



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Formal response to the Law Commission – Electoral Law: A Joint Consultation Paper

1. INTRODUCTION

1.1. The Association of Electoral Administrators (AEA) was founded in 1987 and is the professional body representing the interests of electoral administrators in the United Kingdom. It is a non-governmental and non-partisan body and has some 1,846 members, the majority of whom are employed by local authorities to provide electoral registration and election services.

1.2. This paper sets out the AEA's views in relation to the questions raised in the consultation document published in December 2014.

1.3. The AEA's primary concern is about the effect of any proposed changes to the law which would impact on electoral registration and the administration of elections and which might arise as a result of the issues identified in the consultation paper. Any such changes would need to be carefully considered in terms of the practical implications and the way in which the changes would be introduced and administered.

2. ANSWERS TO SPECIFIC QUESTIONS

CHAPTER 2: LEGISLATIVE FRAMEWORK

Provisional proposal 2-1: The current laws governing elections should be rationalised into a single, consistent legislative framework governing all elections.

The AEA welcomes and fully supports this provisional proposal.

Provisional proposal 2-2: Electoral laws should be consistent across elections, subject to differentiation due to the voting system or some other justifiable principle or policy.

The AEA welcomes and fully supports this provisional proposal.

CHAPTER 3: MANAGEMENT AND OVERSIGHT

Provisional proposal 3-1: The ceremonial role, in England and Wales, of sheriffs, mayors, and others as returning officer at UK parliamentary elections should be abolished.

The AEA supports this provisional proposal.

Provisional proposal 3-2: Electoral law should set out the powers and duties of returning officers centrally for all elections.

The AEA supports this provisional proposal.

Provisional proposal 3-3: The functions, duties, and powers of direction of regional returning officers at elections managed by more than one returning officer should be spelled out.

The AEA supports this provisional proposal.

Question 3-4: What is the proper role of powers of direction by direction officers at combined polls led by another returning officer?

Powers of direction by direction officers at combined polls led by another returning officer can be a useful approach in ensuring consistency in the voter experience is achieved across the constituency/region. However, these should be limited and should be consistent with the EC performance standards for that election/referendum, and consistent across elections. Directing officers, regional returning officers, local returning officers and electoral registration officers need to be able to work together. The detail and precise nature of such a direction needs to be subject to consultation with the other returning officer/s in the constituency/region and agreed in plenty of time to allow sufficient time for the returning officer/s to plan and implement the directions issued. There is also an issue about the status of Borough ROs at GLA elections which needs to be addressed as part of this issue.

Provisional proposal 3-5: The designation and review of polling districts is an administrative matter which should be the responsibility of the returning officer rather than local authority councils.

The AEA supports this provisional proposal. All too often the local politics of an area can influence the designation of a polling district area or polling place. The returning officer (presumably UK Parliamentary) would be better placed to represent the geographical and community needs and would have an unbiased and apolitical opinion when allocating polling districts and places. The usual consultation process should be conducted with local political parties being included as part of the consultation process and also invited to comment on the returning officer's final proposals. The current arrangement for appeals being considered by the Electoral Commission should be retained.

Question 3-6: Should appeals against designations of administrative areas be to the Electoral Commission or the Local Government Boundary Commissions?

It may not be appropriate for the Local Government Boundary Commission to undertake these reviews as their knowledge and experience may not be transferrable for such appeals. As a result, it may be more appropriate for the Electoral Commission to carry out such appeals given its experience.

CHAPTER 4: THE REGISTRATION OF ELECTORS

Provisional proposal 4-1: The franchises for all elections in the UK should be centrally set out in primary legislation.

The AEA supports this provisional proposal.

Provisional proposal 4-2: The law on residence, including factors to be considered, and special category electors, should be restated clearly and simply in primary legislation.

The AEA supports this provisional proposal.

Provisional proposal 4-3: The possibility of satisfying the residence test in more than one place should be explicitly acknowledged in legislation.

The AEA supports this provisional proposal.

Question 4-4: Should the law lay down the factors to be considered by registration officers when registering an elector at a second residence?

Yes. With the factors included in legislation, this would make it clearer for the registration officer when determining applications from electors wishing to register at a second residence. Option 1 on page 55 appears to include the relevant factors that should be considered in relation to second residency.

Question 4-5: Should electors applying to be registered in respect of a second home be required to make a declaration supporting their application?

Yes.

Question 4-6: Should electors be asked to designate, when registering at a second home, one residence as the one at which they will vote at national elections?

Yes. The declaration needs to be made at the time of registration. As a result, legislation will have to allow for a franchise marker to indicate which residence they are entitled to vote at for national elections. In addition, consideration would need to be given in relation to the elector wishing to change their designation for national elections should they so decide. In such a case, the elector should be required to give reasons for the change. A suitable deadline date would need to be considered for the change to take effect at an election to allow details of the notification to the second ERO. This date should be before postal votes for an election are despatched.

Provisional proposal 4-7: Entitlement to be a special category elector should be governed by primary legislation which should require a declaration in a common form establishing a voter's entitlement to be registered at a notional place of residence; other administrative requirements should be in secondary legislation.

The AEA supports this provisional proposal.

Provisional proposal 4-8: The 1983 Act's provisions on maintaining and accessing the register of electors should be simplified and restated for Great Britain and Northern Ireland respectively.

