

BRECKLAND DISTRICT COUNCIL (ELECTRONIC COUNTING) PILOT ORDER 2007

Made - - - -

26 March 2007

Coming into force in accordance with Article 1

This Order is made in exercise of the powers conferred by section 10(1) of the Representation of the People Act 2000(a).

Breckland District Council submitted proposals for a scheme under section 10 of the 2000 Act to apply to any election that will take place in relation to any vacancy in the membership of the District Council, and any election to a Parish Council with which that election will be combined, arising on the ordinary day of elections in 2007.

The Secretary of State consulted the Electoral Commission on these proposals, as he is required to under section 10(1A) of the 2000 Act.

The Secretary of State makes the following Order:

Citation and commencement

1. This Order may be cited as the Breckland District Council (Electronic Counting) Pilot Order 2007 and shall come into force forthwith.

Interpretation and application

2. In this Order, in any modification to an enactment made by this Order, or in any other enactment which applies in relation to the relevant election unless the contrary intention appears-

- "1983 Act" means the Representation of the People Act 1983(b);
- "2000 Act" means the Representation of the People Act 2000(c);
- "2006 Principal Areas Rules" means the Local Elections (Principal Areas) (England and Wales) Rules 2006(d);
- "2006 Parishes Rules" means the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(e);

(a) 2000 c.2. Section 10 is amended by the Political Parties, Elections and Referendums Act 2000 c.41, section 158(1) and Schedule 21, paragraph 16.

(b) 1983 c.2.

(c) 2000 c.2.

(d) S.I. 2006/3304.

(e) S.I. 2006/3305.

- "the election" means any local government election that takes place arising from a vacancy in the membership of the Breckland District Council, or any election to a Parish Council or Community which is combined with that election, arising on the ordinary day of election in 2007;
- "electronic counting system" means such computer hardware and software, data, other equipment and services as may be provided by the returning officer pursuant to rule 46A(1) in Schedules 1 and 2 to this Order for the purpose of calculating electronically the numbers of votes cast at the elections;
- "the returning officer" means the returning officer at the principal area election,

and for the purposes of this Order sections 6A and 6B of the Political Parties, Elections and Referendums Act 2000^(a) shall apply to representatives of the Department for Constitutional Affairs as they apply to representatives of the Electoral Commission and references in any other enactment, including this Order, to representatives of the Commission, or any person, attending or entitled to attend, or being admitted to or being present at, a polling station by virtue of sections 6A to 6D of that Act shall be construed accordingly.

Conduct of elections

3. – (1) In relation to the election, the enactments governing the conduct of the election specified in the Schedules to this Order shall have effect subject to the modifications made by this Order.

(2) Schedule 3 to the 2006 Principal Areas Rules shall have effect subject to the modifications set out in column (2) of Table 1 in Schedule 1.

(3) Schedule 3 to the 2006 Parishes Rules shall have effect subject to the modifications set out in column (2) of Table 2 in Schedule 2.

(4) The provisions specified in column (1) of Table 3 in Schedule 3 shall have effect subject to the modifications set out in column (2) of that table.

Electronic counting

4. Notwithstanding anything in any enactment, at the election the counting of votes, or any part of it, may be conducted electronically, if the returning officer so decides.

Signed by authority of the Secretary of State

.26.March 2007

Bridget Prentice
Parliamentary Under Secretary of State
Department for Constitutional Affairs

^(a) 2000 c.41. Sections 6A to 6D are inserted by section 29 of the Electoral Administration Act 2006 (c.22).

SCHEDULE 1

Article 3(2)

