



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

AEA comments on the proposals published in the *Parliamentary Voting System and Constituencies Bill* and the *Fixed-term Parliaments Bill*

1. Introduction

- 1.1. The Association of Electoral Administrators (AEA) was founded in 1987 and has since established itself as a professional body to represent the interests of electoral administrators in the United Kingdom. It is a non-governmental and non-partisan body and has some 1,650 members, the majority of whom are employed by local authorities to provide electoral registration and election services.
- 1.2. The AEA encourages and provides education and training in electoral administration, in addition to delivering a range of commercial and professional services.
- 1.3. The key **aims** of the AEA are to:
 - contribute positively to electoral reform within the UK;
 - foster the advancement of consistent and efficient administration of electoral registration and the conduct of elections in the UK;
 - raise the profile of electoral administration both within the UK and internationally;
 - enhance and maintain the AEA's reputation as the leading professional body for electoral administrators within the UK.
- 1.4. The AEA supports and advocates the principle that all those with a role in organising elections should consider the voters' interests above all other considerations.
- 1.5. In accordance with the AEA's non-partisan and neutral position, this paper does not offer any views on the political implications of the alternative vote system, nor do we offer any comments on the arrangements for the regulation of loans and any other financial matters pertaining to permitted participants in the referendum. The AEA's comments concern the administrative and implementation implications of the proposals currently before the UK Parliament.

2. The Parliamentary Voting System and Constituencies Bill

- 2.1. The *Parliamentary Voting System and Constituencies Bill* (subsequently referred to in this paper as “the Bill”) would, if passed, introduce significant changes to the electoral process in the United Kingdom. The Bill proposes:
- a UK-wide referendum (subsequently referred to in this paper as “the referendum”) on whether the UK should move to the alternative vote system for UK Parliamentary elections;
 - details of the alternative vote system that would be brought into effect if there were a “yes” vote at the referendum; and
 - new arrangements for reviewing and drawing up UK Parliamentary constituency boundaries in order to equalise and reduce the number of UK Parliamentary constituencies from 650 to 600.
- 2.2. The AEA is extremely concerned about the speed with which these significant reforms are being introduced without the root-and-branch review of the electoral process that we recommended in our post-election report, *Beyond 2010: The future of electoral administration in the UK*¹.
- 2.3. The *Explanatory Notes* to the Bill (paragraph 135) state that “the implementation of the alternative vote at parliamentary elections, will be implemented through existing structures for the delivery of elections”, and that the provisions within the Bill “do not require an Impact Assessment” (paragraph 136). Whilst the AEA recognises that the provisions contained within the Bill do not meet the Cabinet Office criteria² to trigger an Impact Assessment, the UK Government and the UK Parliament should not underestimate the impact of these proposals on electoral administration at a time when local authorities are facing significant cuts in budgets and resources.
- 2.4. There is no assessment indicated:
- In respect of the additional staffing and resourcing implications for local authority electoral services in order to deliver the referendum on 5 May 2011 alongside the other scheduled polls; or
 - for implementing the alternative vote system if there were to be a “yes” vote at the referendum; or
 - to take account of the impact of the increase in cross-boundary constituencies arising from the Parliamentary constituency boundary provisions within the Bill.
- 2.5. Further, the AEA is concerned about the timescales for the drafting, scrutiny and passage of the legislation currently before the UK Parliament and the impact of these issues on the implementation of the new provisions, particularly in respect of the proposed referendum.

¹ *Beyond 2010: the future of electoral administration in the UK*, http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf

² http://www.cabinetoffice.gov.uk/making-legislation-guide/impact_assessment.aspx

- 2.6. The AEA firmly supports the principle set out by Gould³ that, except in cases of unforeseen emergencies, changes to election law should not be applicable to any elections within a six-month period from the date the legislation comes into effect.
- 2.7. The proposed date for the poll at the referendum is 5 May 2011 and, if passed, the Bill requires the referendum to be run on that date. There is no provision in the Bill as currently drafted for any kind of postponement in the event of an emergency. The AEA assumes that in the event of extreme circumstances requiring the date of the referendum to be moved, further legislation would have to be passed by the UK Parliament to achieve this.
- 2.8. 5 May 2011 is also the scheduled date for the polls at the elections to the Scottish Parliament, National Assembly for Wales, Northern Ireland Assembly, local government elections in England, including most of the parish and town council elections and some mayoral elections, and it is likely that there will be local government elections in Northern Ireland. In addition, there is the possibility of the polls at Mayoral referendums in England and local government by-elections across Great Britain also being held on this date.
- 2.9. Clause 2 of the Bill establishes the franchise for the referendum based on the UK Parliamentary franchise which, given the referendum is to decide on the voting system for UK Parliamentary elections, is entirely appropriate.
- 2.10. The AEA continues to be concerned about the trend for holding different electoral events on the same day, particularly where there are different voting systems and franchises in operation. Whilst we recognise the political and economic interest in doing so, the impact on voters and on the administration of polls should not be underestimated and careful consideration of these should inform the planning and the delivery of the various electoral events.
- 2.11. In the *Explanatory Notes* (paragraph 133), there is a stated assumption that holding the referendum on the same day as other polls will result in cost savings. Whilst this may be the case, there are costs arising from this decision that must be funded. Some such costs are indicated below.
- 2.12. In **England**, in many areas voters would be faced with three (or four) ballot papers, one with a YES/NO answer, another with multiple candidates (some parishes have as many as 20 – 30+ candidates) and local government ballot papers where voters are electing candidates to areas with both single and multi-seat wards. Both the Parliamentary franchise and the local government franchise would be in operation.
- 2.13. In **Scotland**, there has been considerable work undertaken following the Gould report to de-couple the elections to the Scottish Parliament from the local government elections in Scotland because of the different voting systems

