



# THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

## Formal response to the Law Commission Scoping Consultation Paper: “Electoral Law in the United Kingdom”

### 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 1747 members, the majority of whom are employed by local authorities to provide electoral registration and election services.
- 1.2. The AEA encourages and provides training and education in electoral administration, in addition to 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 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.
- 1.5. The Association has been increasingly concerned about the growing complexity and volume of electoral law and its impact on the effective conduct of electoral processes. Therefore, we strongly advocated for this review of electoral law to take place and welcomed its inclusion in the Law Commission's eleventh programme of law reform.
- 1.6. The *Scoping Consultation Paper: Electoral Law in the United Kingdom* (the scoping consultation paper) was published on 15 June 2012 and marks a significant stage in the process to reform electoral law and we welcome the opportunity to comment.

## **2. Overarching issues**

- 2.1. We agree that it is necessary to consider electoral law on a UK basis and we welcome the cooperation in terms of the conduct of this scoping consultation between the Law Commission for England and Wales, the Scottish Law Commission, and the Law Commission for Northern Ireland. We agree that it would be to the benefit of all jurisdictions for this project to proceed on a tripartite basis. However, the AEA recognises that within the proposed timescale for the law reform project, there may be a referendum on Scottish independence. Therefore, we offer our comments on a UK-wide basis to reflect the current constitutional situation without prejudice to any future arrangements.
- 2.2. We agree that the focus of the project should be on what is known as electoral administration law, "the purpose of which is to set out a system of transparent rules to facilitate the fair and effective administration of the electoral process" (paragraph 1.6). We respond to the consultation questions in turn below

within this context and argue for specific areas to be included within scope.

- 2.3. The scoping consultation paper indicates that an impact assessment will be undertaken and invites organisations and individuals to provide the Law Commission with available figures and estimates of both monetised and non-monetised costs of electoral administration under the current law.
- 2.4. In 'putting the voter first', a key consideration of the electoral law reform project will need to be that of access to the electoral process. One non-monetised cost of the current system of electoral administration is that the use of legalistic language, for example, can present barriers to access and can actually mitigate against compliance.
- 2.5. As regards monetised costs, the event-specific approach to establishing rules for each new election or referendum cannot be cost-effective. On each occasion many staff hours are expended by government officials, Electoral Commission staff, and electoral administrators in attempting to deliver a set of rules and then guidance and training to translate the rules into a set of administrative practices that are workable. Late legislation and uncertainty as to what will be required can result in administrators having to prepare and work to multiple plans and potential scenarios, and is an inherently inefficient and dangerous way to work. It is virtually impossible to put a cost on this approach and the risks it brings with it.
- 2.6. Other monetised costs can arise from drafting errors and we provided an example in relation to joint descriptions and emblems at the 2010 elections, with the anomaly being identified late in the process. This was then notified in guidance provided after the close of nominations with the result that ballot papers had to be destroyed and reprinted incurring costs<sup>1</sup>.

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<sup>1</sup> [http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_report\\_final\\_PUBLICATION.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf) ; p 14.

- 2.7. The AEA will offer any assistance we can to inform the impact assessment process.

### **3. Question 1 - Introduction**

*Should the scope of the reform project include the elections and referendums listed in paragraphs 1.10 and 1.11?*

- 3.1. The AEA agrees that the elections listed in paragraph 1.10 should be included within the scope of the project.
- 3.2. As regards the referendums listed in 1.11, we comment later in this response on the *Localism Act 2011* referendums and other local government polls (Question 16).

### **4. Question 2 - The need for reform**

*Should the scope of the reform project include, with a view to reducing the volume, complexity and fragmentation of the law, consideration of the current legislative framework for electoral administration including the place of rules within the legislative hierarchy?*

- 4.1. Yes. The AEA believes that it will be essential to reduce the volume, complexity and fragmentation of electoral law. In order to achieve this, it will be necessary to consider the current legislative framework and the place of rules within it.

*Volume and complexity*

- 4.2. At present there is considerable systemic complexity in the legal and structural framework for electoral administration in the UK.
- 4.3. For example, over 25 separate pieces of primary and secondary legislation (some of which have been amended on several occasions) governed the administration of the elections that took place across the UK in May 2010 (with specific legislation applying in respect of particular provisions for Scotland, Wales and Northern Ireland). For the various polls across the UK on 5

May 2011, there were some 14 Acts and 26 pieces of secondary legislation including orders, regulations and rules that applied.

- 4.4. In many cases, such as for absent voting, the fragmentation of the law results in those required to apply the law to have regard to multiple sources. Given that there are inconsistencies as to whether particular provisions are contained within primary or secondary legislation, or within rules or regulations, it isn't always obvious or intuitive to navigate.
- 4.5. Statutory officers and electoral administrators are, understandably, expected to have a sound working knowledge of the relevant provisions of all of the legislation relevant to the elections they are delivering. This is becoming increasingly challenging in such a complex legislative environment.
- 4.6. The legislation governing electoral registration is particularly complex and is likely to become even more so as provisions enabling the introduction of individual electoral registration are bolted onto the existing primary and secondary legislation.
- 4.7. In our view, the reform of electoral law within the UK is essential and long overdue. The current situation is neither effective nor efficient and is not sustainable.

#### *Combination of polls*

- 4.8. The complexity of election law is exacerbated when elections are held on the same day, and where polls are combined, particularly where the rules and timetables for the elections are not compatible. We make numerous references to the combination of polls throughout this response as it is one of the most significant overarching concerns and sources of complexity within electoral administration.
- 4.9. It should be noted that, following the issues that arose in 2007 in Scotland, there was a decision to 'de-couple' the Scottish Parliament and local government elections and so combination of these polls is now prevented by statute. This sends a very

clear message about the risks of combining polls particularly when two or more different voting systems are being used.

*The legislative framework and hierarchy*

- 4.10. We believe that central to this review should be the creation of a single Electoral Administration Act in accessible language setting out the high-level principles and framework for electoral administration; the operational detail should then be contained in secondary legislation. There should be a clear logic and consistency in the way that this is done in respect of electoral registration and across all elections and referendums within scope. We agree that the project should explore the benefits of moving away from the current event-specific approach to electoral law.
- 4.11. The electoral law reform project offers the opportunity to examine and debate the level of detail required to be included in the secondary legislation and through any other mechanisms. The objective should be to achieve certainty and consistency of practice where it is desirable, and to determine how best to allow the necessary flexibility for local decision making to respond to local circumstances. Such consideration should focus on the outcomes sought and, in all cases, the interests of the voter should be paramount.
- 4.12. We note the consideration of the hierarchy of election law in the research document *Electoral legislation, principles and practice: a comparative analysis* published by the Electoral Commission<sup>2</sup>. This provides a useful basis for informing the debate about how the framework for electoral legislation might be structured. That debate will need to address the role of the power of direction and whether there should be any new tier within the legislative hierarchy of binding instructions, codes or guidance.
- 4.13. In addition, the role and operation of the current performance standards framework must be an essential part of that consideration.