Modifications of Schedule 3 to the 2006 Principal Areas Rules

Table 1

(1) <i>Rule</i>	(2) <i>Modification</i>
16	<p>In paragraph (2) for sub-paragraph (b) substitute-</p> <p>The ballot papers "(b) except in the case of a postal ballot paper (which must have directions printed on the back as to folding up), must have the words "Do not fold" printed on the back;"</p> <p>and at the end add the following paragraph-</p> <p>((6) Notwithstanding paragraph (2)-</p> <p style="padding-left: 40px;">(a) a ballot paper may be printed on A4 size paper and, where it is so printed, any space beneath the particulars of the candidates must be left blank; and</p> <p style="padding-left: 40px;">(b) marks may be printed on the front to facilitate scanning by the electronic counting system."</p>
24	<p>For paragraph (1) substitute the following paragraph-</p> <p>Appointment of presiding officers and clerks "(1) The returning officer must-</p> <p style="padding-left: 40px;">(a) appoint and pay a presiding officer to attend at each polling station, and</p> <p style="padding-left: 40px;">(b) appoint and pay such clerks as may be necessary for the purposes of the election, who may include technical advisers with sufficient expertise to advise on the use of such computer hardware, software and other equipment as may be used for the election,</p> <p>but he must not appoint any person who has been employed by or on behalf of a candidate in or about the election."</p>
25	<p>In paragraph (3) after sub-paragraph (c) insert the following sub-paragraph-</p> <p>Issue of official poll card "(ca) an instruction not to fold the ballot paper except in the case of a postal ballot paper;"</p>
27	<p>In paragraph (4) for sub-paragraph (b) substitute the following sub-paragraph-</p> <p>Appointment of polling and counting agents "(b) the number allowed to a candidate must not (except in special circumstances) be less than the number obtained by dividing-</p>

(i) (where the returning officer decides to use the electronic counting system for the counting of votes cast at the election) the number of counting machines to be used in the counting; or

(ii) (in any other case) the number of clerks to be employed on the counting,

by the number of candidates.”

33

After paragraph (4) insert the following paragraphs-

Questions to be put to voters

"(5) Nothing in this rule shall prevent the presiding officer who attends at a polling station from providing any voter with a questionnaire concerning the conduct of the election.

(6) The questionnaire mentioned in paragraph (5) must not-

(a) be delivered to a voter until he has placed his ballot paper into the ballot box; or

(b) contain any question designed to elicit any information from the voter as to the candidate for whom he has voted."

35

In paragraph (4) delete the words “and fold it up so as to conceal his vote” and “so folded up”.

Voting procedure

45

At the end add the following paragraph-

The count

“(14) With the assistance of the electronic counting system the returning officer may calculate the total number of votes cast and the total number of votes cast for each candidate from the aggregate of the records as to the total number of ballot papers and postal ballot papers.”.

46

Add the following paragraphs at the end-

Re-count

"(3) The extent to which any re-count carried out pursuant to paragraph (1) above involves the electronic counting of votes shall be in the absolute discretion of the returning officer.

(4) In so far as the votes have been counted using the electronic counting system, the returning officer may treat a request for a re-count as unreasonable unless he has reason to believe that the system has not scanned the votes correctly."

and after this rule insert the following rule-

"Electronic counting and re-counting

46A. –(1) The returning officer may provide an electronic counting system for the counting of votes consisting of computer hardware and software.

(2) When the returning officer carries out his functions of counting and recording under rules 45 and 46 using the electronic counting system-

(a) he must keep, or cause to be kept, an electronic record of all decisions made and actions taken by him, or on his behalf, in respect of, or when using, the system;

(b) any ballot paper which cannot be counted by the system must be the subject of a decision by the returning officer under rule 47;

(c) such a decision may be made by the returning officer examining an image of the ballot paper, which is shown on a screen, so as to be visible to the candidates and their agents, and by the returning officer recording his decision electronically; and

(d) neither a candidate nor his agent shall be entitled to require the returning officer to provide a paper copy of any ballot paper for their inspection.

(3) When the returning officer uses the electronic counting system for the re-counting of votes under rule 46 he must not re-consider any earlier decision on any ballot paper under rule 47."

47

At the end add the following paragraph-

Rejected ballot papers

"(6) Where the returning officer conducts the counting of votes using the electronic counting system, he must ensure that the system produces the statement required by paragraph (5) electronically."

51

For paragraph (1) substitute the following paragraph-

Sealing up of ballot papers

"(1) On the completion of the counting at a contested election the returning officer must-

(a) seal up in separate packets-

(i) the counted and rejected ballot papers, including ballot papers rejected in part, and

(ii) complete electronic copies of any data relating to the counting of votes, including the record required by rule 46A(2) and the statement required by rule 47(6), contained in any devices suitable for the purpose; and

(b) following the declaration of the result of the election and the sealing up of the devices as aforesaid, as soon as

reasonably practicable delete, or cause to be deleted, from the system any such data."

