

## A QUESTION OF IDENTITY – VOTER IDENTIFICATION

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This article is intended to serve as an update on the new voter identification rules that have been introduced as a result of the voter identity requirements provisions contained in the Elections Act 2022. Save to note that, prior to its enactment, the proposed legislation attracted considerable debate as to whether the historic level of electoral fraud, and in particular personation, within the United Kingdom justified the introduction of these requirements the author does not intend to cover the arguments for or against them.

The article will primarily cover the rules as they relate to:

- (i) The production of identification documents and issuing of ballot papers on polling day; and
- (ii) Applications for electoral identification documents.

Within this article, unless otherwise stated, sections referred to are sections of the Representation of the People Act 1983 as amended; regulations referred to are the Voter Identification Regulations 2022/1382; and rules referred to are the Local Elections (Principal Areas)(England and Wales) Rules 2006 as amended.

#### **I. Polling Day Requirements**

##### **Requirement for Identification**

A ballot paper must not be delivered to a voter unless the voter produces a specified document to the presiding officer or a clerk (rule 35(1A)).

**Specified Documents (save for anonymous entries)**

These are defined in rule 37(1H) of the parliamentary election rules (applied by rule 35(1I)(a) of the Principal Areas Rules 2006), the following are considered specified documents:

- (i) UK, EEA, or Commonwealth passport.
- (ii) Driving licence.
- (iii) Biometric immigration document.
- (iv) PASS identity card (with a Proof of Age Standards Scheme hologram).
- (v) Defence Identity Card.
- (vi) A relevant concessionary travel pass.
- (vii) Disabled blue badge.
- (viii) An electoral identity document.
- (ix) EEA national identity card.

The expiry date of such documents is usually not relevant and specified documents may be used regardless of their expiry date (rule 35(1J)). An exception to this is a temporary electoral identity document where the date of the poll for the election is after the date for which the document is issued (rule 37(1K)). Such a document is not valid.

**Anonymous Entries**

In the case of a voter who has an anonymous entry in the register of electors, a specified document means an anonymous elector's document which (in accordance with rule 35(1I)(b)):

- (i) was issued by the registration officer for the local authority in whose area the election is held; and
- (ii) contains the number – allocated to the voter as stated in the copy of the register of electors or, where an entry relating to the voter is added to the register in pursuance of a notice issued under section 13B(3B) or (3D) of the 1983 Act, as stated in the copy of that notice.

Therefore, a person who has an anonymous entry needs to produce an anonymous elector's document in order to vote in person.

### **Notices inside Polling Stations**

Pursuant to rule 26(7A) a large notice must be displayed inside each polling station containing:

- (a) details of the documents the voter needs to produce when applying for a ballot paper, namely—
  - (i) in the case of an elector (other than an elector with an anonymous entry) or a proxy, any of the forms of identification for the time being referred to in rule 37(1H) of the parliamentary election rules;
  - (ii) in the case of an elector with an anonymous entry, the elector's official poll card and an anonymous elector's document showing the same electoral number as the electoral number shown on the official poll card; and
- (b) a statement that further proof of identity may be required to resolve any discrepancy between the name of the holder of a form of identification and the name of the elector or proxy that the voter claims to be.

### **Poll cards**

The reverse side of the form should list accepted forms of photographic identification and state that further proof of identity may be required if there is any discrepancy between the voter's name on their photographic identification and the name of the elector or proxy they claim to be.

### **New Questions**

Pursuant to Rule 33 the clerk may put two new questions to a person seeking to vote in person, namely:

- (i) What is your name?
- (ii) What is your address?

If the person has been given the required information and fails to answer the question satisfactorily, the matter must be referred to the presiding officer.

A person answers those questions satisfactorily if—

- (i) where one of those questions is put, the answer matches a name or address (as the case may be) in the register of local government electors;
- (ii) where both those questions are put, the answers match a name and address in that register that relate to the same person.

### **Required Information**

A ballot paper will be refused if the person fails to answer each question satisfactorily (rule 33(5)). Giving false information may be an offence.

It should be noted that an inquiry relating to the production of voter ID is not to be regarded as an inquiry as to the right of the person to vote (rule 33(4)).

