



Responsibilities of Returning Officers

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This Note sets out the general responsibilities of Returning Officers and Acting Returning Officers in Great Britain. They are appointed under the *Representation of the People Act 1983* and are responsible for the conduct of elections. Library Standard Note 5166 *Timing of parliamentary election counts* deals separately with the question of the timing of the counting of votes – a decision taken by Returning Officers. This Note does not cover that issue, but gives information about the performance standards for Returning Officers issued by the Electoral Commission and funding for elections generally.

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1 Introduction

Electoral registration and the running of elections are conducted at local authority level: Electoral Registration Officers (EROs) have the statutory responsibility for the preparation and maintenance of the register in their area and are appointed under section 8 of the *Representation of the People Act 1983*. The Electoral Commission does not have the power to direct individual EROs who, although they are local government officials, are not answerable to their local authority in respect of their electoral duties. EROs and the electoral register are not considered to fall within the scope of the *Freedom of Information Act 2000* for that reason.

Returning Officers in England and Wales are treated as honorary positions, and held by a Mayor or Sheriff, and it is the Acting Returning Officer who organises the election, normally the chief executive of a local authority. In turn, the ARO will delegate functions to Deputy Returning Officers. Returning Officers in England and Wales are appointed under section 24(3) of the *Representation of the People Act 1983*. They may choose to receive and return the writ for a parliamentary election, if they give notice.¹

In most cases the ERO is also the Acting Returning Officer. In Scotland, in 31 out of 32 councils, it is the Assessor who fulfils the role of ERO and the RO is a separate local government officer appointed under section 41 of the *Representation of the People Act 1983* and not an honorary position.² At European Parliamentary elections, a single Regional Returning Officer (RRO) is appointed for each of the 12 European electoral regions.

Traditionally, (Acting) Returning Officers have had considerable autonomy in their work, and one current manifestation is that they decide the detail and timing of the count of the poll. Library Standard Note 5166 *Timing of Parliamentary Election Counts* covers this point in detail and is not separately dealt with here.

The Electoral Commission's manual for Acting Returning Officers for the 2010 general election gives further detail:

Discharge of duties of the (Acting) Returning Officer

4.5 The duties of the (Acting) Returning Officer are separate from their duties as a local government officer. This follows from Section 27(1) of the RPA 1983, which has the effect of making the office of (Acting) Returning Officer totally distinct from the office by virtue of which they have become (Acting) Returning Officer.

4.6 The provision serves to emphasise the independence of the (Acting) Returning Officer at a UK Parliamentary general election from their local authority. They are directly accountable to the courts system as an independent statutory office holder.

Breach of official duty

4.7 If the (Acting) Returning Officer is, without reasonable cause, guilty of any act or omission in breach of their official duty they are liable on summary conviction to a fine not exceeding £5,000.¹⁴ An (Acting) Returning Officer is, in respect of any breach of their official duty, liable only to the fine imposed by that section. No action for damages

¹ For background, see *Parker's Law and Conduct of Elections*, Chapter 4, The Returning Officer, his staff and expenses

² *Scottish Elections 2007: the independent review of the Scottish parliamentary and local elections 3 May 2007* Electoral Commission October 2007 p21

lies against the (Acting) Returning Officer or their staff in respect of a breach of official duties.

4.8 The (Acting) Returning Officer has the power to correct procedural errors they have made, an Electoral Registration Officer, a Presiding Officer, a person providing goods or services to the (Acting) Returning Officer and any Deputy or authorised assistant of any of the above. Where an (Acting) Returning Officer remedies an act or omission by using this power, they will not be guilty of an offence of breach of official duty, except where any conviction for such a breach is made before the act or omission has been remedied in full.³

Section 64 of the *Representation of the People Act 1983* and section 46 of the *Electoral Administration Act 2006* govern breaches of official duty and powers to remedy procedural errors.

Acting Returning Officers can also be the subject of electoral petitions under Part III of the *Representation of the People Act 1983*, if there are questions as to the conduct of the election. For this reason, indemnity insurance is common.

2 Role of the Electoral Commission

Under the provisions of Section 10(3) of the *Political Parties, Elections and Referendums Act 2000* the Electoral Commission has the power to provide advice to EROs and ROs. Section 10(3) states:

- (3) The Commission may also –
 - (a) provide advice and assistance to –
 - (i) registration officers,
 - (ii) returning officers at relevant elections,
 - (iii) registered parties,
 - (iv) recognised third parties within the meaning of Part VI, and
 - (v) permitted participants within the meaning of Part VII

The Commission publishes its guidance for Electoral Registration Officers, *Managing electoral registration in Great Britain: guidance for EROs* on its website.⁴

3 Performance standards

Section 67 of the *Electoral Administration Act 2006* inserted new Sections 9A, 9B and 9C into PPERA. These sections give the Electoral Commission the power to set and publish performance standards for Electoral Registration Officers, Returning Officers and Referendum Counting Officers. The provisions also allow the Commission to collect information on the costs of electoral services. The Commission has the power to require these officers to provide reports on their level of performance against the standards and to publish its assessments of their performance. These powers do not apply in Northern Ireland

³ http://www.electoralcommission.org.uk/__data/assets/pdf_file/0011/83369/Part-A-Final-Proofs-ok-web.pdf

⁴ *Performance Standards for Electoral Registration Officers in Great Britain* April 2009 available at http://www.electoralcommission.org.uk/__data/assets/pdf_file/0006/42927/Full-ERO-FINAL_amended_March_2009.pdf

where there is a separate Chief Electoral Officer or to local government elections in Scotland which is a devolved matter.

