

Priority	High
Event specific	UK Parliamentary general election
Action required	Yes
Area	Great Britain
Retain	Until replaced
Circular reference	EC08/2010

Draft guidance on timing of UK Parliamentary election counts

16 March 2010

For the attention of:

The Acting Returning Officer

Parliamentary constituencies in England and Wales

The Returning Officer

Parliamentary constituencies in Scotland

The Chief Electoral Officer

Northern Ireland

Purpose

1. The purpose of this circular is to provide information and draft guidance for Returning Officers on the timing of UK Parliamentary election counts following the insertion of clause 90 into the Constitutional Reform and Governance Bill (CRAG Bill), which is currently before the UK Parliament. Given the level of cross-party support for the amendment, it is expected that clause 90 will become law before the forthcoming UK Parliamentary election, which must be held by 3 June 2010.
2. This circular provides the Commission's draft guidance on the factors that Returning Officers should take into account in having regard to the duty that will be imposed on them under Clause 90 of the CRAG Bill once the provisions come into force.

Background

3. On 9 February 2010 the Secretary of State for Justice announced his support for an opposition amendment to the CRAG Bill on the timing of UK Parliamentary election counts. This amendment was intended to require (Acting) Returning Officers to begin counting votes within four hours of the close of the poll unless there were exceptional circumstances.
4. The Commission raised several concerns about the workability of this amendment. In particular, we pointed out that any guidance on this amendment could never be exhaustive and could not reasonably anticipate all of the local exceptional circumstances which might be relevant in any given constituency. In addition, we questioned whether it was permissible or appropriate for the Secretary of State to issue guidance to Returning Officers on the conduct of their statutory duties.
5. A revised amendment was agreed on 2 March 2010 which made further changes to the new provisions about the timing of UK Parliamentary election counts. These changes removed the original opposition amendment and added clause 90 to the CRAG Bill without debate.
6. The latest version of the CRAG Bill can be found at:
<http://www.publications.parliament.uk/pa/ld200910/ldbills/040/10040.i-v.html>.
A full transcript of the 2 March debate on the clause can be found at:
<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100302/debtext/100302-0019.htm>.
7. (Acting) Returning Officers should be aware of the strength of support for the clause as demonstrated by the debates in the UK Parliament on the CRAG Bill. While the clause does not affect the independence of the (Acting) Returning Officer in carrying out their statutory duties under the Representation of the People Act, (Acting) Returning Officers will want to note the strong views which have been expressed by Members of Parliament in support of overnight counts, which they see as a traditional feature of British democracy. In particular, (Acting) Returning Officers should be aware of the views expressed by many Members of Parliament that the requirement to begin counting votes as soon as practicable after the close of poll should be interpreted as meaning that the count should begin on the evening of polling day rather than on the day after polling day.

Draft guidance

8. As the UK Parliamentary general election must be held by 3 June 2010, if the CRAG Bill does successfully complete the legislative process, this duty would not come into force until very close to the date of the election itself.
9. Given this, we are providing you with sight of a draft of the guidance the Commission would issue in the event that this provision does become law in its current form in order to assist (Acting) Returning Officers in planning to meet the duty this provision creates. The draft guidance is attached to this Circular at Appendix A.

10. As soon as the Bill receives Royal Assent, the Commission will issue formal guidance on this new duty.

Timing of counts information

11. As you will be aware, the Commission has asked (Acting) Returning Officers for information regarding when they intend to commence the counting of votes at the forthcoming UK Parliamentary general election.
12. We have produced a table of information summarising the responses we have received to date, which is available on our website at:
<http://www.electoralcommission.org.uk/elections/upcoming-elections-and-referendums/uk/general-election>.
13. We will be updating this information every Monday between now and the forthcoming UK Parliamentary general election, and would ask all (Acting) Returning Officers to review the information we currently hold for their constituencies. If any (Acting) Returning Officers have yet to notify us of their plans or have changed their plans from the information provided to us previously, we would ask that they contact their local Commission office with current information on when they intend to commence the counting of votes.
14. The decisions taken by (Acting) Returning Officers will be looked at closely by candidates, political parties and other stakeholders both locally and nationally, and may well be considered in the context of the decisions made by other (Acting) Returning Officers. We reiterate our advice that (Acting) Returning Officers should be able to explain their decisions, and they should be prepared to do so in response to enquiries.

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This circular was approved by Andrew Scallan, Director of Electoral Administration and Boundaries.