The administration of the referendums and elections across the UK in 2011

14 July 2011
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Executive Summary

5 May 2011 will be remembered for the dramatic political outcomes from the polls that took place on that day, and not for any issues connected with the administration of those polls. And that is as it should be.

The UK-wide referendum on the voting system for UK Parliamentary elections was held on the same day as national elections in Scotland, Wales and Northern Ireland as well as local government elections in England and Northern Ireland. In some areas, electoral administrators were delivering four or five different types of poll on the same day.

This resulted in an unprecedented level of combination which brought with it considerable legislative and practical complexity.

In Wales, administrators delivered the referendum on the law making powers of the National Assembly for Wales on 3 March while preparing to deliver the polls on 5 May.

The Association of Electoral Administrators (AEA) is a non-governmental and non-partisan body founded in 1987 to represent the interests of electoral administrators in the United Kingdom.

In this report we provide an account of the significant challenges faced by electoral administrators in delivering the referendums and elections across the UK in 2011 and offer a model for future referendums. We also make a number of wider recommendations for improvements to electoral administration in the UK.

A summary of our main recommendations

Turn to pages 123-125 to see the full list of our recommendations.

Clear and timely legislation

The UK Government should:

- bring forward legislation to require that electoral law cannot be applied to any referendum or election held within six months of the new provisions coming into force;
- support the proposed Law Commission review and simplification of electoral law;
- undertake a thorough review of combination issues incorporating learning points from 2011, in particular focusing on which polls can
safely be held on the same day, and the rules for combination and absent voting;

➤ create a generic conduct order for referendums.

You can read our analysis of the legal framework for the referendums and elections in 2011 in Chapter 2 - Framework on page 12.

**The power of direction**

➤ The UK Government should review the management structure and the use of the power of direction at future referendums to achieve a consensus on how they should operate.

➤ The AEA would not support the extension of the power of direction to other elections.

We consider the management structure for the referendum on 5 May 2011 in Chapter 3 - A different management structure on page 29.

Our analysis of the power of direction and its use by the Chief Counting Officer is set out in Chapter 4 - Directions, advice and performance on page 40.

We include constructive proposals for the future management and delivery of referendums in Chapter 10 - A model for future referendums, on page 114.

**Absent voting**

➤ The Electoral Commission should review the Code of Conduct for political parties, candidates, canvassers and campaigners with input from political parties and electoral administrators.

➤ The UK Government should prescribe the postal voting application form.

In Chapter 6 - Absent voting on page 74, we present evidence that campaigns including the direct mailing of postal voting application forms can lead to voter confusion and potentially to disenfranchisement, and can incur unnecessary costs for the Electoral Registration Officer.

**Communicating the voting process**

➤ The UK Government should review and improve the prescribed voting materials and notices for all elections in the light of learning
from the modification of forms by the Chief Counting Officer and with input from electoral administrators and printers.

We set out the issues and learning points in Chapter 5 - Voting materials and notices on page 62.

In Chapter 7 - Public awareness activity on page 85, we provide feedback on the referendum booklet and campaigns delivered by the Electoral Commission and the participation work undertaken by electoral administrators.

Polling stations

- The Electoral Commission should review what types of buildings should be made available to Returning Officers to use by right.
- The selection of polling places should be the responsibility of independent Returning Officers.
- Polling station ratios should be advisory for future national electoral events.
- The UK Government should review its funding policy for election equipment for national electoral events given the increased number likely by 2015.

In Chapter 8 - Managing the polls on page 92, we provide feedback on the administration of the polls, including the impact of the Chief Counting Officer’s direction on polling station ratios.

Ensuring an accurate result

In Chapter 9 - Verification, counts and results collation on page 103, we call for a review of the impact of combination on verification and count timings and processes, and we identify measures that could assist in alleviating the pressure on small elections teams which are providing oversight of the various counts.
1 Introduction

“Clearly, referendums are not elections, because they do not involve the choosing of persons, but a direct vote on a policy (or constitutional) issue presented to an electorate.”

1.1 We have limited experience of delivering referendums at a national level within the UK.

“Switzerland, which holds on average around one national referendum a year, is very much the exception to the general rule. Indeed, Switzerland has held around half of all of the national referendums that have ever occurred. ... The typical democracy, like Britain, holds referendums but very infrequently.”

1.2 Before the referendums in 2011 there had been only nine national, regional and/or UK-wide referendums, and only one UK-wide referendum which was the advisory referendum in 1975 on renegotiating the UK’s membership of the EEC. Further, the Electoral Commission had direct experience in relation to only one of these referendums - the North East regional referendum in 2004 - to draw on when planning the delivery of the referendums in 2011.

1.3 Electoral administrators across the UK had varying levels of experience in relation to national, regional, and UK-wide referendums depending on their geographic location and length of service. For many electoral administrators, the referendums in 2011 were their first experience of delivering a referendum.

1.4 In many respects a UK-wide referendum should be straightforward to run - there is one ballot paper across the UK and there is no nominations process to manage.

1.5 It should be noted that it is critical to deliver an accurate verification and count process as the local figures build into a national result.

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1 Reeve, A and Ware, A; Electoral Systems - A comparative and theoretical introduction, 1992.
2 House of Lords - Constitution Committee - Minutes of Evidence; Memorandum by Professor Vernon Bogdanor, Professor of Government, Brasenose College, University of Oxford; 31 December 2009; http://www.parliament.the-stationery-office.co.uk/pa/id200910/idselect/idconst/99/10012002.htm
However, in many areas of the UK, significant other elections were also taking place at the same time as the referendum and in some areas this meant that up to four (and exceptionally even five\(^4\)) polls were being delivered on 5 May.

The following electoral events took place in 2011:

- **Wales referendum** 3 March 2011
- **UK-wide referendum** 5 May 2011
- **Scottish Parliament elections** 5 May 2011
- **National Assembly for Wales elections** 5 May 2011
- **Northern Ireland Assembly elections** 5 May 2011
- **Local government elections in England** 5 May 2011
- **Local government elections in NI** 5 May 2011
- **Mayoral elections in England** 5 May 2011
- **A UK Parliamentary by-election** 5 May 2011

The referendums and elections in 2011 took place against a backdrop of the UK Government’s spending review which created an environment of uncertainty for electoral administrators working within local government. It should be noted that electoral services teams are generally very small units that depend, at election time, on additional staff resources being made available by the local authorities within which they work.