The AEA supports this provisional proposal.

Provisional proposal 4-9: Primary legislation should contain core registration principles including the objective of a comprehensive and accurate register and the attendant duties and powers of registration officers, the principle that the register determines entitlement to vote, requirements of transparency, local scrutiny and appeals, and the deadline for registration.

The AEA supports this provisional proposal.

Provisional proposal 4-10: The deadline for registration should be expressed as a number of days in advance of a poll.

The AEA supports this provisional proposal.

Provisional proposal 4-11: Primary legislation should prescribe one electoral register, containing records held in whatever form, which is capable of indicating the election(s) the entry entitles the elector to vote at.

The AEA supports this provisional proposal. In addition, consideration should also be given to abolishing the open (edited) register. If this cannot be

achieved, then the name of the open (edited) register should be made clearer to the elector so that they are aware their name will be used for marketing purposes, for example, "electoral marketing list".

Provisional proposal 4-12: Secondary legislation should set out the detailed administrative rules concerning applications to register, their determination, publication of the register and access to the full and edited register.

The AEA supports this provisional proposal.

Provisional proposal 4-13: Registration officers' systems for managing registration data should be capable, in the long term, of being exported to and interacting with other officers' software, through minimum specifications or a certification requirement laid down in secondary legislation.

The AEA supports this provisional proposal. However, consideration would need to be given in relation to the resources and funding required to achieve this.

Provisional proposal 4-14: EU citizens' declaration of intent to vote in the UK should have effect for the duration of the elector's entry on the register, possibly subject to a limit of five years.

The AEA supports the provisional proposal subject to the declaration of intent to vote in the UK having effect for five years with the facility for the EU elector to cancel their declaration. However, limiting the declaration to five years in effect still means the EU elector has to complete a declaration at each European Parliamentary election.

CHAPTER 5: MANNER OF VOTING

Provisional proposal 5-1: The secrecy requirements under section 66 should extend to information obtained when a person completed their postal vote, and should prohibit the taking of photographs in a polling station.

The AEA supports this provisional proposal.

Provisional proposal 5-2: The obligation to store sealed packets after the count should spell out that they should be stored securely.

The AEA supports this provisional proposal.

Provisional proposal 5-3: Corresponding number lists should be stored in a different location from ballot papers and in a different person's custody.

The AEA does not support this provisional proposal as it is considered unnecessary for the reasons set out in paragraph 5.43. As an alternative, if there is an issue to be addressed, then it may be more appropriate to store the corresponding number lists (in both paper and digital form) and ballot papers in two different locations rather than in different persons' custody.

Provisional proposal 5-4: Secrecy should be unlocked only by court order, with safeguards against disclosure of how a person voted extended to an innocently invalid vote.

The AEA supports this provisional proposal.

Provisional proposal 5-5: The form and content of ballot papers and other materials supplied to voters should continue to be prescribed in secondary legislation.

The AEA supports this provisional proposal.

Provisional proposal 5-6: The duty to consult the Electoral Commission as to the prescribed form and content of ballot papers should include consultation in relation to the principles of clarity, internal consistency of the design (with equal treatment between candidates), and general consistency with other elections' ballot papers.

The AEA supports this provisional proposal.

CHAPTER 6: ABSENT VOTING

Provisional proposal 6-1: Primary legislation should set out the criteria of entitlement to an absent vote. Secondary legislation should govern the law on the administration of postal voter status.

The AEA supports this provisional proposal.

Provisional proposal 6-2: The law governing absent voting should apply to all types of elections, and applications to become an absent voter should not be capable of being made selectively for particular elections.

The AEA supports this provisional proposal subject to the necessary safeguards being built in to prevent double voting by those registered at two different addresses.

Provisional proposal 6-3: Registration officers should be under an obligation to determine absent voting applications and to establish and maintain an entry in the register recording absent voter status, which can be used to produce absent voting lists.

The AEA supports this provisional proposal.

Provisional proposal 6-4: The special polling station procedure in Northern Ireland under schedule 1 to the Representation of the People Act 1985 should be repealed.

The AEA supports this provisional proposal.

Provisional proposal 6-5: Absent voting applications should substantially adhere to prescribed forms set out in secondary legislation.

The AEA supports this provisional proposal.

Provisional proposal 6-6: Requests for a waiver of the requirement to provide a signature as a personal identifier should be attested, as proxy applications currently must be.

The AEA fully supports this provisional proposal but the attestation should be extended to a health professional, including a carer, to enable all electors who might require a waiver to be able to apply for one.

Question 6-7: Should electoral law prohibit, by making it an offence, the involvement by campaigners in any of the following:

(1) assisting in the completion of postal or proxy voting applications;

Yes – campaigners should be able to promote the completion. However, there is a considerable risk in assisting with the completion of applications.