### **The Role of the Clerk**

Where:

- (i) They have reasonable doubts as to whether the voter is the elector or proxy they claim to be; or
- (ii) They reasonably suspect that a document produced by the voter is forged, they must refer the matter to the Presiding officer (rules 35(1C)-(1D)).

### **The Role of the Presiding Officer**

If a matter is referred to the Presiding Officer, they must proceed as if the voter had produced the document to them in the first place (rule 35(1D)).

Where:

- (i) They have reasonable doubts as to whether the voter is the elector or proxy they claim to be; or
- (ii) They reasonably suspect the document produced is forged; they must refuse to deliver a ballot paper (rule 35(1E)).

## Privacy Requirements

The rules contain various requirements for privacy in respect of the production of proof of identity:

- (i) The returning officer must ensure that each polling station contains an area in which voters can produce proof of identity in private (rule 23(5)).
- (ii) The presiding officer or clerk must arrange for the voter to produce any document in a private area of the polling station if the voter so requests, and, in such a case, must ensure that no other persons witness the production except as permitted by the voter (rule 35(1B)).
- (iii) No person other than the presiding officer or a clerk may inspect a document produced as proof of a voter's identity, except as permitted by the voter (rule 35(1L)).

## Name Discrepancies

Where:

- (i) a discrepancy between the name of the holder of a specified document and the name of the elector or proxy that the voter claims to be is resolved to the presiding officer's satisfaction at the time of the application by the voter producing further proof of identity and,
- (ii) the presiding officer has no other reason (arising from any document produced by the voter) to doubt that the voter is the elector or proxy that the voter claims to be,

a ballot paper must be delivered to the voter who applied for one providing the usual rules are met (rule 35(1F)).

## Further Applications for a Ballot Paper

Where a presiding officer refuses to deliver a ballot paper to a voter, the voter is not prevented from making a further application for a ballot paper under rule 35(1), to which the same rules will apply (rule 35(1G)).

### **Voters who are Disabled, Incapacitated or Unable to Read**

The same rules apply although rather than refusing to deliver a ballot paper the refusal is either:

- (i) A refusal to cause a voter's vote to be marked on a ballot paper in the case of those unable to vote in the manner directed by the rules due to incapacity, disability, or inability to read (rule 36(1A)), or
- (ii) A refusal refuses to grant a voter's application (rule 37(2A)) in the case a person with a disability.

### **Ballot Paper Refusal List**

The returning officer must provide each polling station with a ballot paper refusal list (rule 26(4ZA)).

Where a presiding officer refuses to deliver a ballot paper to a voter who applied for one as an elector, the officer or a clerk must enter on the ballot paper refusal list (rule 39A(1)):

- (a) the voter's electoral number, and
- (b) against that number, the reason for the refusal.

Where the voter applied as a proxy, the name and address of the voter must be entered rather than the electoral number (rule 39A(2)(a)):

Where a further application for a ballot paper is made, the result of that further application (whether delivered or refused) must be noted on the ballot paper refusal list by the presiding officer or a clerk (rule 39A(4)-(5)).

Such entries on the ballot paper refusal list must be made as soon as practicable after the delivery or refusal of a ballot paper (rule 39A(6)).

The ballot paper refusal list is added to the lists of documentation to be sealed on close of the poll (rule 43).

## **Challenging Ballot Paper Refusals**

A refusal to deliver a ballot paper to a voter is final and may not be questioned in any proceeding whatsoever, save for (rule 39A(8)):

- (i) By making a further application; or
- (ii) By election petition.

## **II. Applications for Electoral Identity Documents**

An application for an electoral identity document may be made by a person who is or has applied to be registered in a register of parliamentary or local government electors (section 13BD(1)).

No charge may be made for the issue of an electoral identity document (section 13BD(7)).

An application must be made to a registration officer who maintains the register in which the applicant is or has applied to be registered (section 13BD(2)). Applications may be made either:

- (i) Directly to the registration officer (regulation 6); or
- (ii) Via the Secretary of State's digital service, which is then sent to the registration officer (regulation 5).

Identity document applications must be made in writing and meet the requirements set out in regulation 4 (i.e. provide full name, registered address, date of birth, national insurance number, date of application and be verified by a declaration of truth).