³ http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/23_10_07_votereport.pdf

in operation. Scottish Parliament elections use the Additional Member System (AMS) and local government elections in Scotland use the Single Transferrable Vote (STV). Therefore, in 2011 there are elections to the Scottish Parliament but not local government elections (unless any by-elections arise). The Bill currently defines the "voting area" as the local government area. However, Scottish Parliamentary elections are run on Scottish Parliamentary constituency boundaries. These boundaries were recently reviewed and new boundaries will be coming into force for the elections in 2011. The AEA understands that it is the UK Government's intention to introduce an amendment so that these boundaries would be used for the referendum and for the Constituency Returning Officer to be the Counting Officer at the referendum. These amendments would greatly assist the effective running of the referendum in Scotland.

2.14. There is currently no information about how the elections will be funded and it is vital that there is sufficient time and opportunity for statutory officers and the Interim Elections Management Board to undertake a careful scrutiny of the draft accounts order that sets out the division between the elections and the referendum.

2.15. In **Wales**, on 5 May 2011, elections to the National Assembly for Wales (NAW) are due to take place. The NAW elections comprise two elections with combined polls. The first is based on constituency boundaries and elects 40 Assembly Members (AMs); the second is a regional election. The franchise for both elections is the local government franchise and the local government Returning Officer (RO) runs the elections (in respect of the regional election, the local government RO is appointed by the Regional Returning Officer as his/her Deputy). So, in practice, holding the referendum on the same day as the NAW elections would already lead to a three-way "combination" with:

- different franchises (NAW on local government franchise; the referendum on the UK Parliamentary franchise);
- different voting systems;
- different electoral areas (crossing local government boundaries); and
- costs to be split between NAW and the fees and charges for the referendum.

The AEA understands that it is the UK Government's intention to introduce an amendment so that, in Wales, the local government RO (appointed under S35 (1A), RPA 1983) would automatically become the Counting Officer for the "voting area". We also understand that the intention is to make the NAW constituencies the "voting areas" for the referendum. These amendments would assist in mitigating some of the complexity outlined above.

2.16. An additional complexity in Wales is that the proposed Welsh referendum on law-making powers for the NAW may well be held in March 2011, just before the start of the timetable for the referendum and the NAW elections. The resulting pressure on the capacity of local authority electoral services to

deliver all of these electoral events within the space of a couple of months should not be underestimated.

- 2.17. In **Northern Ireland**, on 5 May 2011, there are scheduled elections to the Northern Ireland Assembly using the Single Transferable Vote (STV) system. It is also likely that there will be local government elections on that date. The boundaries to be used for the Northern Ireland Assembly elections should also be the boundaries for the conduct of the referendum.
- 2.18. Given these potential scenarios across the UK, there would be significant implications for supporting voters to effectively cast their votes by post and in person. The potential for voter confusion and the additional workload in dealing with public enquiries arising from these different combinations of electoral events on the same day held on different franchises and operating different voting systems should not be underestimated. It is likely that ROs would need to reduce, where practicable, the number of electors allocated to each polling station. This would increase the number of polling stations with a corresponding increase in the number of polling staff to ensure that the polls run efficiently and that adequate help is available to voters on polling day. These additional costs would need to be funded.
- 2.19. In addition, there would need to be a coordinated programme of voter education to support voters in understanding how to participate in the various elections and the referendum and the choices that they would be asked to make at the polls. This should extend to clear and effective signposting of processes in the election stationery sent to voters, and in official notices in polling stations. This programme would also need to address the differences in the elections being held in the four nations of the UK, and the different registration system in Northern Ireland.
- 2.20. Given the level of complexity outlined above, statutory officers need to begin planning now. However, to do so would be on the basis of a Bill that may or may not be passed, or that may be passed less than six months before 5 May 2011, and that is likely to be subject to amendment during its passage.
- 2.21. The Bill currently does not include provision for changing the arrangements regarding the close of poll to give effect to the recommendation by the Electoral Commission that electoral legislation should be changed to allow eligible voters present in the queue at the close of poll to be able to vote. If the UK Government intends to give effect to this recommendation in time for the elections in 2011, an early indication of this intention is essential. Equally, the Electoral Commission would need to produce workable and timely guidance on managing the new arrangement.
- 2.22. The secondary legislation that will be needed to set out the detail of the arrangements for the combination of polls and the fees and charges order setting out the funding available to deliver the referendum cannot be made until after the Bill has been passed by the UK Parliament. Whilst the AEA

recognises that Government officials are already working on these arrangements and are likely to share drafts and assumptions with senior electoral officers, these cannot be confirmed until the legislation is passed.

- 2.23. The practical consequences of this situation is that, for a referendum on 5 May 2011, statutory officers and electoral administrators will have to put in place multiple plans and make provisional arrangements that might then change or not be needed at all, with certainty only being achieved very close to the start of the election and referendum timetables. This is not the best way to achieve the professional conduct of electoral events that we believe the voters of the UK deserve and that electoral administrators want to deliver. Additionally, it fails to recognise two key findings of the Gould review, namely, that voters should be put at the heart of the system and the six months issue relating to legislation previously mentioned in this paper.
- 2.24. The AEA understands that members of the Elections and Registration Working Group, chaired by the Electoral Commission, have submitted comments on the drafting of the Bill and, in particular, the referendum rules. We do not intend to duplicate these here.

