



# THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

## Formal response to the National Assembly White Paper: "Promoting Local Democracy"

### 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 1751 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 National Assembly for Wales (NAW) issued the White Paper “Promoting Local Democracy” (the Paper) on the 17 May 2012 and consults on a number of issues, some of which are pertinent to this Association and its members. In short these are: -
- The future of the Local Government Boundary Commission for Wales.
  - Future funding for NAW elections, in particular payments to local government officers.
  - The implications of Individual Electoral Registration in Wales and the impact on elector numbers in the run up to the 2016 NAW elections.
- 1.6. In responding to this consultation and, in accordance with the AEA’s non-partisan and neutral position, this response focuses on the implications for electoral administration of the issues raised by the consultation.

## **2. Local Government Boundary Commission for Wales**

2.1. The Association strongly welcomed the Mathias Report into the Local Government Boundary Commission for Wales and endorsed the proposals within. The Association has also welcomed the actions of the Minister for Local Government and Communities for his actions to date, in response to the Mathias Report.

2.2. We respond to the consultation questions as appropriate below:

**Question 1:** *Do you agree with the Commission being renamed as the Local Democracy and Boundary Commission for Wales?*

**Response:** The name of the organisation is not particularly important; however, what it does and the way it goes about it is paramount. We recognise that it may be seen as helpful to draw

a line under past events by effectively re-branding the organisation.

**Question 2:** *Do you agree with the Commission's quorum being increased to three, with the appointment of a Chair, Deputy Chair and two other members becoming the norm?*

**Response:** The AEA welcomed the appointment of the Interim Commissioners, who have between them a wealth of Local Government experience. The AEA strongly supports the recommendation of the Mathias report that, at any given time, at least two of the Commissioners have direct experience at a senior level of running elections or other local government experience at a corporate management level.

**Question 3:** *What are your views on the appointment of a reserve member?*

**Response:** With a new team of Commissioners being appointed at the same time, there is a real danger that they could exit the Commission at roughly the same time, taking with them their existing knowledge and experience gained in the role. A reserve member could help to bridge that problem, acting as a "Commissioner in Waiting" so to speak. It would also help to ensure that the work of the Commission was not held up by the absence of two Commissioners for any length of time.

**Question 4:** *Do you agree that the provisions set out at section 7.3 of the Welsh Government's Welsh language scheme are appropriate with regard to appointing members to the Commission?*

**Response:** It is important that the best possible candidates are appointed to fulfill the role of Commissioners in terms of their previous local government and electoral experience. The AEA offers no view on linguistic ability being a consideration so long as it is not considered to have more primacy than the two elements of experience mentioned above.

**Question 5:** *What are your views on the Commission having the power to appoint persons to provide expert advice, together with the power to pay any such persons?*

**Response:** It is important that the Commission has the necessary freedom to conduct its affairs and therefore discharge its statutory responsibilities, in an open and transparent manner. It has to be recognised that there will be instances when the Commission may need additional advice and guidance and it would be appropriate for whoever provides that service to be paid. This would be no different to a local authority taking advice from Counsel over complex legal issues.

**Question 6:** *Do you agree that the Commission should consider consequential changes to electoral arrangements (the numbers and distribution of councillors) when recommending changes to local government areas?*

**Response:** The success, or indeed failure of any review, will be measured by its outcome, which is ultimately the election of local councillors. It is imperative therefore that due consideration is given to electoral arrangements when recommending changes to local government areas.

**Question 7:** *Do you agree that the Commission should inform the Home Secretary of any recommendations which affect the boundaries of a police area?*

**Response:** The establishment of Police and Crime Commissioners has led to the establishment of a new set of electoral boundaries, which, unlike others, are not currently subject to review by the Commission. Following the Local Government Wales Act 1994 and the consequential reorganisation of local government into unitary authorities, it was ensured that no Police Force Area crossed a preserved County Boundary. For example, the former Rhymney Valley District, which had been in Mid Glamorgan, became part of the Gwent preserved County on its merger with the former Islwyn Borough Council. It was thereafter policed by Gwent Constabulary. Therefore, police force areas have remained

coterminous with one or more preserved county boundaries. Coterminosity supports the effective administration of elections within those areas. It is essential therefore that a mechanism is evolved that allows such changes to continue, presumably on the periodical review of the boundaries of the preserved counties. At this point the Home Secretary should not only be informed of any proposed changes but also be a statutory consultee.

