

# Core principles and legislation

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## Core principles

Six core principles underpin successful policing of elections.

### 1. Public confidence in the electoral process.

1. Police need to be proactive and positively engaged with partners throughout the electoral process.
2. Public perceptions that the initial police response to allegations or complaints is ineffective can impact on public confidence.

### 2. Prevention is better than prosecution.

1. Police leaders need to consider strategies to prevent electoral malpractice or associated allegations (which will promote voter engagement).
2. The reactive investigation of alleged electoral malpractice can require a significant investment in resources.
3. The awareness of key roles needs to be raised in force during the election planning and staging process.

### 3. Facilitation of campaigning that is free from intimidation and promotes peaceful voting.

1. Proactive policing mitigates the threat of intimidation and promotes peaceful voting.

### 4. Elections should be fair and inclusive.

1. The Electoral Commission is committed to ensuring that elections and referendums are conducted in a fair and inclusive manner and in accordance with the law.

5. Elections should be conducted in accordance with the law.

1. Returning officers are responsible for ensuring that elections are conducted in accordance with the law.
2. The electoral register is produced by the electoral registration officer.
3. Election planning primarily involves the force election single point of contact (SPOC) and the local authority and it should also involve political parties, independent candidates, registered parties, campaigners and the Royal Mail Group Ltd.

6. Elections should be effectively policed

1. Each force should have an election SPOC, who will work closely with the local authority, to advise and lead on investigations of electoral malpractice.
2. Visible and consistent leadership promotes integrity, raises awareness and ensures a focus on proactive policing of elections.
3. Local policing inspectors should ensure that they embed the requirement for election integrity into their local policing style and operations.
4. Experienced force election SPOCs protect organisational memory and the force's ability to evaluate the relative significance of allegations of electoral malpractice.

## Legal framework

Note: [\*\*Responding to intimidating behaviour in elections and public office: a CPS guide\*\*](#) provides legal guidance for candidates on intimidation related and other types of criminal offences.

Allegations of electoral malpractice are dealt with by the Special Crime and Counter-Terrorism Division (SCCTD) of the CPS and not local CPS areas. All requests for advice or decisions to prosecute should be directed to the force election SPOC, who will liaise with specialist prosecutors in the relevant SCCTD.

The CPS is responsible for all charging decisions including cautions. Any type of positive disposal must go to the CPS via the force election SPOC.

The principal primary legislation regarding governance of elections is the [\*\*Representation of the People Act 1983 \(RPA 1983\)\*\*](#). In addition, the [\*\*Political Parties, Elections and Referendums Act 2000 \(PPERA\)\*\*](#) sets out rules for spending, finances and donations for elections and referendums.

The **Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014** makes provision for expenditure and donations for political purposes and provides new powers for returning officers. It also makes provision for the Electoral Commission's functions with respect to compliance with requirements imposed by or by virtue of enactments.

RPA 1983 defines most offences for UK parliamentary elections, English local government elections and electoral registration and postal voting issues across the UK.

The European Parliamentary Elections Regulations 2004 (EPE Regulations 2004) mirror the electoral offences contained in RPA 1983, as does legislation for each referendum.

The most relevant RPA 1983 offences include those listed in the table below. Further details of offences under RPA 1983, together with persons liable, category of offence and penalty, are presented in the **schedule of election and referendum-related crimes and penalties**.

## Table of relevant RPA 1983 offences

Section	Brief description of offence or illegal or corrupt practice
110  (note also sections 143 and 126 PPERA 2000)	Printer's name and address on election publications
106(1)	False statement of fact as to candidate
13D(1)	False registration information
13D(1A)	False information in relation to postal/proxy voting
65A(1) and (1A)	False statements in nomination papers etc.