3. Proposed combination of polls on 5 May 2011

- 3.1. Although it is proposed that the referendum will take place on 5 May 2011 along with scheduled elections as outlined above, separate legislation is required in order to combine the polls at these electoral events.
- 3.2. The AEA understands that work on the combination provisions has already commenced and offers the following comments in order to support the delivery of effective and workable rules. Given the complexity of combining the various polls scheduled for 5 May 2011 with the proposed referendum, it is vital that there is sufficient time and opportunity for Returning Officers and electoral administrators to scrutinise the draft rules before they are put before the UK Parliament.
- 3.3. The scope of the combination provisions for the poll at the referendum should include the polls at all elections currently scheduled for 5 May 2011 as relevant in the different countries of the UK. There is also the issue that there may be other elections that are not currently scheduled, the polls for which might also take place on 5 May 2011. In the case of any by-elections, there are differing views across the countries of the UK as to whether the polls at these should be combined with the scheduled polls. The AEA strongly recommends that Government officials consult with statutory officers and relevant bodies within the different countries of the UK in order to ensure the most workable solution in each case.
- 3.4. The AEA would have grave concerns about the capacity of administrators to deliver a UK Parliamentary General Election on the same date as all of the other polls currently proposed for 5 May 2011. Setting out in combination rules

the roles, responsibilities and provisions to deliver combined processes and combined polls would provide technical clarity but would not do much to mitigate the significant risks to delivery in such a scenario.

However, the implications of not providing for combination would be that, at very short notice, Returning Officers would have to:

- Set up a whole separate set of polling stations and staff these (even if in the same building as the station(s) for the other polls and that may not be the case).
- Obtain another complete set of ballot boxes (at short notice as the other polls on the same day may well result in the need for additional ballot boxes)
- Issue and receive twice the number of postal votes.
- Scan and check twice the number of identifiers on postal voting statements (I would imagine many would go down to the legal minimum to cope).

There are other issues that would also need to be addressed.

- There is an impact on voters in that they would essentially be asked to go to two separate polling stations (even if they are in the same building).
- Administrators would be faced with even more enquiries from confused voters, candidates and agents (even more than will currently be the case).
- The current Parliamentary Election Rules require the count to start within four hours of the close of poll. On that basis, a whole separate count venue and separate set of staff would be needed to run the general election count at the same time as what are likely to be the planned Scottish Parliament, Assembly and local government etc. counts.

3.5. The overriding principle that the combination provisions should achieve is to establish clarity about the extent of authority of the various statutory officers and the responsibility for decisions at the various polls. The relationship between any powers of direction the Chief Counting Officer (and Regional Counting Officers) may have as regards the conduct of the referendum and the responsibility for making decisions about the conduct of the other polls by Returning Officers must be absolutely clear.

3.6. The combination provisions should:

- Clearly identify the "primary" statutory officer, and be clear about where authority and responsibility lies for decisions about the operation of the combined polls. They should set out who is responsible for appointing staff and for the provision of polling stations and equipment. They should also provide clarity as to who is responsible for deciding whether separate or

combined ballot boxes are used and whether there should be a combined issue of postal votes.

- Be clear about what **must** be combined, and what **may** be combined.
- Clearly state which official notices **must** be combined and those which **may** be combined. There will need to be some careful wording on these where combined as there is the potential for voter confusion. For example – should these refer to the Counting Officer or to the Returning Officer or both?
- Clearly state the arrangements for separate and/or combined poll cards and whether these **must** or **may** be combined, especially as the franchises for the various electoral events will be different.
- Clarify the position regarding the official mark at the referendum. The rules should ensure that local Counting Officers and Returning Officers can decide on the official mark at the various electoral events in order to take account of marks previously used, and the varying capacity of printers as to the form of official mark they can produce.
- Ensure workable arrangements for verifying the ballot boxes for the various polls. See comments below.
- Provide clarity as to who can attend the various proceedings (particularly the verifications and counts).

3.7. The consultation on the combination rules should include specific consideration of the form of Corresponding Number List (CNL) or Lists to be used at the combined polls. Current combination arrangements prescribe one combined CNL. However, this presents logistical difficulties where voters do not take all of the ballot papers to which they are entitled, or are not entitled to vote in all of the electoral events. A much simpler administrative arrangement would be to have separate CNLs, or the option to use separate CNLs. However, given that there may be three or four polls in many areas on 5 May 2011, it would result in polling staff having to mark that number of separate lists. A practical way to manage this would be for each CNL to be the same colour as the ballot paper for that particular poll. The AEA strongly urges Cabinet Office officials to consult with the Elections and Registration Working Group in order to arrive at a workable solution.

3.8. It is anticipated that the combination provisions to apply on 5 May 2011 are likely to be based on existing arrangements and forms. The combined form of postal voting statement currently prescribed in regulations⁴ should be reviewed to ensure that the instructions are in plain language. Current arrangements allowing for only one ballot paper envelope “A” should similarly be reviewed. Again, these issues should be taken to the Elections and Registration Working Group.

3.9. The combined guidance to voters⁵ to be placed in each polling booth in respect of a referendum offers two possible instructions to voters; “Vote for ONE candidate only”, and “Vote ONCE for your FIRST CHOICE and ONCE for your

⁴ Form H, *Representation of the People (England and Wales) Regulations 2001*, (and equivalent in Scotland).

⁵ Schedule 2, *Representation of the People (Combination of Polls)(E&W) Regulations, 2004*.

SECOND CHOICE". This wording is clearly incorrect in relation to the referendum on 5 May 2011 and will require amendment.

