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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 35**

**REPRESENTATION OF THE PEOPLE**

**The Absent Voting at Scottish Local Government Elections  
(Provision of Personal Identifiers) Regulations 2009**

*Made* - - - - 5th February 2009  
*Laid before the Scottish  
Parliament* - - - - 6th February 2009  
*Coming into force* - - 31st March 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 21(7), 22(3), 23(2)(c), 24(1), 33 and 61(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006<sup>(1)</sup> and all other powers enabling them to do so.

**PART 1**

General

**Citation and commencement**

1. These Regulations may be cited as the Absent Voting at Scottish Local Government Elections (Provision of Personal Identifiers) Regulations 2009 and come into force on 31st March 2009.

**PART 2**

Absent voting: personal identifiers

**Interpretation**

2. In this Part “the 2007 Regulations” means the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007<sup>(2)</sup>.

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(1) 2006 asp 14.  
(2) S.S.I. 2007/170.

### **Disapplication of Part IV of the Representation of the People (Scotland) Regulations 2001**

3. In Part IV of the Representation of the People (Scotland) Regulations 2001(3) (absent voters), after regulation 50 (interpretation of Part IV) insert—

#### **“Disapplication of Part IV**

**50A.** This Part does not apply where a postal or proxy vote is being or has been sought in respect solely of local government elections in Scotland or of a particular local government election in Scotland.”.

### **Amendment of the 2007 Regulations**

4. The 2007 Regulations are amended in accordance with regulations 5 to 10.

### **Application of the 2007 Regulations**

5.—(1) In regulation 2 (interpretation) omit paragraph (2).

(2) After regulation 2 insert—

#### **“Application of these Regulations**

**2A.** These Regulations apply where a postal or proxy vote is being or has been sought in respect solely of local government elections in Scotland or of a particular local government election in Scotland, and do not apply in any other circumstances.”.

### **Interpretation of the 2007 Regulations**

6. In regulation 2(1) in the appropriate places, insert—

““the 2006 Act” means the Local Electoral Administration and Registration Services (Scotland) Act 2006;”;

““absent voter” means an elector who is entitled to vote by proxy, or an elector or proxy who is entitled to vote by post, only at local government elections in Scotland or at a particular local government election in Scotland;”;

““absent voting records” means any one or more of the records kept pursuant to paragraph 3(4) or 7(6), or the lists kept pursuant to paragraph 5 or 7(8), of Schedule 4;”;

““the personal identifiers record” means the record kept by the registration officer under section 21(6) (absent vote applications: provision of personal identifiers) of the 2006 Act;”;

““returning officer” is to be construed in accordance with section 41 (returning officers: local elections in Scotland) of the 1983 Act;” and

““universal postal service provider” means a universal service provider within the meaning of section 4(3) (provision of a universal postal service: meaning) of the Postal Services Act 2000(4);”.

### **General requirements for applications for an absent vote**

7.—(1) Regulation 3 (general requirements for applications for an absent vote at a local government election in Scotland) is amended as follows.

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(3) S.I. 2001/497; amended by S.I. 2001/1749, 2002/1872, 2003/3075, 2004/1771 and 1960, 2005/2114, 2006/594 and 834, 2007/925, and 2008/305 and 1901.

(4) 2000 c. 26.

- (2) In paragraph (2) after sub-paragraph (e) insert—
- “(f) in the case of a person who is unable to provide a signature, the reasons for that person’s request that the registration officer dispense with the requirement under section 21(3) of the 2006 Act to provide the applicant’s signature and the name and address of any person who has assisted the applicant to complete the application; and
- (g) where the applicant has, or has applied for, an anonymous entry, that fact.”.
- (3) For paragraph (3), substitute—
- “(3) The application shall be made in writing and shall be dated.
- (3A) Where an application is required to contain a signature and date of birth, the information must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning by configuring the information as follows—
- (a) the signature shall appear against a background of white unlined paper at least 5 centimetres long and 2 centimetres high; and
- (b) the applicant’s date of birth shall be set out numerically configured in the sequence of date, month and year, namely [d][d][m][m][y][y][y][y].
- (3B) Where the application contains a request that the registration officer dispense with the requirement for a signature, paragraph (3A)(a) shall not apply.”.
- (4) In paragraph (4)—
- (a) after “state”, insert “that it is so made.”; and
- (b) omit sub-paragraphs (a) and (b).