**Question 8:** *Once notified of a forthcoming electoral review, should a principal council be required to ensure that its communities have been recently reviewed to the satisfaction of the Commission?*

**Question 9:** *If a principal council does not follow the guidance, should the Commission be empowered to carry out the review and charge the principal council for doing so?*

**Question 10:** *What are your views on the Commission being empowered to issue guidance to the principal council on the timing and process of community reviews together with the principles to be followed?*

**Response:** Past problems in this area have resulted from the need of the Commission to use community wards as the basic building blocks for the principal council review. In mainly rural and semi rural areas, community councils ('communities') are normally functional for the entire principal council area, with appropriate warding arrangements in place. Reviews of such communities are usually community led, resulting in sensible proposals.

In more urban areas however, large parts, although designated as communities, have no community council or community meeting, the community boundaries usually being coterminous with the principal council electoral divisions and with no warding arrangements in place. The principal council might find it difficult to review such communities as they would be effectively pre-empting their own review and could be accused of gerrymandering its own boundaries. This would suggest that some degree of external control would be desirable.

There is however a more practical approach, which is indirectly suggested in questions 14 and 15:

**Question 14:** *Should the Commission be able to propose electoral divisions which straddle community boundaries?*

**Question 15:** *Should the Commission be able to propose changes to community boundaries as part of an electoral review?*

**Response:** By following the proposals in questions 14 and 15, the principal council review could effectively be carried out prior to the community review. The resulting proposals could then be used to advise the community review, with the local authority deciding on appropriate arrangements for existing communities, within the new electoral division framework.

For example, if the Commission proposed moving polling district 1 from electoral division A, (which was coterminous with Community A), to division B, the resulting move would create a new Community Ward which initially would still be part of Community A. As part of its review, the principal council would decide, in consultation, whether the new community ward should remain as part of Community A, or be moved to Community B.

In reality, much of this work would be carried out jointly by the Commission and local authority staff simultaneously, but leads in to question 11:

**Question 11:** *Should the Commission be granted order-making powers in relation to community reviews carried out by principal councils?*

**Response:** It would be sensible for the orders to be made by the Commission as these tend to be only small alterations to existing communities, usually with the backing of that community.

**Question 12:** *What are your views on the Commission operating a continual cycle of electoral reviews, commencing in 2014, with a timetable for a ten year cycle of reviews being produced?*

**Response:** It would make sense to split the work over a defined period, however it would be useful if interim reviews could be carried out, either at the request of the principal council or on petition from a set number of electors, to address local issues that could arise over a ten year period.

**Question 13:** *When fixing boundaries should local community ties have equal importance to achieving a target ratio of electors to councillors?*

**Response:** The AEA believes that it is important to recognise strong community ties in determining electoral boundaries. On that basis, it should have equal importance to the principle of achieving a target ratio.

**Question 16:** *Should the Commission identify and publish, as part of its consultation prior to an electoral review, the number of councillors it considers appropriate for each principal council?*

**Response:** In principle, the number of councillors ought to be determined as part of the review process, taking into account demographic and other changes that have or will affect the council area over the ten year period of the review. However, the AEA recognises that the arrangements in other parts of the UK now reflect a situation where an indication of the likely number of councillors is available at the start of the process. On that basis, the AEA suggests that it is important to reach a conclusion on the methodology to be used in relation to this issue so that all reviews are conducted in the same way.

**Question 17:** *Should Welsh Ministers be required to consult with the Commission before Ministerial directions are issued?*

**Response:** Yes, it is essential that the Commission and Welsh Ministers establish effective communication channels to avoid the problems of the past.