- 3.10. The existing combination arrangements (that applied on 6 May 2010) require that all ballot boxes relating to all the polls being combined on the same day should be verified before the counting of the votes on any of the ballot papers can commence. This requirement acts as a robust check to establish before the counting of votes in any election commences, the number of ballot papers relating to each election. However, this approach does delay the start of the counting of the votes. The AEA understands that Cabinet Office officials are considering amending the legislation to enable Counting Officers and Returning Officers to commence counting the votes before all the ballot boxes have been verified so long as the verification is complete for every election before any of the counts have been concluded. This is a pragmatic solution to the issues presented by the combination of multiple polls. However, it will require careful management by statutory officers and count staff to ensure that all ballot papers are properly counted within the respective counts.
- 3.11. There will also need to be clarity as to the proposed timetabling for the counts at the various electoral events, and particularly for the proposed timing of the referendum count so that Counting Officers and Returning Officers can book venues and plan staffing and processes. In arriving at any scheduling for the counts at the various elections and the referendum, it is essential to avoid a situation whereby the referendum count is undertaken at different times across the UK with either the eventual outcome being known in advance of some of the counts starting, or the result hinging on a few results still to come later on the Friday. The latter scenario could place considerable unanticipated pressure on the local Counting Officer and staff at these count locations. If the referendum count is to take place at a time after the counts at the other elections, it is vital that a realistic time is agreed for the start of the referendum count which recognises the length of time that is likely to be needed for those other counts.
- 3.12. The logistical implications of combining the polls at three or four separate electoral events need to be worked through with printing suppliers, particularly in terms of the capacity of printers to produce the relevant election stationery. The AEA is interested to know whether the Cabinet Office or the Electoral Commission will be arranging any meetings with, or taking views from, any of the main suppliers or their representative body, the British Printing Industries Federation.
- 3.13. Schedule 3, Part 1, of the Bill makes provision for certain categories of electors with existing absent vote arrangements to automatically be sent a postal vote, or to have a proxy, at the referendum without the need for a separate application. This is a sensible and voter-focused arrangement. However, the reference in the tables in Schedule 3, paragraph 5, is only in respect of UK Parliamentary electors and Peers who are eligible to vote in the referendum. In England, for example, there may be electors who have existing absent voting

arrangements for local government elections only and who are eligible to vote in the referendum. Similarly, in Scotland, Wales and Northern Ireland there may be electors who currently have arrangements for an absent vote only in those elections. The legislation should ensure that any application received to vote by post, or proxy, or any existing absent voting arrangements automatically cover all polls taking place that day, providing the elector is eligible to vote at all of them. The rationale for this is that if an elector has indicated that they will be absent for one poll, he/she would be expected to be absent for all polls taking place that day.

4. The timetable for conduct of proceedings at the referendum

- 4.1. Schedule 2 of the Bill contains the referendum rules, and Rule 1 sets out the referendum timetable as being a 25 day timetable which is consistent with the local government timetable. This would address, in England, Wales and Northern Ireland, many of the concerns the AEA expressed in its post-election report 2010 about the difficulties for the administration of the polls and for voters created by running different timetables at the same time.
- 4.2. However, the timetable for elections to the Scottish Parliament allows for a minimum of 28 days and a maximum of 35 days.
- 4.3. It should be noted that the St Patrick's Day holiday in Northern Ireland (17 March) would apply throughout the UK for the referendum, but would not apply for the Scottish Parliament election.
- 4.4. The AEA remains of the view that all election timetables should be consistent and that a more workable timetable would be a 30 day timetable. We make further comments below on the election timetable in relation to the proposals for fixed-term UK Parliaments.

5. The structure and funding for the administration of the referendum

- 5.1. The AEA notes that the Bill provides for the referendum to be conducted on local authority areas, through reference to "voting areas" in Clause 5, *Interpretation*, which refers to "a relevant area in Great Britain within the meaning of Part 7 of the 2000 Act⁶ (see section 128(9) of that Act), or Northern Ireland". The AEA supports this arrangement for England. The AEA understands that Cabinet Office officials are considering putting forward amendments to the Bill to determine appropriate and workable arrangements for "voting areas" in Scotland, Wales and Northern Ireland.
- 5.2. The AEA has concerns about the arrangements set out in Schedule 1 of the Bill as regards the appointment of Counting Officers. Schedule 1, paragraph 2(3) states that the Chief Counting Officer may require the Regional Counting Officers to appoint the Counting Officers for the "voting areas" within the region. We recognise that this flows from the *Political Parties, Elections and*

⁶ The *Political Parties, Elections and Referendums Act* (PPERA) 2000.

Referendums Act (PPERA) 2000, section 128 (3) which states that the Chief Counting Officer “shall appoint a counting officer for each relevant area in Great Britain”.

- 5.3. The AEA suggests that, in England and Wales, a more straightforward arrangement that would provide greater certainty would be for the Returning Officer for local government elections to be the Counting Officer by virtue of already having been appointed as Returning Officer by the local authority under section 35 of the *Representation of the People Act* (RPA) 1983. In Scotland, a more sensible arrangement would be for the Scottish Parliamentary Constituency Returning Officer to be the Counting Officer. In any event, the AEA would expect the UK Government to consult with relevant colleagues, statutory officers and relevant representative bodies in Scotland and Wales regarding the arrangements there.
- 5.4. The AEA notes that the Bill makes provision for the fees and charges for the referendum to be on the same basis as that in place at the European Parliamentary Elections in 2009 and at the UK Parliamentary General Election in 2010. Schedule 1, paragraph 18, specifies that there would be an “overall maximum recoverable amount” for each Counting Officer. The AEA believes that this would allow greater flexibility for Counting Officers to make decisions as to how the money is spent.
- 5.5. However, the amounts (and any assumptions) and the guidance as to the fees and charges for the referendum should be confirmed as early as possible. In the AEA’s post-election report, we noted that, in 2010, the fees and charges order, guidance and advances were all delivered very close to the UK Parliamentary General Election. In the case of the advances, these were received after the election had been called. The proposed date of the referendum is already on the face of the Bill. Whilst we recognise that the funding arrangements, guidance and payment of any advances could not be delivered until the Bill receives Royal Assent, it is vital that arrangements are put in place to ensure that these are delivered as soon after that point as possible.
- 5.6. Further, the impact of any proposed directions by the Chief Counting Officer on costs and resources needed to deliver the referendum and the other elections taking place on 5 May 2011 will need to be factored into the funding assumptions. It is essential that there is clarity as to which level of Government is to meet any such costs where such directions impact on or affect other elections. For example, a direction on numbers of polling staff per number of electors assigned to a polling station would have a direct impact on the costs for staffing, additional venues where polling stations are split, and additional voting equipment.
- 5.7. The Bill sets out that, in respect of the referendum, the Electoral Commission would have responsibility for managing the fees and charges framework,

