
STATUTORY INSTRUMENTS

2020 No. 926

**The Postponed Elections and Referendums (Coronavirus) and
Policy Development Grants (Amendment) Regulations 2020**

PART 2

Provision relating to polls postponed due to coronavirus

CHAPTER 1

Postal ballots

Application and interpretation of Chapter 1

2.—(1) Regulations 3 to 5 apply to the following elections or referendums in the circumstances described in paragraph (2)—

- (a) the election of a councillor for any local government area in England to fill a casual vacancy;
- (b) a referendum, the poll for which is conducted in accordance with Schedule 3 or 5 to the 2012 Regulations (neighbourhood planning referendums).

(2) The circumstances referred to in paragraph (1) are where—

- (a) a notice of election or (as the case may be) notice of the referendum was required to be published on or before 6th April 2020, and
- (b) the poll for that election or referendum was not held on the date required to be stated in that notice as a result of the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020(1).

(3) In this Chapter—

“the 1983 Act” means the Representation of the People Act 1983(2);

“the 2012 Regulations” means the Neighbourhood Planning (Referendums) Regulations 2012(3);

“principal area” has the same meaning as in section 270(1) of the Local Government Act 1972(4) and includes the area council for the Isles of Scilly;

“relevant by-election” means an election to which regulations 3 to 5 apply (by virtue of paragraphs (1) and (2) of this regulation);

“relevant referendum” means a referendum to which regulations 3 to 5 apply (by virtue of paragraphs (1) and (2) of this regulation);

(1) [S.I. 2020/395](#).

(2) [1983 c. 2](#).

(3) [S.I. 2012/2031](#); relevant amending instruments are [S.I. 2013/798](#), [2014/333](#).

(4) [1972 c. 70](#); section 270(1) was amended by the Local Government Act [1985 \(c. 51\)](#), Schedule 16, paragraph 8.

“relevant registration officer”—

- (a) in the case of a relevant by-election—
 - (i) where the election was for a councillor to fill a casual vacancy in the office of councillor for any principal area in England, has the meaning given by rule 52(2) of Schedule 2 or (as the case may be) rule 52(3) of Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006⁽⁵⁾;
 - (ii) where the election was for a councillor to fill a casual vacancy in the office of parish councillor, has the meaning given by rule 52(2) of Schedule 2 or (as the case may be) rule 52(3) of Schedule 3 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006⁽⁶⁾;
- (b) in the case of a relevant referendum, has the meaning given by rule 2 of Schedule 3 or (as the case may be) rule 2 of Schedule 5 to the 2012 Regulations;
- (c) in the case of a referendum to which regulation 6 applies, means a business registration officer within the meaning of paragraph 1 of Schedule 6 to the 2012 Regulations.

(4) In this Chapter, “the 2001 Regulations” means the Representation of the People (England and Wales) Regulations 2001⁽⁷⁾; and references to provisions of the 2001 Regulations are—

- (a) in relation to a relevant referendum the poll for which was not due to be taken together with the poll for a relevant by-election or relevant referendum, to those provisions as applied by regulation 8 of, and Schedule 4 to, the 2012 Regulations;
- (b) in relation to a relevant referendum the poll for which was due to be taken together with the poll for a relevant by-election or another relevant referendum, to those provisions as applied by regulation 12 of, and Schedule 4 to, the 2012 Regulations;
- (c) in relation to a relevant by-election the poll for which was due to be taken together with the poll for a relevant referendum, to those provisions as applied by regulation 13 of, and Schedule 4 to, the 2012 Regulations.

(5) In paragraph (1), “local government area” has the same meaning as in section 203(1) of the 1983 Act⁽⁸⁾.

Postal ballots: general

3.—(1) A postal ballot paper which was returned by a postal voter has no effect for the purpose of the postponed poll.

(2) The fact that a postal voter cast a postal ballot paper in respect of a relevant by-election or relevant referendum does not of itself prevent that person from doing so in respect of the postponed poll.

(3) In paragraphs (1) and (2), “postponed poll”, in relation to a relevant by-election or relevant referendum, means the poll which is to be held on the date, or within the period, specified by regulations under section 61 of the Coronavirus Act 2020⁽⁹⁾.