### **Checking of personal identifiers**

8. For regulation 4 (additional provision concerning the requirement that an application for an absent vote must be signed by the applicant), substitute—

**“Additional provisions concerning the requirement that an application for an absent vote must be signed by the applicant and state the applicant’s date of birth**

4. The registration officer may confirm—
- (a) whether an application under Schedule 4 meets any requirement that it has been signed by the applicant and states the applicant’s date of birth by referring to any signature and date of birth—
- (i) previously provided by the applicant to the registration officer or the returning officer; or
- (ii) previously provided by the applicant to the council by which the registration officer was appointed or a registrar of births, deaths and marriages, if held by the council or registrar in records which the registration officer is authorised to inspect for the purposes of that officer’s registration duties;
- (b) whether the applicant is unable to provide a signature or a consistent signature due to any disability or inability to read or write.”.

### **Provision of fresh signatures**

9. After regulation 15 (inquiries by registration officers), insert—

### **“Requirement to provide fresh signatures**

**15A.**—(1) A registration officer may send to any person who remains an absent voter and whose signature held on the personal identifiers record is more than 5 years old a notice in writing—

- (a) requiring that person to provide a fresh signature; and
- (b) informing that person of the date (6 weeks from the date of sending the notice) on which that person would cease to be entitled to vote by post or by proxy in the event of a failure or refusal to provide a fresh signature.

(2) The notice must be sent by the registration officer to the current or last known address of the absent voter.

(3) The registration officer must, if the absent voter has not responded to the notice within 3 weeks from the date on which the notice was sent, as soon as practicable send a copy of the notice to the absent voter.

### **Notices: supplementary**

**15B.**—(1) Where a notice or copy of a notice under regulation 15A is sent by post, the registration officer may use—

- (a) a universal postal service provider; or
- (b) a commercial delivery firm,

and postage shall be prepaid on any such notice sent by post.

(2) A notice or copy of a notice sent to an absent voter in accordance with this regulation must be accompanied by a pre-addressed reply envelope and, in the case of any notice or copy of a notice sent to an address within the United Kingdom, return postage shall be prepaid.

### **Consequence of failure to provide required information**

**15C.**—(1) Subject to paragraph (2), where, upon the expiry of the period of 6 weeks following the date of sending of a notice under regulation 15A(1) to an absent voter, the registration officer has not received a fresh signature—

- (a) the registration officer must remove that voter’s entry from the absent voting records; and
- (b) that voter shall not be entitled to vote by post, by proxy or by post as a proxy (as the case may be) at local government elections in Scotland, or a particular local government election in Scotland, otherwise than in pursuance of a further application made under Schedule 4.

(2) The registration officer must not remove the absent voter’s entry if the registration officer is satisfied that the voter is unable—

- (a) to provide a signature because of any disability the voter has;
- (b) to provide a signature because the voter is unable to read or write; or
- (c) to sign in a consistent and distinctive way because of any such disability or inability,

and, where the registration officer is so satisfied, entries of the voter in the absent voting records shall not show the voter’s signature.