including the payment of advances and the receipt and scrutiny of the accounts submitted by Regional Counting Officers and Counting Officers.

- 5.8. Schedule 1, paragraph 18(7) states that, "At the request of a counting officer or Regional Counting Officer, the Electoral Commission may make an advance on account of the officer's charges on such terms as they think fit." It is usual at elections for advances to be paid without the need for a request from each individual Returning Officer. It would be administratively more efficient for a policy regarding the payment of advances to be set out in guidance in advance of the referendum and for this to be paid without the need for a request. This should also contain the "terms" referred to in the reference above.
- 5.9. Schedule 1, paragraph 18(8) provides for the Electoral Commission to make regulations setting out "the time when and the manner and form in which accounts are to be rendered to the Commission for the purposes of the payment of the charges of a counting officer or Regional Counting Officer". The AEA would urge the Commission to set out its proposed approach as early as possible in order that there is clarity as to the expectations regarding the submission of accounts, and so that Counting Officers and electoral administrators can plan their management processes to achieve compliance. Such a timetable should also take account of other electoral activities throughout the year.
- 5.10. Schedule 1, paragraph 8, sets out the responsibilities of the Chief Counting Officer, Regional Counting Officers and Counting Officers to "encourage participation in the referendum". In paragraph 8(5), there is a reference to possible funding for this activity. The AEA would welcome early confirmation of the availability of any such funds for use by Counting Officers.

6. The intelligibility of the referendum question

- 6.1. The AEA has submitted a formal response to the consultation by the Electoral Commission on the intelligibility of the referendum question and this is attached at Appendix 1.

7. The referendum ballot paper and other prescribed forms

- 7.1. Schedule 1 of the Bill contains *Further provisions about the referendum*. Schedule 2, Part 1 sets out the *Rules for conduct of the referendum* and in Part 2 the prescribed *Forms referred to in referendum rules*.
- 7.2. The AEA's response to the Electoral Commission on the intelligibility of the referendum question raises the issue that the heading on the front of the ballot paper should specify that the referendum on the voting system is in respect of UK Parliamentary elections. The back of the ballot paper and the directions as to printing the ballot paper will also need amending accordingly. The *Form of Certificate of Employment* (Form 15) and the *Form of Proxy Paper* (Schedule 3, Part 3) similarly require amendment.

- 7.3. Quite rightly, the form of ballot paper is tightly prescribed in the Bill in order to achieve certainty and consistency. However, the directions as to printing the ballot paper (given in Schedule 2, Part 2 - Form 1) if followed, would not provide exactly the image of the front of the ballot paper that appears in the Bill. There is a border around the ballot paper and a horizontal line between the wording 'Vote (X) once only' and the question, but no mention of these in the directions. The directions do not give any indication as to the size of the ballot paper, the size of the various areas in which the prescribed text, referendum question and answers are to appear, or whether there should be space allowed around the border mentioned above.
- 7.4. The AEA recommends that the Form 1 should include an image of the ballot paper that is exactly as it should be printed and appear to the voter. The directions as to printing should function effectively and, if followed, achieve the form of ballot paper so prescribed.
- 7.5. We understand that the Electoral Commission plans to design all of the prescribed forms for use at the referendum and any combined polls, and to user-test these forms. Whilst we support the principle of undertaking such work in a considered way over an appropriate period of time that allows for proper consultation, usability testing, and input from administrators, we have grave concerns about the scale of the proposed project given the timescales available to achieve this for a referendum on 5 May 2011. It is essential that there is early clarity as to the format of all forms to be used at the referendum and other polls, and the Commission would need to deliver template forms in time for statutory officers to incorporate any administrative implications into their planning and negotiations with contractors. Using the Gould principle of six months, we strongly recommend that the forms are available by the end of October 2010. Further, as indicated in earlier comments in this paper regarding the combination of polls, it is essential that there is clarity about any **requirement** to use the Electoral Commission's forms for the other elections.
- 7.6. Schedule 1, paragraph 3(4) of the Bill refers to the possibility of "two or more forms of ballot paper" being used in the referendum. There is, however, only one form of ballot paper prescribed in Schedule 2 of the Bill and we are currently only aware of one referendum question to be put before voters. Therefore, the erroneous wording should be removed from the instances where it appears in the Bill⁷, or the UK Government should clarify whether there is to be a further question and a separate ballot paper. If the latter is the case, this would have a profound impact on the administration of the various polls proposed for 5 May 2011 and the AEA will want to review its position regarding the combination of those polls.
- 7.7. The term "Counting Officer" is used widely in the prescribed stationery intended to communicate important information to voters, such as poll cards. However, nowhere within those documents is there an explanation of this role

⁷ It also appears in Schedule 2, paragraph 41(6). There may be other instances.

in relation to the referendum, or that it is the equivalent to the Returning Officer role that is likely to be more familiar to voters. We assume that this will form part of any voter education information produced by the Electoral Commission.