**Purpose of this report**

The purpose of this report is to present an account of the administration of the UK-wide referendum on the voting system for UK Parliamentary elections from the perspective of electoral administrators.

The poll at the UK-wide referendum was combined with the polls at the national elections in Scotland, Wales and Northern Ireland as well as with local government elections in England and Northern Ireland. This created an unprecedented level of combination and complexity across the UK and merits particular attention.

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4 For example, Great Yarmouth.
6 There were elections to all 26 councils in Northern Ireland.
7 There were mayoral elections in Bedford, Leicester, Mansfield, Middlesbrough, and Torbay. There was also a Mayoral referendum and a County Council By-election in Great Yarmouth.
8 Leicester South constituency, following the resignation of Sir Peter Soulsby MP in order to stand in the Leicester City mayoral contest.
1.11 We also comment on the referendum in Wales in March in relation to its impact on the planning and delivery of the referendum in May.

1.12 In accordance with the AEA’s non-partisan and neutral position, this report does not offer any views on the political implications of the questions put to voters or the outcomes arising from the referendums in 2011. To use the words of the Nairne Commission report\(^9\), the AEA,

“... remains strictly neutral on whether referendums should be held on any specific question as well as on the desirable outcome of any given referendum.”

1.13 We offer no view on the campaign designation process, nor do we offer any comments on the arrangements for the regulation of financial matters pertaining to permitted participants in the referendum.

About the AEA

1.14 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 some 1660 members, the majority of whom are employed by local authorities to provide electoral registration and election services.

1.15 The key aims of the AEA are to:

- Contribute positively to electoral reform within the United Kingdom.
- 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.

1.16 The AEA supports and advocates two key principles set out by Gould\(^10\) 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

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electoral legislation should not be applied to any election held within six months of the new provision coming into force.

1.17 The AEA published a report on the administration of the elections that took place across the UK on 6 May 2010 - Beyond 2010: the future of electoral administration in the UK\(^{11}\).

1.18 That report reflected on the experiences of those tasked with delivering the elections within an increasingly complex and challenging environment. We noted the prospect of more elections and referendums and a trend for holding these on the same day, as well as the likelihood of fewer resources with which to deliver them.

1.19 We expressed serious concern about the burdens being placed on the system of electoral administration across the UK and called for a thorough and systemic review of the electoral process to ensure that it was fit for purpose in the 21st Century and could deliver the scale of constitutional reform proposed by the UK Government.

1.20 Our recommendations included:

- The creation of a single Electrical Administration Act to replace the overwhelming complexity of the current legislation.
- A UK-wide review of funding and resources with the aim of delivering a coherent and efficient structure.
- The design of a clearer and local system of accountability and challenge.
- A review of the implications for voters and the administration of the polls of holding elections and referendums on the same day.
- A review of statutory election timetables to ensure consistency across all elections and the lengthening of the UK Parliamentary General Election timetable.
- That equal access should be central to the electoral process and future policy development and implementation, including a consultation on what types of buildings should be made available for Returning Officers to use by right as polling stations.

1.21 Where relevant, this 2011 report comments on progress against our recommendations, updating and amending them in the light of the evidence and learning from the administration of the referendums and elections in 2011.

\(^{11}\) http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf
Out of scope of this report

1.22 It is not within the scope of this report to comment in detail on the national and local elections the polls for which were held on 5 May 2011. However, we draw out the key themes and issues in relation to the combination of the polls at these elections with the UK-wide referendum.

Performance

1.23 The AEA does not comment on the performance of individual Electoral Registration Officers, Counting Officers, Returning Officers, or electoral administrators.

Integrity and malpractice

1.24 The AEA does not collect data on allegations or cases of alleged malpractice.

The voting experience

1.25 The AEA has worked with Scope to encourage electoral administrators to make use of ‘Polls Apart’ materials to improve access to voting.

1.26 The AEA does not undertake public opinion research. However, we are well placed to comment on issues relating to the voters’ experience of the referendums and elections, given that electoral administrators have direct experience of the kinds of questions that voters have and the issues they express in engaging with the electoral process.

Sources of evidence used in this report

1.27 The findings and recommendations contained in this report are based on the following evidence:

- Minutes, papers and correspondence relating to the relevant planning groups and electoral bodies.
- Instructions and other documents issued by the Chief Counting Officer and the Electoral Commission.
- Findings from the survey questionnaire for AEA Members.
- Questions and issues raised on the AEA website Members’ forum and directly by email.
- AEA Branch meeting minutes.
- Minutes and feedback from other electoral administrator groups.
- Previous AEA reports / policy papers.

References

1.28 All references to numbered directions are taken from the list for Counting Officers administering the referendum on the UK Parliamentary voting system and the local elections in England (as updated on 9 March 2011).

1.29 This report includes anonymised quotations from the feedback and submissions that we received and have been selected as representative of the nature of concerns and views expressed in relation to a particular issue. In cases where the view expressed differs from the comments received generally on an issue we have indicated this. In some cases, we have simplified job titles in order to preserve an officer’s anonymity.

1.30 References to regions are to those included in the Parliamentary Voting System and Constituencies Act 2011 for which Regional Counting Officers were appointed.
2 Framework

“If a Government is planning a series of referendums, it has the option of establishing a statutory framework for the conduct of referendums through the enactment of a generic Referendum Act. Such an Act would demonstrate the Government’s commitment to the efficient, fair and consistent conduct of referendums.”

Report of the Commission on the Conduct of Referendums, 1996

Establishing a legislative framework for UK referendums

2.1 The current legislative framework for the conduct of national and regional referendums came into being in 2000 in the form of the Political Parties, Elections and Referendums Act (PPERA).

2.2 Before this, referendums were conducted according to legislation specifically brought forward by the UK Government for the purpose and passed by the UK Parliament. In 1975, Sir Philip Allen was appointed Chief Counting Officer for the referendum and his responsibilities included the administration of party funding and the approval of what we would now call ‘designated organisations’.