(2) handling completed postal or proxy voting applications;

Yes

(3) handling another person's ballot paper;

Yes

(4) observing a voter marking a postal ballot paper;

Yes

(5) asking or encouraging a voter to give them any completed ballot paper, postal voting statement or ballot paper envelope;
Yes

(6) if asked by a voter to take a completed postal voting pack on their behalf, failing to post it or take it directly to the office of the Returning Officer or to a polling station immediately;
Yes

(7) handling completed postal voting packs at all?
Yes

In relation to paragraph 6.127 reference is made to the *Electoral Commission hoping to implement its recommendations with the following appearing in its Code of Conduct for campaigners: that campaigners at elections and referendums in the UK should also not be involved in the completion of postal or proxy voting applications, the delivery of completed applications, or the handling of any postal votes.*

Unfortunately, these recommendations were not approved by the political parties for the Code of Conduct agreed for the forthcoming elections in May 2015 and therefore were not included. It is worth bearing in mind that the Code of Conduct is only a voluntary code and, as a result, there is a need for provision to be made within legislation to make it an offence.

Provisional proposal 6-8: A single set of rules should govern the postal voting processes in Great Britain and Northern Ireland respectively;

The AEA supports this provisional proposal.

Provisional proposal 6-9: These rules should set out the powers and responsibilities of returning officers regarding issuing, receiving, reissuing and cancelling postal votes generally rather than seeking to prescribe the process in detail.

The AEA supports this provisional proposal.

Paragraph 6.99 states*it is perhaps curious that the law contemplates that returning officers may retrieve ballot papers from ballot boxes. This is particularly so in circumstances where 100% of postal voting statements will have been verified.....* It is worth noting that, with recent changes in legislation allowing for the early despatch of postal vote packs before the deadline for absent vote changes, the number of retrieved ballot papers may increase as a result of this change.

CHAPTER 7: NOTICE OF ELECTION AND NOMINATIONS

Provisional proposal 7-1: A single nomination paper, emanating from the candidate, and containing all the requisite details including their name and address, subscribers if required, party affiliation and authorisations should replace the current mixture of forms and authorisations which are required to nominate a candidate for election.

The AEA fully supports this provisional proposal.

Provisional proposal 7-2: The nomination paper should be capable of being delivered by hand, by post or by electronic mail.

The AEA supports this provisional proposal subject to wider definition to indicate the alternative methods of electronic technology.

Provisional proposal 7-3: The nomination paper should be adapted for party list elections to reflect the fact that parties are the candidates; their nomination must be by the party's nomination officer and should contain the requisite consents by list candidates.

The AEA supports this provisional proposal.

Provisional proposal 7-4: Subscriber, where required, should be taken legally to assent to a nomination, not a paper, so that they may subscribe a subsequent paper nominating the same candidate if the first was defective.

The AEA supports this provisional proposal. In addition, in view of this proposed change, the AEA would also welcome guidance for candidates to ensure that they do not entirely duplicate the initial nomination paper for their second nomination paper as the same error may be repeated. Consideration should be given to removing the need for details from a second and/or third nomination paper to be published at a UK Parliamentary election.

Provisional proposal 7-5: Returning officers should no longer inquire into and reject the nomination of a candidate who is a serving prisoner. The substantive disqualification under the Representation of the People Act 1981 will be unaffected.

The AEA supports this provisional proposal.

Provisional proposal 7-6: Returning officers should have an express power to reject sham nominations.

The AEA supports this provisional proposal. However, returning officers would have to act with caution in deciding if the nomination is actually a sham and the process to be followed would need to be clearly set out.

CHAPTER 8: THE POLLING PROCESS

Provisional proposal 8-1: A single polling notice in a prescribed form should mark the end of nominations and the beginning of the poll, which the returning officer must communicate to candidates and publicise.

The AEA supports this provisional proposal.

Provisional proposal 8-2: The same forms of poll cards should be prescribed for all elections, including parish and community polls, subject to a requirement of substantial adherence to the form.

The AEA supports this provisional proposal.

Provisional proposal 8-3: As part of their duty of neutrality, returning officers should not appoint in any capacity – including for the purposes of postal voting – persons who have had any involvement (whether locally or otherwise) in the election campaign in question.

The AEA supports this provisional proposal.

Provisional proposal 8-4: The power to use school rooms should be clarified so that the returning officer is able to select and be in control of the premises required, and so that the duty to compensate the school for costs does not extend beyond the direct costs of providing the premises.

The AEA supports the provisional proposal in relation to the returning officer being able to select and be in control of the premises required. In relation to reimbursement of costs, the returning officer should only pay the direct costs of providing the premises for use at an election, for example, heating, lighting and additional caretaker costs. The current position of a hire charge not being permissible should remain. The provision should extend to all premises that are maintained wholly or partly at the public expense and apply consistently across all elections, referendums etc. including for postal voting and counting as well as polling.

Provisional proposal 8-5: The law should specifically require that returning officers furnish particular pieces of essential equipment for a poll, including ballot papers, ballot boxes, register and key lists. For the rest, returning officers should be under a general duty to furnish polling stations with the equipment required for the legal and effective conduct of the poll.

The AEA supports this provisional proposal.

Provisional proposal 8-6: Presiding officers should have the power to use, or authorise the use by polling station staff of, reasonable force to remove from a polling station a person not entitled to be there. The procedure for returning officers to issue authorisations to use force should be abolished.

The AEA supports this provisional proposal although has concerns in relation to actually applying this proposal in practice should the circumstances arise.

Provisional proposal 8-7: A single set of polling rules should apply to all elections, simplified so that they prescribe only the essential elements of conducting a lawful poll, including: the powers to regulate and restrict entry, hours of polling, the right to vote, the standard, assisted, and tendered polling processes, and securing an audit trail.