It is an offence to provide false information in an application (section 13CZA RPA 1983).

### **Determination of Applications**

A registration officer must determine an application in accordance with regulations (section 13BD(3)).

The officer may:

- (i) Require the applicant to provide certain additional evidence within 28 days where they consider it necessary to verify the applicant's identity (e.g. passports, birth certificates, bank statements) (regulation 7).
- (ii) Inspect and copy certain records for the purposes of determining identity document applications (e.g. the local authority's records of births, deaths and marriages) (regulation 8).
- (iii) Require any person to give information required for the purpose of determining an identity document application (regulation 9). However the officer may not require an applicant to provide information to assist the registration officer in determining, in connection with that person's application, whether that applicant is the person named in that application (regulation 9(2)).

Failure to provide information sought under reg.9 is a criminal offence punishable by a fine (regulation 9(3)).

An officer may refuse an application if they have required additional evidence in accordance with regulation 7 and the applicant has failed or refused to provide it by the deadline (regulation 11(1)).

An officer must grant the application if satisfied that certain conditions are met or refuse the application if not so satisfied (regulation 11(2)). These conditions are that:

- (i) The application meets the requirements in regulations 4(1)-(3). i.e. the application contains the requisite information and the photograph meets the requirements set out in schedule 2 of the regulations (in sharp focus and clear, etc).
- (ii) The applicant is the person named in the application.

- (iii) The applicant is registered in a register of parliamentary or local government electors maintained by the registration officer or the registration officer is required to enter them in such a register in accordance with section 10ZC(1).

Where the applicant is unable to provide a photograph with a plain facial expression and/or with eyes clearly open and visible due to any disability, those requirements do not apply (regulations, schedule 2, paragraph 3(2)).

### **Postponement of Determinations**

Applications received in the postponement period (i.e. after 5pm on the sixth working day before the poll in a relevant election, petition or referendum) must not be determined in accordance with regulation 11(2) until after the poll (regulation 10).

The applicant must be notified – unless the application is received on the poll day (regulation 10(2)).

### **Temporary Electoral Identity Documents**

Where an officer issues an electoral identity document in the relevant period (i.e. after 5pm on the sixth working day before the poll), and they are satisfied that it may not be delivered in time for the applicant to vote they may also issue the applicant with a temporary electoral identity document (regulation 18).

Temporary electoral identity documents are valid only on the relevant poll day for which they are issued (regulation 19(1)).

### **Notification and Issue**

The officer must notify the applicant of their determination (regulation 12) and either:

- (i) If granted, how the document will be delivered or made available for collection (in accordance with regulation 17).

- (ii) If refused, the reason for that refusal, the right of appeal and the time in which any notice of appeal must be given.

The notification must be given or confirmed in writing (regulation 12(3)).

Where an application is granted, the officer must issue one of the following in the format designed by the Electoral Commission (regulations 15,16 and 18):

- (i) Electoral identity document.
- (ii) Anonymous elector's document.
- (iii) Temporary electoral identity document

These are A4 size (schedule 3 paragraphs 1-3) and include a photograph, the date of issue and the full name of the elector (or, for an anonymous elector, their electoral number).

### **Retention of Evidence**

The application and supporting documentation (save for original documents which should be copied and returned in accordance with regulation 14(1)) must be retained by the registration officer for either (regulation 14(3)):

- (i) 28 working days beginning with the day on which the registration officer granted the application; or
- (ii) 12 months beginning with the day on which the registration officer refused that application.

A registration officer must keep a record of all anonymous elector's documents and electoral identity documents issued by them and make an entry in that record as soon as practicable after issuing it. Such record must be kept for specified retention periods (regulation 20).

The information provided in an application must be disclosed to the Secretary of State or Levelling Up, Housing and Communities, who may share it with the Secretary of State for Work and Pensions (regulation 6).

### **Appeals against Determinations**

An appeal may be made against a determination (section 56(1)(ac)). Notice of the appeal must be given to the registration officer before the end of the period of 14 days beginning with the day on which the notification under regulation 12 is given (reg.13(1)).

The registration officer must forward any such notice to the county court together with a statement setting out the facts, the officer's decision, and the officer's representations on the grounds of appeal (regulation 13(3)).

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**7.03.2023**

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