(3) Where an absent voter ceases to be entitled to vote by post, by proxy or by post as a proxy in the circumstances to which paragraph (1) refers—

- (a) the registration officer must inform the voter, where appropriate, of the location of the polling station to which the voter has been allotted or is likely to be allotted, under Rule 21 of Schedule 1 to the Scottish Local Government Elections Order 2007<sup>(5)</sup>, unless that voter is not likely to be allotted to a polling station;
  - (b) regulations 12(4) and 13 must apply as if the registration officer were refusing an application under Schedule 4; and
  - (c) in the case of an absent voter who ceases to be entitled to vote by post as a proxy, the registration officer must also notify the elector for whom the proxy was appointed.
- (4) Where paragraph (3) applies, the registration officer must provide the absent voter with information—
- (a) explaining the effect of removal from the absent voting records; and
  - (b) explaining that the absent voter may make a fresh application under Schedule 4 to vote by post, by proxy or by post as a proxy (as the case may be).”.

### **The personal identifiers record**

**10.** After regulation 18 (conditions on the supply and inspection of absent voters records or lists), insert—

#### **“The personal identifiers record**

**18A.**—(1) The registration officer must retain a voter’s entry on the personal identifiers record until the expiry of 12 months from—

- (a) the date on which that voter’s entry is removed from the record kept pursuant to paragraph 3(4) or 7(6) of Schedule 4; or
- (b) the date of the poll for the purposes of which that voter’s application for an absent vote was granted under paragraph 4(1) or (2) or 7(4)(b) of Schedule 4.

(2) The returning officer may disclose information held in the personal identifiers record to any candidate or agents attending proceedings on receipt of postal ballot papers in accordance with regulation 24B of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007<sup>(6)</sup>.”.

## **PART 3**

### **Personal identifiers: existing absent voters**

#### **Interpretation**

**11.** In this Part—

“the 2000 Act” means the Representation of the People Act 2000<sup>(7)</sup>;

“absent voting records” means any one or more of the records kept pursuant to paragraph 3(4) or 7(6), or the lists kept pursuant to paragraph 5 or 7(8) of Schedule 4 to the 2000 Act;

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(5) S.S.I. 2007/42; amended by S.S.I. 2007/379.

(6) S.S.I. 2007/263. Regulation 24B is inserted by regulation 6 of the Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009.

(7) 2000 c. 2.

“existing absent voter” has the meaning given by section 24(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006<sup>(8)</sup>; and

“universal postal service provider” means a universal service provider within the meaning of section 4(3) of the Postal Services Act 2000<sup>(9)</sup>.

### **Requiring personal identifiers from existing absent voters**

**12.**—(1) A registration officer may send a notice in writing to any existing absent voter requiring that voter to provide to the registration officer, within 6 weeks from the date of sending the notice, a specimen of the absent voter’s signature and the absent voter’s date of birth (“the required personal identifiers”) in accordance with this Part.

(2) The notice must be sent by the registration officer to the current or last known address of the absent voter.

(3) The registration officer must, if the voter has not responded to the notice within 3 weeks from the date on which the notice was sent, as soon as practicable send a copy of the notice to the absent voter.

(4) Where a notice or copy of a notice is sent by post, the registration officer may use—

- (a) a universal postal service provider; or
- (b) a commercial delivery firm,

and postage shall be prepaid.

(5) A notice or copy of a notice sent to an existing absent voter in accordance with this Part must be accompanied by a pre-addressed reply envelope and, in the case of any notice sent to an address within the United Kingdom, return postage shall be prepaid.

(6) Where a registration officer has been provided with the required personal identifiers under—

- (a) the Representation of the People (Scotland) Regulations 2001<sup>(10)</sup>;
- (b) the Absent Voting (Transitional Provisions) (Scotland) Regulations 2008<sup>(11)</sup>;
- (c) the Scottish Parliament (Elections etc.) Order 2007<sup>(12)</sup>; or
- (d) the Scottish Parliament (Elections etc.) Amendment Order 2008<sup>(13)</sup>,

before the date specified in accordance with regulation 13(2)(d) of these Regulations in the notice sent to the absent voter, the officer may use them for the purposes of local government elections and records kept in connection with such elections.