“The conduct of voting and vote counting was left to local authorities, following, so far as possible, normal general election practice.”

2.3 The Nairne Commission (1996) was established jointly by the Constitution Unit, University College London and the Electoral Reform Society as an Independent Commission on the Conduct of Referendums. In its report it noted:

“The need for rules or guidance for the conduct of referendums is implicit in the Commission’s task and explicit in its terms of reference. The various Representation of the People Acts govern the way in which elections are run in the UK and, through the provision of a consistent framework, ensure that they are fair. There is no comparable statute for referendums, and the arrangements for elections cannot simply be applied without change.”

2.4 The Nairne Commission recommended that the conduct of referendums should be the responsibility of a statutory independent body accountable to the UK Parliament. The key aim was to ensure confidence in the legitimacy of the results of referendums.

13 Nairne Report page 27, Paragraph 44.
2.5 To achieve this, the Nairne Commission recommended the creation of a *generic Referendum Act*. In considering the provisions to be contained in such an Act, the Commission drew a distinction between ‘fixed rules’ for the organisation of the poll and the count and, “other matters on which it was impossible to determine rules in advance (for example, the wording of the question)”. For the latter, the Act should “set out how a decision should be reached”. Further, “those matters which will be different in each referendum and are likely to be of Parliamentary concern could be dealt with through primary legislation on each occasion.”

2.6 The Committee on Standards in Public Life, chaired by Lord Neill, published in October 1998 its fifth report on *The Funding of Political Parties in the United Kingdom*\(^\text{14}\). In this report, the Committee recommended the creation of an ‘Election Commission’ and included (in addition to proposed regulatory responsibilities in relation to campaign groups and expenditure) a monitoring and reporting role in “…keeping referendums and referendum campaigns under review and making reports and recommendations to Parliament and the Government concerning them”.

**The Political Parties, Elections and Referendums Act 2000 (PPERA)**

2.7 The legislative framework for the administration of referendums as set out in PPERA envisaged a fairly straightforward arrangement comprising:

- A Chief Counting Officer to -
  - Appoint a counting officer for each relevant area in Great Britain (the Chief Electoral Officer for Northern Ireland is deemed to be the counting officer for Northern Ireland).
  - Certify the total number of ballot papers counted (verification) and the total number of votes cast in favour of each answer to a question asked in the referendum.
- Counting Officers at a local level to certify the number of ballot papers counted by him (verification) and the total number of votes cast ... etc.
- The ability for the Secretary of State to make (by order) provisions for regulating the conduct of the referendum.

2.8 The last point is significant in terms of the assumption as to how the poll at the referendum would be conducted.

2.9 The Explanatory Notes to PPERA, set out the intention,

“... to use the order-making power to apply those provisions of the Representation of the People Acts and Regulations that relate to the administration of a referendum poll (polling hours; arrangements for postal and absent voting; issue of polling cards etc.).”

2.10 However, the arrangements for the 2011 referendums were not as originally envisaged by PPERA for the following reasons.

2.11 A new role of Regional Counting Officer was created to support the management and coordination of the conduct of the referendum. This was modelled on the role of Regional Returning Officer at European Parliamentary Elections, and was based on the European electoral regions.

2.12 The Chief Counting Officer was given a power of direction in relation to both Regional Counting Officers and Counting Officers. Similarly the Regional Counting Officers were also given a power of direction in relation to Counting Officers but could only use this with the consent of the Chief Counting Officer. The Chief Counting Officer also sought and was given a power to modify the statutory voter-facing forms for the combined polls.

2.13 Since 2006, the Electoral Commission had been given the role of setting and monitoring performance standards\(^\text{15}\).

2.14 This report addresses the various roles and responsibilities in relation to the delivery of the polls on 5 May 2011 in more detail in Chapter 3 - A different management structure.

2.15 The poll at the referendum was combined with a number of other polls across the UK, with Returning Officers responsible for the conduct of these polls according to different rules and using different electoral areas. As a result of combination arrangements put in place for the polls on 5 May 2011, the Counting Officer for an electoral area also had responsibility for certain combined functions.

2.16 The legislation provided for these officers to be subject to a power of direction by the Chief Counting Officer and by the relevant Regional Counting Officer for their area. Therefore, any directions issued could and did have a direct impact on the administration of those other polls.

\(^{15}\) S67 of the Electoral Administration Act 2006 inserted new sections 9A, 9B and 9C into PPERA.
2.17 Given that there was a unique set of polls scheduled to take place across the UK on 5 May 2011, it was also necessary to create a specific set of combination rules.

The *Parliamentary Voting System and Constituencies Act 2011* (PVS&C Act)

2.18 The *Parliamentary Voting System and Constituencies Bill* (‘the Bill’) was introduced into the UK Parliament on 22 July 2010. On being introduced into the UK Parliament, the Bill contained the referendum rules but not the detailed combination provisions. The schedules containing the combination rules were tabled on 25 October 2010.

2.19 It was also necessary for these provisions to fit with the arrangements being brought forward in conduct orders for the elections to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

2.20 The Bill did not have an easy passage through the UK Parliament, particularly during the House of Lords stages where there was a ‘marathon’ 16 17 days of debate mostly arising from the provisions in the Bill relating to the reduction in UK Parliamentary constituencies. The exceptional nature of the debates and scrutiny of the Bill was noted by the Minister on 15 February 2011.

“It is no secret that the Bill has received extensive and lengthy debate both in this House and in the other place. It had eight days of debate in this House and the Lords Committee stage took place over the four months from November to February, taking 17 days and more than 110 hours. I think that, with one exception, it was the longest Committee stage of any Bill in my lifetime.”17

2.21 One Lords amendment of particular concern to electoral administrators in preparing for the referendum was that tabled by former Labour minister Lord Rooker taking out the date of 5 May 2011 and allowing the referendum to be held on any day before 31 October 2011. He argued that the referendum could still be held on 5 May, but that it gave the UK Government a ‘lifeboat’ in the event that there was insufficient time to prepare for holding the poll on that date. This was agreed by peers on 6 December 2010 (by 199 votes to 195) and created uncertainty as to whether the referendum would take place on 5 May 2011.