The Commission published its performance standards for EROs in July 2008 and published its first assessment of their performance in April 2009.⁵ In March 2009 it published performance standards for ROs.⁶ There are seven performance standards as follows:

- Skills and knowledge of the RO
- Planning processes in place for an election
- Training
- Maintaining the integrity of an election
- Planning and delivering public awareness activity
- Accessibility of information to electors
- Communication of information to candidates and agents.

In November 2009 the Commission published its assessment of RO performance against these standards following the European Parliamentary elections in 2009. All 378 ROs were asked to assess their performance using these standards. The Electoral Commission summary noted:

Overall the first self-assessment against the standards paints a positive picture of performance by ROs across Great Britain, but it also points to areas where improvements need to be made before the United Kingdom Parliamentary general election in 2010.

Nearly all ROs (just over 96%) either met or exceeded the first standard relating to *Skills and knowledge of the Returning Officer*.

The majority (just over 90%) of ROs met or exceeded all three of the standards relating to 'Planning and organisation' ('Skills and knowledge of the Returning Officer', 'Planning' and 'Training').

The majority (over three quarters) of ROs met or exceeded standard 4: 'Integrity'. However one in five ROs said that they did not meet this standard, the highest proportion of all the seven standards. This is an area that ROs need to improve before the next set of elections.

Just over three quarters of ROs met or exceeded all three standards in the 'Participation' area.

The main reason for performing 'Below the standard' was the lack of formalised planning procedure. This was most apparent for standard 4: 'Integrity' and standard 7: 'Public awareness'. This was an area for improvement identified in our analysis of performance of Electoral Registration Officers (EROs).

⁵ *Performance standards for Electoral Registration Officers in Great Britain: first analysis of Electoral Registration Officers' performance*. Electoral Commission, April 2009. Available at http://www.electoralcommission.org.uk/__data/assets/pdf_file/0018/74034/ERO-REPORT-FINAL1.pdf

⁶ *Performance Standards for Reporting Officers* Electoral Commission March 2009 http://www.electoralcommission.org.uk/__data/assets/pdf_file/0007/72709/131-Performance-standards-for-ROs-final-20090226.pdf

Following our analysis of the performance of EROs earlier this year, there is still a lack of written documented plans for election processes, although to a far lesser extent than was found for ROs. Our discussions with ROs, EROs and electoral services managers over the last year also suggest that ROs adopt a more 'hands on' approach to election planning than EROs apply to registration planning, due primarily to the high profile and public nature of the role. Although it is encouraging that ROs ensure they have the correct procedures and documentation in place to carry out a successful election, a similar approach should also be carried out for registration processes

Information about the performance of individual ROs is available on our website, where anyone can review performance against the standards in an accessible chart-based format. This tool also enables comparison of performance with ROs for other local authorities, and in future will allow comparison with past performance. This information can be found on our website at <http://www.electoralcommission.org.uk/performance-standards>

The Electoral Commission has published a manual for (Acting) Returning Officers in Great Britain in preparation for the general election in 2010.⁷

4 Funding for elections

Electoral registration and local elections are funded from local council budgets with no dedicated budget or ring-fencing; the cost of conducting Parliamentary and European elections are paid for by the Government from the Consolidated Fund. After several years of discussion, the Ministry of Justice has set out a more flexible fees regime, moving away from scales specifying individual fees and charges, as in the *Parliamentary Elections (Returning Officers' Charges) Order 2005*.

The *Electoral Administration Act 2006* introduced a number of changes to the arrangements for the recovery of Returning Officers' services and expenses. The Act amended section 29 of the RPA 1983 to allow the Secretary of State to specify in an Order the total overall amount a Returning Officer can recover for the services rendered and the expenses incurred for or in connection with an election providing the services were necessarily rendered or the expenses were necessarily incurred for the efficient and effective conduct of the election. Amended section 29 also enables the Secretary of State to specify a maximum recoverable amount for services or expenses of a specified description. The first Fees and Charges Order under the new regime were those issued for the European Parliamentary Elections in June 2009. Separate Orders were made for England and Wales, Scotland and Northern Ireland.⁸

The *Parliamentary Elections (Returning Officer's Charges) Order 2010* has not yet made, but the Ministry of Justice issued a letter on 26 January 2010 with indications of the amounts being made available for each counting area, including Wales and Scotland. The letter notes that: "If the election is held on 6th May 2010, the amount available for the conduct of the poll in Great Britain will be £82.1m; if it is held at any other time, the amount available will be £89.6m."⁹ The fees payable to each Returning Officer for each constituency counting area is set out, and these range between £2,500 and £4,000. For the first time, Scotland will be included within the England and Wales Order.

⁷ <http://www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/uk-parliamentary-elections>

⁸ *The European Parliamentary and local elections June 2009: Report on the administration of 4 June elections* Electoral Commission para 6.23

⁹ Election Coordination Group Members: Election Funding 2010 26 January 2010 *Ministry of Justice*