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STATUTORY INSTRUMENTS

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**2023 No. 1225**

**The Representation of the People (Postal Vote Handling and Secrecy) (Amendment) Regulations 2023**

**The Police and Crime Commissioner Elections Order 2012**

**8.—**(1) The Police and Crime Commissioner Elections Order 2012<sup>(1)</sup> is amended as follows.

(2) In article 2 (interpretation), in paragraph (1), in the appropriate places insert—

““left behind postal voting document” is a postal voting document that is left behind at a polling station or left for the returning officer without being handed in and for which no return of postal voting documents form has been completed;”;

““postal voting document” means a postal ballot paper, postal voting statement or other document that has been issued to a person for the purpose of enabling the person to vote by post at a PCC election;”;

““relevant officer” means—

(a) where a postal voting document is handed in at a polling station—

- (i) the person presiding at the polling station, or
- (ii) a clerk at the polling station;

(b) where a postal voting document is handed in to the local returning officer, a person acting under the authority of that officer;”;

““return of postal voting documents form” has the meaning given in paragraph 43A of Schedule 2;”.

(3) In article 22 (requirement of secrecy) after paragraph (5) insert—

“(5A) No person may—

- (a) except for some purpose authorised by law, obtain or attempt to obtain information, or communicate at any time to any other person any information, as to the number or other unique identifying mark on the back of a ballot paper sent to a person for voting by post at a PCC election;
- (b) except for some purpose authorised by law, obtain or attempt to obtain information, or communicate at any time to any other person any information, as to the official mark on a ballot paper sent to a person for voting by post at a PCC election;
- (c) obtain or attempt to obtain information, in the circumstances mentioned in paragraph (5B), as to the candidate for whom a person voting by post at a PCC election (“V”) is about to vote or has voted;
- (d) communicate at any time to any other person information obtained in contravention of sub-paragraph (c).

(5B) The circumstances referred to in paragraph (5A)(c) are where V is about to mark, is in the process of marking, or has just marked, a ballot paper sent to V for voting by post at the election.

(5C) But—

- (a) a person (“E”) who is voting by proxy does not contravene paragraph (5A) by obtaining or attempting to obtain from the person appointed as E’s proxy information as to a matter mentioned in sub-paragraph (a) or (c) of that paragraph that relates to E’s vote, and
- (b) a person who is appointed as proxy for an elector does not contravene paragraph (5A) by communicating to that elector information as to a matter mentioned in sub-paragraph (a) or (c) of that paragraph that relates to that elector’s vote.

(5D) Paragraphs (5A)(c) and (d) do not apply where the purpose (or main purpose) for which the information is sought or communicated is its use for the purposes of—

- (a) a published statement relating to the way in which voters intend to vote or have voted at the PCC election, or
- (b) a published forecast as to the result of that election which is based on information given by voters.

(5E) In paragraph (5D)—

- (a) “forecast” includes estimate;
- (b) “published” means made available to the public at large or to any section of the public, in whatever form and by whatever means;
- (c) the reference to the result of the PCC 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.

(5F) A person voting as proxy for an elector at a PCC election—

- (a) must not communicate at any time to any person other than that elector any information as to the candidate for whom the person is about to vote, or has voted, as proxy for that elector;
- (b) except for some purpose authorised by law, must not communicate at any time to any person other than that elector the number or other unique identifying mark on the back of a ballot paper sent or delivered to the person for voting as proxy for that elector.”.

(4) In article 75 (persons reported personally guilty of corrupt and illegal practices), in paragraph (2)(b)(i)—

- (a) for “or 62B” substitute “, 62B or 112A”;
- (b) for “paragraph 10” substitute “paragraph 9A or 10”.

(5) In article 77 (incapacities on conviction of corrupt or illegal practice), in paragraph (2)(a)(i)—

- (a) for “or 62B” substitute “, 62B or 112A”;
- (b) for “paragraph 10” substitute “paragraph 9A or 10”.

(6) In Schedule 2 (absent voting at PCC elections)—

- (a) after paragraph 9 (offences as to declarations or forms used for purposes of postal and proxy vote applications) insert—

**“Offence of handling postal voting documents by political campaigners**

**9A.—**(1) A person who is a political campaigner in respect of a PCC election commits an offence if the person handles a postal voting document that has been issued to another person for use in that election.