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17 [http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110215/debtext/110215-0002.htm#11021556000002](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110215/debtext/110215-0002.htm#11021556000002)
2.22 The date of 5 May 2011 for the referendum poll was reinstated through a Lords amendment (also moved by Lord Rooker) on 7 February with an option to delay the poll through an order making power.

2.23 Further uncertainty arose from the need for the Bill to gain Royal Assent by 17 February (the actual date of 24 February fell during the UK Parliament’s half-term recess) to allow for the minimum 10-week referendum campaign period as set out in PPERA.

2.24 The *Parliamentary Voting System & Constituencies Act 2011* (PVS&C Act) received Royal Assent on 16 February 2011, a little over two and a half months before polling day.

“Once again at these elections the late decision in finally confirming the combination of the AV Referendum with Local Elections impacted adversely on the detailed preparations by electoral administrators. We were within eleven weeks of polling day when this took place, far too late and with most detailed arrangements in place leading to inevitable expenditure in relation to procurement of essential supplies and services e.g. purchase of additional ballot boxes due to anticipated impact of the combined poll, printing contracts and to the reservation of both premises and staffing.”

Electoral Services Manager, South West

**The legislation for the referendum in Wales on 3 March 2011**

2.25 It is important to remember that two referendums took place in the UK in 2011. The first of these was in Wales on 3 March 2011.

2.26 For the referendum on the law-making powers of the National Assembly for Wales, an Order in Council was introduced into the UK Parliament on 21 October 2010. This set out the rules for the conduct of that referendum and contained provisions similar to those contained in the PVS&C Act.

2.27 The key difference in the administration of the Welsh referendum was that it was a standalone referendum whereas the poll at the 5 May referendum was combined with the polls for the National Assembly for Wales elections.

“There was a degree of conflict between the final week of the referendum and initial planning for the May elections, for example postal vote pack printers wanted data the week of the Welsh Referendum.
This was compounded by the lateness of the AV legislation and I know that many of us in Wales had no opportunity to get to grips with the AV legislation before finding ourselves fully committed.”

Electoral Services Manager, Wales

The ‘six months’ rule

2.28 In recommending that legislation should be in place six months before the electoral event to which it applies, or at which it is to be implemented, Ron Gould was clear in what he meant by this.

“Throughout this report\(^{18}\), we have pointed to problems that have arisen because the passing of electoral legislation has been unduly delayed. To avoid these problems, we would recommend a practice found in the electoral laws in other countries. These laws provide that electoral legislation cannot be applied to any election held within six months of the new provision coming into force.” [Our emphasis]

2.29 This is an entirely different prospect to the one facing electoral administrators in planning the polls that took place on 5 May 2011.

2.30 In a statement issued on 22 July 2010, the Electoral Commission stated that “the rules on how the referendum will be conducted must be clear from at least six months in advance”.\(^{19}\) The concern was that all those with a role at the referendum should not be left with uncertainty about their roles and responsibilities. This does not accurately reflect the recommendation made by Gould, but is an interpretation of it that recognises the difficulties caused by late legislation.

2.31 On 11 November, just after six months before the 5 May polls, the Electoral Commission issued a further statement expressing that it was ‘broadly satisfied’ that “sufficient progress had been made to enable the local Returning and Counting Officers to run the polls well and that voters will be able to participate in them”. However, there was concern that although the detailed combination provisions had been tabled, “the Commission was not provided with adequate prior consultation to check that the provisions will be effective in practical implementation”.


The Commission indicated that it had begun to work through the detail and would continue to do so, providing comments to the UK Government.

2.32 As a result of the amendments to the Bill in respect of the date of the referendum (as outlined above), the Electoral Commission issued on 17 January 2011 Electoral administration alert 157, with a message from the Chief Counting Officer. The Chief Counting Officer stated that along with the Electoral Commission and the Regional Counting Officers, she was continuing to plan on the basis of the poll at the referendum being on 5 May and asked Counting Officers to do the same.

2.33 However, the continuing uncertainty as regards the date of the referendum, or whether or not there would be a referendum, did not support or assist electoral administrators in planning confidently.

2.34 In our 2010 election report the AEA reflected similar concerns about the uncertainty arising from the ability of the Prime Minister of the day being able to call a general election at any time. However, in 2011, the situation was significantly altered as a result of the Chief Counting Officer having the power to direct Counting Officers in the discharge of their functions, requiring them to take specified steps in preparation for the referendum, and requiring them to provide information.20

2.35 The requirement to follow a direction is absolute and unequivocal.

“A person to whom a direction is given under this paragraph must comply with it.21”

2.36 From this it is clear that a direction has the force of law. Therefore, any direction issued after six months before the poll at the referendum was, in effect, also the equivalent of late legislation.

2.37 On 2 December 2010, the Chief Counting Officer published (EC24/2010) a number of planning assumptions to enable Counting Officers to begin their preparations for the polls on 5 May 2011. This highlighted a number of areas on which the Chief Counting Officer intended to direct. The detail of the directions themselves were issued in a series of five instructions modules, the first module on Planning and organisation was issued by email to Counting Officers in late December 2010, with the remaining modules issued during the week commencing 24 January 2011, before the Bill had become an Act but still between three and four months before the polls.

20 Para 5(5), Schedule 1, PVS&C Act 2011.
21 Para 5(8), Schedule 1, PVS&C Act 2011
“The final decision in February 2011 was far too late on whether the Referendum should proceed. It made planning really difficult because we still had to plan for our local elections - our biggest election - yet allow for the directions of the CCO.”

Head of Democratic Services, South East

2.38 It should also be noted, however, that many of the Chief Counting Officer’s directions were not legislation-dependent as they addressed what is generally considered to be good practice. This report examines in more detail the nature and impact of the use of the power of direction and the communication of directions, requirements and advice through the instruction modules and other channels in Chapter 4 - Directions, advice and performance.

2.39 The practical consequences of this situation was that, for the referendum and the other polls scheduled for 5 May, statutory officers and electoral administrators were having to put in place alternative plans and make provisional arrangements that might then change or not be needed at all.