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<sup>2</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/150498/Electoral-legislation-comparative-analysis.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/150498/Electoral-legislation-comparative-analysis.pdf)

4.14. In considering the responsibilities of officers with powers of direction, it should be recognised that understandably they may want to issue their own guidance to support operational coordination and delivery. This was the case in respect of the recent Mayoral and Assembly elections in London where there was detailed guidance issued by the Greater London Returning Officer<sup>3</sup>. At the same time, the Electoral Commission also published detailed guidance<sup>4</sup> linked to the performance standards. This can result in duplication or contradiction and does not support efficiency or clarity for electoral administrators who are then required to navigate between the two sets of guidance and requirements. As a matter of general principle, we believe that the direction of the statutory officer responsible for the management of the election should always over-ride any performance standard and that this principle needs to be enshrined in law. We comment further on related issues in response to Questions 4 and 15.

4.15. Secondary legislation and any other vehicles for providing the detail of electoral administration should set out procedures that are recognisable in modern-day electoral practice with its use of technology and modern means of communication. There is a need to balance certainty as to what is required with the need to be able to provide flexibility to amend the rules:

- where it is found that there are drafting errors or omissions that need to be corrected
- to accommodate new electoral events
- in order to keep pace with innovation and change in technology and working practices.

4.16. There is considerable concern within the profession that any new legislative framework will be subject to amendment almost as soon as it has been created. Many government departments now propose and take forward arrangements for new polls of varying kinds. It is therefore an essential feature of the reformed legislative framework that it is able to provide a

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<sup>3</sup> <http://www.londonelects.org.uk/electoral-administrators/handbooks-and-training-manuals>

<sup>4</sup> <http://www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/greater-london-authority>

structure that is accepted across government and sufficiently flexible to accommodate any new events in a consistent, well understood and recognised manner.

*Forms, notices and electoral communications*

- 4.17. The current electoral legislation uses legalistic language and this translates into election communications that are not always accessible without modification. As many electoral communications, notices and forms are prescribed, the scope for modification is limited 'to like effect' and the extent of this discretion is not always clear. Indeed, for the 2011 referendums the Chief Counting Officer was provided with an express power to modify forms in order to make them more accessible.
- 4.18. A different approach has been taken in relation to the forthcoming Police and Crime Commissioner (PCC) elections by including more accessible form design in the prescribed forms - we will report on how this arrangement operates in our 2012 report.
- 4.19. Some forms are specified by reference in rules or regulations as to their content, and others are set out as prescribed forms in schedules within both primary and secondary legislation. This fragmentation does not support administrators in readily identifying where to find the correct wording for a particular communication. There should be a consistent and logical approach to where and how provision is made for forms and notices within the legislative hierarchy.
- 4.20. In addition, the prescribed election communications have been amended to add in information and to reflect changes to the electoral process. The poll card is a good example. We believe it is time for a fresh look at the purpose and timing of election communications with the aim of ensuring that electors receive timely and relevant information about the process at the time they need it. This will need to be done within the context of aligning election and registration deadlines within the election timetable (as relevant) across all elections and referendums.

## 5. Question 3 - Core electoral parameters

*Do you agree the scope of the project should exclude the franchise, electoral boundaries and voting systems?*

- 5.1. The AEA generally agrees that the scope of the project should exclude the franchise, electoral boundaries and voting systems. However, there are consequential and procedural issues relating to the process of establishing boundaries and the combination of polls using different voting systems and franchises that should be considered as part of this review.

### *The Franchise*

- 5.2. Changes to the franchise are of constitutional significance relating to the rights and responsibilities of citizens across the UK. This goes beyond a technical reform of the law providing for electoral administration.
- 5.3. However, it should be noted that there is no single franchise for elections and referendums across the UK, but rather there are multiple franchises. This brings with it complexity for electoral registration and for the administration of the poll. In some metropolitan areas in particular, this can result in a significant logistical impact for the administration of the polls where these are combined.
- 5.4. In the case of in-person voting it impacts on guidance and training for polling station staff and the level of staffing in order to address voter confusion. This includes the production and marking of the polling station register and the management of the corresponding numbers list, to ensure that voters receive only the papers to which they are entitled and that this is correctly indicated. The new framework will need to address these issues.
- 5.5. We comment on the definition of 'residence' in response to Question 5.

### *Electoral boundaries*

- 5.6. The Law Commission's preliminary view is that the "procedures for boundary changes are not within the scope of the electoral law reform project" (paragraph 3.5). The rationale for this view is that "questions of community representation are best left to elected representatives or cross party consensus." However, it is recognised that "the current provisions on boundaries may have to be consolidated into the eventual reformed legislative framework."
- 5.7. It would be helpful to have clarity as to what this consolidation will encompass in relation to "the current provisions on boundaries". The current provisions are devolved and not holistic or consistent in terms of approach for the various and growing number of elections and referendums.
- 5.8. The AEA believes that there are a number of boundary-related and consequential issues which ought to be considered as part of the review of electoral law. In particular, the issue of the administrative areas to be used at elections and referendums must surely form part of the Law Commission's consideration in establishing a reformed and modern legislative framework for elections and referendums.
- 5.9. As a minimum, the legal framework ought to require as a fundamental principle and in practice that there are properly constituted administrative areas for elections and referendums in place in sufficient time ahead of any elections or referendums to which they relate for the consequential work in relation to polling district and places reviews, the revision of electoral registers, and election planning and preparation to be completed. In addition, political parties require certainty as to the electoral areas in terms of their organisational and campaign planning.
- 5.10. This issue impacts on and determines the management of those electoral events and is particularly relevant to the increasingly common scenario of multiple polls being combined, with a lack of coterminosity and a need for cross-boundary arrangements.

This increases the complexity for the administration of polls and for those campaigning at the various elections and referendums.

- 5.11. One might imagine that the administrative areas for electoral events could be taken as read. However, this has not been the case over recent years and there are proposals for new electoral events that may also bring into being new electoral areas. With new elections and new electoral areas also come new statutory officers with specific responsibilities including overall coordination where an electoral area includes a number of local authority or constituency areas (or part thereof).
- 5.12. Equally, inconsistencies and incompatibility can arise as a result of the parliamentary boundaries being established on the basis of local government ward boundaries that are subsequently redrawn by the local boundary commissions.
- 5.13. We set out a number of recent examples of boundary-related issues in Appendix A. The impact of these kinds of scenarios will have to be managed within the electoral framework.

#### *Voting systems*

- 5.14. The AEA agrees with the Law Commission's analysis that "the legislative treatment of different voting systems produces inconsistency and complexity" (paragraph 3.6). It is for relevant Parliaments/Assemblies to decide the electoral systems to be used for relevant elections. However, the consequences both for voters and electoral administrators of multiple electoral systems being operated at combined polls should be reviewed. We comment further on combination in response to Question 12 below.