52 In paragraph (1) add the following sub-paragraph at the end-

Delivery of documents to relevant registration officer "(g) the packets containing the devices referred to in rule 51(1)(a)(ii)."

53 In this rule add the following paragraph at the end-

Orders for production of documents "(9) In this rule and the rules that follow, unless the context otherwise requires, any reference to ballot papers or documents includes the devices referred to in rule 51(1)(a)(ii)."

In Part 7 of both Schedules, in the form of Official Poll Card and the form of Proxy Poll Card and in Part 7 of Schedule 2 in the form of directions for the guidance of voters in voting, delete the words "Fold the ballot paper in two".

SCHEDULE 2

Article 3(3)

Modifications of Schedule 3 to the 2006 Parishes Rules

Table 2

(1) <i>Rule</i>	(2) <i>Modification</i>
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16 In paragraph (2) for sub-paragraph (b) substitute-

The ballot papers

"(b) must have the words-

(i) if larger than A4 size, "Please fold here"

(ii) if of A4 size or less, "Do not fold",

printed on the back, except in the case of a postal ballot paper (which must have directions on the back as to folding up);",

and at the end add the following paragraph-

((6) Notwithstanding paragraph (2)-

(a) a ballot paper may be printed on A4 size or larger paper and, where it is so printed, any space beneath the particulars of the candidates must be left blank; and

(b) marks may be printed on the front to facilitate scanning by the electronic counting system."

24

For paragraph (1) substitute the following paragraph-

**Appointment of
presiding officers
and clerks**

"(1) The returning officer must-

(a) appoint and pay a presiding officer to attend at each polling station, and

(b) appoint and pay such clerks as may be necessary for the purposes of the election, who may include technical advisers with sufficient expertise to advise on the use of such computer hardware, software and other equipment as may be used for the election,

but he must not appoint any person who has been employed by or on behalf of a candidate in or about the election."

25

In paragraph (4) after sub-paragraph (c) insert the following sub-paragraph-

**Issue of official
poll cards**

"(ca) an instruction as to the folding of the ballot paper except in the case of a postal ballot paper;"

27

In paragraph (4) for sub-paragraph (b) substitute the following sub-paragraph-

**Appointment of
polling and
counting agents**

"(b) the number allowed to a candidate must not (except in special circumstances) be less than the number obtained by dividing-

(i) (where the returning officer decides to use the electronic counting system for the counting of votes cast at the election) the number of counting machines to be used in the counting; or

(ii) (in any other case) the number of clerks to be employed on the counting,

by the number of candidates."

33

After paragraph (4) insert the following paragraphs-

**Questions to be
put to voters**

"(5) Nothing in this rule shall prevent the presiding officer who attends at a polling station from providing any voter with a questionnaire concerning the conduct of the election.

(6) The questionnaire mentioned in paragraph (5) must not-

(a) be delivered to a voter until he has placed his ballot paper into the ballot box; or

(b) contain any question designed to elicit any information from the voter as to the candidate for whom he has voted."

35 In paragraph (4) for the words "fold it up so as to conceal his vote" substitute "if larger than A4 size, fold it up" and delete the words "so folded up".

Voting procedure

45 At the end add the following paragraph-

The count "(13) With the assistance of the electronic counting system the returning officer may calculate the total number of votes cast and the total number of votes cast for each candidate from the aggregate of the records as to the total number of ballot papers and postal ballot papers."

46 Add the following paragraphs at the end-

Re-count "(3) The extent to which any re-count carried out pursuant to paragraph (1) above involves the electronic counting of votes shall be in the absolute discretion of the returning officer.

(4) In so far as the votes have been counted using the electronic counting system, the returning officer may treat a request for a re-count as unreasonable unless he has reason to believe that the system has not scanned the votes correctly."

and after this rule insert the following rule-

"Electronic counting and re-counting

46A. –(1) The returning officer may provide an electronic counting system for the counting of votes consisting of computer hardware and software.