(4) Where any list has been created under regulation 87 of the 2001 Regulations, regulation 61C of those Regulations (notification of rejected postal voting statement) does not apply in respect of an absent voter who appears on that list.

(5) S.I. 2006/3304, to which there are amendments not relevant to these Regulations.

(6) S.I. 2006/3305, to which there are amendments not relevant to these Regulations.

(7) S.I. 2001/341; relevant amending instruments are S.I. 2006/752, 2910, 2013/3198.

(8) Section 203(1) was amended by the Representation of the People Act 1985 (c. 51), Schedule 4, paragraph 71, the Local Government Act 1985 (c. 51), Schedule 9, Part 1, the Education Reform Act 1988 (c. 40), Schedule 13, Part 1, and the Greater London Authority Act 1999 (c. 29), Schedule 3, paragraphs 1 and 39.

(9) See S.I. 2020/395.

(5) Regulation 84A of the 2001 Regulations (confirming receipt of postal voting statements) does not apply.

Postal ballots: disposal of documents by the returning or counting officer

4.—(1) The returning officer for a relevant by-election or the counting officer for a relevant referendum—

- (a) subject to paragraph (2), must not take any step or further step to open a covering envelope, or deal with the contents of an opened relevant envelope, in accordance with Part 5 of the 2001 Regulations;
- (b) must treat as if it were a counted ballot paper—
 - (i) any unopened covering envelope;
 - (ii) the contents of any opened relevant envelope;
 - (iii) any contents of the postal ballot box.

(2) Where the polls for one or more relevant by-elections or relevant referendums were due to be taken together—

- (a) the returning officer or counting officer may open any covering envelopes or ballot paper envelopes in order to separate the contents by election or referendum for the purposes of paragraph (4);
- (b) the requirements of Part 5 of the 2001 Regulations do not apply to any such opening of envelopes.

(3) In paragraph (1), “opened relevant envelope” means—

- (a) a covering envelope that has been opened, or
- (b) an envelope (other than a covering envelope) which is received by the returning officer or counting officer and which, when opened, contains a ballot paper envelope, postal voting statement or ballot paper.

(4) The returning officer or counting officer—

- (a) must seal up in packets—
 - (i) any contents of the receptacle for rejected votes;
 - (ii) any contents of the receptacle for ballot paper envelopes;
 - (iii) any contents of the receptacle for rejected ballot paper envelopes;
 - (iv) any lists of spoilt, lost or cancelled postal ballot papers kept in accordance with regulation 77(8), 78(4) or 78A(3) of the 2001 Regulations respectively;
 - (v) any contents of the receptacle for rejected votes (verification procedure);
 - (vi) any contents of the receptacle for postal voting statements (verification procedure);
 - (vii) anything treated as if it were a counted ballot paper under paragraph (1)(b) which would not otherwise be contained in a packet in accordance with paragraphs (i) to (vi);
 - (viii) the marked copies of the postal voters list and the proxy postal voters list;
- (b) must forward those packets to the relevant registration officer, together with—
 - (i) any sealed packets described in regulations 75(1), 77(6), 78(2C) and 78A(2)(c) of the 2001 Regulations (completed corresponding number lists and spoilt, lost and cancelled postal ballot papers);
 - (ii) any list required to be compiled in accordance with regulation 87(4) of the 2001 Regulations (lists of rejected ballot papers).

(5) The returning officer or counting officer must endorse each packet described in paragraph (4) with—

- (a) a description of its contents;
- (b) the date of the poll for the relevant by-election or relevant referendum;
- (c) in the case of a relevant by-election, the name of the electoral area (or areas) to which the relevant by-election relates;
- (d) in the case of a relevant referendum, the name of the relevant council.

(6) Subsection (4) or (5), as the case may be, of section 36 of the 1983 Act (local elections in England and Wales: payment of expenditure)(10) applies to all expenditure properly incurred by a returning officer or counting officer in relation to the exercise of the officer's functions under this regulation as it applies to expenditure properly incurred in relation to the holding of an election or referendum.