(2) But a person who handles a postal voting document for use in a PCC election does not commit the offence if—

- (a) the person is responsible for, or assists with, the conduct of that election (for example as a police area returning officer or a local returning officer or a person working under the direction of such an officer),
- (b) the person is engaged in the business of a postal operator, or
- (c) the person is employed or engaged in a role the duties of which include the handling of postal packets on behalf of members of an organisation or the occupants of a communal building,

and the handling is consistent with the person’s duties in that capacity.

(3) Nor does a person commit the offence if the person—

- (a) is the other person’s spouse, civil partner, parent, grandparent, brother, sister, child or grandchild, or
- (b) provides regular care for, or is employed or engaged by an organisation which provides care for, the other person.

(4) It is a defence for a person charged with the offence to show that the person did not dishonestly handle the postal voting document for the purpose of promoting a particular outcome at a PCC election.

(5) Where sufficient evidence is adduced to raise an issue with respect to the defence under sub-paragraph (4), the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(6) A person is guilty of a corrupt practice if the person—

- (a) commits the offence under sub-paragraph (1), or
- (b) aids, abets, counsels or procures the commission of that offence.

(7) For the purposes of this paragraph a person is a political campaigner in respect of a PCC election if any of the following applies—

- (a) the person is a candidate at the election;
- (b) the person is an election agent of a candidate at the election;
- (c) the person is a sub-agent of a person within paragraph (b);
- (d) the person is employed or engaged by a person who is a candidate at the election for the purposes of that person’s activities as a candidate;
- (e) the person is a member of a registered political party and carries on an activity designed to promote a particular outcome at the election;
- (f) the person is employed or engaged by a registered political party in connection with the party’s political activities;
- (g) the person is employed or engaged by a person within any of paragraphs (a) to (f) to carry on an activity designed to promote a particular outcome at the election;
- (h) the person is employed or engaged by a person within paragraph (g) to carry on an activity designed to promote a particular outcome at the election.

(8) In this paragraph—

“postal operator” has the same meaning as in Part 3 of the Postal Services Act 2011(2);

“postal voting document” has the meaning given in article 2(1) but also includes an envelope that has been issued to a person for the purpose of enabling the person to vote by post at a PCC election.

(9) For the purposes of this paragraph, an envelope—

(a) that is not a postal voting document within the meaning of sub-paragraph (8), but

(b) that contains a postal ballot paper or postal voting statement that has been issued to a person for the purpose of enabling the person to vote by post at a PCC election,

is to be treated as if it were a postal voting document that has been issued to the person for use in the election.

(10) In this paragraph, any reference to a person who is “engaged” by another person, or to a person who provides care for another person, includes a reference to a person who is engaged or provides care otherwise than for payment or promise of payment.

(11) For the purposes of sub-paragraph (3)(a), two people living together as if they were a married couple or civil partners are treated as if they were spouses or civil partners of each other.”;

(b) in paragraph 29 (combination of polls)—

(i) in sub-paragraph (1), after “local referendum may,” insert “subject to sub-paragraph (1A) and”;

(ii) after sub-paragraph (1) insert—

“(1A) Sub-paragraph (1) does not apply where the polls of a PCC election and any of the following are taken together—

(a) a local government election in Wales;

(b) an election described in section 15(1)(d)(v) of the Representation of the People Act 1985;

(c) a referendum in Wales described in section 15(3)(a)(v) or (vi) of the Representation of the People Act 1985.”;

(iii) omit sub-paragraph (3);

(c) in paragraph 34 (notification of requirement of secrecy), for “sub-paragraphs (5) and (7)” substitute “paragraphs (6) and (8)”;

(d) in paragraph 43 (alternative means of returning postal ballot paper or postal voting statement)—

(i) in sub-paragraph (3)—

(aa) for “sub-paragraph (4)” substitute “sub-paragraphs (3A) and (4)”;

(bb) after “that station” insert “and any return of postal voting documents form”;

(ii) after sub-paragraph (3) insert—

“(3A) A postal ballot paper or postal voting statement may only be delivered to the local returning officer in accordance with sub-paragraph (3) if the requirements of paragraph 43A are met and the paper and statement are not rejected in accordance with paragraph 43B or 43D.”;

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(2) 2011 c. 5. See section 27(3) to (5).