- 7.8. In Schedule 1, rule 3 sets out the information that should appear on the Notice of Referendum. This makes reference to the “registration officer”. However, for the purposes of communications to electors, the term “electoral registration officer” may be more descriptive and, indeed, this term appears on the back of the poll card, the postal poll card and the proxy postal poll card. It is notable that the proxy poll card makes reference to obtaining a postal vote without indicating that the voter must apply to the “electoral registration officer”. The AEA recommends that consistent terms should be used in all communications to voters. It needs to be recognised that not all of these communications are set out in the prescribed forms, and this principle should also be applied to any notices and notifications set out in the rules. The Bill should be amended accordingly.
- 7.9. The AEA strongly recommends that Cabinet Office officials undertake a careful check of all the forms in Schedule 2, Part 2. There appears to be wording missing from forms contained in the Bill as it appears on the Parliament UK website.⁸ For example, the official postal poll card contains the wording, “This poll card is to tell you that you will receive a postal vote for this referendum because you have asked to... “. The sentence is clearly incomplete. It is likely that it should continue to say something along the lines of, “...vote by post at elections or specifically in this referendum.” Further, there is the omission of the wording, “You will not be able to vote in a polling station. If you want to cancel your postal vote, please contact [helpline number] before 5pm on [11-day/deadline]”. There are similar omissions from the wording of the postal proxy poll card, the postal poll card for Northern Ireland and postal proxy poll card for Northern Ireland.

8. “Permitted period” for challenging the result of the referendum

- 8.1. The AEA makes no comment on the method by which the result of the referendum could be challenged. However, Schedule 1, paragraph 21(1) and 21(2) provides for a “permitted period” of “six weeks” for such challenges. The AEA assumes that this would be comprised of calendar weeks, and not computed to exclude *dies non*. Clarification of this point is essential given the importance of the issue.

9. The administration of the alternative vote system

- 9.1. The AEA recognises the importance of having clarity about the electoral system on which people may be asked to decide in the referendum. Therefore, we understand the rationale for including in the Bill the proposed amendments to the Parliamentary Election Rules (PER) that would be needed if the

⁸ <http://www.publications.parliament.uk/pa/cm201011/cmbills/063/11063.62-68.html>

referendum produces a decision to change the voting system at UK Parliamentary elections to the alternative vote system. However, the AEA's position on this matter is that it is preferable to have the administrative detail (the Rules for the conduct of elections) in secondary legislation so that those Rules can be amended more quickly should errors or defective drafting be discovered or required improvements identified. In addition, this would have given more time for proper consideration of the detail of processes and procedures.

- 9.2. The AEA provides limited comments here on the provisions in the Bill setting out how the alternative vote system will work in practice. However, the AEA reserves the right to raise any further points of detail that may arise as a result of more considered scrutiny of the amendments to the PER contained in Schedule 6 of the Bill.
- 9.3. Schedule 6 of the Bill contains amendments to the wording of statutory notices, the ballot paper and guidance for voters that would come into effect if there is a decision to move to the alternative vote system for UK Parliamentary elections. It is the AEA's view that given the complexity of some of the instructions, there should be usability testing of the proposed wording and the amended notices and ballot paper before these are used at any UK Parliamentary election.
- 9.4. The wording of new rule 45A (inserted into the PER by clause 7 of the Bill) which contains the process for counting the votes using the alternative vote system is less than clear. Given that the purpose of the rules is to set out the process that Returning Officers and electoral administrators would be required to follow, it is unfortunate that these are not in plain language. Equally, this does not fulfil the intention of providing clarity about the alternative vote system being proposed. The AEA recommends that the UK Government brings forward an amendment to set out the process more clearly in the legislation.
- 9.5. The count process as contained in the Bill currently assumes manual counting of the votes at UK Parliamentary elections conducted under an alternative vote system. Given the current requirement to commence the counting of the votes at a UK Parliamentary general election within four hours of the close of the poll, the AEA would be interested to know what work the UK Government has undertaken to establish how long alternative vote counts are likely to take and any assessment of the impact on staffing and venue requirements.

10. The implications for electoral administration of the proposals to reduce the number of UK Parliamentary constituencies and equalise the size of those constituencies

- 10.1. The new approach to reviewing UK parliamentary constituency boundaries with its emphasis on numerical equality according to the "quota" set out in the Bill would undoubtedly bring about the creation of many more constituencies that cross local government boundaries.

- 10.2. A key factor adding to the complexity of the UK Parliamentary General Election in May 2010 was that of coordinating across local authority boundaries in UK parliamentary constituencies comprising more than one local authority area or part thereof. This impacted on all aspects of the planning and management of resources and the processes to be used. It also complicated issues relating to customer service.
- 10.3. In working across local government boundaries, the relevant statutory officers, including the Electoral Registration Officers and Returning Officers for the different elections need to work together to achieve a single outcome; the effective conduct of the elections. The level of planning and coordination required is substantial and officers in some areas commenced such planning up to two years ahead of the General Election in order to ensure its successful delivery.
- 10.4. In many cases, different software systems for the electoral register and the management of the election are used by the statutory officers in the various local authorities making up a constituency. The transfer, compatibility, timeliness and quality of electoral data presented difficulties in a number of areas at the elections in May 2010. Whilst it appears that solutions were found to these issues at the recent elections, the AEA does not have evidence as to the resilience and sustainability of these solutions for the future, particularly in relation to the conduct of different electoral events or systems.
- 10.5. The additional coordination required to deliver UK Parliamentary elections across local government boundaries has implications for resources and costs and urgent work needs to be undertaken to understand the scale of this impact.
- 10.6. While the AEA is committed to developing and sharing good practice on cross-boundary working amongst its membership, it is also important that legislators and the Boundary Commissions consider the administrative impact of the proposed new approach and seek to achieve, in as many cases as possible, coterminosity with local government boundaries. Electoral areas need to function as administrative entities as well as representative ones. There are clear lessons to be learnt from the elections in May 2010 and the impact on voters should not be underestimated.

