DRAFT STATUTORY INSTRUMENTS

2012 No.

The Police and Crime Commissioner Elections Order 2012

PART 2

Exercise of franchise for PCC elections

Registration

Effect of register of electors

4.—(1) Any entry in the register of electors, if it gives a date as that on which the person named will attain voting age, is conclusive for any purpose of this Part relating to that person as elector that until the date given in the entry the person is not of voting age nor entitled to be treated as an elector except for the purposes of a PCC election at which the day fixed for the poll is that or a later date.

(2) Paragraph (1) applies to an entry in the record of anonymous entries as it applies to an entry in the register of electors.

(3) A person registered in the register of electors, or entered in the list of proxies, is not excluded from voting at a PCC election on any of the grounds specified in paragraph (4): but this does not prevent the rejection of the vote on a scrutiny, or affect the person's liability to any penalty for voting.

(4) The grounds are—

(a) that the person is not of voting age;

(b) that the person is not, or, on the relevant date or the date of the person's appointment as proxy (as the case may be), was not—

(i) a Commonwealth citizen,

(ii) a citizen of the Republic of Ireland,

(iii) a relevant citizen of the Union;

(c) that the person is, or, on the relevant date or the date of the person's appointment as proxy (as the case may be), was, otherwise subject to any other legal incapacity to vote.

(5) In paragraph (4) "the relevant date" means—

(a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act, the 15th October immediately preceding the date of publication of the register;

(b) in relation to any other person registered in the register of electors, the relevant date for the purposes of section 4 of the 1983 Act.

Effect of misdescription

5.—(1) No misnomer or inaccurate description of any person or place named—

(a) in the register of electors, or

(b) in any list, record, proxy paper, nomination paper, ballot paper, notice or other document required for the purposes of this Order,

affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Discharge of registration duties

6.—(1) A registration officer must comply with any general or special directions which may be given by the Secretary of State with respect to the arrangements to be made by the registration officer for carrying out the officer's functions under this Order.

(2) The Secretary of State may give a direction under this article only if it is in accordance with a recommendation of the Commission.

(3) Any of the duties and powers of a registration officer under this Order may be performed and exercised by any deputy for the time being approved by the local authority which appointed the registration officer, and the provisions of this Order apply to any such deputy so far as respects any duties or powers to be performed or exercised by the deputy as they apply to the registration officer.

(4) Any acts authorised or required to be done by or with respect to the registration officer under this Order may, in the event of the officer's incapacity to act or of a vacancy, be done by or with respect to the proper officer of the local authority by which the registration officer was appointed.

(5) Each local authority must place the services of such of its officers as are required at the disposal of a registration officer on whom functions are conferred by this Order for the purpose of assisting the registration officer in the discharge of those functions.

(6) "Proper officer" means a proper officer within the meaning of section 270(3) of the Local Government Act 1972(**1**).

Payment of expenses of registration

7.—(1) Any expenses properly incurred by a registration officer in the performance of the officer's functions under this Order are to be paid by the local authority by which the registration officer was appointed.

(2) Such expenses are referred to in paragraph (4) as "registration expenses".

(3) Any fees paid to the registration officer under this Order must be accounted for by the officer and paid to the local authority by which the officer was appointed.

(4) On the request of a registration officer for an advance on account of registration expenses, the local authority by which the registration officer was appointed may, if they think fit, make such an advance to the officer of such an amount and subject to such conditions as they may approve.

Effect of registration appeals

8.—(1) An appeal to the county court or Court of Appeal by virtue of a relevant provision which is pending when notice of a PCC election is given does not prejudice the operation as respects the election of the decision appealed against, and anything done in pursuance of the decision is as good as if no such appeal had been brought and is not affected by the decision of the appeal.