(iii) in sub-paragraph (4), after “statement” insert “and any return of postal voting documents form”;

(iv) for sub-paragraph (5) substitute—

“(5) Where the local returning officer collects, or causes to be collected, any postal ballot paper or postal voting statement or return of postal voting documents form in accordance with sub-paragraph (4), the presiding officer must first make up into separate packets sealed with the presiding officer’s own seal and the seals of such polling agents as are present and desire to affix their seals with a description of its contents written on each packet—

(a) the postal ballot papers and postal voting statements; and

(b) the return of postal voting documents forms for those postal ballot papers and postal voting statements.”;

(e) after paragraph 43 insert—

**“Requirements of return of postal voting documents form**

**43A.—**(1) The requirements of this paragraph are—

(a) the person handing in a postal voting document (“P”) completes a form containing the following information (a “return of postal voting documents form”)—

(i) P’s name and address,

(ii) whether P is handing in P’s own postal voting documents,

(iii) the number of other electors for whom P is handing in postal voting documents,

(iv) the total number of envelopes containing postal ballot papers P is handing in, including P’s own,

(v) the reason P is handing in postal voting documents for other electors,

(vi) a declaration by P that P has not handed in postal voting documents at any polling station or to the returning officer for a total of more than the number of electors other than P set out in paragraph 43B(1)(c) or 46B(1)(c), including those being handed in at that time and either—

(aa) that to the best of P’s knowledge, P is not a political campaigner for whom it is an offence to handle the postal voting documents concerned in accordance with paragraph 9A, or

(bb) that P is a political campaigner and is only handing in postal voting documents for P and for P’s spouse, civil partner, parent, grandparent, brother, sister, child or grandchild, or someone for whom P provides regular care or for whom regular care is provided by an organisation which employs or engages P, and

(b) the relevant officer has endorsed the return of postal voting documents form returned by P to confirm the relevant officer’s name and that—

(i) the relevant officer is satisfied that the form has been completed properly and provides the information required by sub-paragraph (a),

(ii) the relevant officer does not suspect that the number of electors other than P for whom P is handing in postal voting documents exceeds the number specified in paragraph 43B(1)(b) or (c), or in paragraph 46B(1)(b) or (c),

(iii) the relevant officer does not suspect that P is a political campaigner who is committing an offence under paragraph 9A, and

(iv) the postal voting documents to which the form relates are not rejected.

(2) For the purposes of sub-paragraph (1)(a)(vi)(bb), two people living together as if they were a married couple or civil partners are treated as if they were spouses or civil partners of each other.

### **Rejection of postal voting documents handed in at a polling station**

**43B.**—(1) A relevant officer must reject—

- (a) all postal voting documents handed in by P where P fails to fully complete the return of postal voting documents form with the required information;
- (b) all postal voting documents handed in by P other than P's own postal voting documents where the relevant officer has reasonable cause to suspect that the documents are handed in on behalf of more than five other electors;
- (c) a postal voting document handed in by P or all postal voting documents handed in together by P (other than P's own postal voting documents) where the relevant officer has reasonable cause to suspect that, taking that document or those documents together with any postal voting documents handed in by P on any previous occasion in respect of the same election, or in respect of an election in England for which the day of poll is the same as the election to which the documents relate (whether to a polling station or to the returning officer and disregarding any that were rejected), P has handed in postal voting documents on behalf of more than five other electors.

(2) Where P hands in one or more proxy postal ballot papers completed by P as proxy for another elector, for "five" in sub-paragraph (1)(b) and (c), substitute the number that is five minus the number of proxy postal ballot papers P hands in.

(3) A relevant officer may reject a postal voting document handed in by P where the relevant officer knows or has reasonable cause to suspect that, in handing in the document, P is committing an offence under paragraph 9A.

### **Procedure for dealing with rejected postal voting documents handed in at a polling station**

**43C.**—(1) Where any postal voting document has been rejected in accordance with paragraph 43B the relevant officer must indicate this, together with the reason or reasons for the rejection and the relevant officer's name, on the return of postal voting documents form and attach the form to the postal voting documents concerned.

