3](#) deals with new applications for postal votes and proxy votes for the referendum from applicants who are already on, or have applied to be on, the register of electors, including those with anonymous entries. The ‘register of electors’ for the purposes of the Act means the register of local government electors and the register of young voters maintained under the Scottish Independence Referendum (Franchise) Act 2013. Applications must be accepted provided they are submitted before the cut-off date and meet the requirements set out in this paragraph and paragraph 7. Paragraph 3 also deals with applications from existing postal voters to vote by proxy and existing proxy voters who wish to vote by post.
19. [Paragraph 4](#) places a requirement on electoral registration officers to keep absent voters lists that comprise a list of all those entitled to a postal vote in the referendum (the postal voters list) and all those entitled to a proxy vote (the list of proxies). Sub-paragraph (4) requires that where someone has an anonymous entry in the register of electors, any entry in the absent voter’s list should include only the person’s voter number. Sub-paragraph (5) requires electoral registration officers to notify anyone who is removed

from either of these lists, where it is practicable to do so, with the reason for their removal.

20. [Paragraph 5](#) sets out the requirements for someone who votes as proxy for another voter. The voter can have only one person appointed as proxy to vote for them. The proxy cannot be someone who would be below voting age on the date of the referendum, who would be subject to any other legal incapacity to vote, or who does not fulfil the citizenship qualifications for a local government election. No one can vote as proxy for more than two people who are not their spouse, civil partner or other close family relation. There is a duty on the registration officer to make the appointment of a proxy provided the applicant is entitled to an absent vote and makes an application in accordance with paragraph 3, the nominated proxy is willing and able to be a proxy and the application meets the requirements set out in paragraph 7. These include provision of details of the person the applicant wishes to be appointed as their proxy. Sub-paragraph (10) allows a person to cancel the appointment of a proxy by giving notice to the registration officer.
21. [Paragraph 6](#) sets out the requirements for voting as a proxy. The proxy can vote by post if they opt to have a postal vote, or they may vote at a polling station. Where someone has a proxy and the proxy opts to vote by post, the person who has the proxy is not allowed to apply for a ballot paper to vote at a polling station (other than a tendered ballot paper as described in rule 24 of schedule 3). He or she must rely on the proxy's postal vote. However, where someone has a proxy and the proxy does not opt to vote by post, the person may vote at a polling station, provided they do so before a ballot paper has been issued to their proxy (see paragraph 1(4)). Sub-paragraph (6) requires that where someone applies to the registration officer to vote by post as a proxy for someone else, the application must be granted if they are an existing proxy voter for that person and the application meets the requirements of paragraph 7.
22. Sub-paragraph (7) places a requirement on electoral registration officers to keep a proxy postal voters list comprising existing proxies who opt to vote by post and those whose applications under sub-paragraph (6) have been granted. Sub-paragraph (9) requires that where a voter has an anonymous entry in the electoral register, any entry in the proxy postal voter's list should include only the person's voter number. The proxy may only vote by post if they are named on that list. Sub-paragraphs (10) and (11) require the registration officer to retain details (name, date of birth and signature) of those who have applied for proxy votes under this paragraph until one year after the date of the referendum.
23. [Paragraph 7](#) sets out the requirements for applications:
 - i. From voters to vote by post
 - ii. From voters to vote by proxy
 - iii. From existing postal voters for their ballot paper to be sent to a different address
 - iv. From existing postal voters to vote by proxy in the referendum
 - v. From existing proxy voters to vote by post
 - vi. From voters wishing to appoint a proxy to vote for them
 - vii. From voters wishing to vote by post as proxy for someone else.
 - viii. From proxies who wish to vote by post for their ballot paper to be sent to a different address.
24. Such applications must be made in writing before the cut-off date (sub-paragraph (2)). They must also include certain information such as the person's name, date of birth and signature (unless a signature is not required due to a disability or inability to read or write), as set out in sub-paragraphs (3), (4) and (5). Sub-paragraph (5) requires

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emergency proxy applications made on the grounds set out in sub-paragraph (9)(a) to comply with additional requirements set out in paragraph 8. Sub-paragraph (7) sets out the requirements for the format of the applicant's date of birth and signature on the application. Sub-paragraph (8) sets out the required details in relation to the person to be appointed as a voter's proxy.

25. Sub-paragraphs (9) and (10) allow for emergency proxy applications, where someone becomes unable to vote in person at the polling station due to a disability suffered after the cut-off date, an unavoidable absence from their qualifying address (at short notice) after the cut-off date; or an absence for reasons relating to occupation, service or employment at short notice after the cut-off date and that person wishes to appoint someone as their proxy. Such applications must be submitted before 5pm on the day of the referendum.
26. [Paragraph 8](#) sets out the requirements for emergency proxy applications on the grounds set out in paragraph 7(9)(a). An application from a person applying for an emergency proxy vote must contain a statement of the date the applicant became aware of the reason for making the application. Where the application is made on or after the fifth working day before the poll and on the grounds of the applicant's suffering a disability after the cut-off date or being unavoidably absent from the applicant's qualifying address, the application must also be attested to by a person who is 18 or over, knows the applicant and is not related to the applicant. For those who apply in that period for reasons of occupation, service or employment, the application must be attested by the applicant's employer or, in other cases such as self-employment, by a person aged 18 or over who knows the applicant and is not related to them. Registered service voters applying on employment-related grounds do not have to meet the attestation requirements.
27. [Paragraph 9](#) places an obligation on electoral registration officers to notify applicants for a postal or proxy vote whether the application has been accepted or not, and to give a reason if the application is refused.
28. [Paragraph 10](#) requires the registration officer to supply as many forms as necessary to anyone wishing to use them in connection with registering to vote, or to applying for an absent vote, at the referendum. The forms must be free of charge. Paragraph 46 provides that the style of the form is as prescribed by the Chief Counting Officer.
29. [Paragraph 11](#) requires registration officers to keep a record of the dates of birth and signatures of voters who have applied for a postal or proxy vote. This information must be made available to the relevant counting officer as soon as possible after the cut-off date. This information is used by counting officers to verify postal voting statements returned along with postal votes.
30. [Paragraph 12](#) states that any entry relating to a voter or proxy who has opted to vote by post should be marked with the letter 'A' on any list of voters provided for use at a polling station. This highlights the fact that the voter is an absent voter and is not entitled to vote in person.
31. [Paragraph 13](#) deals with registration appeals made under existing legislation about registering on the electoral register (i.e. under section 56 of the 1983 Act, including as that provision is applied in relation to the register of young voters). Sub-paragraph (1) states that until the appeal has been decided, any activity related to the referendum proceeds on the basis that there is no appeal. For example, if an individual is appealing against the registration officer refusing to register him or her, he or she is not entitled to a vote in the referendum.
32. Under sub-paragraph (2), if, when an appeal is decided it results in an alteration of the register of electors (which is usually carried out by means of a notice rather than by publication of a completely new register), any referendum-related activity should take place in light of the decision as represented by the notice. In other words, once

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the notice is issued the appeal decision should be acted upon, but until that point the appeal should be ignored.