**Question 18:** *Should the Commission and principal authorities be empowered to require the council for the local government*

*area under review to provide them with information relevant to the review?*

**Response:** The Commission should establish a data gathering list, to be provided at the start of a review, with clear guidelines of what is required and by when. This would better support local authorities in providing the necessary information as it may not always be possible for a principal or local council to provide the Commission with ad hoc information at short notice. In addition, it should be recognised that information is not always held in the format the Commission require. Where it would be unreasonable for the council to create the required data they should be able to provide it in the format in which they hold it, giving the reason why.

**Question 19:** *Do you agree with the Commission being able to provide draft proposals or orders in electronic format only?*

**Response:** In the interests of ensuring access to the proposals arrangements ought to be in place to also provide the draft proposals and copies of relevant documents for inspection locally.

**Question 20:** *Do you agree that the Commission, or principal council, should describe within their proposals, the steps they took to consult and how they responded to the representations received?*

**Response:** In the interests of transparency, the consultation scheme, the responses to it and the methodology employed in terms of such responses should be available to reassure those that responded that their comments had been considered.

**Question 21:** *Should an organisation that conducted a review of any kind which resulted in a change to local authority areas be placed under a duty to inform Ordnance Survey, and any other persons or organisations which may be prescribed, once the changes have been made?*

**Response:** Agreed

**Question 22:** *Do you agree with the proposal to remove the regulatory power within section 60(6) of the 1972 Act to prescribe the procedure for reviews?*

**Response:** Agreed. However, it is vital that a clear methodology is set out ahead of reviews so that all stakeholders understand the process to be followed.

**Question 23:** *Should Welsh Ministers have the power to make other public bodies whose membership includes elected councillors (e.g. fire and rescue authorities, local health boards), subject to review by the Commission?*

**Response:** Agreed, please see response to question 7 above.

### **3. Electoral Issues**

- 3.1. In examining the issues surrounding the delivery of electoral services, including the remuneration of staff for services provided, one needs to look at the current arrangements, in part, from a historical context.
- 3.2. Prior to the Representation of the People Act 2000 (RPA 2000), the Electoral Registration Officer (ERO) and his/her staff would conduct the annual canvass of electors between August and February, with preparation works carried out in June/July. The new register would be published on the 15 February, prior to any May elections.
- 3.3. Once the register was published, there was a claims and objections process which resulted in a small number of changes between canvass periods. Therefore, the ERO's staff could direct their attention to that year's elections, under the management of the (Acting) Returning Officer, who was often the same person as the ERO. There were also fewer elections and referendums than is currently the case and the number are likely to increase further given current proposals, e.g. elections to the House of Lords.
- 3.4. Prior to 2001, postal voting numbers were comparatively low at around 2%, with electors requiring an attested application for a

permanent absent vote. Staff were able to devote themselves purely to the election, without the ongoing workload of electoral registration.

- 3.5. Post 2001, the RPA 2000 introduced rolling registration, which requires EROs to provide registration services throughout the year, either at the annual canvass or at a series of nine monthly updates. These applications have to be processed daily, as a strict time deadline applies to the granting of applications, including (following the Electoral Administration Act 2006) through an election period deadline for applications at 11 days before polling day. The RPA 2000 also provided for absent votes on demand, which saw postal voting numbers shoot up to around 15% fairly quickly.
- 3.6. As a result of this dramatic increase, the Electoral Administration Act 2006 introduced measures to combat postal voting fraud, namely the collection and checking of personal identifiers (signature and date of birth), which again added greatly to the workload of Electoral Administrators.
- 3.7. As can be seen, daily registration tasks now have to continue throughout the election period, while the postal voting procedures have become one of the most significant and time consuming parts of the process.
- 3.8. Prior to 2001, Returning Officers were paid a fee for conducting the election, and could claim the costs of all other necessary charges, including the employment of staff for polling stations, postal vote issue and receipt, poll card issue and count staff and the cost of premises and the count.
- 3.9. While the Returning Officer's fee has not changed dramatically, the sum of money required to administer the election has, mainly due to the costs of delivering the postal voting process and associated anti-fraud measures. A revised system of funding was introduced at the European Parliamentary elections in 2009, giving Returning Officers a finite budget (a 'maximum recoverable amount') within which the election has to be delivered.