(2) The presiding officer must make up a packet (or packets) of the rejected postal voting documents and the accompanying return of postal voting documents forms, sealed with the presiding officer's own seal and the seals of such polling agents as are present and desire to affix their seals with a description of its contents written on each packet.

(3) Where a return of postal voting documents form relates to postal voting documents which have not all been rejected, that form must be dealt with as if it related just to the rejected postal voting documents, and the postal voting documents which have been rejected must be noted on it.

(4) The presiding officer must deliver, or cause to be delivered, those packets in the same manner and at the same time as the presiding officer delivers, or causes to be delivered, the packets referred to in rule 47(1) of the PCC elections rules.

### **Postal voting documents left behind at a polling station**

**43D.**—(1) Where a person leaves a left behind postal voting document at a polling station, the relevant officer must reject that left behind postal voting document.

(2) The relevant officer must—

- (a) write on a return of postal voting documents form to confirm that the postal voting document is a left behind postal voting document,
- (b) write the relevant officer’s name on that form, and
- (c) attach that form to the left behind postal voting document.

(3) Left behind postal voting documents and the attached return of postal voting documents forms must be included in the packet of rejected postal voting documents and forms made up in accordance with paragraph 43C(2).”;

- (f) in paragraph 46 (receipt of covering envelope), in paragraph (1) for “(whether by hand or by post)” substitute “by post”;
- (g) after paragraph 46 insert—

### **“Postal voting documents handed in to the returning officer**

**46A.**—(1) Subject to sub-paragraphs (2) and (3), the relevant officer must deliver to the local returning officer—

- (a) any postal voting document handed in under paragraph 43(2) before the close of the poll, and
- (b) the return of postal voting documents form completed in respect of it.

(2) A postal voting document may only be delivered to the local returning officer in accordance with sub-paragraph (1) if the requirements of regulation 43A are met and the paper and statement are not rejected in accordance with regulation 46B or 46D.

(3) Before delivering them to the local returning officer in accordance with sub-paragraph (1), the relevant officer must first make up into separate packets with a description of its contents written on each packet which is then sealed up—

- (a) the postal voting documents;
- (b) the return of postal voting documents forms for those postal voting documents.

### **Rejection of postal voting documents handed in to the returning officer**

**46B.**—(1) The relevant officer must reject—

- (a) all postal voting documents handed in by P in accordance with paragraph 43(2) where P fails to fully complete the return of postal voting documents form with the required information;
- (b) all postal voting documents handed in by P in accordance with paragraph 43(2) other than P’s own postal voting documents where the relevant officer has reasonable cause to suspect that the documents are handed in on behalf of more than five other electors;
- (c) a postal voting document handed in by P or all postal voting documents handed in together by P in accordance with paragraph 43(2) (other than P’s own postal voting documents) where the relevant officer has reasonable cause to suspect that, taking that document or those documents together with any postal voting documents handed in by P on any previous occasion in respect of the same

election or in respect of an election in England for which the day of poll is the same as the election to which the documents relate (whether to a polling station or to the returning officer and disregarding any that were rejected), P has handed in postal voting documents on behalf of more than five other electors.

(2) Where P hands in one or more proxy postal ballot papers completed by P as proxy for another elector, for “five” in sub-paragraphs (1)(b) and (c), substitute the number that is five minus the number of proxy postal ballot papers P hands in.

(3) The relevant officer may reject a postal voting document handed in by P where the relevant officer knows or has reasonable cause to suspect that, in handing in the document, P is committing an offence under paragraph 9A.

#### **Procedure for dealing with rejected postal voting documents handed in to the returning officer**

**46C.**—(1) Where any postal voting document has been rejected in accordance with regulation 46B the relevant officer must indicate this, together with the reason or reasons for the rejection and the relevant officer’s name, on the return of postal voting documents form and attach the form to the postal voting documents concerned.

(2) The relevant officer must make up a packet (or packets) of the rejected postal voting documents and the accompanying return of postal voting documents forms which must be sealed up with a description of its contents written on each packet.

