
DRAFT STATUTORY INSTRUMENTS

2012 No.

The Police and Crime Commissioner Elections Order 2012

PART 2

Exercise of franchise for PCC elections

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 - (ii) when P knows or has reasonable grounds for supposing that P’s appointment as proxy is no longer in force.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⁽¹⁾ (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.

(1) 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).

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
 - (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⁽²⁾.
- (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).

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

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),
- (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⁽³⁾ (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

(3) S.I. 2012/XXX.

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.

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⁽⁴⁾ (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;

(4) 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).

- (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.

(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.