



Protocol to create substitute marked register for Glenrothes by-election on 6 November 2008

**Presented to Parliament
by the Secretary of State for Scotland
by Command of Her Majesty
October 2009**

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PROTOCOL

agreed by

The Right Honourable James Murphy M.P., Her Majesty's Secretary of State for Scotland
("The Secretary of State");

James Harris, Forth House, Abbotshall Road, Kirkcaldy, Fife, KY1 1RU, as electoral
registration officer for Fife ("the Electoral Registration Officer")

Ronnie Hinds, Fife House, North Street, Glenrothes, KY7 5LT, as returning officer for the
Glenrothes Parliamentary Constituency ("the Returning Officer");

and

Joe Murphy, Sheriff Clerk, Kirkcaldy Sheriff Court, Sheriff Court House, Whytecauseway,
Kirkcaldy, KY1 1XQ, as the current sheriff clerk for the sheriff court district of Kirkcaldy
("the Sheriff Clerk")

in relation to

the creation of a substitute marked register of electors
for the Glenrothes by-election of 6 November 2008

WHEREAS the sealed packets containing the marked copies of the registers sent to the Sheriff Clerk under rules 55 and 58 of the Parliamentary Elections Rules in Schedule 1 to the Representation of the People Act 1983 following the by-election were lost whilst in the custody of the Sheriff Clerk's predecessor in office;

AND WHEREAS the Secretary of State intends to seek an order of the House of Commons under rule 56 of the Parliamentary Elections Rules to facilitate the creation of substitute marked copies of the registers;

AND WHEREAS the Secretary of State intends that the substitute marked copies of the registers be made available for public inspection as if they were the principal marked registers had those principal copies not been lost;

NOW THEREFORE, the SECRETARY OF STATE, the ELECTORAL REGISTRATION OFFICER, the RETURNING OFFICER and the SHERIFF CLERK agree as follows:

Interpretation

1. In this protocol-

"the Act" means the Representation of the People Act 1983;

"the Rules" means the Parliamentary Elections Rules in Schedule 1 to the Act;

"the Regulations" means the Representation of the People (Scotland) Regulations 2001;

"by-election" means the election for Glenrothes parliamentary constituency which took place on 6 November 2008;

"CCNL" means the completed corresponding number lists;

"partial copy CCNL" has the meaning given to it in paragraph 14;

"rule 56 order" means an order made by the House of Commons under rule 56 in relation to the sealed packets containing the CCNL;

"unmarked register" has the meaning given to it in paragraph 6;

2. In this protocol-
 - (1) unless the contrary intention appears, expressions have the same meaning as they have in the Act (including the Rules);
 - (2) a reference to a numbered rule is a reference to a rule bearing that number in the Rules;
 - (3) a reference to a numbered section means a section bearing that number in the Act;
 - (4) a reference to a numbered regulation means a regulation bearing that number in the Regulations; and
 - (5) references to documents are to those documents relating to the by-election.

Effect of protocol contingent on House of Commons order

3. This protocol, shall come into force on the day and at the time when the House of Commons makes the rule 56 order and shall have no force or effect until then. However, if such an order is not made by or on 7 November 2009, this condition shall be deemed incapable of satisfaction and accordingly this protocol shall lapse and be of no effect.

Secretary of State to give parties notice of rule 56 order

4. The Secretary of State shall, immediately after the House of Commons makes the rule 56 order, give notice of that order to the other parties. That notice may be in writing or by electronic mail.

Discharge of duties through staff

5. Any act required to be taken by the Electoral Registration Officer, the Returning Officer or the Sheriff Clerk under this protocol may be taken on behalf of that person by a member of staff specifically appointed by that person for that purpose.

Delivery of unmarked register by Electoral Registration Officer

6. As soon as reasonably practicable after receiving notice under paragraph 4 the Electoral Registration Officer must, under regulation 97(3), deliver to the Returning Officer the following documents (collectively referred to as “the unmarked register”):
 - (1) a paper copy of the register of electors published under section 13(1) on 30 November 2007 ; and
 - (2) a paper copy of each notice setting out an alteration to the register published under section 13A(2) or 13B(3), (3B) or (3D) between 30 November 2007 and 6 November 2008.
7. The Returning Officer must, on receipt of the unmarked register, provide the Electoral Registration Officer with a signed receipt showing the date and time of receipt.

Delivery of Sealed Packets by Sheriff Clerk

8. As soon as reasonably practicable after the House of Commons has made the rule 56 order the Sheriff Clerk must deliver into the hands of the Returning Officer the sealed packets containing the CCNL.
9. The Returning Officer must, on receipt of the sealed packets containing the CCNL, provide the Sheriff Clerk with a signed receipt showing the date and time of receipt.

Supervision arrangements

10. The Returning Officer shall ensure that no person other than the following is present when the steps in paragraphs 13 to 18 are carried out:

- (1) the Returning Officer;
- (2) staff appointed by the Returning Officer to discharge the functions of the Returning Officer under this protocol;
- (3) one representative of the Electoral Commission (being either a member of the Electoral Commission, a member of staff of the Electoral Commission or a person appointed by the Electoral Commission for the purposes of this paragraph); and
- (4) each person who was a candidate at the by-election or a representative appointed by such a person.

11. The persons specified in paragraph 10(3) and 10(4) may be present whilst the steps in paragraph 13 to 18 are carried out but the Returning Officer may carry out those steps without those persons being present so long as those persons have been given the opportunity of being present.

Opening of Sealed Packets by Returning Officer

12. On receipt of the sealed packets the Returning Officer shall notify the following persons of the time and place at which the Returning Officer will open the sealed packets and commence the process of preparing the substitute marked register. Those persons are:

- (1) the Electoral Commission;
- (2) each person who was a candidate at the by-election; and
- (3) the respective registered political parties for each such candidate.