(2) When the returning officer carries out his functions under rules 45 and 46 using the electronic counting system-

(a) he must keep, or cause to be kept, an electronic record of all decisions made and actions taken by him, or on his behalf, in respect of, or when using, the system;

(b) any ballot paper which cannot be counted by the system must be the subject of a decision by the returning officer under rule 47;

(c) such a decision may be made by the returning officer examining an image of the ballot paper, which is shown on a screen, so as to be visible to the candidates and their agents, and by the returning officer recording his decision electronically; and

(d) neither a candidate nor his agent shall be entitled to require the returning officer to provide a paper copy of any ballot paper for their inspection.

(3) When the returning officer uses the electronic counting system for the re-counting of votes under rule 46 he must not re-consider any earlier decision on any ballot paper under rule 47."

47 At the end add the following paragraph-

Rejected ballot papers "(6) Where the returning officer conducts the counting of votes using the electronic counting system, he must ensure that the system produces the statement required by paragraph (5) electronically."

51 For paragraph (1) substitute the following paragraph-

Sealing up of ballot papers "(1) On the completion of the counting at a contested election the returning officer must-

- (a) seal up in separate packets-
 - (i) the counted and rejected ballot papers, including ballot papers rejected in part, and
 - (ii) complete electronic copies of any data relating to the counting of votes, including the record required by rule 46A(2) and the statement required by rule 47(6), contained in any devices suitable for the purpose; and
- (b) following the declaration of the result of the election and the sealing up of the devices aforesaid, as soon as reasonably practicable delete, or cause to be deleted, from the system any such data."

52 In paragraph (1) add the following sub-paragraph at the end-

Delivery of documents to relevant registration officer "(g) the packets containing the devices referred to in rule 51(1)(a)(ii)."

53 In this rule add the following paragraph at the end-

Orders for production of documents "(9) In this rule and in the rules that follow, unless the context otherwise requires, any reference to ballot papers or documents includes the devices referred to in rule 51(1)(a)(ii)."

In Part 7 in the form of Official Poll Card and the form of Official Proxy Poll Card, delete the words "Fold the ballot paper in two".

SCHEDULE 3

Article 3(4)

Table 3

Modifications of enactments

<i>(1)</i> <i>Provision</i>	<i>(2)</i> <i>Modification</i>
1983 Act	
Section 65	In subsection (1), after paragraph (f) insert-
Tampering with nomination papers, ballot papers etc	"(fa) without due authority interferes with the proper working of- (i) any computer hardware or software or other electronic equipment or service provided for the counting of votes; or (ii) any electronic data being transmitted, stored or used for the purposes of the election;".
Section 66	After subsection (2) insert the following subsection-
Requirement of secrecy	"(2A) When the returning officer uses the electronic counting system provided by him for the counting of votes, following the declaration of the result of the election and the sealing up in packets of any devices containing the data, he must as soon as reasonably practicable delete, or cause to be deleted, from the system any such data.", and for subsection (6) substitute- "(6) If a person acts in contravention of, or fails to comply with, this section he shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months."
202	In subsection (1), after the definition of "elector" insert the following definition-
General provisions as to interpretation	"“electronic counting system” means such computer hardware and software, data, other equipment and services as may be provided by the returning officer pursuant to the Breckland District Council (Electronic Counting) Pilot Order 2007 for the purpose of calculating electronically the numbers of votes cast at the election;”
2000 Act	
Section 10	After section 10 insert-

"Duty to co-operate with the Electoral Commission

10A. –(1) The returning officer for a local government election to which an order under section 10 applies shall ensure that the Electoral Commission, and any person authorised by the Commission, is afforded access to any ballot paper, document, equipment, computer software, computer hardware, data stored electronically or place that is to be, is being, or has been used for the purposes of the election.

(2) Subsection (1) shall apply only to the extent that the Electoral Commission reasonably requires access to the ballot paper, document, equipment, computer software, computer hardware, data stored electronically or place for the purpose of enabling the Commission to assess the election in question.

(3) Subsection (1) shall not require the returning officer to give access, without an order of the court, to any ballot paper, document, equipment, computer software, computer hardware or data stored electronically which, by reason of a requirement in any enactment, is contained within a sealed packet."