## **6. Question 4 - Management and oversight**

*Should the scope of the reform project include consideration of management and oversight of elections, but exclude fundamental change to the current institutional framework for electoral administration?*

- 6.1. The AEA agrees that the scope of the reform project should include consideration of the management and oversight of elections, including the role and powers of specific statutory officers. As regards the exclusion of fundamental change to the current institutional framework for electoral administration, it may be helpful to clarify what may be included and excluded as a result of this distinction.
- 6.2. In considering the management and oversight of electoral registration and elections management, a number of statutory bodies and officers have specific roles and responsibilities set out in electoral law. We cannot see how the legislative framework for electoral administration in the UK can be reformed without changes to these roles and responsibilities.
- 6.3. The basis of our current system of electoral administration is devolved with local Electoral Registration Officers and local Returning Officers. However, this arrangement has been modified by the role of Regional Returning Officers for European Parliamentary Elections, and in relation to elections to the Scottish Parliament and the Welsh Assembly; the Greater London Returning Officer for Mayoral and Assembly elections in London, and the role of the Chief (and Regional) Counting Officers for various referendums. In England and Wales, for the first time this year a new role of Police Area Returning Officer has been created with specific powers in relation to the delivery of the forthcoming PCC elections.
- 6.4. With the introduction of these 'coordinating' roles has come a power of direction. Although key elements of these roles are set out in the legislation, it has been considered necessary to supplement this with role or job descriptions, including the level of resource the post-holder will require to have at their disposal. In addition, there have been differing ways of recruiting or appointing these officers. The new legislative framework should deliver consistent and transparent processes which are capable of withstanding scrutiny particularly in terms of appointment arrangements.

- 6.5. Northern Ireland has an entirely separate system with a Chief Electoral Officer delivering his responsibilities through permanent staff at the Electoral Office for Northern Ireland (EONI). EONI also employs a large number of temporary staff during a canvass or election.
- 6.6. In Scotland, there is now the Elections Management Board (EMB) chaired by the Convener with a limited power of direction.
- 6.7. It should also be recognised that the Secretary of State has the power to direct Electoral Registration Officers in the discharge of their duties under S52 of the *Representation of the People Act 1983* (RPA 1983).
- 6.8. All of these roles and powers are likely to be impacted by and impact on the legislative hierarchy, particularly if it includes an extension of the use of the power of direction, or the introduction of 'instructions', or binding codes or guidance.
- 6.9. Similarly, such changes may alter fundamentally their relationships to each other and to any future legal processes by which such bodies and officers are held accountable for their decisions and actions in discharging their statutory duties.

#### *Funding and resources*

- 6.10. A vital part of any management framework is the ability to draw on the necessary resources to deliver statutory responsibilities. The conduct of elections and referendums require significant numbers of people and resources to be deployed within extremely short timescales.
- 6.11. Whilst the issue of funding for elections is unlikely to be within the scope of a law reform project, the event-specific fees and charges order is a mechanism for funding that we would expect to be included within scope.
- 6.12. There are also specific references within electoral law to the requirement for local authorities to provide statutory officers with the necessary resources to deliver their responsibilities.

These are vital funding and resourcing mechanisms enabling the local delivery of electoral administration.

- 6.13. Similarly, the ability to use premises for the purpose of election processes and the delivery of the poll is a crucial consideration which is currently provided for within electoral legislation. The AEA has previously raised the issue of the designation by local authorities of polling districts and places which has the potential to limit the choice of buildings for use as polling stations, a responsibility which falls to independent Returning Officers. It is an anachronistic and inconsistent arrangement which we believe should be addressed.
- 6.14. Further, any measure to widen the choice of premises a Returning Officer may use as a polling station would benefit access to the electoral process. In particular, Returning Officers continue to experience difficulties in using school premises. The AEA strongly believes that the use of premises as polling stations is a key access issue which would benefit from examination within the law reform project as part of the consideration of the manner of voting (Question 8).

*International comparisons and centralisation*

- 6.15. The AEA fully supports the international principles that are designed to ensure that countries have an open and transparent electoral process. Key elements of those principles include:
- supporting citizens and participants in exercising freely their democratic right to vote in a manner that allows equal access
  - maintaining the secrecy of voting
  - ensuring confidence in the results of elections and referendums.
- 6.16. The scoping consultation paper makes reference to centralised management and oversight of electoral administration (paragraph 3.22). One example given is that of Canada where, “the Chief Electoral Officer in Canada is responsible for the direction of the administration of elections and maintains the

register of qualified voters". The point is made that, "The closest UK analogue has no such general formal role as overseer of all electoral administration." It should be noted that Elections Canada is responsible for *federal* elections and referendums and registration<sup>5</sup>, with provincial electoral bodies responsible for electoral administration at that level<sup>6</sup>, and below that the municipal elections and referendums are run by the municipalities<sup>7</sup>. We comment on the role of the UK Electoral Commission below.

- 6.17. As noted earlier, the Electoral Commission has published some useful initial research into international standards and comparisons<sup>8</sup>. The paper examines the powers and roles of a small number of central elections bodies with responsibility for federal elections. The paper also notes that within those countries there are also various arrangements for the management of provincial or local elections. It highlights that international guidance states that there ought to be consistency (unless there is good reason for there not to be) across the legislation governing national, sub-national and local elections. The AEA supports that principle.
- 6.18. It would be useful if there could be further research undertaken specifically to understand the extent to which the polls at elections at a national and a local level are combined in these countries and what arrangements are in place to support this, both in terms of specific combination legislation and in terms of the management and oversight of the administration of the polls.
- 6.19. In considering the future of the management and oversight of electoral administration in the UK, we would be concerned if an

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<sup>5</sup> Its website sets this out clearly, "Elections Canada is the independent, non-partisan agency responsible for conducting federal elections and referendums." These are governed by the Elections Canada Act. <http://www.elections.ca/home.aspx>

<sup>6</sup> For example, here is what Elections BC says about its role, "Elections BC is the organization that administers the Election Act and the provincial electoral process in B.C. Elections BC is separate from other provincial and federal election organizations and is only responsible for administering elections at the provincial level. Elections BC does not administer federal or municipal elections." Provincial electoral legislation applies. <http://www.elections.bc.ca/index.php/about/>

<sup>7</sup> In accordance with the Municipal Elections Act.

<sup>8</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/150498/Electoral-legislation-comparative-analysis.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/150498/Electoral-legislation-comparative-analysis.pdf)

incomplete view of the level and nature of centralisation elsewhere is used as a benchmark. We agree with the conclusion of the Electoral Commission's paper that the research, whilst useful,

...“provides a limited review of the law of a small number of selected countries and how it complies with international guidance. More work is required to look at these countries systems in more depth and / or consider other countries in order to produce options for the structure of the UK's electoral law.”

