



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Formal response to the UK Government's Consultation on facilitating a legal, fair and decisive referendum on whether Scotland should leave the United Kingdom

1. Introduction

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 non-governmental and non-partisan body and has 1674 members, the majority of whom are employed by local authorities to provide electoral registration and election services. The AEA encourages and provides education and training in electoral administration, in addition to a range of commercial and professional services.

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.

The AEA supports and advocates two key principles set out by Gould (*Independent Review of Scottish Parliamentary and Local Government Elections*, Ron Gould, 2007) in his report on the 2007 elections in Scotland, namely that:

- all those with a role in organising elections should consider the voters' interests above all other considerations: and
- electoral legislation should not be applied to any election held within six months of the new provision coming into force.

In this paper we respond to the consultation by the UK Government to comment on the referendum on whether Scotland should remain part of the United Kingdom. In responding to this consultation and, in accordance with the AEA's non-partisan and neutral position, this response focuses on the administrative issues pertaining to the proposed referendum.

2. Response to consultation questions

1. *What are your views on using the order making power provided in the Scotland Act 1998 to allow the Scottish Parliament to legislate for a legal referendum in an Act of the Scottish Parliament?*

No comment.

2. *What are your views on the UK Parliament legislating to deliver a referendum on independence?*

No comment.

3. *What are your views on whether the Scotland Bill should be used either to:*
i) give the Scottish Parliament the power to legislate for a referendum; or
ii) directly deliver a referendum?

No comment.

4. *What are your views on the oversight arrangements for a referendum on Scottish independence?*

Oversight should be carried out by a person or body not directly involved in organising or carrying out the administration of the referendum. This would avoid any potential conflict of interest which could be seen to dilute the independence of the overseeing body in the analysis of any issues or problems resulting from the administration of the referendum.

5. *Do you think the Electoral Commission should have a role in overseeing a referendum on Scottish independence?*

The Electoral Commission should be capable of independently overseeing a referendum but care should be taken to avoid the circumstances of the UK Referendum and the Welsh Referendum in 2011 where the Commission also actively supported the Chief Counting Officer (who was also the Chair of the Electoral Commission) in actually running the referendums and directing how they were to be administered. Some of the directions given by the Chief Counting Officer at last year's UK referendum seemed to be aimed at advancing the Electoral Commission's views of future election/referendum conduct rather than being wholly focused on the referendum remit and the problems of combined electoral events in the specific case of the UK referendum.

The newly constituted Electoral Management Board for Scotland may be better placed to carry out the administration and co-ordination of the referendum, although it may require additional temporary resources to do so, leaving the Electoral Commission able to have independent oversight and a practical guidance role.

6. *What are your views on which people should be entitled to vote in a Scottish independence referendum?*

The franchise is a matter for policymakers. Any "revised franchise" would need to be set out in clear, unambiguous legislation at the earliest opportunity in the interests of ensuring clarity both for electors and for electoral administrators. There may be significant canvass and registration issues that would require to be addressed.

7. What are your views on the timing of a referendum?

The timing of a referendum should allow at least six months for final legislation to be in place and settled. This is a recommendation of the Gould Report (2007) but the implication of this is that the major thrust of the proposed legislation is known to administrators well before that date to allow time for changing administration systems (including software), publicising the changes, and encouraging registration as electors. In this way, the voter is aware of what he or she has to do to have a vote. For various reasons, that have been reported on elsewhere, this was not achieved for the UK referendum in 2011 and the fact that it was administered well by local Counting Officers is commendable in spite of the uncertainties of legislation at a very late stage.

In such a referendum as is now proposed the legislation (including secondary orders and any formal directions) must be in place at least six months in advance of polling day.

Care should be taken in relation to decisions on timing as the period from now until December 2015 is when the electoral registration system is likely to change to individual electoral registration. This will be nothing short of a transformation of the way in which electoral registration is administered and, as such, will have a significant impact both on electors and electoral administrators. It is proposed that the traditional annual canvass due in 2013 will be delayed until January to March 2014, and a new style canvass or contact with individual electors will be carried out from September to December 2014. During 2014, there will also be the European Parliamentary Elections which means that there will be two canvasses and possibly two major electoral events in that year. The detailed timing of communication with potential electors for registration purposes and for electoral purposes has to be carefully co-ordinated to avoid confusing the voter.

While normally a major referendum should be administratively achievable during the annual electoral registration canvass, such timing would not be in the interest of putting the voter first. Additionally, the impact of the transition to IER should not be underestimated. At this point, there is no certainty about the practical impact of the proposed IER canvass in autumn 2014 and the framework for this is still in development. This includes legislation, IT infrastructure, standards and protocols, and business processes. We cannot be certain as to the scope of the resources required to deliver the new system. It is unlikely that there will be certainty on these matters until some point towards the end of 2013.

Care has to be taken to avoid confusing the electors and potential electors by issuing documentation relating to different electoral matters over a short period of time.

Recent legislation has allowed an ERO to delay the December publication date for up to two months if an election is called (either nationally or locally) during the period from July to end of November. This allows canvass activity to be suspended but also allows rolling registration to restart and allows already issued canvass forms to be treated as registration applications valid for the election. This relaxation of the publication date is in part because there is a risk of overloading the limited resources of the ERO with carrying out rolling registration, new register publication and dealing with absent vote applications and amendments generated by an election all at the same time. However, and of greater significance, there is also a real danger of confusing the elector with a whole series of documents and forms that would appear to the citizen to be along a related theme.

Even without the added complications of the transition to Individual Electoral Registration, the Annual Canvass period (September to November) has no register updates in order to allow a period of "churn" in the register. Different EROs will be at different stages in this churn. For instance, the timing of accuracy measures, reminders, and door-to-door canvassing all vary to suit local circumstances. These differences allow for the availability of local information from Councils, Universities and other sources at different times in each area. Because of local holiday patterns, electors may complete canvass forms more quickly and without reminder in one area compared to another and so will be more likely to have their registrations up to date on polling day.

For the reasons given above, it is suggested that the referendum and canvass ideally should not take place during the same period in autumn 2014. A legislative extension of the ERO's right to delay the canvass and publication of the revised register for a national referendum in the same way as can be done for a national or local election would be of significant assistance in the administration of the referendum and allow the voter to be the focus of attention.

8. *What are your views on the question or questions to be asked in a referendum?*

The question or questions must be rigorously tested by an independent organisation to ensure plain language and to avoid any bias.

9. *What are your views on the draft section 30 Order?*

No comment.

John Turner
Chief Executive

William Pollock
Chair, Scotland and
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