2.40 If the PVS&C Act had not received Royal Assent in time for the referendum to be held on 5 May 2011, Returning Officers in areas with scheduled elections would have had to revert to a different set of assumptions and arrangements to those provided in the combination schedules to the Bill and envisaged by the Chief Counting Officer in her directions and instructions.

2.41 In doing so, staff time and resources were expended and costs were being incurred during the planning process that would have had to be met from the Consolidated Fund. An example of this was printing development costs and any actual printing done in advance in order to clear work in order to meet the deadlines for issue of the various referendum and election documents such as poll cards and postal voting stationery.

2.42 In addition, there would have been the less quantifiable impact of the disruption caused by provisionally booking and then cancelling some or all of the various venues needed for the referendum (depending on whether there were other polls on 5 May or not) which would have had an impact on others wishing to use the venues and potentially on future availability. With large count venues, there are also often cancellation costs.

2.43 This is not the best way to achieve the professional conduct of electoral events that we believe the voters of the UK deserve and that electoral administrators want to deliver.
2.44 The more complex the legislation and the later it is available in its final form, the less accessible it is to those who have to implement it and the more there is a need for the legislation to be ‘interpreted’ in guidance or, in the case of the referendum, directions and instructions.

2.45 Therefore, the more essential it is that sufficient time is allowed for that work to be undertaken properly and issued in good time for administrators to assimilate the information and apply it in practice.

“Once again, the legislation was far too late. I have never been less comfortable with my knowledge of the statute than I was with the referendum. Whilst I obviously took on board EC guidance and directions, and consulted the legislation periodically on specific points, this was not an ideal situation.”

Returning Officer/Counting Officer, South East

2.46 If the legislation had been in force six months before 5 May 2011, one might reasonably assume that the provisions of the draft legislation going through the UK Parliament would have been known at a much earlier time (even if subject to potential changes).

2.47 Consequently, planning by all those involved in the administration of the polls, including the planning for any directions and / or guidance, could have been reasonably informed that much earlier and absolutely confirmed no later than six months before the poll.

2.48 Gould’s recommendation has never been more relevant than now given that we are again facing the prospect of late legislation in respect of the proposed elections for Police and Crime Commissioners.

Combination and complexity

2.49 In 2010, we noted that more than 25 separate pieces of primary and secondary legislation applied at the polls on 6 May. 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.

2.50 The PVS&C Act is a complex piece of legislation extending to some 311 pages, and containing three Parts and 12 schedules. As noted above, the schedules to the Act setting out the combination provisions had been tabled at the end of October 2010 so as to be available in the public domain six months before the proposed date of the referendum. However, the Bill was subject to amendment during the remaining stages of its passage through the UK Parliament.
2.51 If you were an electoral administrator in the enviable position of delivering a ‘standalone’ referendum with no other polls taking place on 5 May, the rules for the conduct of the referendum were straightforward and were adapted largely from the Parliamentary Election Rules\textsuperscript{22} as had been envisaged in the Explanatory Note to S129 of PPERA. This comment is purely an observation on the legislation and does not reflect any issues arising from directions.

2.52 The legislative provisions put in place for the administration of the absent voting process for the polls on 5 May 2011 provides a cogent example of the level of complexity involved both for voters and for electoral administrators.

2.53 In order to understand what was required in terms of the administration of the absent voting process in an area where the poll at the referendum was combined with another poll an administrator would need to refer to Schedules 1 - 4 of the Act (including the various parts within these schedules) and then the relevant combination Schedule for England, Wales, Scotland and Northern Ireland.

2.54 The Act also cross-referenced with existing primary and secondary legislation including provisions within the Representation of the People Acts 1983, 1985 and 2000, the Representation of the People Regulations 2001 (as amended) and according to either England and Wales or Scotland, and the 2008 Northern Ireland Regulations.

2.55 Further, there were references to the European Parliamentary Regulations 2004 in relation to peers, the relevant election rules and conduct orders for the various local and national polls, as well as the regulations governing the conduct of local authority referendums and mayoral elections.

2.56 No wonder then that an extremely late amendment was required during the Lords stages of the Bill to address an issue in relation to a person’s eligibility to receive a postal vote for all polls on 5 May.

2.57 The difficulty with the arrangements for applications for absent voting facilities in relation to the referendum was that until the Parliamentary Voting System and Constituencies Bill became an Act, there was no referendum. Therefore, electors could not apply for absent voting facilities for this particular referendum as it had not been confirmed in law, even though there was media coverage of the proposed event.

\textsuperscript{22} PER, Schedule 1, Representation of the People Act 1983.
At the same time, electors were aware that there were significant national and local elections scheduled for 5 May 2011 and so were making applications for absent voting facilities for those polls. The AEA considered it reasonable to assume that the elector may well have expected that this application or existing arrangement would also cover the scenario whereby the referendum did take place on the same date as the other polls.

In September 2010, in our comments on the proposals published in the *Parliamentary Voting System and Constituencies Bill*, the AEA noted that the Bill made provisions only in respect of UK Parliamentary electors and certain Peers (the franchise for the referendum) to automatically have an absent vote for the referendum without the need for a separate application.

However, this did not reflect the fact that some electors (who were eligible to vote in the referendum) may apply for or have absent voting arrangements purely for the national or local elections taking place on 5 May 2011. We made the following recommendation:

“The legislation should ensure that any application received to vote by post, or proxy, or any existing absent voting arrangements automatically cover all polls taking place that day, providing the elector is eligible to vote at all of them. The rationale for this is that if an elector has indicated that they will be absent for one poll, he/she would be expected to be absent for all polls taking place that day.”

On 1 February 2011, we recognised that the provisions within the Bill on this matter had not fully resolved this issue and were in need of amendment. Cabinet Office officials, with input from the AEA and the Electoral Commission, moved quickly to bring forward amendments to the Bill during the final report stages in the Lords (7 - 9 February). Some very complicated drafting had to be achieved in a very short space of time that took account not only of the different polls to be combined with the referendum but also the possibility that some of these polls may be postponed and take place at a later date, as well as the different franchises for these polls.

However, despite best endeavours the provisions in the PVS&C Act were not entirely comprehensive on this matter.