The AEA supports this provisional proposal.

Provisional proposal 8-8: Polling rules should set out general requirements for a legal poll which the returning officer should adhere to. These should no longer include a requirement for voters to show the official mark on their ballot paper to polling station staff.

The AEA supports this provisional proposal.

Provisional proposal 8-9: The right to ask voters questions as to their entitlement to vote should be preserved, but secondary legislation should only prescribe the point they may elicit, and leave suggested wording to guidance.

The AEA supports this provisional proposal.

Provisional proposal 8-10: Voting with the assistance of a companion should not involve formal declarations, but should be permitted by the presiding officer where a voter appears to be unable to vote without assistance. There should no longer be a limit on the number of disabled voters a person may assist; alternatively, the limit should not apply to family members, who should include grandparents and (adult) grandchildren.

The AEA supports the provisional proposal for companions to voters not having to complete formal declarations. However, it considers that there is still the need for the list of votes marked by companions. The list should record the details of the companion and voter so that there is a record should the need arise to refer to the list as a result of alleged electoral malpractice or an election petition.

The AEA has concerns on there no longer being a limit on the number of disabled voters a person may assist as such a relaxation may give rise to the opportunity for electoral malpractices in some areas. The AEA supports the

provisional proposal to include grandparents and (adult) grandchildren to the family member list where such a limit would not apply.

Provisional proposal 8-11: The requirement to provide equipment to assist visually impaired voters to vote unaided should be retained. There should be a single formulation, applying to all elections, of the required characteristics of the equipment.

The AEA supports this provisional proposal.

Provisional proposal 8-12: The current provision, including the distinction between the death of party and independent candidates, should be retained as regards parliamentary elections.

The AEA supports this provisional proposal.

Provisional proposal 8-13: At elections using the party list voting system, the death of an individual independent candidate should not affect the poll unless he or she gains enough votes for election, in which case he or she should be passed over for the purpose of allocation of the seat; the death of a list candidate should not affect the poll.

The AEA supports this provisional proposal.

Question 8-14: We ask consultees whether, at local government elections, the death of an independent candidate should or should not result in the abandonment of the poll.

In the case of the death of an independent candidate, the poll should not be abandoned. Notices can be placed in the polling station and electors also advised on the receipt of their ballot paper.

Provisional proposal 8-15: The existing rule, requiring the presiding officer to adjourn a poll in cases of rioting or open violence, should be abolished.

The AEA supports this provisional proposal.

Provisional proposal 8-16: Returning officers should have power to alter the application of electoral law in order to prevent or mitigate the obstruction or frustration of the poll by a supervening event affecting a significant portion of electors in their area, subject to instruction by the Electoral Commission in the case of national disruptions. Presiding officers should only have a corresponding power in circumstances where they are unable to communicate with their returning officer.

The AEA supports this provisional proposal in respect of the proposed power for returning officers. However, it does not support the granting of the same

power to presiding officers. The power is too widely drawn and could result in undue pressure being applied to a presiding officer and/or inconsistency in its application. From a practical perspective, it is difficult to imagine a situation where it was not possible for a presiding officer to be able to communicate with the returning officer given the advances in the use of mobile and similar technologies.

CHAPTER 9: THE COUNT AND DETERMINATION OF THE RESULT

Provisional proposal 9-1: A single standard set of rules should govern the count of all elections.

The AEA supports this provisional proposal if it can be achieved with the different voting systems.

Provisional proposal 9-2: The standard counting rules should cater for differences between elections as regards their voting system and how their counts are managed.

The AEA supports this provisional proposal.

Provisional proposal 9-3: The rules should empower returning officers to determine the earliest time at which it is practicable to start a count, and to pause one overnight, subject to the duty to commence counting at UK Parliamentary elections within four hours and the requirement to report any failure to do so.

The AEA supports this provisional proposal.

Provisional proposal 9-4: Candidates may be represented at the count by their election agents or counting agents, who should be able to scrutinise the count in the way the law currently envisages. At party list elections, parties may appoint counting agents. Election agents and counting agents should be able to act on a candidate's behalf at the count, save that a recount may only be requested by a candidate, an election agent or a counting agent specifically authorised to do so in the absence of the candidate or election agent.

The AEA supports this provisional proposal.

Provisional proposal 9-5: Save for differences in the transfer value, the same detailed rules should govern all STV counts.

The AEA supports this provisional proposal.

Provisional proposal 9-6: A standard set of counting rules and subset of counting rules for electronic counting should apply to all elections. Which elections are subject to electronic counting should be determined by statutory instrument.

The AEA supports this provisional proposal.

Question 9-7: Should electronic counting systems be subject to a certification requirement, a requirement of a prior demonstration to political parties and/or the Electoral Commission, or should there be no change in the current law?

The AEA supports the provisional proposal of a prior demonstration to political parties and/or the Electoral Commission but believes that the issue of a certification requirement would need further examination and consideration. As part of good practice arrangements, the GLA already demonstrate the counting system to political parties and many local authorities already hold election agent briefings closer to the election. These will include details of the count arrangements and count methods along with the determination of doubtful papers.

