



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Formal response to the Cabinet Office consultation on the *Transparency of Lobbying, Non Party Campaigning and Trade Union Administration 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 1745 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 a range of commercial and professional services.
- 1.3. The key **aims** of the AEA are to:
 - a. contribute positively to electoral reform within the UK;
 - b. foster the advancement of consistent and efficient administration of electoral registration and the conduct of elections in the UK;
 - c. raise the profile of electoral administration both within the UK and internationally;
 - d. 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 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 6 months of the new provision coming into force.

- 1.5. The AEA is responding to the Cabinet Office request for views on clause 34 of the *Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Bill (the Bill)*. We also offer comments on the possible implications for Returning Officers and their staff of the proposals in clause 28.
- 1.6. As a matter of principle, the AEA supports the transparency of the electoral process. However, as the professional body representing electoral administrators, the AEA comments here on the role of the Returning Officer and on the administrative and practical implications of the proposals for Returning Officers and their staff. In accordance with our non-partisan and independent role, we do not comment on any political issues arising from the proposals.
- 1.7. In this response, we use the generic term 'Returning Officer'. At a UK Parliamentary election the responsibilities of the Returning Officer are delivered by the Acting Returning Officer.

2. Clause 34 - the role of the Returning Officer

- 2.1. Clause 34 is intended to apply to third party expenditure in respect of individual candidates at UK Parliamentary elections.
- 2.2. Currently, at UK Parliamentary elections any person who has been authorised to incur election expenses is required to deliver to the Returning Officer a return and declaration as to those expenses. The Returning Officer is required to make the returns and declarations available for public inspection and to send a copy of these expenses to the Electoral Commission.
- 2.3. This role is similar in respect of other elections with Returning Officers receiving returns and declarations and making these available for public inspection and providing copies to the Electoral Commission (on request). The Returning Officer has no statutory role in investigating these returns or the non-delivery of returns.
- 2.4. If enacted, clause 34 would provide a power for the Electoral Commission and Returning Officers *to be able to request* a record of third party 'permitted' expenditure (a return and a declaration) in relation to a candidate at the election. The particular candidate would have to be specified in the request. The 'relevant person' would have 21 days to comply with this request beginning with the day on which the request was received.
- 2.5. In its letter inviting views on clause 34, the Cabinet Office sets out the following:

"The Government acknowledges that the Electoral Commission and Returning Officers have no formal regulatory role in respect of such third party campaigns. However, the Government believes that it is sensible

and proportionate for the Electoral Commission and Returning Officer to have the power to request this information should complaints be directed to them.”¹

- 2.6. This assumes that Returning Officers have some kind of role in receiving and dealing with complaints about campaigns.
- 2.7. Further, the letter states that:
- “The provision of this power does not impact upon the discretion of the Electoral Commission or the Returning Officer to decide whether it is appropriate for them to undertake an investigation or direct complaints to the police. It would be for the Electoral Commission or Returning Officer to decide which approach to take.”
- 2.8. **We fundamentally disagree with the premise that the Returning Officer has any role in ‘undertaking an investigation’ as regards third party campaign expenditure. Given that the Returning Officer has no statutory basis for undertaking any such investigation, nor any powers of enforcement in relation to third party campaigning, we cannot see a reason for the Returning Officer to request that a return and declaration is delivered to them.**
- 2.9. If the power to request returns is brought into effect, we are concerned that Returning Officers could find themselves in the middle of allegations and counter allegations about third party campaigns. A decision to request a return or not to request a return could equally place the Returning Officer in an invidious position and at risk of accusations of acting in a partisan manner, thereby compromising the essential neutrality of the role.
- 2.10. While clause 34 sets out that any request for a return could be made “at any time during the period of 6 months beginning with the date of the poll”, we anticipate that the complaints and allegations are likely to arise in the run-up to the election taking the Returning Officer’s attention away from their primary responsibility of effectively conducting the election.
- 2.11. We are aware from its briefings to the UK Parliament, that the Electoral Commission supports the removal of clause 34 for the following reasons:
- “Since neither we [the Electoral Commission] nor Returning Officers have a regulatory role in respect of local third party campaigners, the new power has no practical use, and may raise unfounded expectations that we are able to take action in the event of an alleged breach of the rules.”²