13. The Returning Officer must open the sealed packets containing the CCNL only as authorised by the rule 56 order.

Creation of the substitute marked register

14. The Returning Officer must take one copy of each of the CCNL excluding those parts of the CCNL which disclose the ballot paper numbers and unique identifying marks (“the partial copy CCNL”).

15. The Returning Officer must, immediately after making the partial copy CCNL, return the principal CCNL to the packets from which they were taken and reseal the packets.

16. The Returning Officer must compare the partial copy CCNL to the unmarked register and for each entry on the partial copy CCNL the Returning Officer must mark the entry in the unmarked register corresponding to the entry for the same elector number in the CCNL by drawing a line through the entry in the unmarked register.

17. If, after the packets have been resealed in accordance with paragraph 15, the Returning Officer requires sight of the CCNL or any of them in order to complete the steps described in paragraph 16, the Returning Officer may open the packets or any of them and must as soon as possible return any such CCNL to the packets from which they were taken and reseal the packets.

18. Immediately after all the entries have been marked in accordance with paragraph 16, the Returning Officer must destroy the partial copy CCNL.

Delivery of substitute marked register to the Sheriff Clerk

19. As soon as reasonably practicable after all the entries have been marked in accordance with paragraph 16 the Returning Officer must deliver into the hands of the Sheriff Clerk the marked copy of the unmarked register (“the substitute marked register”) together with a letter specifying the number and description of the documents delivered.

20. The Sheriff Clerk must, on receipt of the substitute marked register, provide the Returning Officer with a signed receipt showing the date and time of receipt and send a copy of that receipt and a copy of the letter referred to in paragraph 19 to the Secretary of State.

Return of the CCNL to the Sheriff Clerk

21. The Returning Officer must, at the same time as delivering the substitute marked register under paragraph 19, deliver into the hands of the Sheriff Clerk the sealed packets containing the CCNL.

22. The Sheriff Clerk must, on receipt of the sealed packets containing the CCNL, provide the Returning Officer with a signed receipt showing the date and time of receipt.

Retention of CCNL packets by the Sheriff Clerk

23. The Sheriff Clerk must retain the sealed packets containing the CCNL for six months from the date on which the substitute marked register is delivered to him, and then, unless otherwise directed by order of the House of Commons, Court of Session or the sheriff, must cause the packets and their contents to be destroyed.

Retention, public inspection and destruction of substitute marked register

24. The Sheriff Clerk must retain the substitute marked register for six months from the date of delivery to him, and then, unless otherwise directed by order of the Court of Session or the sheriff must cause it to be destroyed.

25. The Sheriff Clerk must make the substitute marked register open to public inspection as if the substitute marked register were the marked register forwarded to the Sheriff Clerk under rule 55 and 58. In particular, and without prejudice to the generality, the conditions specified in regulation 118 of the Representation of the People (Scotland) Regulations 2001 apply to the substitute marked register as they apply to the marked register.

26. The Sheriff Clerk must, on request, supply to any person copies of or extracts from the substitute marked register as if the substitute marked register were the marked register forwarded to the Sheriff Clerk under rule 55 and 58. In particular, and without prejudice to the generality, the conditions specified in regulation 117 of the Representation of the People (Scotland) Regulations 2001 apply to the substitute marked register as they apply to the marked register, but the requirement in regulation 117(4)(b) that the Sheriff Clerk receive payment of a fee shall not apply to supply of copies of the substitute marked register.

27. The Sheriff Clerk must display to each person inspecting the substitute marked register under paragraph 25 and supply to each person being supplied with a copy or extract of the substitute marked register under paragraph 26 a notice in the following terms:

“

NOTICE:

This document is not the original marked register forwarded to the Sheriff Clerk following the Glenrothes Parliamentary Constituency by-election on 6 November 2008 or a copy of or extract from that document. That document was lost whilst in the custody of the Sheriff Clerk in office at the time of that election. The attached document is a substitute marked register (or copy of or extract from that substitute marked register) prepared through comparison of the unmarked register as at 6 November 2008 with the completed corresponding number lists, in terms of a protocol agreed between the Secretary of State, Returning Officer, Electoral Registration Officer and Sheriff Clerk. No warranty is given as to the accuracy of this document.”

Confidentiality

28. The parties shall use the information obtained under this protocol for the purposes of this protocol only and for no other purpose whatsoever and will otherwise keep that information confidential.

Costs

29. The Secretary of State shall pay to the Returning Officer the amount of his expenses reasonably and properly incurred in fulfilling his duties under this protocol as the Secretary of State may determine.

30. Except as otherwise provided above, each party must bear their own costs in carrying out their duties under this protocol; IN WITNESS WHEREOF these presents typewritten on this and the five preceding pages are subscribed as follows:-

At Stirling
On 19 October 2009
In the presence of R McMillan
(Witness)



Full Name ROLAND McMILLAN
Address Sheriff Clerk, 6 West Bell Street,
Dundee

At Edinburgh
On 16 October 2009
In the presence of R Angus
(Witness)



Full Name RODERICK JAMES ANGUS
Address 1 Melville Crescent
Edinburgh

At Kirkcaldy
On 19 October 2009
In the presence of Lesley Murray
(Witness)



Full Name LESLEY MURRAY
Address Fife Council
Forth House, Kirkcaldy

At Edinburgh
On 16 October 2009
In the presence of Chris Nabney
(Witness)



Full Name CHRISTOPHER JON NABNEY
Address 1 Melville Crescent
Edinburgh, EH3 7HW

(an officer of the Secretary of State)

Full Name Alisdair Douglas McIntosh
Address 1 Melville Crescent
Edinburgh, EH3 7HW



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