CHAPTER 10: TIMETABLES AND COMBINATION OF POLLS

Provisional proposal 10-1: The UK Parliamentary election timetable should be oriented so that steps count back from polling day.

The AEA supports this provisional proposal.

Provisional proposal 10-2: A separate rule should state that, for by-elections, polling day is on the last Thursday occurring between days 23 and 27 after the warrant for the writ of by-election is issued. (this is based on the current 25 day timetable length).

The AEA supports this provisional proposal.

Provisional proposal 10-3: The writ should be capable of communication by electronic means.

The AEA supports this provisional proposal.

Provisional proposal 10-4: A standard legislative timetable should apply to all UK elections, containing the key milestones in electoral administration, including the deadlines for registration and absent voting.

The AEA supports this provisional proposal. However, the deadlines with “not later than” should be kept as Returning Officers, in the case of local elections,

may wish to publish the Notice of Election early particularly in respect of parish or community council elections.

Provisional proposal 10-5: The timetable should be 28 days in length.

The AEA supports this provisional proposal.

Provisional proposal 10-6: The law governing combination of coinciding polls should be in a single set of rules for all elections.

The AEA supports this provisional proposal.

Provisional proposal 10-7: Any elections coinciding in the same area on the same day must be combined.

The AEA supports this provisional proposal but with an upper limit on the number of polls being allowed to take place on any one day. On such a basis, if that limit had already been met in relation to other polls taking place on a particular day, the further poll should be held on a separate day at a date to be fixed by the Returning Officer.

Question 10-8: Should the returning officer have a power to defer a fourth coinciding poll in the interests of voters and good electoral administration? What safeguards might sensibly apply to the exercise of the power?

The AEA is concerned with the provisional proposal to combine polls being at the discretion of the Returning Officer who may, for financial reasons, be under extreme pressure from the local authority, public organisation or parish council and others to combine the poll, if the timing allows, no matter how many polls are already scheduled to take place on that day. Along with scheduled local and national polls, there could also be principal area or parish by-elections and local referendums taking place on the same day of the other polls scheduled. As a result, the AEA would wish to see the proposed change to be at the discretion of the Returning Officer but with an upper limit on the number of polls being allowed to take place on any one day. On such a basis, if that limit had already been met or exceeded in relation to other polls taking place on a particular day, the further poll should be held on a separate day at a date to be fixed by the Returning Officer. The current hierarchy of polls should be clearly set out in legislation.

Given the likelihood of combined polls arising from the number of scheduled elections for 2019 and 2020, the AEA would suggest the following formula in relation to the upper limit on the number of polls being combined on any one day:

- Up to 4 elections - No RO discretion
- 5 elections - Discretion of RO
- 6 elections - Cannot combine so no discretion for the RO

Provisional Proposal 10-9: The lead returning officer and their functions should be determined by a single set of rules according to the existing hierarchy for mandatory combinations, with some discretionarily combinable functions.

The AEA supports this provisional proposal.

Provisional Proposal 10-10: A single set of adaptations should provide for situations where a poll involves several ballot papers.

The AEA supports this provisional proposal.

CHAPTER 11: ELECTORAL OFFENCES

Provisional proposal 11-1: A single set of electoral offences should be set out in primary legislation which should apply to all elections.

The AEA supports this provisional proposal.

Provisional proposal 11-2: The offence of bribery should be simplified, with its mental element stated as intention to procure or prevent the casting of a vote at election.

The AEA supports this provisional proposal.

Provisional proposal 11-3: The electoral offence of treating should be abolished and the behaviour that it captures should where appropriate be prosecuted as bribery.

The AEA supports this provisional proposal.

Provisional proposal 11-4: Undue influence should be restated as offences of trickery, pressure and duress.

The AEA supports this provisional proposal.

Question 11-5: Should the law regulate the exercise of abuse of influence, religious or otherwise, by a person over a voter which does not amount to an existing electoral offence?

The AEA supports this provisional proposal.

Question 11-6: Is the current power to make provision concerning imprinting of “other” (including online) material sufficient, or is it desirable and feasible, within the remit of this project, to recommend regulation of online material?

The AEA supports the regulation of online material as introduced in the Scottish Independence Referendum Act 2013 and outlined in paragraph 11.59. The way people communicate and access information over recent years has changed and publicity and media campaigns have adapted to this change to capture this vast audience via digital sources. With the present wide use of social media and the challenges and issues that can arise as a result in terms of the conduct of an election or referendum, there is a need for online material to be regulated.

Question 11-7: Should the illegal practice of disturbing election meetings apply only to candidates and those supporting them, and no longer be predicated on the “lawfulness” of the meeting?

The AEA supports this provisional proposal.

Question 11-8: Should the offence of falsely stating that another candidate has withdrawn be retained?

Yes, the offence should be retained unless it is legally captured as an undue influence by the trickery offence (see 11.4 above).

Question 11-9: Should an increased sentence of ten years’ custody be available in cases of serious electoral fraud as an alternative to recourse to the common law offence of conspiracy to defraud?

Yes.

CHAPTER 12: REGULATION OF CAMPAIGN EXPENDITURE

Provisional proposal 12-1: Returning officers should publicise and make available for inspection expenses returns (as well as publicising non-receipt of a return). Secondary legislation should prescribe in detail the process for that publicity and inspection, paving the way for publication online.