- 6.20. The centralisation of arrangements for federal or national elections in other countries differ and do so to reflect the specific constitutional, legislative and practical environments within which the electoral officers work. In considering the issues of centralisation and localism in relation to the management and oversight of electoral administration, we believe it is important to identify what outcomes and outputs are required and desirable, and to use these as the basis for considering the best mechanisms for achieving them within the UK context.

#### *Consistency*

- 6.21. A key outcome about which there is agreement in principle is that of consistency. However, when it comes to the detail of what this means in practice there have been some significant differences of opinion.
- 6.22. Consistency has to be seen in the context of a highly devolved structure for elections in the UK. Even in the context of a single person being responsible for a national poll, in 2011 the Chief Counting Officer was responsible for the UK-wide referendum and the framework for delivery involved 440 voting areas with Counting Officers delivering the poll locally. Those Counting Officers had at their disposal (to varying degrees) different local staffing and resourcing arrangements (local authorities are not in themselves uniform nor are they required to be), in partnership with an indeterminate number of separate private

contractors. In addition, there are geographic and demographic differences to be considered.

- 6.23. This presents a challenge in terms of achieving a uniform presentation and delivery of processes, but is beneficial in bringing local knowledge to bear. Devolved responsibilities and arrangements have many benefits which should not be overlooked or lost on a principle which cannot be clearly defined within the broad context of public administration within the UK.

*Direction and performance*

- 6.24. The Electoral Commission research notes that a key difference in most of the UK is that, unlike the arrangements in some of the countries reviewed in the research, Electoral Registration, Returning and Counting Officers and electoral administrators are not employed by the Electoral Commission and (other than for *Political Parties, Elections and Referendums Act 2000* (PPERA) referendums) are not directed by the Commission. Therefore, almost uniquely we have a performance standards framework alongside the personal responsibility and accountability of the statutory officers.
- 6.25. The *Electoral Administration Act 2006* (EAA) amended PERA to give the Commission powers to set standards of performance for Electoral Registration Officers, Returning Officers, and Counting Officers in Great Britain. Until recently this did not include local elections in Scotland. However, the *Local Electoral Administration (Scotland) Act 2011* provided the Electoral Commission with the power to set and monitor performance standards for local government elections in Scotland.
- 6.26. The performance standards framework provides publicly available data on performance but does not provide the Electoral Commission with sanctions to enforce compliance with the standards or to require any improvements to performance it believes to be necessary (other than by way of publication).
- 6.27. Any consideration of management arrangements should consider the operation of the performance standards framework

in relation to the personal responsibility and accountability of Electoral Registration and Returning Officers. Further, the new legislative framework will need to address the tension between the performance standards framework and the statutory powers of those officers with a power of direction in order to avoid any conflict or contradiction (see paragraph 4.15 above).

- 6.28. In addition, the *Electoral Registration and Administration Bill* currently in the UK Parliament includes a provision to reduce the charges which a particular Returning Officer may claim for conducting a UK Parliamentary election if they are deemed by the Electoral Commission to have 'inadequately performed' their duties<sup>9</sup>.
- 6.29. The hierarchy of elections, electoral areas and responsible officers (including those with a power of direction) all need to be considered holistically given the increasing number of elections and the propensity for the polls at elections and referendums to be combined. If more than one such officer with a power of direction was delivering elections across the same area (or part thereof) on the same day with combined polls, the relationship between them and the extent of their responsibilities and powers would need to be absolutely clear.
- 6.30. We expect the law reform project to consider the issues and learning points contained in the AEA's report on the referendums and elections that took place across the UK in 2011<sup>10</sup>. In particular, we made a number of observations in our report on the nature and use of the power of direction.
- 6.31. The capacity of Returning Officers and Counting Officers to issue lawful, effective and meaningful directions will also need to be taken into account in any new legislative framework. The Police Area Returning Officers have a power of direction in relation to the PCC elections along the lines of the Regional Returning Officer power at European Parliamentary Elections.

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<sup>9</sup> <http://www.publications.parliament.uk/pa/bills/lbill/2012-2013/0033/2013033.pdf> , Part 2, 17.

<sup>10</sup> [http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_referendum\\_report\\_2011.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_referendum_report_2011.pdf)

The AEA will be reporting on how this power is exercised at the forthcoming PCC elections in our 2012 election report.

- 6.32. It may be necessary to provide a means for electoral participants and/or voters to lodge complaints and appeals arising from the adoption of any directions or instructions by a Returning or Counting Officer. The Electoral Commission research<sup>11</sup> points to the existence of such arrangements in some of the legislative frameworks considered.
- 6.33. It may also be useful also to consider a mechanism by which a Returning or Counting Officer can challenge a direction which they believe it to be unlawful. Similarly, should there be a right of appeal in relation to a performance standard assessment that has been made by the Electoral Commission? Further, we have previously expressed concern about the current approach to performance standards potentially blurring the boundaries of responsibility for decision making in respect of an election<sup>12</sup>. This is particularly pertinent in respect of the future framework for legal challenge or complaint.

*A statutory basis for undertaking election work*

- 6.34. It ought to be the case that all officers with a role in delivering elections should have a statutory basis for doing so. In terms of the borough returning officers in relation to Mayoral and Assembly elections in London, this is not currently the case and this is a long standing omission that should be rectified.

## **7. Question 5 - The Register of Electors**

*Should the scope of the reform project include electoral registration, and if so, the meaning of residence?*

- 7.1. Yes, this is vital. It should include a mechanism for ensuring that the changes being brought in to implement individual electoral registration are incorporated into consolidated and

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<sup>11</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/150498/Electoral-legislation-comparative-analysis.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/150498/Electoral-legislation-comparative-analysis.pdf) , page 51

<sup>12</sup> [http://www.aea-elections.co.uk/downloads/consultations\\_and\\_responses/aea\\_resp\\_perf\\_standards\\_ro\\_oct\\_2011.pdf](http://www.aea-elections.co.uk/downloads/consultations_and_responses/aea_resp_perf_standards_ro_oct_2011.pdf)

simplified electoral registration legislation. At present, the approach being taken is to further amend legislation that has already been amended on a number of occasions and which has therefore become extremely complex and difficult to navigate.

- 7.2. For a recent example of the level of complexity that both those providing guidance and electoral administrators have to attempt to navigate, see the Appendix to Electoral Commission circular EC01/2012<sup>13</sup>. In addition, this demonstrates clearly the inflexibility of the current legislative framework to accommodate any change to usual arrangements.
- 7.3. The meaning of residence has continuously presented difficulties for electoral registration officers in determining applications to register, particularly in relation to people with second or multiple residences. See also our paper to the Cabinet Office on legislation requiring amendment<sup>14</sup>.

