



# Referendums (Scotland) Act 2020

## 2020 asp 2

### *Conduct*

#### **7 Chief Counting Officer**

- (1) The Scottish Ministers must, in writing, appoint a Chief Counting Officer for the referendum.
- (2) The Chief Counting Officer is to be the person who, immediately before the coming into force of the Act of the Scottish Parliament referred to in section 1(2) or regulations made under that Act, is the person appointed as the convener of the Electoral Management Board for Scotland by virtue of section 2 of the Local Electoral Administration (Scotland) Act 2011.
- (3) But subsection (2) does not apply if—
  - (a) there is no person appointed as convener at that time,
  - (b) that person is unable or unwilling to be appointed as the Chief Counting Officer,
  - (c) that person has been removed from office as the Chief Counting Officer under subsection (5),(in which case the Scottish Ministers must appoint such person as they consider appropriate).
- (4) The Chief Counting Officer may resign by giving notice in writing to the Scottish Ministers.
- (5) The Scottish Ministers may, by notice in writing, remove the Chief Counting Officer from office if—
  - (a) where subsection (2) applies, the Chief Counting Officer ceases to be the convener of the Electoral Management Board for Scotland,
  - (b) the Chief Counting Officer is convicted of any offence, or
  - (c) they are satisfied that the Chief Counting Officer is unable to perform the Chief Counting Officer's functions by reason of any physical or mental illness or disability.
- (6) If the Chief Counting Officer dies, resigns or is removed from office, the Scottish Ministers must appoint another person to be the Chief Counting Officer.

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- (7) The Chief Counting Officer may, in writing, appoint deputies to carry out some or all of the officer's functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to the Chief Counting Officer is to be read as including a deputy.
- (8) A person may be appointed to be—
  - (a) the Chief Counting Officer,
  - (b) a deputy of the Chief Counting Officer,only if the person is or has been a returning officer appointed under section 41(1) of the 1983 Act.

## **8 Other counting officers**

- (1) The Chief Counting Officer must, in writing, appoint a counting officer for each local government area.
- (2) The Chief Counting Officer must notify the Scottish Ministers of each appointment made under subsection (1).
- (3) A counting officer may resign by giving notice in writing to the Chief Counting Officer.
- (4) The Chief Counting Officer may, by notice in writing, remove a counting officer from office if—
  - (a) the Chief Counting Officer is satisfied that the counting officer is for any reason unable to perform the counting officer's functions, or
  - (b) the counting officer fails to comply with a direction given or requirement imposed by the Chief Counting Officer.
- (5) If the counting officer for an area dies, resigns or is removed from office, the Chief Counting Officer must appoint another person to be the counting officer for the area.
- (6) A counting officer may, in writing, appoint deputies to carry out some or all of the officer's functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to a counting officer is to be read as including a deputy.

## **9 Functions of the Chief Counting Officer and other counting officers**

- (1) The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act.
- (2) Each counting officer must—
  - (a) conduct the poll and the counting of votes cast in the local government area for which the officer is appointed in accordance with this Act, and
  - (b) certify—
    - (i) the number of ballot papers counted by the officer,
    - (ii) the number of votes cast in the area in favour of each answer to the referendum question, and
    - (iii) the number of rejected ballot papers.
- (3) A counting officer—

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- (a) must consult the Chief Counting Officer before making a certification under subsection (2)(b), and
  - (b) must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.
- (4) The Chief Counting Officer must, for the whole of Scotland, certify—
  - (a) the total number of ballot papers counted,
  - (b) the total number of votes cast in favour of each answer to the referendum question, and
  - (c) the total number of rejected ballot papers.
- (5) A counting officer must give the Chief Counting Officer any information which the Chief Counting Officer requires for the carrying out of the Chief Counting Officer's functions.
- (6) A counting officer must carry out the counting officer's functions under this Act in accordance with any directions given by the Chief Counting Officer.
- (7) Before giving a direction to a counting officer, the Chief Counting Officer must consult the Electoral Commission.
- (8) The Chief Counting Officer must not impose a requirement or give a direction that is inconsistent with this Act.
- (9) The Chief Counting Officer may—
  - (a) appoint such staff,
  - (b) require a council to provide, or ensure the provision of, such property, staff and services,as may be required by the Chief Counting Officer for the carrying out of the Chief Counting Officer's functions.
- (10) The council for the local government area for which a counting officer is appointed must provide, or ensure the provision of, such property, staff and services as may be required by the counting officer for the carrying out of the counting officer's functions.

## **10 Correction of procedural errors**

- (1) The Chief Counting Officer or a counting officer may take such steps as the officer thinks appropriate to remedy any act or omission on the officer's part, on the part of a deputy of the officer, or on the part of a relevant person, which—
  - (a) arises in connection with any function the Chief Counting Officer, counting officer or relevant person (as the case may be) has in relation to the referendum, and
  - (b) is not in accordance with the requirements of this Act relating to the conduct of the referendum.
- (2) But the Chief Counting Officer or a counting officer may not under subsection (1) recount the votes cast in the referendum after the result has been declared.
- (3) For the purposes of subsection (1), each of the following is a relevant person—
  - (a) in relation to the Chief Counting Officer, a counting officer or a deputy of a counting officer,
  - (b) a registration officer,

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- (c) a presiding officer,
  - (d) a person providing goods or services to the counting officer,
  - (e) a deputy of any registration officer or presiding officer,
  - (f) a person appointed to assist or, in the course of the person's employment, assisting any person mentioned in paragraphs (b) to (d) in connection with any function that person has in relation to the referendum.
- (4) The Chief Counting Officer or a counting officer does not commit an offence under paragraph 5 of schedule 6 by virtue of an act or omission in breach of the officer's official duty if the officer remedies that act or omission in full by taking steps under subsection (1).
- (5) Subsection (4) does not affect any conviction, or any penalty imposed, before the date on which the act or omission is remedied in full.

## **11 Expenses of counting officers**

- (1) The Chief Counting Officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the Chief Counting Officer of functions under this Act.
- (2) A counting officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.
- (3) The amount of charges and expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, regulations made by the Scottish Ministers.
- (4) However the Scottish Ministers may pay an amount of charges or expenses that exceeds that maximum amount if they consider—
  - (a) that it was reasonable for the Chief Counting Officer or, as the case may be, the counting officer, to incur the charges or expenses, and
  - (b) that the amount of the charges or expenses is reasonable.
- (5) Regulations under subsection (3) may include provision for the submission by the Chief Counting Officer and counting officers to the Scottish Ministers of accounts of charges and expenses before payments are made by the Scottish Ministers, including provision about—
  - (a) the time by which accounts are to be submitted,
  - (b) the form and manner in which they are to be submitted.
- (6) Regulations under subsection (3)—
  - (a) may make different provision for different functions, cases or areas,
  - (b) may include incidental and supplementary provision.
- (7) If the Chief Counting Officer or a counting officer requests from the Scottish Ministers an advance on account of any charges or expenses recoverable by the officer from the Scottish Ministers under this section, the Scottish Ministers may make such advance on such terms as they think fit.

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## 12 Conduct rules

Schedule 2 makes provision about the conduct of the referendum.

**Changes to legislation:**

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