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2.63 The Electoral Commission issued advice to Counting Officers on postal voting arrangements for the 5 May polls in EC09/2011. This clarified that the provisions for an elector to automatically receive a postal vote for the referendum would not apply to electors with existing absent voting arrangements, for example, at a local government election if that election was then uncontested and no poll took place on 5 May.

2.64 By the time it was known that the election was uncontested there would be very little time for electors to make a separate application for the referendum before the deadline at 11 days before the poll.

“...on postal votes the legislation relating to whether or not an elector should receive a local only or referendum only or both postal votes was extremely confusing, it caused problems with software companies and caused issues with electors and confusion with polling station staff on election day...”

Electoral Services Officer, North West

2.65 With the likelihood for late legislation in respect of elections of Police and Crime Commissioners, and the prospect of an increasing number of different types of elections being held on the same day with differing franchises, the AEA believes it is vital that the combination provisions for absent voting should be reviewed to learn the lessons from the drafting difficulties outlined above.

A generic conduct order for UK referendums

2.66 In its report on the 2004 referendum in the North East of England, the Commission stated its understanding that,

“...the Government intends to develop a generic Conduct Order for referendums, setting out the detailed regulations governing the administration of future referendums. We believe this should be regarded as a priority, in order to ensure that all involved in planning for any future UK-wide referendum have a shared understanding of the key ‘rules of the game’ well in advance.”

2.67 Since 2004, there have been significant changes to key aspects of the electoral process with changes to primary and secondary legislation resulting, as the AEA noted in its report on the 2010 elections24, in an increasingly complex legislative environment.

2.68 In any event, there was no generic conduct order that could be brought into effect for the referendums in 2011.

2.69 If the rules for the conduct of the referendum on 5 May had been contained in a generic conduct order, a much shorter Bill would have been presented to the UK Parliament for its consideration and scrutiny. There could have been the potential for earlier clarity as to the procedures for the conduct of the poll (subject of course to any implications arising from directions issued by the Chief Counting Officer), even though it is recognised that there may not have been any earlier certainty that the poll would go ahead.

“Now that two referendums have been held within an extremely short period of time the rules should be adapted to ensure that they can be used at any future referendum.”

Electoral Services Manager, Wales

2.70 Given the work done for the referendums in 2011, it should not be a difficult matter to create a generic conduct order that could be used for future standalone referendums.

2.71 As a result of continuing change in the administration of elections, the UK experience of conduct orders for the elections to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly and the regulations for the GLA elections, is that these need to be reviewed and amended in advance of each set of scheduled elections. Such reviews build on learning from the delivery of previous events and generally take at least a year from the commencement of any review of the provisions to legislation coming into effect.

2.72 It should be recognised, however, that while a generic referendums conduct order would provide a helpful starting point, it would not be a panacea for all of the difficulties and challenges set out in this report. Alongside a generic conduct order, there would need to be clear and agreed arrangements for the combination of a referendum poll with the polls at elections.

2.73 In particular, any learning from the work undertaken on the detailed combination provisions for the polls on 5 May 2011 should be included in a substantive wider review of combination as recommended in the AEA’s 2010 report.
The AEA urges the UK Government to prioritise this work which will become increasingly vital as the number and types of polls increase as part of its reform agenda across the different Government departments. There should be active coordination of the rules for the various elections, referendums and advisory polls in order to enable effective combination of polls and in order to be clear where polls should and should not be combined.

It is in the interests of the voters and critical to the proper conduct of those polls that the rules are straightforward and clearly understood. This is particularly true in cases where different voting systems are used for the polls which are being combined as is likely to be the case in at least four out of the next five years.

Review and simplification of electoral legislation

In writing about the legislation applicable to the elections taking place in Scotland in 2007, Ron Gould wrote that,

“... it is so fragmented and antiquated that it fundamentally interferes with the ability of electoral stakeholders to make timely decisions and to carry out all activities related to planning, organising and implementing an election effectively. The obvious conclusion, and our recommendation, is that a major initiative should be undertaken to rationalise and consolidate the existing legislation as it relates to these elections, ensuring that the respective electoral provisions of the laws are as compatible as possible and that they focus on electoral policy rather than micro-management of the elections.”

Some four years later, this assessment could equally be applied to the legislation in place for the various polls on 5 May 2011.

In 2010, the central recommendation in our report on the administration of the elections across the UK in 2010 was that the UK Government should undertake a thorough and systemic review of the electoral process in the UK. We said that this should include the creation of a single Electoral Administration Act in accessible language setting out the high-level framework with the operational detail contained in secondary legislation.

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26 Beyond 2010: the future of electoral administration in the UK
2.79 The key aim should be the simplification and consistency of rules across all elections.

2.80 The AEA also strongly urges the UK Government to respond positively to the proposal that the Law Commission takes forward work to review and simplify the legislative framework for electoral administration in the UK as part of its eleventh programme of law reform.

2.81 We recognise that this would present a significant challenge and take some considerable time to achieve. For these reasons, we believe it is imperative that this work should commence as a matter of urgency and the AEA stands ready to offer practical assistance and resources in order to support its successful delivery.

Fees and charges

2.82 Referendums and elections involve the deployment of significant amounts of resources, involving the production of millions of separate pieces of stationery, and the staffing and equipping of thousands of venues. All of this has to be paid for by central and local government.

2.83 The arrangements for the fees and charges for the referendum on 5 May 2011 and the combined polls involved considerable negotiation and clarification, particularly with respect to the split of costs across the various polls and the impact of the Chief Counting Officer’s directions.

2.84 EC17/2011 announcing the publication of the detailed guidance notes for Counting Officer’s expenses was issued on 31 March 2011 when the referendum and elections were already under way. At this point the Fees and Charges Orders had still not been made. While some assumptions and information had been made available during the planning process, this is by any reckoning extremely late in the process to be confirming the detailed arrangements for the funding of a UK-wide event involving significant public expenditure.

2.85 Feedback from our Members also suggests that the lack of clarity continued after the polls in respect of the split of costs in Scotland between the referendum and the costs of the elections to the Scottish Parliament.