## **8. Question 6 - Candidates and the campaign**

*Should the scope of the reform project include consideration of the rules on candidates and the campaign?*

- 8.1. Yes. Candidates are key participants in the electoral process. The AEA has previously raised a number of issues in relation to the rules on candidates and the campaign.
- 8.2. It should be recognised that there are two types of candidate - those supported and endorsed by registered political parties and those 'independent' candidates who do not have access to the support and advice that a party may provide. The reformed legislative framework will need to address how these two categories of candidate are treated, particularly with a view to ensuring fairness and to support independent candidates in understanding their responsibilities and rights within the system.

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<sup>13</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0009/146844/Circular-EC012012-Appendix-A.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0009/146844/Circular-EC012012-Appendix-A.pdf)

<sup>14</sup> [http://www.aea-elections.co.uk/downloads/consultations\\_and\\_responses/aea\\_response\\_legislation\\_changes\\_140311.pdf](http://www.aea-elections.co.uk/downloads/consultations_and_responses/aea_response_legislation_changes_140311.pdf)

- 8.3. A particular example that is frequently cited is that of the definition of when a person becomes a candidate and access to the relevant part of the electoral register in order to conduct the campaign and to complete the nomination form in relation to subscribers' electoral numbers.
- 8.4. This latter point links to one we have previously raised which is the inconsistency across arrangements for subscribing nominations. It is our view that this should be harmonised as far as possible and we have noted the models used in Wales and Scotland in respect of Assembly and Parliament elections respectively. In addition, there is no consistent regime for the inspection, retention and destruction of nomination papers and this should also be addressed.
- 8.5. Whilst we recognise that the determination of qualifications and disqualifications to stand is quite properly a matter for relevant Parliaments/Assemblies, the qualifications relating to local elections would benefit from clarification and review. For example, within the qualifications for standing at local government elections to principal area councils, a clearer definition of 'occupier as owner or tenant of the following land or other premises'<sup>15</sup> would be beneficial.
- 8.6. In general, a more accessible language and structure to setting out qualifications and disqualifications within the law must surely support better access to the process and encourage compliance with the requirements.
- 8.7. We have also previously recommended that there should be a more modern and streamlined mechanism for the return of election expenses<sup>16</sup>. Currently, these are received by Returning Officers who otherwise do not have any role in the regulation of campaign expenditure.

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<sup>15</sup> *Local Elections (Principal Areas) (E & W) Rules 2006*, Sch. 2, rule 7, Form of Candidate's Consent to Nomination.

<sup>16</sup> [http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_report\\_final\\_PUBLICATION.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf) , p 61-62

## **9. Question 7 - Political parties and broadcasts**

*Do you agree the scope of the project should exclude political party regulation and national campaign publicity?*

- 9.1. Agreed. In accordance with the AEA's purpose and aims, our primary interest is in the legislative framework for electoral administration.

## **10. Question 8 - Manner of voting**

*Should the scope of the reform project include consideration of the rules on manner of voting?*

- 10.1. We agree that the scope of the reform project should include consideration of the rules on the manner of voting. This consideration should form part of a strategic approach to electoral modernisation which to date has been a piecemeal process. There are provisions in primary legislation for the conduct of pilot schemes to test innovations in the manner of voting and we would welcome clarification as to whether these provisions will remain and how the new framework will facilitate and support technological innovation and change. We have made specific references to the use of technology in relation to the verification and counting of votes.
- 10.2. There are two key overarching themes or principles that need to be balanced in any consideration of the manner of voting at electoral events. These are access to the process and integrity or security. In order to support confidence in the electoral process, the reformed framework for electoral administration must ensure access to the process so that all those who wish to vote and participate are not prevented from doing so by unnecessary barriers. However, at the same time the framework will need to contain measures with the aim of preventing anyone who is not entitled to vote or participate from doing so, and that a person is not deprived of their vote by fraudulent means. This will not be an easy balance to achieve. The framework should also make provision for there to be transparency and access to the technology being used, for

example, the use of open source software and compliance with international standards.

*In-person voting*

- 10.3. We have commented earlier in this paper on the current arrangements for the review of polling districts and places and the provision of polling stations.
- 10.4. International observers continue to question the lack of any requirement to produce identification at the point of voting in-person at a polling station. It remains a potential vulnerability in the electoral process in Great Britain. In Northern Ireland, voters are required to produce pictorial identification at the polling station. The law reform project provides an opportunity to consider this issue further. In doing so the role of the prescribed questions should also be considered. The format of the prescribed questions has become increasingly complex and, if retained, ought to be reviewed and simplified.
- 10.5. If there is to be no requirement to provide a signature in polling stations then we believe the utility of corresponding numbers lists should be reconsidered, particularly in relation to the management of these at combined polls.
- 10.6. Further to our earlier comments about the debate to be had in relation to the level of detail in secondary legislation, paragraph 3.102 gives as an example of the current level of prescription the description of the tactile voting device to be used by visually impaired voters; "The device is described down to the smallest detail in secondary legislation."
- 10.7. It is a requirement of current electoral law to have a device in every polling station. At present, the statutory provisions leave no leeway to Returning Officers in providing this equipment yet every other piece of equipment used in polling stations is not specified in any detail. We believe that a better approach to this issue would be for the law to specify the objective of what the equipment is meant to achieve rather than the means itself.

### *Absent voting*

- 10.8. It is the extensive access to absent voting arrangements that has generated considerable media coverage and public concern in relation to the potential for electoral malpractice.
- 10.9. Although the requirement for personal identifiers to be provided and checked provides a measure of security within the system, many administrators are concerned about the barrier that this can present for some voters who are disenfranchised because they may have made a mistake in completing the security statement. The AEA welcomes the UK Government's intention to provide statutory officers with the power to follow up where this occurs.
- 10.10. However, we remain concerned about the signature waiver in relation to the provision of personal identifiers and we believe that this should require attestation in the same way as proxy applications.
- 10.11. The role of political parties in producing absent voting application forms and in returning completed postal ballot packs should also be considered. At present, there is a code of conduct agreed by the main political parties but that is not binding.
- 10.12. The ability for anyone who wants to produce an application form to do so has the potential to undermine any efforts at ensuring accessible and consistent election forms, can create problems in the processing of such forms in order to give effect to the application, and has resulted in incorrect or less than helpful information being provided to electors. We commented on one such situation in relation to the 2011 UK-wide referendum<sup>17</sup>.

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<sup>17</sup>[http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_referendum\\_report\\_2011.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_referendum_report_2011.pdf) , p 76 - 81

### *Ballot papers*

- 10.13. We have raised the issue of the design of forms and notices earlier in this response. A particular area for consideration is the design of ballot papers which ought to be as consistent as possible (to support voter familiarity with their operation) and be subject to usability testing.