(7) In paragraph (6), the reference to subsection (4) or (5) of section 36 of the 1983 Act in relation to—

- (a) a relevant referendum the poll for which was not due to be taken together with the poll for a relevant by-election or relevant referendum, is to that subsection as applied by regulation 8 of, and Schedule 4 to, the 2012 Regulations;
- (b) a relevant referendum the poll for which was due to be taken together with the poll for a relevant by-election or another relevant referendum, is to that subsection as applied by regulation 12 of, and Schedule 4 to, the 2012 Regulations;
- (c) a relevant by-election the poll for which was due to be taken together with the poll for a relevant referendum, is to that subsection as applied by regulation 13 of, and Schedule 4 to, the 2012 Regulations.

(8) In this regulation—

“ballot paper envelope”, “covering envelope”, “postal voter”, “receptacle for ballot paper envelopes” and other references to specified receptacles have the same meanings as in Part 5 of the 2001 Regulations;

“counting officer” has the same meaning as in the 2012 Regulations;

“electoral area” has the same meaning as in section 203(1) of the 1983 Act;

“postal voters list” and “proxy postal voters list” have the same meaning as in section 202(1) of the 1983 Act(11);

“relevant council” has the same meaning as in paragraph 14(3) of Schedule 4B to the Town and Country Planning Act 1990(12).

Postal ballots: retention, production and destruction of documents by the relevant registration officer

5.—(1) The relevant registration officer must—

- (a) retain the documents forwarded to the officer in accordance with regulation 4(4) for the period of one year, and
- (b) after that period, cause those documents to be destroyed, unless otherwise directed by an order of a county court, a Crown Court or a magistrates' court.

(10) Section 36(4) and (5) was amended by the Representation of the People Act 1985 (c. 50), Schedule 17; by the Local Government (Wales) Act 1994 (c. 19), Schedule 16, paragraph 68(9) and (10); and by S.I. 1991/1730.

(11) Section 202(1) was amended by the Electoral Administration Act 2006 (c. 22), Schedule 1, paragraph 128.

(12) 1990 c. 8; Schedule 4B was inserted by the Localism Act 2011 (c. 20), Schedule 10.

(2) A person must not be allowed to inspect any of the documents described in regulation 4(4)(a)(i) to (iii) and (v) to (vii) and (b)(ii) in the possession of the relevant registration officer, except in accordance with an order made by a court for the inspection or production of any document for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers.

(3) The following provisions apply to an order described in paragraph (2) as they apply to an order under the rule to which those provisions relate, reading references in those provisions to counted ballot papers as references to the documents described in regulation 4(4)(a)(i) to (iii) and (v) to (vii) and (b)(ii)—

(a) in respect of a relevant by-election—

(i) where the election was for a councillor to fill a casual vacancy in the office of councillor for any principal area in England, paragraphs (3) to (7) of rule 53 of Schedule 2 or (as the case may be) of Schedule 3 to the Local Elections (Principal Areas) (England and Wales) Rules 2006;

(ii) where the election was for a councillor to fill a casual vacancy in the office of parish councillor, paragraphs (3) to (7) of rule 53 of Schedule 2 or (as the case may be) of Schedule 3 to the Local Elections (Parishes and Communities) (England and Wales) Rules 2006;

(b) in respect of a relevant referendum, paragraphs (3) to (8) of rule 46 of Schedule 3 or (as the case may be) of Schedule 5 to the 2012 Regulations.

(4) Section 176 of the 1983 Act (time limit for prosecutions)(13) applies in respect of documents retained by the relevant registration officer under paragraph (1) as if—

(a) in subsection (2C), the reference to rule 57 of the parliamentary elections rules were a reference to paragraph (1);

(b) in subsection (2D)(a) the reference to rule 57 were a reference to paragraph (1).

(5) In paragraph (4), references to section 176 of the 1983 Act in relation to—

(a) a relevant referendum the poll for which was not due to be taken together with the poll for a relevant by-election or relevant referendum, are to that section as applied by regulation 8 of, and Schedule 4 to, the 2012 Regulations;

(b) a relevant referendum the poll for which was due to be taken together with the poll for a relevant by-election or another relevant referendum, are to that section as applied by regulation 12 of, and Schedule 4 to, the 2012 Regulations;

(c) a relevant by-election the poll for which was due to be taken together with the poll for a relevant referendum, are to that section as applied by regulation 13 of, and Schedule 4 to, the 2012 Regulations.