### **Required information to be provided to existing absent voters**

**13.**—(1) Where a registration officer sends to an existing absent voter a notice or a copy of a notice pursuant to regulation 12, the registration officer must also provide information—

- (a) explaining how the required personal identifiers will be used and how the required personal identifiers will assist in deterring misuse of the entitlement to vote;
- (b) explaining that, in the event of a failure or refusal to provide the required personal identifiers, the voter will lose the entitlement to vote by post, by proxy or by post as a proxy (as the case may be);

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<sup>(8)</sup> 2006 asp 14.

<sup>(9)</sup> 2000 c. 26.

<sup>(10)</sup> S.I. 2001/497.

<sup>(11)</sup> S.I. 2008/48.

<sup>(12)</sup> S.I. 2007/937.

<sup>(13)</sup> S.I. 2008/307.

- (c) explaining the circumstances in which a registration officer may dispense with the requirement to provide a signature; and
  - (d) explaining that loss of the entitlement to vote by post, or proxy or by post as a proxy (as the case may be) under this Part does not prevent the voter from making a fresh application under Schedule 4 to the 2000 Act to be entitled to vote by post, by proxy or by post as a proxy.
- (2) The notice or copy of a notice sent to an existing absent voter pursuant to regulation 12 must specify the following matters—
- (a) the types of elections in respect of which the absent voter would cease to be entitled to vote by post, by proxy or by post as a proxy (as the case may be) if the absent voter does not provide the required personal identifiers;
  - (b) whether the absent voter has an entry in the absent voting records as voting by post, by proxy or by post as a proxy or in more than one capacity;
  - (c) as regards an existing absent voter entitled to vote by post as a proxy, the name and address of each person for whom that person is entitled to vote; and
  - (d) the date (not less than 49 days from the sending of the initial notice) from which the absent voter will cease to be entitled to vote by post, by proxy or by post as a proxy (as the case may be) in the event of a failure or refusal to provide the required personal identifiers.

#### **Determination by registration officer**

**14.—**(1) The registration officer must, no later than the date specified in accordance with regulation 13(2)(d) in the notice sent to an existing absent voter, determine whether the voter has failed or refused to provide the required personal identifiers.

(2) The registration officer must not determine that an existing absent voter has failed or refused to provide the required personal identifiers due to a failure to provide a signature if the registration officer is satisfied that the absent voter is unable—

- (a) to provide a signature because of any disability the absent voter has;
- (b) to provide a signature because the absent voter is unable to read or write; or
- (c) to sign in a consistent and distinctive way because of any such disability or inability,

and where the registration officer is so satisfied entries of the absent voter in the absent voting records shall not show the absent voter's signature.

#### **Consequence of failure or refusal to provide personal identifiers**

**15.—**(1) Where the registration officer determines that an existing absent voter has failed or refused to provide the required personal identifiers—

- (a) the registration officer must remove that voter's entry from the absent voting records; and;
- (b) that voter shall not be entitled to vote by post, by proxy or post as a proxy (as the case may be) at local government elections in Scotland, or a particular local government election in Scotland, otherwise than in pursuance of a further application made under Schedule 4 to the 2000 Act.

(2) Where an existing absent voter ceases to be entitled to vote by post, by proxy or by post as proxy in the circumstances to which paragraph (1) refers—

- (a) the registration officer must inform the voter of the location of the polling station to which the voter has been allotted or is likely to be allotted, under rule 21 of Schedule 1 to the

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- Scottish Local Government Elections Order 2007(14), unless that voter is not likely to be allotted to a polling station;
- (b) regulations 12(4) and 13 of the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 apply as if the registration officer were refusing an application under Schedule 4 to the 2000 Act; and
  - (c) in the case of an existing absent voter who ceases to be entitled to vote by post as proxy, the registration officer must also notify the elector for whom the proxy was appointed.
- (3) Where paragraph (2) applies the registration officer shall provide the absent voter with information–
- (a) explaining the effect of removal from the absent voting records; and
  - (b) reminding the voter that a fresh application may be made under Schedule 4 to the 2000 Act to vote by post, by proxy or by post as a proxy (as the case may be).