## **11. Question 9 - Polling day**

*Should the scope of the reform project include consideration of the rules on polling day?*

- 11.1. The AEA agrees that the scope of the reform project should include consideration of the rules on polling day. See also our comments above on the manner of voting (Question 8).
- 11.2. One particular issue requiring careful consideration is that of the arrangements for the close of poll. The Electoral Commission has called for a change which would allow any eligible voters in the queue at a polling station at the close of poll to be allowed to vote. Whilst the AEA understands and supports the aim of ensuring that eligible electors can vote, we do have concerns about the implications of such a change.
- 11.3. As a general principle, the AEA believes that any changes to the drafting of the legislation and the existing arrangements must be clear and unambiguous in terms of the requirements and their practical application. The arrangements should be capable of being clearly communicated, understood and accepted by voters. In addition, they should be capable of being understood and applied consistently and fairly by polling staff whether in an urban or rural setting without compromising their neutrality and safety.
- 11.4. The potential impact on the processes which follow the close of poll would have to be thoroughly examined and tested to ensure that any changes would not result in unintended consequences.

- 11.5. The poll must close at some point and, for the avoidance of doubt, the legislation ought to set out clearly what must happen at that point. It may be that clarification of the existing provisions would address the concerns raised and enable a clearer understanding of the arrangements on the part of polling station staff, campaigners and voters.

## **12. Question 10 - Determining and declaring the result**

*Should the scope of the reform project include consideration of the rules for determining and declaring the result?*

- 12.1. Yes. A great deal is made of the timing of election counts and the length of time taken to declare results. However, the AEA believes that the primary objective of the administration of the verification and count at any election must be to ensure the quality of decision-making in order to achieve an accurate result. As we have previously noted, timeliness of the result is one of a number of key principles that should underpin good practice in the conduct of the count, along with transparency, security, professionalism, accuracy, secrecy, accountability and equity<sup>18</sup>.
- 12.2. In our response<sup>19</sup> to the Electoral Commission consultation on the timing of election counts, we emphasised the need for decisions on election counts to support the delivery of an accurate result in which all participants in the election and the wider public can have confidence. This was reflected in the Electoral Commission report published in July 2012<sup>20</sup>.
- 12.3. The legal framework for elections and referendums must allow sufficient time for such decisions to be taken well in advance of the events to which they relate. Uncertainty caused by late legislation, late confirmation of the detail of fees and charges,

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<sup>18</sup> ACE Electoral Knowledge Network; <http://aceproject.org/ace-en/topics/vc/vc20> ; cited in the AEA's 2010 election report: [http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_report\\_final\\_PUBLICATION.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf)

<sup>19</sup> [http://www.aea-elections.co.uk/downloads/consultations\\_and\\_responses/aea\\_response\\_timing\\_of\\_the\\_count\\_feb\\_2012.pdf](http://www.aea-elections.co.uk/downloads/consultations_and_responses/aea_response_timing_of_the_count_feb_2012.pdf)

<sup>20</sup> [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0003/149511/Timing-of-election-counts.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0003/149511/Timing-of-election-counts.pdf)

and late decisions on which events will take place on a particular date do not support effective decision making and planning processes.

- 12.4. In addition, where there are complex combination arrangements the legislative framework for elections should recognise that commencing the counting of votes within a few hours of the close of poll is unlikely to be achievable because of the increased complexity in relation to verification processes particularly where a number of different electoral areas (or parts thereof) are involved and therefore a number of different statutory officers.
- 12.5. The importance of the verification process cannot be overstated and should form a key area in terms of the review's consideration of the rules for determining and declaring the result.
- 12.6. We note the reference in the scoping consultation paper (paragraph 3.155) to the use of technology to support the counting of the votes at the Mayoral and Assembly elections in London. E-counting is also used to count the votes at local elections in Scotland. With the increasing use of different electoral systems other than first-past-the-post, the learning from London and Scotland and the relevant rules should be utilised to establish a consistent framework for e-counting.
- 12.7. In general, we believe that the legislative framework should be sufficiently flexible to allow for the potential future use of technology to support count processes, particularly those dealing with multi-member vacancies such as parish councils etc.

### **13. Question 11 - Election timetables**

*Should the scope of the reform project include consideration of the timetables for elections?*

- 13.1. In our 2010 report, we emphasised the need for the statutory election timetable for UK Parliamentary elections (General

Elections and by-elections) to be reviewed in the context of a wider review of election timetables, with the aim of achieving consistency across all elections and lengthening the current UK Parliamentary General Election timetable.

- 13.2. Whilst the AEA recommended that the statutory timetable for all elections should be 30 working days, the AEA welcomes the provisions within the *Electoral Registration and Administration Bill* currently in the UK Parliament which proposes lengthening the Parliamentary timetable to 25 days.
- 13.3. Even though this will bring the Parliamentary timetable into line with the local government timetable in terms of its length, this will not achieve consistency with all other election timetables, such as those for elections to the Scottish Parliament and Mayoral and Assembly elections in London, for example. Where there are necessary differences, for example to support the provision of booklets containing candidates' addresses, these will need to be incorporated into the reformed timetable for elections and referendums.
- 13.4. The law reform project should further consider the relationship between the various deadlines within the timetables for all elections and referendums to ensure that these are compatible, work well for voters, and are deliverable in terms of the effective administration of the poll.
- 13.5. Further, the reform and consolidation of electoral legislation provides an opportunity to draw together the various deadlines that currently do not appear in the timetable as it is presented in Part 1 of the *Parliamentary Election Rules* (PER) or in other elections rules. The registration and absent voting deadlines are contained in both primary and secondary legislation and currently need to be imported into the election timetable for it to make sense as a whole. Similarly, the deadline for the appointment of polling and counting agents are contained within election rules but do not appear in the election timetable.
- 13.6. The impact on the election timetable of the implementation of Individual Electoral Registration will need to be considered,

including the relationship between the deadlines (both dates and times) for registration and postal vote applications. This will need to take account of any objections period which currently results in some postal votes being required to be despatched just five working days before polling day.

#### **14. Question 12 - Combination of polls**

*Should the scope of the reform project include the combination of elections?*

- 14.1. Yes, and the scope should include the combination of elections with referendums. The localism agenda is likely to generate an increasing number of referendums and polls which are also likely to be combined with elections with the aim of reducing costs.
- 14.2. Combination is a key area in terms of generating legislative and practical complexity and is increasingly a critical factor in the administration of elections and referendums. In turn, this impacts on the experience of all those participating in the events. The legal framework should attempt to establish and recognise that there is a limit to how many electoral events can be delivered on the same day without overloading administrators, voters and campaigners.
- 14.3. The impact of combination on election communications and stationery should be included within this consideration. For example, how many ballot papers can be combined within a single postal ballot pack before it becomes unwieldy both to produce and distribute, and for the voter to use effectively to cast their votes?
- 14.4. We believe that, in its examination of combination, the project should take a wide view including the implications of holding multiple polls on the same day, as well as the specific rules governing the combination of polls. Throughout this response, we have highlighted a number of scenarios and issues arising from combination.