(3) Where a return of postal voting documents form relates to postal voting documents which have not all been rejected, that form must be dealt with as if it related just to rejected postal voting documents, and the postal voting documents which have been rejected must be noted on it.

(4) The relevant officer must deliver those packets to the local returning officer before the close of the poll.

#### **Postal voting documents left behind with the returning officer**

**46D.**—(1) Where a person leaves a left behind postal voting document with the relevant officer in accordance with paragraph 43(2), the relevant officer must reject that left behind postal voting document.

(2) The relevant officer must—

- (a) write on a return of postal voting documents form to confirm that the postal voting document is a left behind postal voting document,
- (b) write the relevant officer’s name on that form, and
- (c) attach that form to the left behind postal voting document.

(3) Left behind postal voting documents and the attached return of postal voting documents forms must be included in the packet of rejected postal voting documents and forms made up in accordance with regulation 46C(2).

#### **Opening of delivered or collected packets of postal voting documents**

**46E.**—(1) Sub-paragraph (2) applies to the packets of postal voting documents delivered to or collected by the local returning officer in accordance with paragraph 43(3) or (4) or 46A(1).

(2) Paragraphs 33(2), 44, 45(6), 47(1) and 48 apply to a packet to which this sub-paragraph applies as if that packet were a postal voters’ ballot box.”;



- (h) in paragraph 55 (lists of rejected postal ballot papers)
  - (i) in the heading and in sub-paragraph (1), after “papers” insert “or other postal voting documents”;
  - (ii) after sub-paragraph (5) insert—
    - “(6) In the fourth list, the officer must, subject to sub-paragraph (9), record in relation to any elector whose postal voting documents were rejected in accordance with paragraph 43B or 46B or were left behind postal voting documents—
      - (a) the elector’s name and address (and the name and address of the proxy if the elector has a proxy),
      - (b) the elector’s number on the register of electors (and that of the proxy if the elector has a proxy),
      - (c) the specified reason or reasons for the rejection of the postal voting documents,
      - (d) an indication as to whether the postal voting documents included a postal ballot paper the number of which matched the postal ballot paper number marked on the postal voting statement, and
      - (e) any other information relating to the rejection that the officer considers appropriate, but not the postal ballot paper number.
    - (7) The specified reasons that may be given under sub-paragraph (6)(c) for the rejection of the postal voting document are—
      - (a) the postal voting documents were handed in at a polling station or to the returning officer but the return of postal voting documents form was not fully completed with the required information;
      - (b) the postal voting documents were handed in at a polling station or to the returning officer but the number of postal voting documents handed in exceeded or was suspected to exceed the permitted number;
      - (c) the postal voting documents were handed in by a political campaigner who was not permitted to hand in those postal voting documents;
      - (d) the postal voting documents were left behind postal voting documents.
    - (8) In compiling the fourth list the returning officer must open separately each covering envelope (including an envelope described in paragraph 46(2)) and each ballot paper envelope.
    - (9) The obligation in sub-paragraph (6) does not apply where an elector’s rejected postal voting documents do not include a postal voting statement.”;
  - (i) in paragraph 57 (sealing of packets), in sub-paragraph (1)—
    - (i) omit the “and” at the end of paragraph (e);
    - (ii) after paragraph (f) insert—
      - “and
      - (g) the packets of rejected postal voting documents and accompanying return of postal voting documents forms made up in accordance with paragraphs 43C(2) and 46C(2),”;
  - (j) in paragraph 59 (forwarding of documents)—
    - (i) in sub-paragraph (1)(a) after “42A(2),” insert “43(5)(b), 46A(3)(b),”;
    - (ii) in sub-paragraph (1)(c)—
      - (aa) for “list” substitute “lists”;