27 The Referendum on the Voting System (Counting Officers’ and Regional Counting Officers’ Charges) Order 2011; made 4 April and came into force on 5 April 2011.
2.86 There is general agreement that the payment of advances, although earlier than at some recent elections, was still late in that costs had already been incurred at the point at which the advances were paid.

2.87 We also have feedback regarding the complexity and work involved in producing accounts for the two separate referendums as well as the elections to the National Assembly for Wales.

“I've started doing the accounts and would like to draw your (someone/anyone's) attention to the complexity of this in Wales. We have to submit the accounts for the 3 March referendum by 5 November, bearing in mind that the 3 months immediately following the referendum were taken up with the May NAW elections and national referendum. The May accounts have to be divided between the NAW elections and the referendum for 2 constituencies and our authority was also the Regional Returning Officer ... This means that I have to submit 6 separate lots of accounts by the beginning of January.”

Electoral Services Manager, Wales

2.88 In 2010, the AEA recommended that the UK Government should undertake a thorough and UK-wide review of the funding and resources required to deliver core electoral services with the aim of delivering a coherent and efficient structure across the UK. The event-by-event approach to fees and charges being so unclear during the planning process cannot be an efficient way to manage election and referendum finances.

2.89 As with other election law, if Fees and Charges Orders remain the mechanism for funding specific electoral events, these should be in place six months before the relevant election or referendum takes place.

2.90 We address specific issues relating to costs arising from the Chief Counting Officer’s direction to adhere to polling station ratios in Chapter 8 - Managing the polls.

Recommendations

The UK Government should:

- bring forward legislation to give effect to Gould’s recommendation that electoral legislation should not be applied to any electoral event held within six months of the new provision coming into force;
- develop a generic conduct order for PPERA referendums;
- undertake a thorough review of combination issues incorporating learning points from 2011, in particular focusing on which polls can safely be held on the same day, and the rules for combination and absent voting;

- support the proposed Law Commission review and simplification of electoral law.
3 A different management structure

“A referendum held under PPERA has a different management and accountability structure compared to any election. It requires a Chief Counting Officer, who will be responsible for certifying the overall result.”

The Chief Counting Officer

3.1 For the referendum on 5 May 2011 there was, in essence, a three-tier management structure comprising:

- The Chief Counting Officer
- Regional Counting Officers
- Counting Officers

3.2 All Counting Officers - the Chief Counting Officer, the Regional Counting Officers, and Counting Officers - had a general duty to conduct the referendums according to the provisions of the legislation.\(^ {28} \)

The Chief Counting Officer and Chair of the Electoral Commission

3.3 The key responsibility of the Chief Counting Officer is to certify the national result.

3.4 The Chief Counting Officer could:

- Appoint Regional Counting Officers.
- Take responsibility for the printing of ballot papers for a voting area and could direct Counting Officers accordingly.
- Modify certain forms and notices to be used at the referendums.
- Direct Regional Counting Officers and Counting Officers in their preparations; the discharge of their functions, and to provide information.

3.5 PPERA sets out that the Chair of the Electoral Commission would be the Chief Counting Officer unless that person decided to appoint another person to be the Chief Counting Officer. Jenny Watson decided to undertake the role of Chief Counting Officer both for the referendum in Wales on 3 March 2011 and for the UK-wide referendum on 5 May 2011.

3.6 This arrangement provided the Chief Counting Officer with the support of Electoral Commission staff and infrastructure.

\(^ {28} \) Para 5(1), Schedule 1, PVS&C Act 2011.
3.7 This had the potential benefit of drawing on learning and expertise developed over the life of the Electoral Commission, particularly in terms of planning, communications, the provision of advice and guidance (and the legal advice underpinning such provision), reporting generally on electoral matters and specifically on performance standards, in addition to the less tangible but nonetheless critical local knowledge and relationships developed by staff in devolved and regional offices.

3.8 For the purposes of the referendum on 5 May 2011, the Commission also assumed responsibility for managing the fees and charges regime, including guidance, payments to Regional Counting Officers and Counting Officers, and receiving and approving the accounts for all Counting Officers (including the Chief Counting Officer and the Regional Counting Officers).

3.9 However, administrators have expressed concerns about whether it is appropriate for a body established to provide advice and keep electoral matters under review - including reporting on the administration of the referendum - to have operational responsibility for that referendum. This includes a concern about the impact on the Electoral Commission’s support for the other elections that also took place.

“I did not feel that the Electoral Commission was the appropriate body to administer the Referendum as the EC was set up to be an overseeing and advisory body. It was not purposed as a management body and does not have the structure, resources and expertise to be one. Consequently the EC managing the Referendum has put an unnecessary strain on its relationship with Electoral administrators and has meant that it was not able to support local elections in its normal manner...”

Elections Officer, East Midlands

“It was felt that the EC attention to the Scottish Parliament election was minimal and as a result some of the guidance, esp. For the candidates and agents suffered as a result as they were concentrating exclusively on the AV referendum. The Scottish Parliament election was supposed to be primary.”

Elections Officer, Scotland

“The Electoral Commission had no interest in Local Elections and focused mainly on the AV Referendum.”

Senior Elections Officer, North West
3.10 We understand that Regional Counting Officers also expressed divergent views on this issue ranging from an endorsement that the Electoral Commission proved its capacity to discharge the Chief Counting Officer role and that there was no question of conflict, to a view that it should not undertake this role in future. It has been argued that the Electoral Commission would provide greater value in delivering its current functions in relation to electoral administration - namely, setting standards and the provision of guidance.

3.11 However, it is clear that a debate is needed on the management structure for future referendums, including the respective roles and powers of the Chief Counting Officer and the Electoral Commission.

3.12 The AEA does not see the two roles as necessarily inconsistent or creating a conflict of interests. However, we do comment in more detail on the approach taken to the management of the referendum by the Chief Counting Officer, and the impact of this approach for the polls with which the referendum poll was combined, in Chapter 4 - Directions, advice and performance.

Regional Counting Officers

3.13 The Parliamentary Voting System and Constituencies Act 2011 established a new role, that of Regional Counting Officer for the referendum on 5 May 2011. This was a discretionary role in that it allowed the Chief Counting Officer to appoint a Regional Counting Officer for any region in Great Britain. The regions were those used at European Parliamentary Elections.