## **15. Question 13 - The election petition and election courts**

*Should the scope of the reform project include the process of challenging elections?*

- 15.1. Yes, the AEA believes that the current arrangements have not moved with the times, and would benefit from a robust examination.
- 15.2. In 2010, we reported our concerns about the shortcomings of the petitions process particularly in terms of the time it can take to resolve challenges to an election. This also raises an important issue regarding access to the process, particularly where the complaint does not necessarily affect the outcome of an election and we suggested an alternative, local system of accountability that might be considered in such circumstances<sup>21</sup>.

## **16. Question 14 - Electoral offences**

*Should the scope of the reform project include consideration of electoral offences?*

- 16.1. Yes, for the reasons set out in the scoping consultation paper.
- 16.2. In addition, there are offences relating to the returns of election expenses by candidates that should be reconsidered particularly in respect of parish and community elections. If it is considered that it is a serious offence not to make a return, then this should be acted upon so that the consequences have real meaning. This is not currently the case, which begs the question of whether the offence and the penalty are set at an appropriate level.
- 16.3. A number of offences, such as undue influence and treating, use out-of-date language and terms which are unlikely to be well understood. Offences should be expressed in language which is understandable by all those who have an interest in

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<sup>21</sup> [http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_report\\_final\\_PUBLICATION.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf) ; p 19-22.

the electoral process. It should be recognised that many of these participants are either independent (not supported by a political party structure) or are volunteers.

- 16.4. The imprint requirements are a good example of a significant offence within electoral law which is not always understood and with which a number of participants fail to comply (or to comply fully) seemingly inadvertently rather than by design.

## **17. Question 15 - National referendums**

*Should the scope of the reform project include consideration of the electoral administration of national referendums?*

- 17.1. Yes. Refer also to our comments in response to Question 4 on management and oversight, particularly in relation to the use of the power of direction. As noted earlier in this response, this power has a direct bearing on the legislative hierarchy to which the scoping paper refers in the introduction. The AEA considered the use and effect of this power in detail in our report on the 2011 referendums and elections. Further, there is a crucial question to be asked in relation to the management and oversight of PPERA referendums.
- 17.2. The scoping consultation paper reflected many of the recommendations and observations by the Electoral Commission in its reporting on the referendums in 2011. However, administrators and others have expressed concerns about whether it is appropriate for the body that has operational responsibility for the delivery of the referendum to report on the administration of that referendum; in effect, to report on its own performance. Where the Chair of the Electoral Commission takes on the role of Chief Counting Officer, there is effectively little or no separation of responsibilities.
- 17.3. In our 2011 report, the AEA set out constructive proposals for the future management and delivery of national and UK-wide referendums. We did so in order to inform the wider debate on a model for future PPERA referendums and we would expect

these to be considered as part of the Electoral Law reform project.

- 17.4. The scoping consultation paper also asks whether any generic referendum rules should deal with core referendum parameters - e.g. the franchise and referendum question. The initial view is that these should be left to the specific legislation proposing a referendum. This approach makes sense particularly in relation to the referendum question for any specific referendum as it will need to be tested to ensure that it is intelligible, unambiguous, balanced and not leading or misleading. However, it may be relevant to consider whether the Electoral Commission's guidelines for assessing referendums questions ought to be included within the legislative framework.
- 17.5. The impact of this approach on the administration of any referendum should also be recognised. Any such proposed legislation must be in place in good time before the referendum to which it relates, and we would expect this to adhere to the Gould principle of six months. Many of the issues and difficulties that we reported in relation to the referendums and elections in 2011 were as a result of uncertainty created by late legislation, including late confirmation of the date of the UK-wide referendum or even that it would take place at all.

## **18. Question 16 - Local referendums**

*Should the scope of the reform project include consideration of the electoral administration of local referendums?*

- 18.1. Yes. As already noted within this response, there is an increasing tendency to legislate for and use local referendums and polls as part of the localism agenda. These should be administered in line with consistent and accepted conduct rules. Currently, these are drafted separately as part of the event-specific approach referred to in the scoping consultation paper. These include neighbourhood planning referendums, for example. Such referendums may be combined with other elections and referendums and therefore need to be included in the scope of the law reform project.

- 18.2. Parish/Community polls should be included within scope. The AEA has raised a number of concerns that the statutory framework for these polls bears little resemblance to the current provisions for local elections or referendums. If they are to remain, this position needs to be corrected. However, there is a wider question as to whether they are necessary at all given the present local referendums regime. As a side issue, there is also the question of whether it is consistent with the principles of localism that only parished areas should have access to this device.
- 18.3. The consultation scoping paper indicates an initial view that 'ad hoc' referendums are akin to advisory polls and are being performed by commercial polling agencies on behalf of local authorities. This is not always the case and some of these referendums have a significant profile involving questions on substantive and often contentious issues within local authority areas, and potentially across wider areas.
- 18.4. The voter in such areas who is being asked to participate in such events will not recognise the distinction between these referendums and those provided for within electoral legislation nor should they be expected to. Confidence in the administration of such polls should be underpinned by the inclusion within the electoral law framework of a model for their conduct.

## **19. Conclusion**

- 19.1. The reform of electoral law is an undertaking of the utmost significance for the future of electoral administration in the UK. The need for reform is without question as we hope we have demonstrated in this response.
- 19.2. We welcome the scoping consultation paper published by the Law Commission for England and Wales, and the opportunity it presents in commenting on the matters to be included within the law reform project. We hope that this response is of assistance in shaping the scope and ambition of that reform

and look forward to working with the Law Commission as this matter proceeds.

**John Turner**  
**Chief Executive**

**Karen Quintmere**  
**Assistant Chief Executive**

**17 September 2012**

## **Appendix A - examples of issues relating to electoral boundaries and electoral areas**

### **1. The UK-wide referendum and combined polls in 2011**

- 1.1. The AEA's 2011 report set out the pragmatic arrangements that were put in place for the different parts of the UK in relation to the electoral areas to be used for the referendum<sup>22</sup>.
- 1.2. PPERA envisaged the Chief Counting Officer appointing all of the Counting Officers for the UK based on local government areas. However, arrangements were complicated as a result of the referendum being held on the same day as the polls for the national elections in Scotland, Wales, and Northern Ireland as well as various local elections in England and Northern Ireland. The complexity arose from the fact that different statutory officers and different electoral areas were involved.
- 1.3. This impacted on who would be the Counting Officer in the various areas and provisions were contained in the legislation specifically drafted for the referendum. If the Law Commission is to move away from event-specific legislation (and this would seem to us to be a sensible way forward), the issue of the administrative areas to be used at events and the relevant officers responsible for conduct will need to be addressed.