(2) Where, as a result of the decision on an appeal by virtue of section 56 of the 1983 Act, an alteration in the register of electors takes effect under section 13(5), 13A(2) or 13B(3) or (3B) of the 1983 Act(**2**) (effective dates of register following conclusion of canvass and notices of alterations

(**1**) 1972 c.70.
(**2**) Section 13A of the Representation of the People Act 1983 was substituted by paragraph 6 of Schedule 1 to the Political Parties, Elections and Referendums Act 2000. Section 13B was inserted by paragraph 3 of Schedule 2 to the Representation of the People Act 2000 (c.2) and amended by section 11(3) of the Electoral Administration Act 2006 (c.22) and section 74 of, and

of register) on or before the date of the poll for a PCC election, paragraph (1) does not apply to that appeal as respects that election.

(3) "Relevant provision" means—

(a) section 56 of the 1983 Act;

(b) regulation 21 of the European Parliamentary Elections Regulations 2004(**3**).

Conduct of elections

Supply of register of electors

9. Schedule 1 (which makes provision about the supply of the register of electors) has effect.

Polling districts and places at PCC elections

10.—(1) For the purpose of PCC elections every police area is to be divided into polling districts.

(2) The power to constitute polling districts for the purpose of PCC elections is to be exercised in relation to each police area so that electors from any parliamentary polling district wholly or partly within a relevant voting area can, in the absence of special circumstances, be allotted to a polling station within the parliamentary polling place for that district unless the parliamentary polling place is outside the voting area.

(3) In paragraph (2), the reference to a relevant voting area is to a voting area wholly or partly comprised in the police area.

(4) An election is not to be questioned by reason of—

(a) any non-compliance with paragraph (1) or (2), or

(b) any irregularity relating to polling districts or polling places.

Manner of voting at PCC elections

11.—(1) Schedule 2 (which makes provision with respect to the manner of voting at PCC elections, and in particular absent voting) has effect as regards PCC elections.

(2) For the purposes of Schedule 2, where the day or last day of the time allowed by this Order for the doing of anything falls on a day which is—

(a) a Saturday or Sunday,

(b) Christmas Eve, Christmas Day, Good Friday or a bank holiday, or

(c) a day appointed for public thanksgiving or mourning,

that time is to be extended until the next following day which is not one of those days.

(3) Subject to paragraph 16(5) and 59(6) of Schedule 2, in computing any period of not more than 7 days for the purposes of that Schedule any day referred to in paragraph (2)(a) or (b) is to be disregarded.

Conduct of PCC elections

12.—(1) Elections of police and crime commissioners for police areas must be conducted in accordance with the rules set out in Parts 1 to 7 of Schedule 3 ("PCC elections rules").

(2) Part 8 of Schedule 3 (forms and directions) has effect for the purposes of those rules.

paragraph 3 of Schedule 10 to, the Police Reform and Social Responsibility Act 2011 (c.13). Subsections (3B) and (3D) were inserted by section 11(4) of the Electoral Administration Act 2006.

(**3**) S.I. 2004/293.

Combination of polls

13.—(1) In this article, "relevant election or referendum" means one or more of the following elections or referendums—

(a) a parliamentary election,

(b) a European parliamentary election,

(c) a local government election in England or Wales,

(d) an election in England for the return of an elected mayor as defined by section 9H(1) of the Local Government Act 2000(**4**),

(e) an election in Wales for the return of an elected mayor as defined by section 39(1) of the Local Government Act 2000,

(f) a local referendum.

(2) Parts 1 and 2 of Schedule 4 contain provision for polls at a PCC election to be taken together with polls at one or more relevant elections or referendums.

(3) Where the poll at a PCC election is taken together with the poll at one or more relevant elections or referendums, the PCC elections rules have effect with the modifications set out in Part 3 of Schedule 4.

(4) Part 4 of Schedule 4 (forms and directions) has effect for the purposes of those modified PCC elections rules.

Further provision about persons involved in conduct of PCC elections

14.—(1) No person is subject to any incapacity to vote at a PCC election by reason of that person being or acting as police area returning officer or local returning officer.

(2) A PCC election is not to be questioned by reason of a defect in the title, or want of title, of the person presiding at or conducting the election, if that person was then in actual possession of, or acting in, the office giving the right to preside at or conduct the election.