Section	Brief description of offence or illegal or corrupt practice
62A	Offences relating to the applications to register to vote by post or by proxy
60	Personation
65(1)	Tampering with nomination papers, ballot papers, etc.
113	Bribery
114(2) and (3)	Treating
115	Undue influence
73(6) to 84	Election expenses
73(6)	Making payments towards a candidate's election expenses by any person which are not made through the election agent
75(5)	Failure to make declaration of expenses incurred by a person and authorised by the agent within 21 days after the day on which the result of the election is declared
76(1B)	Exceeding limit on candidate expenses
82(6)	Making false declaration accompanying expenses return
84	Failing to make a return

## Other relevant statutory and common law offences

Criminal offences or allegations involving fraud may be aligned to documentation used to register or for the voting process itself.

### Perjury Act 1911

It is an offence under s 5 for any person to knowingly and wilfully make a false statement (otherwise than on oath) for example in a statutory declaration, a return or other document they are authorised or required to make, attest or verify or in any oral declaration or oral answer required by, under or in pursuance of any Act of Parliament.

### Forgery and Counterfeiting Act 1981

#### Forgery

It is an offence under s 1 for a person to make a false instrument, with the intention that that person or another shall use it to induce somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his/her own or any other person's prejudice.

#### Using a false instrument

It is an offence under s 3 for a person to use an instrument which is, and which that person knows or believes to be, false, with the intention of inducing somebody to accept it as genuine, and by reason of so accepting it to do or not to do some act to his/her own or any other person's prejudice.

### Common law

#### Conspiracy to defraud

It is an offence at common law (as preserved by the Criminal Law Act 1977 s 5(2)) for two or more individuals to dishonestly conspire to deprive a person of something which is his/hers or to which that person would be or might be entitled, or to injure some proprietary right of a person.

#### Public Order Act 1986

Common offences during an election period are likely to be:

- **s 4** – using threatening, abusive or insulting words or behaviour causing fear of or provoking violence
- **s 4A** – using threatening, abusive or insulting words or behaviour, or disorderly behaviour intending to and causing harassment, alarm or distress
- **s 5** – using threatening, or abusive words or behaviour, or disorderly behaviour likely to cause harassment, alarm or distress

In addition, consideration should be given to the many powers available to the police under the **Public Order Act 1986** which may assist when dealing with potential public order situations linked to elections.

Further information on public order policing (including **breach of the peace**) can be found in the APP on public order.

## The Human Rights Act 1998

The use of all police powers must be considered in accordance with the **Human Rights Act 1998 (HRA)**. This requires all public authorities, including the police, to act in a way that is compatible with the rights set out in Schedule 1 to the Act, which incorporates the European Convention on Human Rights (ECHR) into domestic law.

The following Articles are of particular relevance to policing elections.

- Protocol 1 Article 3 (under which states undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature).
- Article 5 (the right to liberty and security).
- Article 8 (the right to respect for private and family life).
- Articles 9, 10 and 11 (freedom of thought, conscience and religion, freedom of expression and freedom of assembly and association respectively which, taken together, provide a right of campaigning during the election period).

The ECHR places both negative and positive duties on the police. With regard to each of the Articles listed above, there exists a 'negative' obligation which requires the police to refrain from interference with the rights in question. In addition, in certain cases positive duties are also imposed on the state. This is the case with regard to Protocol 1 Article 3 under which there exists an

obligation to hold free elections, and Article 11 under which there exists a positive duty to secure the effective enjoyment of the rights of assembly and association, such as peaceful canvassing and assembly at or near polling stations.

### **Interference with Convention rights**

The rights and freedoms provided by Articles 9, 10 and 11 ECHR are qualified rights. This means that they may be interfered with or restricted in certain circumstances if necessary and for a legitimate aim.

The police can impose restrictions on the freedoms of belief, expression and peaceful assembly, provided that any such restriction is:

- prescribed by law
- in pursuit of one or more legitimate aims specified in paragraph 2 of the Article in question
- necessary and
- proportionate

Article 5 of the Convention and Protocol 1 Article 3 are both limited rights. This means that they may be restricted in clear and finite circumstances as set out expressly in the Article itself or impliedly by the European Court of Human Rights.

## **Tags**

Elections