11. The implications for electoral administration of the proposals to establish fixed-term UK Parliaments of five years

- 11.1. Currently, the date of the UK Parliamentary General Election is not fixed and the election can be called at any time. This has a significant impact on the planning and contingency arrangements that Returning Officers must have in place to deal with the uncertainty around timing. The AEA welcomes the UK Government's proposal for fixed-term UK Parliaments in that it will bring certainty for planning purposes.

- 11.2. However, the *Fixed-term Parliaments Bill* states in clause 1(2) that the “polling day for the next parliamentary general election after the passing of this Act is to be 7 May 2015”. This is also the date fixed for elections to the Scottish Parliament in 2015. Given the different electoral systems that will be used for the two elections (First past the post (FPTP) or Alternative Vote (AV) and Additional Member System (AMS) respectively), the proposition does not take account of the recommendations made by Gould in 2007 (and referred to earlier in this paper) that elections with different systems should not be held on the same day.
- 11.3. In addition, in 2015 there are scheduled elections to the National Assembly for Wales (AMS), Northern Ireland Assembly (Single Transferable Vote (STV)) and local government elections in Northern Ireland (STV). The same issue will apply to the large number of local government elections in England scheduled for that date if the UK Parliamentary General Election is held on an AV system.
- 11.4. It will also raise the question of the postponement of parish council elections in England from the date when the vast majority of those councils are due to have elections. The AEA has given a view that in respect of the polls proposed and scheduled for 5 May 2011, the polls at parish and town councils should not be postponed provided that certain issues and actions identified by the AEA are properly addressed⁹.
- 11.5. In the longer term, the introduction of fixed-term UK Parliaments would present an opportunity for a wider consideration of electoral cycles to establish more consistent and workable arrangements.
- 11.6. In the consequential amendments set out in the Schedule to the Fixed-term Parliaments Bill, there is a change to the UK Parliamentary election timetable (contained in the RPA 1983, Schedule 1, *Parliamentary Election Rules*, rule 1) which removes the reference to the 11-day timescale between the close of nominations and polling day. However, given that the Bill expressly provides for dissolution to take place 17 days before polling day, and retains the period for nominations as currently exists, the effect is to retain the 17-day timetable with nominations at 11 days before polling day.
- 11.7. The AEA is concerned that the *Fixed-term Parliaments Bill* retains the 17-day statutory election timetable for UK Parliamentary general elections and so does not address the many issues raised in our post-election report regarding the impact on the administration, integrity and service to voters of the shortness of the current timetable. In our report we strongly recommended that the timetable should be extended to 30 days, that timetables across all elections should be consistent, and that the various deadlines within the timetable should be reviewed. The move to fixed-term UK Parliaments would offer a real opportunity to ensure that, in future, the UK Parliamentary general election timetable is administratively workable in order for Returning Officers

⁹ http://www.aea-elections.co.uk/downloads/aea_issues_paper_1_parish_poll_postponement_2011.pdf

and electoral administrators to be able to deliver a consistently high quality of service for voters, candidates and agents.

- 11.8. In addition, the proposed introduction of fixed-term UK Parliaments offers an opportunity to put in place a planned approach to funding with early confirmation of the fees and charges for the election and timely guidance. This would enable Returning Officers to plan with confidence and to be able to commit funds in order to enter into printing contracts, venue hire and staffing arrangements.
- 11.9. The *Fixed-term Parliaments Bill* contains provisions to enable the Prime Minister to alter the date of the general election within a two-month period before and after the scheduled date. The *Explanatory Notes* to the *Fixed-term Parliaments Bill* (paragraph 14) indicate that this provision is intended to cover emergencies such as was the case with foot-and-mouth in 2001. The AEA is content that the use of a statutory instrument requiring approval by both Houses of the UK Parliament would give sufficient scrutiny of the reasons for the alteration and also provides sufficient certainty about the degree of alteration, allowing for appropriate contingency plans to be drawn up in advance and brought into effect by Returning Officers.
- 11.10. The *Fixed-term Parliaments Bill* proposes that a general election could be called if there was a vote for a motion expressing no confidence in the Government, requiring two thirds of MPs to vote in favour of that motion, and if 14 days then pass without a motion by the House of Commons expressing confidence in any new Government. We are unclear if this latter motion would also be subject to the "two thirds" threshold contained in clause 2, (1)(c).
- 11.11. The AEA notes that the dissolution of the UK Parliament would not automatically follow immediately after the triggering events set out in clause 2, but, as outlined in the *Explanatory Notes* (paragraph 19), "can be timed so that, for example, essential business can be completed or the date of the election can be set to fall on a Thursday". We welcome the clarity that this will provide in such circumstances in order that Returning Officers and electoral administrators can amend their plans for the conduct of the election, and so that timely information can be provided to the public about participating in the election.