3.10. This brings us to question 35:

**Question 35:** *Do you agree that a local government officer should not receive payment under the terms of a Returning Officers' fees and charges order whilst also receiving remuneration for the same period of time from their local authority?*

**Response:** It is difficult to provide a formal response to this question without having further information as to how the NAW envisage elections being successfully run without the involvement of local authority staff.

This question is at best unhelpful in its over simplified summary of how and why payments are made to election staff and at worse dangerous, with severe implications for the delivery of electoral services.

Arrangements for funding electoral administration including elections to various bodies, and referendums, are complex and lack coherence. This is primarily because the existing arrangements have evolved over time, are event-specific, and because a number of different funding bodies may be involved particularly as more elections are held on the same day as combined polls.

We have set out below a summary of the wider issues and context relating to the funding of elections in order to inform consideration of the consultation question.

Firstly, the role of the Returning Officer has to be clarified. Although appointed by the local authority, the Returning Officer acts as an independent entity, not answerable to his/her appointing authority, but to the Courts. The Returning Officer is clearly paid a **fee** not a **wage** for conducting elections and as the Electoral Commission remind us from time to time, even if all parts of the process could be contracted out, the responsibility for the delivery of the election remains steadfastly with the Returning Officer and the fee is paid for that duty and responsibility.

Next we have to consider how the RO obtains his/her major resource – staff. In the case of NAW elections, Section 19 of the National Assembly for Wales (Representation of the People Order 2007) states:

**“19.—(1)** The council of each county or county borough shall place the services of its officers at the disposal of any constituency returning officer for an Assembly constituency wholly or partly situated in its area.

(2) The services placed at the disposal of a constituency returning officer under paragraph (1) may relate to the exercise of that officer’s functions in connection with a constituency election, a regional election or both such elections.

(3) The council of each county or county borough shall also place the services of its officers at the disposal of any regional returning officer for an Assembly electoral region partly situated in its area.”

While section 19 clearly provides for the use of the council staff, it is silent on payment to those staff. Section 26 (1) of the Representation of the People Act does however give an indicator:

**“26.\_\_\_\_ (1)** The Returning Officer shall appoint and pay a presiding officer to attend at each polling station and such clerks as may be necessary for the purpose of the election, but he shall not appoint any person who has been employed by or on behalf of a candidate in or about the election.”

A similar provision exists in the Rules for NAW elections, Schedule 5 of the Assembly Order states:

**“35.—(1)** At an Assembly election the constituency returning officer shall appoint and pay a presiding officer to attend at each polling station and such clerks as may be necessary for the purposes of the election, but he shall not appoint any person who has been employed by or on behalf of—

(a) a candidate; or  
(b) a registered political party,  
in or about the election.

(2) At a regional election the regional returning officer shall appoint and pay such clerks as may be necessary for the purposes of the election, but he shall not appoint any person

who has been employed in the circumstances described in paragraph (1)(a) or (b).”

This clearly places a responsibility on the Returning Officer to pay the staff taken from the local council, or indeed any other source, to conduct the election.

If local authority staff were prevented from being paid by the Returning Officer while being paid by a local authority, this could impact in a number of ways, depending on interpretation. Two major scenarios could be:

1. Local authority staff working in electoral services or any other section of the council would be effectively prevented from doing election work during their normal hours of employment, because to act as a clerk at the election you have to be paid by the Returning Officer (see above). This would prevent staff from helping candidates with nominations and other queries, members of the public with queries about the election and any other body requiring information, for example, the Electoral Commission. A huge burden would be placed upon that small number of core staff in electoral services to then conduct election duties outside of normal working hours. Given the volume of work involved, it is highly likely the election could not be delivered.
2. The Returning Officer depends on experienced staff to act as presiding officers. Before being appointed as a presiding officer, most will have been appointed as a poll clerk on at least three occasions and have attended the compulsory training sessions. If a presiding officer was employed by the local authority, it would appear from clarification given at the Electoral Commission Post Election Seminar held in Merthyr Tydfil on 29 May 2012, they would no longer be able to work for the Returning Officer as, even if they took annual leave, they would still be in receipt of a payment. It is highly unlikely that anybody would be prepared to work as a presiding officer or poll clerk and take unpaid leave for the day in question. Again, it is unlikely that the election could be delivered.

