

STRATFORD ON AVON DISTRICT COUNCIL AND WARWICK 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).

Stratford On Avon District Council and Warwick District Council submitted proposals for a scheme under section 10 of the 2000 Act to apply to any election in relation to any vacancy in the membership of the District Councils, and any election to a parish within the area of either District Council, that will take place on 3 May 2007,

The Secretary of State considered that certain modifications to the scheme proposed by the Councils were required and consulted the Councils on those modifications, as he is required to under section 10 of the 2000 Act. The Secretary of State also 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 Stratford On Avon District Council and Warwick 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);

(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.

- "2006 Principal Areas Rules" means the Local Elections (Principal Areas) (England and Wales) Rules 2006(a);

- "2006 Parishes Rules" means the Local Elections (Parishes and Communities) (England and Wales) Rules 2006(b);

- "the Appendix", unless otherwise indicated, means-

-in Schedule 1 to this Order, the Appendix of Forms in Part 7 of Schedule 3 to the 2006 Principal Areas Rules" as modified by this Order;

-in Schedule 2 to this Order, the Appendix of Forms in Part 7 of Schedule 3 to the 2006 Parishes Rules as modified by this Order;

- "close of poll" means 10.00 p.m. on 3rd May 2007;

- "day or date of the poll" means 3rd May 2007;

- "the election" means any local government election arising from a vacancy in the membership of the Stratford on Avon District Council and the Warwick District Council, or any election in relation to any parish within the area of either District Council, that will take place on 3 May 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(c) 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 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 those provisions 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) Schedules 2 and 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.

(a) S.I. 2006/3304.

(b) S.I. 2006/3305.

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

(3) Schedules 2 and 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

SCHEDULE 1

Article 3(2)

Modifications of Schedules 2 and 3 to the 2006 Principal Areas Rules

Table 1

| <i>(1)</i> <i>Rule</i> | <i>(2)</i> <i>Modification</i> |
|---|--|
| 16 in both Schedules The ballot papers | <p>After paragraph (5) 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 in both Schedules Appointment of presiding officers and clerks | <p>For paragraph (1) substitute the following paragraph-</p> <p>“(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 style="padding-left: 40px;">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 in both Schedules Issue of official poll cards | <p>In paragraph (3) after sub-paragraph (c) insert the following sub-paragraph-</p> <p>“(ca) an instruction not to fold the ballot paper except in the case of a postal ballot paper;”.</p> |
| 27 in both Schedules Appointment of polling and counting agents | <p>In paragraph (4) for sub-paragraph (b) substitute the following sub-paragraph-</p> <p>“(b) the number allowed to a candidate must not (except in special circumstances) be less than the number obtained by dividing-</p> <p style="padding-left: 40px;">(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</p> |

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

by the number of candidates.”

33 in both
Schedules
**Questions to be
put to voters**

After paragraph (4) insert-

"(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 both
Schedules
Voting procedure

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

45 in Schedule 2 At the end add the following paragraph-

The count

“(10) 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.”

45 in Schedule 3 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 in both
Schedules
Re-count

Add the following paragraphs at the end-

"(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, 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..

(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 in both
Schedules
**Rejected ballot
papers**

At the end add the following paragraph-

"(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 in both
Schedules
**Sealing up of ballot
papers**

For paragraph (1) substitute the following paragraph-

"(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, 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."; and

in Schedule 2

add the following paragraph at the end-

"(3) After taking copies for the purposes of paragraph (1), the returning officer must arrange for the original records referred to in rules 45(10), 46A(2) and 47(6) and any other records relating to the election and which reveal or are capable of revealing the manner in which any elector has voted to be removed from the computer hardware and software and other equipment referred

to in that rule and destroyed in a manner that ensures that the confidentiality of those records is preserved.”

in Schedule 3

add the following paragraph at the end-

“(4) After taking copies for the purposes of paragraph (1), the returning officer must arrange for the original records referred to in rules 45(10), 46A(2) and 47(6) and any other records relating to the election and which reveal or are capable of revealing the manner in which any elector has voted to be removed from the computer hardware and software and other equipment referred to in that rule and destroyed in a manner that ensures that the confidentiality of those records is preserved.”

52 in both
Schedules

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

**Delivery of documents
to relevant registration
officer**

“(g) the packets containing the records referred to in rule 51(1)(a)(ii).”

and in Schedule 2 at the end of paragraph (2) and in Schedule 3 at the end of paragraph (3) add the following words-

“and, unless the context otherwise requires, references to ballot papers include a reference to the records referred to in rule 51(1)(a)(ii).”

53 in both
Schedules

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 records 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 Official 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 Schedules 2 and 3 to the 2006 Parishes Rules

Table 2

| (1) <i>Rule</i> | (2) <i>Modification</i> |
|---|---|
| 16 in both Schedules The ballot papers | After paragraph (5) add the following paragraph- “(6) Notwithstanding paragraph (2)- (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 (b) marks may be printed on the front to facilitate scanning by the electronic counting system.”. |
| 24 in both Schedules Appointment of presiding officers and clerks | For paragraph (1) substitute the following paragraph- “(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 both Schedules Issue of official poll card | In paragraph (4) after sub-paragraph (c) insert the following sub-paragraph- “(ca) an instruction not to fold the ballot paper except in the case of a postal ballot paper;” |
| 27 in both Schedules Appointment of polling and counting agents | In paragraph (4) for sub-paragraph (b) substitute the following sub-paragraph- “(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 in both
Schedules
**Questions to be
put to voters**

After paragraph (4) insert-

"(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 both
Schedules
Voting procedure

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

45 in Schedule 2

At the end add the following paragraph-

The count

“(10) 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.”

45 in Schedule 3

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 including ballot papers and postal ballot papers.”

46 in both
Schedules
Re-count

At the end add the following paragraphs-

"(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 electronic counting 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, 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.

(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 in both
Schedules
**Rejected ballot
papers**

At the end add the following paragraph-

“(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 in both
Schedules
**Sealing up of
ballot papers**

For paragraph (1) substitute the following paragraphs-

“(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 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.”; and

In Schedule 2

at the end add the following paragraph-

“(3) After taking copies for the purposes of paragraph (1), the returning officer must arrange for the original records referred to in rules 45(10), 46A(2) and 47(6) and any other records relating to the election and which reveal or are capable of revealing the manner in which any elector has voted to be removed from the computer hardware and software and other equipment referred

to in that rule and destroyed in a manner that ensures that the confidentiality of those records is preserved. .”

In Schedule 3

and at the end add the following paragraph-

“(4) After taking copies for the purposes of paragraph (1), the returning officer must arrange for the original records referred to in rules 45(10), 46A(2) and 47(6) and any other records relating to the election and which reveal or are capable of revealing the manner in which any elector has voted to be removed from the computer hardware and software and other equipment referred to in that rule and destroyed in a manner that ensures that the confidentiality of those records is preserved. .”

52 in both
Schedules

In paragraph (1) add the following subparagraph at the end-

**Delivery of
relevant registration
officer**

“(g) the packets containing the records referred to in rule 51(1)(a)(ii).”

53 in both
Schedules

At the end add the following paragraph-

**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 records 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 Official 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".

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- "(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- "(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 data relating to the counting of votes, 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." |
| Requirement of secrecy | |
| 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 Stratford on Avon District Council and Warwick District Council (Electronic Counting) Pilot Order 2007 for the purpose of calculating electronically the number 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."