John Turner
Chief Executive

Karen Quintmere
Assistant Chief Executive

1 September 2010

Ref: PVSC_FTP_Bills



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Formal response to the Electoral Commission invitation to interested organisations to submit views on the intelligibility of the proposed question for the referendum on the voting system for UK Parliamentary elections

1. Introduction

- 1.1. This is a formal response from the Association of Electoral Administrators (AEA) to the Electoral Commission invitation to interested organisations to submit views on the referendum question published in the *Parliamentary Voting System and Constituencies Bill* on 22 July 2010.
- 1.2. The Association of Electoral Administrators (AEA) was founded in 1987 and has since established itself as a professional body to represent the interests of electoral administrators in the United Kingdom. It is a non-governmental and non-partisan body and has 1648 members, the majority of whom are employed by local authorities to provide electoral registration and election services.
- 1.3. The AEA encourages and provides education and training in electoral administration, in addition to delivering a range of commercial and professional services.
- 1.4. The key **aims** of the AEA are to:
 - contribute positively to electoral reform within the UK;
 - foster the advancement of consistent and efficient administration of electoral registration and the conduct of elections in the UK;
 - raise the profile of electoral administration both within the UK and internationally;
 - enhance and maintain the AEA's reputation as the leading professional body for electoral administrators within the UK.
- 1.5. The AEA supports and advocates the principle that all those with a role in organising elections should consider the voters' interests above all other considerations.

1.6. The proposed referendum question, in English and Welsh, is given below¹⁰ :

English

Do you want the United Kingdom to adopt the “alternative vote” system instead of the current “first past the post” system for electing Members of Parliament to the House of Commons?

Yes

No

Welsh

Ydych chi am i’r Deyrnas Unedig ddilyn y system “pleidlais amgen” yn lle’r system gyfredol “y cyntaf i’r felin” ar gyfer ethol Aelodau Seneddol i Doe’r Cyffredin?

Ydw

Nac ydw

1.7 In responding to this invitation to submit views and, in accordance with the AEA’s non-partisan and neutral position, this response does not offer any views on the qualities or impact of either of the voting systems referred to in the proposed referendum question.

2. The impact of the proposed wording of the referendum question on the administration of the poll

2.1. The Electoral Commission has issued Referendum question assessment guidelines. In general terms, the AEA would expect the assessment of the question to also consider the wording of the ballot paper as a whole, and have regard to the associated documents and instructions to voters both in postal ballot stationery and in polling station notices. These documents contain vital information and set the context within which the question is presented to voters.

2.2. The Electoral Commission guidelines include a checklist to help them assess the intelligibility of the question. This includes consideration of whether the question is written in plain language and describes the characteristics of plain language as using short sentences; being simple, direct and concise; and using familiar words, and *avoiding jargon or technical terms that would not be easily understood by most people* [our emphasis].

2.3. The wording of the question does not seem to comply with ‘plain language’ as it uses expressions such as ‘adopt’ and ‘current’, as well as ‘alternative vote’ and ‘first-past-the-post’. The latter is correctly known as the ‘simple majority’

¹⁰ Text taken from *The Parliamentary Voting System and Constituencies Bill*, introduced to Parliament on 22 July 2010, <http://services.parliament.uk/bills/2010-11/parliamentaryvotingsystemandconstituencies.html>

system, and we recognise that 'first-past-the-post' is a term that is likely to be slightly more recognisable to voters than the correct term.

- 2.4. The AEA is concerned that the use of the terms 'first-past-the-post' and 'alternative vote' to describe the systems for electing Members of the UK Parliament to the House of Commons may not be understood by most people. This is likely to be the case particularly as regards the term 'alternative vote'.
- 2.5 Given that these terms and the implications of the two systems will need to be explained to voters, it is vital that clear and neutral explanations are set out, in English and in Welsh, in relevant election stationery and communications so that voters can understand the choice being put to them at the referendum.
- 2.6 These explanations should be available to voters in advance of the poll but also in polling stations and with postal vote stationery.
- 2.7 Counting Officers, electoral services staff and polling station staff are likely to be approached to give an explanation of these terms and, in order to preserve the neutrality of election staff and the consistency of information to voters, it is vital that clear and neutral explanations of the two voting systems are available. There must also be clear guidance for Counting Officers on handling such enquiries.
- 2.8 In drafting these explanations there will need to be a rigorous assessment of their intelligibility. It is our view that:
 - these should be assessed in the same way as the referendum question;
 - all voter materials should undergo appropriate usability analysis in order to ensure equal access to the electoral process.

3. Welsh translation of the referendum question

- 3.1. It is noted that there is no direct Welsh translation for 'first-past-the-post'. However, the AEA is of the view that the translation set out in the *Parliamentary Voting System and Constituencies Bill* is as good as it can be.

4. Reference to 'Parliament' in the proposed referendum question

- 4.1. The UK Government plans to hold the proposed referendum on a change to the voting system at UK Parliamentary elections on 5 May 2011, the same day on which elections to the Scottish Parliament are also due to take place.
- 4.2. With this timetabling in mind, the AEA is concerned that, although there is reference to the United Kingdom in the proposed question, both the proposed question and the form of ballot paper¹¹ do not make it explicit that the referendum applies in respect of the *United Kingdom Parliament*. The

¹¹ Prescribed in the *Parliamentary Voting System and Constituencies Bill*, Schedule 2, Part 2, *Forms referred to in referendum rules*.

referendum question refers to 'Members of Parliament' which may be confusing to voters in Scotland who will be voting on 5 May 2011 to elect 'Members of the Scottish Parliament'.

- 4.3. It is notable that the prescribed form of postal voting statement, declaration of identity (Northern Ireland) and poll cards all contain the wording, "Referendum on the voting system for United Kingdom parliamentary elections"
- 4.4. It is the AEA's view that the referendum question and the ballot paper should be amended accordingly to ensure clarity.

Karen Quaintmere
Assistant Chief Executive

19 August 2010