Validity of PCC election

15. No PCC election may be declared invalid by reason of any act or omission by any police area returning officer, local returning officer or other person in breach of his or her official duty in connection with the election or otherwise of the PCC elections rules if it appears to the tribunal having cognizance of the question that—

(a) the election was so conducted as to be substantially in accordance with the law as to PCC elections, and

(b) the act or omission did not affect the result.

Loan of equipment for PCC elections

16.—(1) Any ballot boxes, fittings and compartments provided for parliamentary elections out of moneys provided by Parliament, may, on request, be lent to a local returning officer at a PCC election on such terms and conditions as the Secretary of State may determine.

(2) Any ballot boxes, fittings and compartments provided by or belonging to a local authority within the meaning of the Local Government Act 1972(**5**) must, on request, and if not required for immediate use by that authority, be lent to a local returning officer at a PCC election on such terms and conditions as may be agreed.

(**4**) Section 9H was inserted by section 21 of, and Schedule 2 to, the Localism Act 2011 (c.20).
(**5**) 1972 c.70.

Offences

Personation

17.—(1) A person is guilty of a corrupt practice if the person commits, or aids, abets, counsels or procures the commission of, the offence of personation.

(2) A person ("P") is deemed guilty of personation at a PCC election if P—

(a) votes in person or by post as some other person, whether as an elector or as proxy, and whether that other person is living or dead or is a fictitious person, or

(b) votes in person or by post as proxy—

(i) for a person whom P knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or

(ii) when P knows or has reasonable grounds for supposing that P's appointment as proxy is no longer in force.

(3) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

(4) Section 24A of the Police and Criminal Evidence Act 1984(**6**) (arrest without warrant: other persons) does not permit a person other than a constable to arrest, inside a polling station, a person who commits or is suspected of committing an offence under the preceding provisions of this article.

Other voting offences

18.—(1) A person ("P") is guilty of an offence if—

(a) P votes in person or by post, whether as an elector or as proxy, or applies to vote by proxy or by post as elector, at a PCC election or at PCC elections, knowing that P is subject to a legal incapacity to vote at the election or, as the case may be, the elections, or

(b) P applies for the appointment of a proxy to vote for P at a PCC election or at PCC elections knowing that P is or the person to be appointed is subject to a legal incapacity to vote at any such election or elections, or

(c) P votes, whether in person or by post, as proxy for some other person at a PCC election, knowing that that person is subject to a legal incapacity to vote.

For the purposes of this paragraph, references to a person being subject to a legal incapacity to vote do not, in relation to things done before polling day at the election or first election at or for which they are done, include the person being below voting age if the person will be of voting age on that day.

(2) A person ("P") is guilty of an offence if—

(a) P votes as elector otherwise than by proxy either—

(i) more than once in the same police area at any PCC election, or

(ii) in any police area at a PCC election when there is in force an appointment of a person to vote as P's proxy at the election in respect of an address in the same police area which is other than the address by virtue of which P votes as elector, or

(b) P votes as elector in person in any police area at a PCC election at which P is entitled to vote by post in the same police area, or

(**6**) 1984 c.60. Section 24A was inserted by section 110(1) of the Serious Organised Crime and Police Act 2005 (c.15) and amended by section 2 of the Racial and Religious Hatred Act 2006 (c.1).

(c) P votes as elector in person in any police area at a PCC election, knowing that a person appointed to vote in the same police area as P's proxy at the election either has already voted in person at the election or is entitled to vote by post at the election.

(3) A person ("P") is guilty of an offence if—

(a) P votes as proxy for the same elector more than once in the same police area at any PCC election, or

(b) P votes in person as proxy for an elector at a PCC election at which P is entitled to vote by post as proxy for that elector, or

(c) P votes in person as proxy for an elector at a PCC election knowing that the elector has already voted in person at the election.

(4) A person is also guilty of an offence if the person votes at a PCC election in any police area as proxy for more than two persons of whom P is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild(**7**).

(5) A person is also guilty of an offence if the person knowingly induces or procures some other person to do an act which is, or but for that other person's want of knowledge would be, an offence by that other person under any of paragraphs (1) to (4).