### **2. Reviews of the boundaries and electoral arrangements for local government elections in Wales**

- 2.1. In Wales, an independent review was commissioned to examine the electoral reports and electoral review processes as conducted by the Local Government Boundary Commission for Wales - the 'Mathias review'<sup>23</sup>.
- 2.2. In January 2009, the Minister at the time directed that the electoral reviews should be completed by June 2011 to allow

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<sup>22</sup> [http://www.aea-elections.co.uk/downloads/reports/aea\\_election\\_referendum\\_report\\_2011.pdf](http://www.aea-elections.co.uk/downloads/reports/aea_election_referendum_report_2011.pdf) ; page

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<sup>23</sup> <http://wales.gov.uk/docs/ds1lg/publications/localgov/110620mathiasreport.pdf>

orders giving effect to the new electoral arrangements to be made in time for the 2012 elections.

- 2.3. The report sets out that (on 8 December 2010) the decision was taken not to make any orders implementing any of the recommendations in the electoral reviews completed to date before the 2012 local government elections because it was clear that not all the reviews would be completed in time.

### **3. Cornwall**

- 3.1. The new Cornwall Council was created as a result of a process to consider unitary local government in England. At the time that decision to approve unitary status was made, no decision had been reached about the timing of the elections to the new authority. The Council was vested from 1 April 2009.
- 3.2. On 19th February 2009, the Department for Communities and Local Government (CLG) indicated that a draft order would be laid before the UK Parliament to provide for the necessary electoral arrangements for the new Council and for the first elections to be held on 4th June 2009. The letter indicated that the electoral arrangements would be based on the Boundary Committee's draft proposals, namely, 123 divisions.
- 3.3. The location of polling stations for these elections was settled by a review of polling districts and places and approved by members of the Implementation Executive in March 2009. A formal review of this nature is likely to take around 6 months to allow for proper consultation and consideration. In Cornwall, this had to be done in less than one month given that the scheme needed to be in place by no later than 1st April.
- 3.4. In this connection, it should be noted that the statutory order bringing the new 123 divisions into place (and which was based on draft proposals from the Boundary Committee which had not been through the full procedure) was not made until 30th March and did not come into force until the following day, i.e. one day before the polling scheme had to be in place to ensure that the

proper polling arrangements could be made for the June elections.

- 3.5. In practical terms, this gave the Returning Officer and his staff not much more than three months to plan for and deliver elections on completely new boundaries. The decision to hold the elections on draft new arrangements with such short notice was not at all conducive to the proper planning that is necessary for an event of this nature.

#### **4. New local government boundaries coming into force during the annual canvass in 2012**

- 4.1. One authority has indicated that it has significant electoral division boundary changes which come into force on 15 October 2012. Although the electoral divisions will change on that date the existing Councillors will still represent the former divisions which no longer exist.
- 4.2. In 2012, as a result of a Secretary of State direction, the revised electoral register will be published on 16 October. The revised register will be based on the new boundaries. The same situation would arise if the revised register were published by 1 December as is usually the case.
- 4.3. Under existing legislation<sup>24</sup> the Councillors will not be entitled to the relevant part of the revised register based on the new electoral divisions until they stand as 'candidates' at the next scheduled elections. This is not satisfactory from the viewpoint of councillors being expected to represent their constituents' interests.

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<sup>24</sup> This is *implicit* in that regulation 103(1)(d) (*Representation of the People (E&W) Regulations 2001*) specifies that the relevant part of the register should be supplied to each councillor for an electoral area. As the councillors represent areas that no longer exist they cannot be supplied with the relevant part of the register for the new areas. They do not represent those new areas.

## 5. New elections and referendums

### *Neighbourhood planning referendums*

- 5.1. Looking forward, the creation of neighbourhood planning referendums for residential and for business areas renders the boundaries and therefore the administrative areas to be used for those events to be a somewhat moveable feast. The polls at these referendums can be combined with the polls at any other elections.
- 5.2. In our response to consultation on draft regulations for the residential planning referendums, we noted that the process for triggering a referendum is set out in the *Localism Act 2011*. An examiner must make a report on a draft neighbourhood planning order and this report may contain a recommendation that the draft order is submitted to a referendum. In such cases, it must also make a recommendation as to whether the area for the referendum should extend beyond the neighbourhood area to which it relates and what that area should be [Schedule 10, 10]. Schedule 9, part 2, 7(3) applies similar arrangements for the examination of proposed neighbourhood plans and provision for holding referendums on these.
- 5.3. The local planning authority then considers the recommendations and, where it is satisfied that the draft order meets certain prescribed conditions (with or without modifications), a referendum must be held. The area in which the referendum is (or referendums are) to be held must, as a minimum, be the neighbourhood area. The decision as to whether to extend the area for the referendum rests with the authority and, if they decide to do so, they must publish a map of the area, and send a copy to the 'qualifying body' (a parish council or an organisation designated as a neighbourhood forum) and 'such other persons as may be prescribed'.
- 5.4. Defining the electoral area in relation to business referendums brings with it a separate set of issues, not least the fact that electoral registers are based on residential properties and the qualification of 'residency' within the existing franchise.

### *Direct elections to National Park Authorities*

- 5.5. Defra has recently consulted (consultation closed on 31 May 2012) on whether there should be direct elections to National Park Authorities and whether these should be piloted.
- 5.6. The AEA submitted a formal response<sup>25</sup> raising a number of issues relating to the boundaries and electoral areas for any proposed elections. In particular, we noted a lack of clarity on who will do the work on establishing boundaries (including warding) for these elections, nor is there any estimate of timescales for doing this work. We questioned whether the wards would be coterminous with any local government boundaries and the principles (beyond one member warding) that would underpin the boundary work.
- 5.7. Establishing boundaries is always a complex issue often with a diversity of local views on what should or should not be included in any given area and so the questions we raised are significant. For this reason, we argued that the work ought to be undertaken by an independent body and there should be a period of public consultation on any proposed boundaries. In the event of direct elections being rolled out to other National Park Authorities, there would also need to be clear rules in place as to how boundaries are to be created and how future reviews are to be undertaken.
- 5.8. In our response, we noted also that AEA members have raised concerns about the feasibility of establishing polling districts on the fringe of the National Park Authority areas. In some cases, there are local authorities with only part of a number of polling districts within the National Park Authority area, some containing as few as three properties. Establishing an area of that size in terms of eligible electorate as a polling district for the proposed elections, each with its own polling station, would not be efficient or cost-effective.

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<sup>25</sup> [http://www.aea-elections.co.uk/downloads/consultations\\_and\\_responses/aea\\_response\\_nat\\_parks\\_elections\\_may\\_2012.pdf](http://www.aea-elections.co.uk/downloads/consultations_and_responses/aea_response_nat_parks_elections_may_2012.pdf)

5.9. In conclusion, we emphasised that sufficient time should be allowed for the necessary changes to electoral registration software to incorporate the new electoral areas and to ensure the correct parts of the registers from the various local authority areas are prepared and provided for the elections.