- (bb) after “55(4)” insert “and (6)”;
  - (iii) in sub-paragraph (4) after “55(4)” insert “and (6)”;
  - (k) in paragraph 59A (notification of a rejected postal voting statement)—
    - (i) in the heading for “statement” substitute “document”;
    - (ii) in sub-paragraph (1) after “55(4)” insert “, or on the list compiled under paragraph 55(6) with an indication in accordance with paragraph 55(6)(d) that a postal ballot paper was included in rejected postal voting documents,”;
    - (iii) in sub-paragraph (1)(a)—
      - (aa) the words from “the local returning officer” to the end becomes sub-paragraph (i);
      - (bb) after that sub-paragraph (i) insert—
        - “(ii) the postal ballot paper was handed in at a polling station and the relevant officer—
          - (aa) was not satisfied that the return of postal voting documents form had been completed properly and provided the required information,
          - (bb) suspected that the person handing it in had handed in postal ballot papers on behalf of more than the permitted number of electors, or
          - (cc) suspected that the person handing it in was a political campaigner who was committing an offence under paragraph 9A;
        - (iii) the postal ballot paper was a left behind postal voting document;”;
    - (iv) in sub-paragraph (1)(c)—
      - (aa) the words from “in paragraph 55(5)” to the end become sub-paragraph (i);
      - (bb) after that sub-paragraph (i) insert—
        - “(ii) paragraph 55(7) applied to the absent voter’s postal ballot paper.”;
    - (v) in sub-paragraph (2)(b) at the end insert “except where that offence is committed by a political campaigner under paragraph 9A”;
  - (l) in paragraph 60 (forms), for form 2 (postal voting statement where PCC election taken alone), form 4 (postal voting statement where polls are combined but proceedings on issue and receipt of postal ballot papers are not combined) and form 5 (statement of the number of postal ballot papers issued) substitute the corresponding forms set out in Part 1 of Schedule 6 to these Regulations.
- (7) In Schedule 3 (rules for the conduct of PCC elections where poll not taken together with poll at another election)—
- (a) in rule 32 (notification of requirement of secrecy), in paragraph (1)—
    - (i) in sub-paragraph (a) for “(4) and (7)” substitute “(5) and (8)”;
    - (ii) in sub-paragraph (b) for “22(2), (3) and (7)” substitute “22(3), (4) and (8)”;
  - (b) in rule 34 (admission to polling stations), in paragraph (1) after sub-paragraph (b) insert—
    - “(ba) persons aged 18 or over returning a postal ballot paper or postal voting statement by hand in accordance with paragraph 43(1) of Schedule 2”;
  - (c) in rule 49 (procedure of verification at ballot paper accounts), in paragraph (2)—
    - (i) omit the “and” at the end of sub-paragraph (c);

(ii) after sub-paragraph (d) insert—

“and

(e) the postal ballot paper is not one that falls to be rejected in accordance with paragraph 43B, 43D, 46B or 46D of Schedule 2.”;

(d) in rule 70 (forms), for form 12 (official postal poll card) and form 14 (official postal proxy poll card) substitute the corresponding forms set out in Part 2 of Schedule 6 to these Regulations.

(8) In Schedule 4 (combination of polls), in paragraph 27 (notification of requirement of secrecy), in the wording substituted for rule 32 by that paragraph—

(a) in paragraph (1)—

(i) in sub-paragraph (a) for “(4) and (7)” substitute “(5) and (8)”;

(ii) in sub-paragraph (b) for “22(2), (3) and (7)” substitute “22(3), (4) and (8)”;

(b) in paragraph (2) for “22(2) and (7)” substitute “22(3) and (8)”.

(9) In the table in Part 1 of Schedule 9 (application to PCC elections of existing provisions about legal proceedings), in the modifications to section 168 of the Representation of the People Act 1983(3)—

(a) after “60 or 62A” insert “or 112A”;

(b) for “paragraph 10” substitute “paragraph 9A or 10”.

(10) In Schedule 10 (access to marked registers and other documents open to public inspection after an election), in paragraph 3 (inspection of documents open to inspection), in sub-paragraph (1) (b)—

(a) in sub-paragraph (iv) after “55(4)” insert “or (6)”;

(b) after sub-paragraph (iv) insert—

“(v) return of postal voting documents forms.”.

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(3) Section 168 was amended by paragraph 8 of Schedule 3 and paragraph 57 of Schedule 4 to the Representation of the People Act 1985 (c. 50), paragraph 121 of Schedule 1 to the Electoral Administration Act 2006 (c. 22), by paragraph 11 of Schedule 2 to the Local Electoral Administration and Registration Services (Scotland) Act 2006 (asp 14) and by section 4(4) of the Elections Act 2022 (c. 37).