The AEA supports this provisional proposal and in addition would like to see an online facility for the submission of expense returns in the near future. Consideration will need to be given as to how online publication will be effected and by whom.

Provisional proposal 12-2: Provisions governing the regulation of campaign expenditure should be centrally set out for all elections.

The AEA supports this provisional proposal.

Provisional proposal 12-3: A single schedule should contain prescribed expense limits and guidance to candidates as to expenditure and donations.

The AEA supports this provisional proposal.

Provisional proposal 12-4: Expenditure limits which are calculated according to a formula should be declared by the returning officer for the constituency or electoral area in a notice accompanying, or immediately following, the notice of election.

The AEA supports this provisional proposal.

Provisional proposal 12-5: Returning officers should receive a single set of documents containing the return of expenses and declarations by the agent and the candidate. These should include any statement by an authorised person containing the particulars currently required to be sent to the returning officer by section 75(2) of the 1983 Act.

The AEA supports this provisional proposal.

CHAPTER 13: LEGAL CHALLENGE

Provisional proposal 13-1: The doctrine of "votes thrown away" should be abolished.

The AEA supports this provisional proposal.

Provisional proposal 13-2: The law governing challenging elections should be set out in primary legislation governing all elections.

The AEA supports this provisional proposal.

Provisional proposal 13-3: Defects in nomination, other than purely formal defects, should invalidate the election if they amount to a breach of election law which was committed knowingly or can reasonable be supposed to have affected the result of the election.

The AEA supports this provisional proposal.

Provisional proposal 13-4: The grounds for correcting the outcome or invalidating elections should be restated and positively set out.

The AEA supports this provisional proposal.

Provisional proposal 13-5: Disqualification at the time of election should be stated to be a ground for invalidating the election for all elections.

The AEA supports this provisional proposal.

Question 13-6: Should the election court have a power to consider whether a disqualification has lapsed and, if so, whether it is proper to disregard it, mirroring the power under section 6 of the House of Commons Disqualification Act 1975?

Yes.

Provisional proposal 13-7: At elections using the party list voting system, the court should be able to annul the election as a whole, or that of a list candidate, because corrupt or illegal practices were committed attributable to the candidate party or individual, or for extensive corruption.

The AEA supports this provisional proposal.

Provisional proposal 13-8: Legal challenges should be heard in the ordinary court system in the UK, with a single right of appeal on a point of law.

The AEA supports this provisional proposal.

Provisional proposal 13-9: Local election petitions in England and Wales should be heard by expert lawyers sitting as deputy judges.

The AEA supports this provisional proposal.

Provisional proposal 13-10: Challenges should be governed by simpler, modern and less formal rules of procedure allowing judges to achieve justice in the case while having regard to the balance between access and certainty.

The AEA supports this provisional proposal.

Provisional proposal 13-11: Returning officers should have standing to bring petitions, including a preliminary application to test whether an admitted breach affected the result.

The AEA supports this provisional proposal.

Provisional proposal 13-12: There should be a means of ensuring sufficient representation of the public interest in elections within that judicial process.

The AEA supports this provisional proposal.

Question 13-13: Should there be a public interest petitioner with standing to bring election petitions?

Yes, for the reasons set out in the commentary in the report from page 312 onwards.

Question 13-14: What should the threshold criteria be for bringing a petition in the public interest?

The criteria should be based on the principle set out in paragraph 13.181 of the report.

Question 13-15: How, if at all, should the law tackle the issue of individuals getting a “free ride” by challenging elections through the public interest petitioner?

If the criteria is sufficiently robust and that criteria is satisfied in any particular case coupled with the assessment process suggested in paragraph 13.187, the “free ride” issue should be satisfactorily dealt with.

Question 13-16: Should the decision to bring a public interest petition be subject to independent and expert assessment of the merits of the case, or left entirely at the discretion of the petitioner?

It should be the former. However, to overcome the issues raised in paragraph 13.186, the AEA believes that there should be a panel of not less than three independent experts to undertake the assessment.

Provisional proposal 13-17: There should be an informal means or reviewing complaints about elections which do not aim to overturn the result.

The AEA supports this provisional proposal.

CHAPTER 14: REFERENDUMS

Provisional proposal 14-1: Primary legislation governing electoral registers, entitlement to absent voting, core polling rules and electoral offences should be expressed to extend to national referendums where appropriate.

The AEA supports this provisional proposal.

Provisional proposal 14-2: Secondary legislation should set out the detailed conduct rules governing national referendums, mirroring that governing elections, save for necessary modifications.

The AEA supports this provisional proposal.

Provisional proposal 14-3: A single legislative framework should govern the detailed conduct of local referendums, subject to the primary legislation governing their instigation.

The AEA supports this provisional proposal.

Provisional proposal 14-4: The grounds of challenge governing elections should apply to local referendums, save that only extensive corrupt or illegal practice shall be a ground for annulling the referendum.

The AEA supports this provisional proposal.

Question 14-5: Should challenge to neighbourhood planning referendums continue to be by judicial review only?

Yes, given the particular legislative framework that applies to planning matters. The AEA would support the proposal relating to the issues which the Administrative Court should have regard to when considering a judicial review claim.