(6) Section 54 of the 1983 Act (payments of expenses of registration)(14) applies to the exercise of functions of the relevant registration officer under this regulation as it applies to the exercise of functions of the registration officer under the 1983 Act.

Application of regulations 3 to 5 to business referendums

6.—(1) This regulation applies to a referendum, the poll for which was to be conducted in accordance with Schedule 7 to the 2012 Regulations (the business referendums rules), where—

(a) a notice of the referendum was required to be published on or before 6th April 2020, and

(13) Section 176 was amended by the Representation of the People Act 1985 (c. 50), sections 24 and 28, Schedule 4, paragraph 61 and Schedule 5.

(14) Section 54 was amended by the Representation of the People Act 1985, Schedule 4, paragraph 14; and by the Electoral Administration Act 2013 (c. 22), Schedule 4, paragraphs 1 and 17.

- (b) the poll for that referendum was not held on the date required to be stated in that notice as a result of the Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020.
- (2) Regulations 3 to 5 apply to a referendum to which this regulation applies as they apply to a relevant referendum, subject to the following modifications.
- (3) Regulation 3(5) is to be read as if the reference to regulation 84A of the 2001 Regulations were a reference to rule 33 of Part 5 of Schedule 7 to the 2012 Regulations.
- (4) Regulation 4 is to be read as if—
- (a) a reference to Part 5 of the 2001 Regulations were a reference to Part 5 of Schedule 7 to the 2012 Regulations;
 - (b) in paragraph (1)(b)(iii), at the end there were inserted “referred to in rule 29(1)(b) of Schedule 7 to the 2012 Regulations”;
 - (c) in paragraph (4)—
 - (i) in sub-paragraph (a)—
 - (aa) in paragraph (iv), the reference to regulation 77(8), 78(4) or 78A(3) of the 2001 Regulations were a reference to rule 25(7), 26(9) or 24(5) of Schedule 7 to the 2012 Regulations;
 - (bb) in paragraphs (v) and (vi), for “(verification procedure)” there were substituted “after verification procedure”;
 - (cc) for paragraph (viii) there were substituted—

“(viii) any copy of the business voting register marked in accordance with rule 20(2) of Schedule 7 to the 2012 Regulations.”;
 - (ii) in sub-paragraph (b)—
 - (aa) in paragraph (i), the reference to regulations 75(1), 77(6), 78(2C) and 78A(2)(c) of the 2001 Regulations were a reference to rules 22(1), 24(1) and (3), 25(6), 26(8) and 32(10) of Schedule 7 to the 2012 Regulations;
 - (bb) paragraph (ii) were omitted;
 - (d) in paragraph (5), for sub-paragraph (d) there were substituted—

“(d) the words “neighbourhood planning business referendum” and the name of the neighbourhood area to which the business referendum relates.”;
 - (e) in paragraph (6), “or (5), as the case may be,” were omitted;
 - (f) for paragraph (7) there were substituted—

“(7) In paragraph (6), the reference to subsection (4) of section 36 of the 1983 Act is to that section as applied by regulation 17(5) of, and Schedule 8 to, the 2012 Regulations.”;
 - (g) in paragraph (8), the definitions of “electoral area”, “postal voters list”, “proxy postal voters list” and “relevant council” were omitted.
- (5) Regulation 5 is to be read as if—
- (a) in paragraph (2), “and (b)(ii)” were omitted;
 - (b) for paragraph (3) there were substituted—

“(3) Paragraphs (2) to (8) of rule 72 of Schedule 7 to the 2012 Regulations apply to an order described in paragraph (2) as they apply to an order under rule 72, subject to the modification that a reference in those paragraphs to counted ballot papers is to be read as if it were a reference to the documents described in regulation 4(4)(a)(i) to (iii) and (v) to (vii).”;

(c) for paragraph (5) there were substituted—

“(5) In paragraph (4), references to section 176 of the 1983 Act are to that section as applied by regulation 17(5) of, and Schedule 8 to, the 2012 Regulations.”;

(d) after paragraph (6) there were inserted—

“(7) In paragraph (6), the reference to section 54 of the 1983 Act is to that section as applied by regulation 17(5) of, and Schedule 8 to, the 2012 Regulations.”.