At present, core election staff are paid in a variety of ways, ranging from an ex-gratia payments from the Returning Officer through to staff only being paid for "out of hours" work, at appropriate rates of pay.

Staff conditions of service also vary, with some having it clearly stated in their particulars of employment that a separate fee is payable for the conduct of elections. In effect, the particulars imply that, while the substantive post requires the post holder to carry out election work, there is no salary element paid by the employer. In extreme circumstances, some have no reference to election work and, in the event of fees being withdrawn, could result in the staff being unwilling to undertake election work without a change to their particulars of employment.

We understand that many staff are still employed on grades unchanged since 1996. However the complexity of the election work they are expected to undertake during their normal working day has increased dramatically, in particular, with the increase in volume of postal voting and the introduction of personal identifiers. This has resulted in staff currently employed at scale 2 or 3, for example, carrying out the duties of a scale 6 or SO1/2. Because the workload is temporary, local authorities are unlikely to accept it as grounds for a permanent re-grading and rely on payments made to these staff from election funds to compensate them appropriately.

Core staff are required to work extremely long hours for up to six weeks before an election, many are effectively required to waive their rights under the Working Time Regulations and are unable to take annual leave during this period with the consequential effects on domestic arrangements.

Notwithstanding the implications of the first example above, it is likely that whatever arrangements are eventually agreed upon, election work would have to be carried out in normal working hours. It is only fair and reasonable therefore that local authorities should be fully recompensed for this time and resource commitment including on-costs by the body funding the

election, for example, NAW in the case of Assembly elections. With the increased use of call centres to handle poll card and postal voting enquiries, these could amount to significant sums.

Any system of payments made to local authority staff for additional duties they have undertaken in order to deliver the election (or referendum) should quite properly ensure that the arrangements are fair and transparent and are able to withstand scrutiny. It is equally important that all staff working on the election are remunerated for their work and efforts and at appropriate rates for out of hours work.

It should also be noted that core electoral services provision within local authorities is funded and resourced at widely differing levels. This is particularly pertinent in the current environment where local authorities are cutting budgets. Given the challenges facing electoral administration over the next few years, this is an area of considerable concern.

The AEA continues to recommend<sup>1</sup> that the funding and resources required to deliver core professional electoral services should be reviewed with the aim of delivering a coherent and efficient structure, cost effectiveness over time, and ensuring that funding for new responsibilities/burdens reaches electoral services. This is an important area in terms of the delivery of effective and efficient electoral administration which is why we believe that any changes should be the subject of a comprehensive review and properly debated. We would welcome the opportunity to engage with the NAW on this subject and to contribute further to this debate in Wales.

#### **4. Individual electoral registration**

- 4.1. The AEA welcomes the inclusion of this issue within the consultation. As indicated above, there are a number of challenges facing electoral administration over the period up to 2016 and the introduction of individual electoral registration is the most significant of these changes. It will fundamentally

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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)

change how electoral registration will be delivered by electoral services teams and how citizens are required to interact with the service.

**Question 36:** *What are your views on the potential use of funding mechanisms to reward efforts to improve registration levels?*

**Response:** It is accepted that there are genuine fears of a reduction in elector numbers following the implementation of individual electoral registration, particularly post the 2015 UK Parliamentary General Election, when EROs would be required to remove those electors not registered individually.

While the £108 million identified by the Cabinet Office to implement IER should assist in ensuring that there is no sharp drop off, any additional funding from the NAW would be more than welcome. As the detailed arrangements for the implementation of individual electoral registration unfold, we would welcome the opportunity to discuss with the NAW how any additional funding might best be deployed.

## **5. Conclusion**

- 5.1. This consultation raises some significant questions for the future of boundary and electoral arrangements in Wales, and in respect of the funding and resourcing of electoral events. The Association welcomes the opportunity to contribute to these important debates.

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**31 July 2012**