Provisional proposal 14-6: A parish poll pertaining to an appointment should be governed by the conduct rules governing elections, omitting the nomination stage.

The AEA supports this provisional proposal.

Provisional proposal 14-7: A parish poll pertaining to an issue should be governed by the conduct rules for local referendums.

The AEA supports this provisional proposal and is of the view that a parish poll should be conducted along the basis of other polls in relation to rules and timetables. On that basis, the local election rules which allows for a 25 day timetable should be adopted. This approach would allow time for the late

registration of electors, postal and proxy voting along with the planning and conduct of the parish poll. It would also ensure a consistent timetable approach for all parish polls (whether with or without postal and proxy voting, the position as presently proposed given the discretion available to the parish council). The AEA has a concern that, for areas where there is no parish council, the same discretion is not available to the parish meeting. We believe that consideration should be given to this point to again provide consistency of approach.

In line with a consistent approach to that of other polls and, to avoid confusion to the elector, the AEA suggests that postal and proxy voting be included as standard for parish polls as it is for parish elections, and not subject to the agreement of the parish council, as proposed. However, if the proposal regarding postal and proxy voting stays as suggested in the Parish Polls consultation paper, the AEA would wish to see a deadline by which the parish is able to request postal and proxy voting, similar to that of a parish council by-election where there is a formal deadline in the timetable for the parish council to request poll cards.

Question 14-8: Should the scope of issues before a parish council which can be put to a poll be defined so as to restrict parish polls to issues of parish concern?

The AEA fully supports the following criteria outlined in the Parish Polls consultation paper:

1. The subject matter was discussed at the parish meeting.
2. The subject matter directly affects those who live and/or work in the parish; and
3. The parish council/meeting has the capacity to make a decision on the subject matter including any decision as a statutory consultee, but not including a decision simply to agree a declaratory statement on the matter.

The above criteria should tighten the subject matter more than at present. However, in addition, the AEA requested the Government to consider a fourth criteria as follows:

4. The subject matter cannot relate to an individual licensing or planning application.

With the initial criteria proposed, a parish poll could be called on an individual licensing or planning application as it meets the criteria laid out in 1 and 2 and under section 3 " the parish council/meeting has the capacity to make a decision on the subject matter including any decision as a statutory consultee". As a result, a parish poll could be requested in relation to a specific application within the parish even though there is already a consultation process in place regarding such applications with views/responses being invited from neighbouring residents, community, and parish/town council. Following the decision of the local authority, there are appeal

processes in place. It is our view that a parish poll being held on a specific application would not be the appropriate route and could be an abuse of the parish poll procedure when there are formal consultation processes already in place.

3. CONSULTEE VIEWS REQUESTED ON THE FOLLOWING:

Chapter 2 – Paragraph 2.34: Our views at this stage on what should be covered by primary and secondary legislation are provisional only. We welcome consultees’ suggestions as to what matters should be covered by each category of legislation

The AEA broadly supports the proposed distinctions between primary and secondary legislation set out in paragraphs 2.32 and 2.33. In essence, primary legislation should contain the high level matters and principles which reflect electoral policy while secondary legislation should contain the detailed rules relating to electoral registration and the conduct of elections.

Chapter 3 – Paragraph 3.46: We should welcome the views of consultees as to how the issue of consistency in the provision of electoral administration should be addressed.

Total or absolute consistency can only be achieved by the provision of a detailed legal framework covering all aspects of electoral administration. Such an approach is probably both impracticable and unnecessary. For those reasons, the proposed hierarchy for the future management structure is most likely to deliver a consistent approach insofar as that is achievable and realistic.

Chapter 4 – Paragraph 4.200:we seek consultees’ views on whether the declaration should instead have a maximum life – perhaps of five years....

The AEA supports the provisional proposal subject to the declaration of intent to vote in the UK having effect for five years with the facility for the EU elector to cancel their declaration. However, limiting the declaration to five years in effect still means the EU elector has to complete a declaration at each European Parliamentary election.

Chapter 5 – Paragraph 5.18: We would also welcome views from consultees, particularly administrators who may have experience of this, on our proposal to prohibit the taking of photographs in a polling station.

For the avoidance of doubt and to assist clarity, the AEA supports the proposed prohibition.

Chapter 5 – Paragraph 5.43: ...If consultees agree, we invite their suggestions as to who should be the custodian.

The AEA does not agree with the proposal (see comments in respect of provisional proposal 5-3).

Chapter 8 – Paragraph 8.24(3):should be drafted so as to make it clear that remoter expenses incurred by the school – such as those of increased security for pupils – are not chargeable to returning officers, though we would welcome receiving views of school authorities on this, as well as the views of the electoral community.

The AEA agrees with the provisional proposal on this issue (see our response to 8-4 above).

Chapter 8 – Paragraph 8.86We would welcome consultees' view on these limits. If the limit on the number of voters that companions may assist is to be retained, we would provisionally propose excluding its application to family members.

The AEA believes that limits should be retained for the reasons set out in our comments on provisional proposal 8-10. As stated, we support the part of the proposal relating to family members.

Chapter 8 – Paragraph 8.111 We have not formed a provisional view on what the law on the death of candidates for local government elections should be, apart from taking the provisional view that the law ought to be uniform throughout the United Kingdom. We invite the views of consultees on this issue.