St Andrew's House,  
Edinburgh  
5th February 2009

*BRUCE CRAWFORD*  
Authorised to sign by the Scottish Ministers



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These regulations implement changes made by sections 21 to 24 of the [Local Electoral Administration and Registration Services \(Scotland\) Act 2006 \(asp 14\)](#) which provide for enhanced anti-fraud measures when a person applies (under Schedule 4 to the Representation of the People Act 2000) to vote by post, by proxy, or by post as a proxy as an absent voter. The regulations set up procedures for an absent voter to provide “personal identifiers” consisting of a signature and date of birth.

These regulations deal with personal identifiers in relation to the registration of absent voters, whereas the Representation of People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 (S.S.I. 2009/ ) deal with the checking of personal identifiers in relation to the counting of postal votes.

The regulations are in 3 Parts. Part 1 relates to citation and commencement. Part 2 provides for the scheme for the collection of personal identifiers by the electoral registration officer, by making amendments to the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (S.S.I. 2007/170). Part 3 makes transitional provision for the provision of personal identifiers by those voters who are registered as absent voters when the order comes into force.

Regulations 3 and 5 make amendments to ensure that the changes being made are limited to situations where the voter is applying to be, or is an absent voter only at local government elections. Applications to be an absent voter at the UK or Scottish parliamentary elections as well as local government elections are dealt with under the Representation of the People (Scotland) Regulations 2001 (S.I.2001/497) or the Scottish Parliament (Elections etc.) Order 2007 (S.I. 2007/937) as appropriate.

Regulation 7 deals with circumstances where a person is entitled to a waiver from the requirement to provide a signature. It also updates the requirements as to how an application for an absent voter must be presented, to take account of these requirements and to allow for electronic scanning on a consistent basis.

Regulation 8 specifies that the registration officer may satisfy himself or herself as to the authenticity of the personal identifiers provided by using other records that the officer is entitled to inspect. It also allows further enquiry where an exemption is sought from the obligation to provide a signature.

Regulation 9 provides that fresh signatures are to be required every five years from the date someone is recorded as a postal voter, proxy voter or postal proxy voter and for the procedures to regulate this.

Regulation 10 specifies that a registration officer must maintain an entry on the personal identifiers record for twelve months after the entry ceases to be effective, and enables a registration officer to disclose information held in the personal identifiers record to a candidate or agent.

Regulation 12 requires a registration officer to send a written notice to all existing absent voters whose records do not contain personal identifiers, requiring that they supply the required personal identifiers. An absent voter will have a period of six weeks within which to respond. Where no response is received within the first three weeks, the registration officer is required to send a copy of the notice to the absent voter.

Regulation 13 specifies the information that must be included in the notice sent to existing absent voters together with the information that must be included with the notice or copy of the notice. This includes details of how the personal identifiers will be used as provided for by the Representation of

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People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009. It also includes details of the matters provided by regulations 14 and 15.

Regulation 14 requires the registration officer to determine whether an absent voter has failed or refused to provide the required personal identifiers. It also allows for an existing exemption from the requirement for a signature if the absent voter is disabled, unable to read or write, or unable to sign consistently for either of these reasons.

Regulation 15 specifies the consequences of a refusal or failure to provide the required personal identifiers. An existing absent voter will cease to be entitled to vote by post, by proxy or by post as proxy and the entry relating to the absent voter in the absent voting records must be removed. The registration officer is to provide information explaining the effect of the removal of the entry and reminding the voter of the ability to make a fresh application for an absent vote under Schedule 4 to the Representation of the People Act 2000 (c. 2) (which application will require to be accompanied by the personal identifiers).