(6) For the purposes of this article, a person who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted, but for the purpose of determining whether an application for a ballot paper constitutes an offence under paragraph (4), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper is to be disregarded, if the person does not exercise that right.

(7) A person is not guilty of an offence under paragraph (2)(b) or (3)(b) only by reason of the person having marked a tendered ballot paper in pursuance of case 3, 4, 5 or 6 of rule 42 of the PCC elections rules.

(8) An offence under this article is an illegal practice, but—

(a) the court before which a person is convicted of any such offence may, if it thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of section 173 of the 1983 Act (read with article 77) (incapacities on conviction of corrupt or illegal practices), and

(b) a candidate is not liable, nor shall the candidate's election be avoided, for an illegal practice under this article of any agent of the candidate other than an offence under paragraph (5).

Breach of official duty

19.—(1) If a person to whom this article applies is, without reasonable cause, guilty of any act or omission in breach of the person's official duty, the person is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) No person to whom this article applies is liable for breach of his or her official duty to any penalty at common law and no action for damages lies in respect of the breach by such a person of the person's official duty.

(3) The persons to whom this article applies are—

(a) any registration officer, police area returning officer, local returning officer or presiding officer,

(b) any other person whose duty it is to be responsible after a PCC election for the used ballot papers and other documents (including returns and declarations as to expenses),

(**7**) *See* the restriction in paragraph 6(5) of Schedule 2.

(c) any deputy of a person mentioned in sub-paragraph (a) or (b),

(d) any person appointed to assist or in the course of employment assisting a person mentioned in any of sub-paragraphs (a) to (c) in connection with that person's official duties;

and for the purposes of this article "official duty" is to be construed accordingly, but does not include duties imposed otherwise than by the law relating to PCC elections or the registration of local government electors.

(4) Where a police area returning officer or a local returning officer for a PCC election—

(a) is guilty of an act or omission in breach of the officer's official duty, but

(b) remedies that act or omission in full by taking steps under regulation 6 of the Police and Crime Commissioner Elections (Functions of Returning Officers) Regulations 2012(**8**) (correction of procedural errors),

the officer is not guilty of an offence under paragraph (1).

(5) Paragraph (4) does not affect any conviction which takes place, or any penalty which is imposed, before the date on which the act or omission is remedied in full.

Tampering with nomination papers, ballot papers etc

20.—(1) A person is guilty of an offence, if, at a PCC election, the person—

(a) fraudulently defaces or fraudulently destroys any nomination paper, or

(b) fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post, or

(c) without due authority supplies any ballot paper to any person, or

(d) fraudulently puts into any ballot box any paper other than the ballot paper which the person is authorised by law to put in, or

(e) fraudulently takes out of the polling station any ballot paper, or

(f) without due authority destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the PCC election, or

(g) fraudulently or without due authority, as the case may be, attempts to do any of the foregoing acts.

(2) If a police area returning officer, a local returning officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers is guilty of an offence under this article, the officer or clerk is liable—

(a) on conviction on indictment to a fine, or to imprisonment for a term not exceeding 2 years, or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding 6 months, or to both.

(3) If any other person is guilty of an offence under this article, that person is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 6 months, or to both.

(**8**) S.I. 2012/XXX.

False statements in nomination papers etc

21.—(1) A person is guilty of a corrupt practice if, at a PCC election, the person causes or permits to be included in a document delivered or otherwise furnished to a police area returning officer or a local returning officer for use in connection with the election—

(a) a statement of the name or home address of a candidate at the PCC election which the person knows to be false in any particular, or

(b) a statement under rule 5(7)(b) of the PCC elections rules which the person knows to be false in any particular, or

(c) anything which purports to be the signature of an elector who proposes, seconds or assents to, the nomination of a candidate at the PCC election but which the person knows—

(i) was not written by the elector by whom it purports to have been written, or

(ii) if written by that elector, was not written for the purpose of signifying that the person was proposing, seconding, or (as the case may be) assenting to, that candidate's nomination, or

(d) a certificate authorising for the purposes of rule 6 of the PCC elections rules (nomination papers: name of registered political party) the use by a candidate of a description if the person knows that the candidate has been nominated as a candidate for election as a police and crime commissioner for any other police area for which the poll is to be held on the same day as the poll at the PCC election to which the certificate relates.