The AEA agrees that there should be consistency of the law on this point including for parish and community councils. This is particularly important given the number of independent candidates at these elections.

Chapter 10 – Paragraph 10.48 ... we are keen to hear consultees' views on the merits in favour of a 25 day timetable or any other timetable.

The AEA supports the 28 day timetable proposal.

Chapter 10 – Paragraph 10.104 ... and it is not clear how frequent non-combined but coinciding polls have been, or how returning officers have approached and run them. We would welcome responses from those who have any experience of the matter.

The AEA has no direct experience to offer on this point.

Chapter 11 – Paragraph 11.23 ... Many electoral offences, such as personation, voting offences and so on, apply only in the electoral context and would need to be retained. Furthermore, the offences labelled corrupt and illegal practice also operate as public law grounds for annulling an election by way of legal challenge, as we consider in chapter 13. We base our provisional proposals on the retention of the current scheme, which needs simplification and modernisation. Nonetheless, we welcome views on this alternative.

The AEA believes that the current system is the better alternative having regard to the comments in paragraph 11.23.

Chapter 11 – Paragraph 11.53 We provisionally propose that the offence of undue influence should be restated to involve pressure, duress or trickery as outlined above, and seek consultees' views on whether the offence should also cover the abuse of a position of influence.

Yes.

Chapter 11 – Paragraph 11.75 ... We are keen to hear the views of consultees as to whether such an increased sentence would be a preferable alternative to recourse to conspiracy to defraud.

The AEA would support a longer sentence for a specific electoral offence of this nature.

Chapter 13 – Paragraph 13.20 ...Our provisional proposal is that this principle should be abolished or at least modified. We welcome consultees' views on this.

The AEA supports the provisional proposal for abolition for the reasons set out at paragraph 13.20.

Chapter 13 – Paragraph 13.107 We find these issues difficult, and especially welcome consultees' views on the above and any alternative solutions.

The AEA has no preferential view on the options put forward other than to comment that a consistent approach for all elections would be the ideal.

Chapter 13 – Paragraph 13.113 ... We nevertheless invite consultees to propose any alternative which suitably and effectively deals with corrupt and illegal practice without resulting in the entire election being compromised.

The AEA believes that provisional proposal 13-7 provides a fair and equitable solution to this problem area.

Chapter 13 – Paragraph 13.157 ...We would therefore ask consultees, particularly those with experience of election proceedings:

- (1) To what extent are the evidential provisions offering some protection to self-incriminating witnesses relevant in modern petition practice?**
- (2) Would removing these provisions deter witnesses from telling the truth in petition trials?**
- (3) Might prosecutorial discretion not to prosecute election crimes by those who have effectively blown the whistle at election petition proceedings be a sufficient tool to promote truthfulness.**

The AEA has no direct experience to offer on this point.

Chapter 13 – Paragraph 13.163 Subject to consultees' views, we do not currently propose to alter the position in Scotland where local government petitions are heard by sheriffs principal.

The AEA has no view to the contrary.

Chapter 13 – Paragraph 13.165 ... Subject to the views of consultees, we consider that these should be limited to:

- (a) The grounds of challenge relate to a payment of money or some other reward relating to a corrupt or illegal practice; or**
- (b) The public interest in determining the challenge is such that an extension should be granted, and the delay is not attributable to the conduct of the petitioner.**

The AEA would support the above exceptions to the time limit of 21 days for the submission of election petitions.

Chapter 13 – Paragraph 13.180 ...A legitimate concern is that individuals who have the means to bring a challenge, or are backed by political parties, may seek to get a "free ride" from the public purse. We welcome suggestions by consultees as to how such concerns might be answered or assuaged.

The AEA supports the proposal for a public interest petitioner for the reasons set out in our response to 13-12 to 13-16 inclusive above.

Chapter 13 – Paragraph 13.182 We welcome consultees' views on these threshold criteria for a public interest petition being brought, as well as any supplemental considerations.

See answer to 13.180 above.

Chapter 13 – Paragraph 13.191 ... We accordingly ask consultees whether a public interest petitioner mechanism is desirable, and if so how it should operate.

See answer to 13.180 above.

Chapter 13 – Paragraph 13.195 ...If the complainant has an outstanding grievance, we welcome consultees' views on the proper forum for addressing any subsisting complaints. It seems to us the following options are available:

- (1) Escalation to the local government ombudsman in England and Wales, the Scottish Public Services Ombudsman or the Northern Ireland Ombudsman;**
- (2) Use of a scheme whereby adjacent returning officers consider complaints, or the directing officer at European Parliamentary elections considers complaints which are not against their service; or**
- (3) Consideration by the Electoral Commission.**

The AEA's previously stated view on this issue is set out at paragraph 13.194 of the report. Of the above options, no. 3 appears to be the most appropriate given the Electoral Commission's wide experience in electoral administration.

Chapter 14 – Paragraph 14.98 ... We therefore ask consultees whether neighbourhood planning order referendums should be an exception to the general rule that local referendums are to be challenged before the court with jurisdiction to hear challenges to elections.

The AEA believes that neighbourhood planning order referendums should be an exception to the general rule for the reasons set out in our response to 14-5 above.

**John Turner
Chief Executive**

March 2015