¹ http://www.aea-elections.co.uk/members/downloads/legislation/cab_off_consultation_lobbying_bill.pdf

² http://www.electoralcommission.org.uk/_data/assets/pdf_file/0011/163001/Third-Parties-Bill-Report-Stage-briefing-October-2013.pdf ; page 10

- 2.12. The Electoral Commission also states that it, "...[does] not regulate the rules on non-party campaigning for or against individual candidates, which are dealt with by the police". It follows that when any complaint about a third party campaign for or against an individual candidate and associated expenditure is directed to the Returning Officer, the course of action should be for the Officer to bring this to the attention of the police whose role it is to investigate such matters.
- 2.13. In addition to our concerns on the utility of the proposal and its conflict with the role of the Returning Officer, we are also concerned that the practical implications that would arise have not been considered. If Returning Officers were to have a power to request a return and declaration from third parties on what basis would a Returning Officer decide that it is appropriate to make such a request? Returning Officers are not equipped to carry out such investigations and they could inadvertently find themselves in the position of potentially compromising any subsequent investigation by a body which does have enforcement powers. Would there be guidance to support Returning Officers and who would provide it? Who would fund any legal advice a Returning Officer may need to take in order to arrive at a decision?
- 2.14. If a Returning Officer decided to make such a request, they would need to be able to identify the 'relevant person' to whom the request must be directed. This may not be straightforward. In order to be in a position to monitor compliance with the request, it would need to be delivered in such a way that the Returning Officer could evidence that the relevant person had received it as it is receipt which commences the timescale (21 days) within which that person must comply with the request.
- 2.15. Should a return and declaration be received by the Returning Officer, there is no provision for the Returning Officer to make it available for inspection, or to supply it or draw it to anyone's attention. There is no defined period for retention or disposal of the documents. As far as we can see, the Bill does not set out what a Returning Officer should do with any such return that they receive as a result of their request.
- 2.16. If the relevant person did not comply with the request, a court may find them to be guilty of committing an illegal practice. This is a serious offence which carries a significant penalty. Therefore, we assume it is envisaged that the Returning Officer should report a failure to comply with the request to the police. Clearly, it would then be for the police to investigate and the prosecuting authorities to determine what, if any, case there is to answer in the public interest.
- 2.17. **For all of the reasons of principle and practicality set out above, the AEA strongly recommends the removal of the provision contained in**

clause 34 empowering Returning Officers to request returns from third parties.

3. Clause 28 - constituency limits and information about local activity

3.1. The AEA notes that this clause places “limits on the amount of controlled expenditure a recognised third party can spend within an individual constituency during the regulated period”³. The Bill also sets out the reporting requirements that flow from the introduction of these limits. We do not comment on the policy intention or the potential impact on third parties.

3.2. The Electoral Commission has set out the potential implications for them as the regulator:

“The new constituency controls will require us to respond to allegations about campaign activity in any of 650 constituencies over a 12 month regulated period. Even if we were given significant extra resources to deal with this, we anticipate that it will be challenging to obtain robust evidence to determine and sanction breaches in specific geographical areas, for example, regarding the effects of a leafleting campaign or mobile advertising in different constituencies.”⁴

3.3. We are concerned that if the Electoral Commission is required to monitor activity on a constituency basis in order to deliver their regulatory responsibilities in relation to these new requirements, understandably they may seek information from Returning Officers and their staff as to any activity taking place within their constituency.

3.4. We cannot estimate the level of burden this may place on Returning Officers and their staff at any given time and particularly in the immediate run-up to polling day. However, it is potentially a further addition to their workload which has increased year on year as new measures have been introduced. Furthermore, it would again place the Returning Officer and his staff in the position of being perceived to have some kind of unofficial role in relation to the regulation of third party campaigning.

4. Conclusion

4.1. The AEA is concerned that there is a general assumption and direction in these proposals towards involving Returning Officers and their staff in the regulation of third party campaigning. For all of the reasons of principle and practicality set out in this paper, the AEA strongly recommends the removal of the provision contained in clause 34 empowering Returning Officers to request returns from third parties.

³ <http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0050/en/14050en.pdf>

⁴ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0015/163140/House-of-Lords-Second-Reading-briefing-22-October.pdf; page 11.

John Turner
Chief Executive

Karen Quintmere
Assistant Chief Executive

13 November 2013