(2) A person is guilty of a corrupt practice if, at a PCC election, the person makes in any document in which the person consents to his or her nomination as a candidate—

(a) a statement of the person's date of birth,

(b) a statement as to the person's qualification for being elected at that election, or

(c) a statement that the person is not a candidate at an election for any other police area the poll for which is to be held on the same day as the poll at the election to which the consent relates,

which the person knows to be false in any particular.

(3) For the purposes of paragraph (2), a statement as to a candidate's qualification is a statement—

(a) that the candidate is qualified for being elected,

(b) that the candidate will be qualified for being elected, or

(c) that to the best of the candidate's knowledge and belief the candidate is not disqualified for being elected.

Requirement of secrecy

22.—(1) The persons listed in paragraph (2) must maintain and aid in maintaining the secrecy of voting and must not, except for some purpose authorised by law, communicate to any person before the poll is closed any information as to—

(a) the name of any elector or proxy for an elector who has or has not applied for a ballot paper or voted at a polling station,

(b) the number on the register of electors of any elector who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station, or

(c) the official mark on any ballot paper.

(2) The listed persons are—

(a) every police area returning officer or local returning officer attending at a polling station,

(b) every deputy of such an officer so attending,

(c) every presiding officer or clerk so attending,

(d) every candidate or election agent or polling agent so attending, and

(e) every person so attending by virtue of any of sections 6A to 6D of the 2000 Act(**9**) (which makes provision about the attendance at certain elections of Commission representatives and accredited observers).

(3) Every person attending at the verification of the ballot paper accounts or the counting of the votes must maintain and aid in maintaining the secrecy of voting and must not—

(a) ascertain or attempt to ascertain at the counting of the votes the number or other unique identifying mark on the back of any ballot paper;

(b) communicate any information obtained at the counting of the votes as to the candidate for whom any vote is given on any particular ballot paper.

(4) No person attending at the verification of the ballot paper accounts may express to any person an opinion based on information obtained at that verification as to the likely result of the election.

(5) No person may—

(a) interfere with or attempt to interfere with a voter when recording his vote;

(b) otherwise obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that station is about to vote or has voted;

(c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given to a voter at that station;

(d) directly or indirectly induce a voter to display the ballot paper after the voter has marked it so as to make known to any person the name of the candidate for whom the voter has or has not voted.

(6) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post must maintain and aid in maintaining the secrecy of the voting and must not—

(a) except for some purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark;

(b) except for some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of the ballot paper sent to any person;

(c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark on the back of any ballot paper;

(d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the candidate for whom any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

(7) No person having undertaken to assist a voter with disabilities (within the meaning of rule 41(10) of the PCC elections rules) to vote may communicate at any time to any person any information as to the candidate for whom that voter intends to vote or has voted, or as to the number or other unique identifying mark on the back of the ballot paper given for the use of that voter.

(**9**) 2000 c.41. Sections 6A to 6D were inserted by section 29 of the Electoral Administration Act 2006 and section 6A(5) was amended by paragraphs 89 and 92 of S.I. 2007/1388 and paragraph 10 of Schedule 10 to the Police Reform and Social Responsibility Act 2011 (c.13).

(8) A person who acts in contravention of this article is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months.

Prohibition on publication of exit polls

23.—(1) No person may in the case of a PCC election publish before the poll is closed—

(a) any statement relating to the way in which voters have voted at the election where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or

(b) any forecast as to the result of the election which is (or might reasonably be taken to be) based on information so given.

(2) A person who acts in contravention of paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months.

(3) In this article—

"forecast" includes estimate;

"publish" means make available to the public at large, or any section of the public, in whatever form and by whatever means;

and any reference to the result of an election is a reference to the result of the election either as a whole or so far as any particular candidate or candidates at the election is or are concerned.