3.14 For the referendum on 5 May 2011, the Chief Counting Officer used this power to appoint Regional Counting Officers (designate until such time as the Parliamentary Voting System and Constituencies Bill was passed).

3.15 In England and Wales in most cases the person who had been the Regional Returning Officer at the 2009 European Parliamentary Elections was appointed. In two regions, East Midlands and Yorkshire and the Humber, it was necessary to undertake a recruitment as the individuals who had been the Regional Returning Officers for those regions had left their posts.

3.16 In Scotland, the Elections Convenor of the Interim Elections Management Board was appointed.

3.17 For the Northern Ireland voting area, the Counting Officer was the Chief Electoral Officer for Northern Ireland.
3.18 For any future referendums in England and Wales, the AEA would prefer to see a recruitment process for all appointments to the role of Regional Counting Officer in line with established and transparent processes for public appointments. The exception to this should be where a statutory officer is designated as Regional Counting Officer by virtue of their appointment to their existing statutory role.

3.19 In terms of their statutory role, the Regional Counting Officer was required to certify for their region the total number of ballot papers counted and the total number of votes cast in favour of each answer to the question asked in the referendum.

3.20 Regional Counting Officers also had a power of direction in respect of the Counting Officers for voting areas within their region, but could only exercise this power ‘in accordance with a specific or general authorisation or direction given by the Chief Counting Officer’.

3.21 A Regional Counting Officer role description was agreed between the Chief Counting Officer and the Regional Counting Officers. This set out a role in coordinating and planning the administration of the poll across the region, supporting compliance with the Chief Counting Officer’s directions, performance monitoring, providing regional briefings and communication, management of the exceptions process and managing the results collation process.

3.22 Given that the size of the regions varied considerably from the North East with 10 Counting Officers, to the South East with 67 Counting Officers, there could not be a ‘one-size-fits-all’ approach to communication and coordination.

“The approach taken by our RCO worked really well - the cascading of information from them to us; and then on within county groups was a good way of helping us to understand the key requirements and practically apply the CCO directions.”

Head of Democratic Services/ Deputy Counting Officer, South East

3.23 As part of the communication and coordination role, Regional Counting Officers with support from Electoral Commission staff provided briefings for Counting Officers and electoral administrators. It was a requirement for Counting Officers and a member of their core project team to attend briefings. The effectiveness and value of these was dependent on there being sufficient information to disseminate.

29 Para 5(7), Schedule 1, PVS&C Act 2011
3.24 We have received feedback that some of these events were held when there was insufficient information to be communicated.

“Briefing ... scheduled for 90 minutes but struggling for content after 20 minutes.”

Electoral Administration Team

3.25 However, this was not a universal experience and we also received comments that some briefings were informative.

3.26 In general, support at the regional level was welcomed by electoral administrators in assisting them by troubleshooting issues, and clarifying requirements. There is some evidence of duplication of effort and requests for information between Regional Counting Officers and the Chief Counting Officer and some administrators have observed that the level of central direction diminished the regional role.

Counting Officers

3.27 The role of the Counting Officer was to conduct the poll and certify the local result.

3.28 PPERA envisaged the Chief Counting Officer appointing all of the Counting Officers for the UK based on local government areas. However, as we have noted, 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.

3.29 The AEA supports the pragmatic approach that was taken in the PVS&C Act which determined for each nation of the UK which Returning Officer was, by default, the Counting Officer at the referendum and which electoral area applied. These were the Returning Officers and electoral areas being used for the relevant national and local elections.

Deputies

3.30 The Chief Counting Officer, Regional Counting Officers and Counting Officers were empowered to appoint deputies to carry out any or all of their functions and any such appointment had to be in writing.

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30 Para 6, Schedule 1, PVS&C Act 2011
3.31 The Chief Counting Officer appointed a Deputy, and required Counting Officers\(^{31}\) and Regional Counting Officers\(^{32}\) to appoint deputies in case they were unable to act in person, which reflects established good practice in risk management at elections.

Accountability and challenge

3.32 Returning Officers are accountable to the courts for their conduct of the election.

3.33 In our 2010 report, we noted that the only provision within the law for addressing grievances and complaints about election is by presenting an election petition to the Royal Courts of Justice (England and Wales), the Court of Session (Scotland), or the High Court (Northern Ireland).

3.34 In such a case, the petition is simply aimed at challenging the outcome of an election. Other than this, there is little provision within the law to deal with the situation of complaints about the administration of the election, and election campaign activity (not related to party and election finance).

3.35 We recommended that a local system of accountability be created that provided a mechanism for referral to the appropriate level of court, and a proportionate and appropriate range of outcomes and penalties.

3.36 For the referendum on 5 May, the PVS&C Act required that any challenge to the referendum had to be by way of judicial review. This was limited to the questioning of the number of ballot papers counted and the number of votes cast as certified by the Chief Counting Officer or any Regional Counting Officer or Counting Officer at the referendum, and any such action had to be filed within six weeks of the certificate being issued. As far as we are aware, no such action has been brought before a court and therefore this mechanism has not been tested.

3.37 Given that the Chief Counting Officer’s power of direction also related to functions at elections being held as part of the combined polls, the AEA raised during the planning process the issue of how any legal challenges to the other elections arising in respect of the exercise of that power would be viewed and whether the Chief Counting Officer had taken legal advice on that point.

\(^{31}\) Direction 6 (a) (b) and (c).

\(^{32}\) Requirement contained in the role description.
3.38 Although we are aware that a small number of election petitions have been lodged, we are not aware of any challenges that question the impact of the Chief Counting Officer’s directions on the delivery of those elections.

3.39 However, it is a point which should be considered and addressed for any future PPERA referendums if the power of direction is to be retained in respect of specific functions relating to elections at combined polls. This is because the Returning Officer at such elections could be a respondent to the petition.

3.40 In addition to legal challenge, a key mechanism for accountability at the combined polls on 5 May was the performance monitoring and compliance with directions put in place by the Chief Counting Officer. We comment on this in more detail in Chapter 4 - Directions, advice and performance.

**Non-statutory planning groups**

3.41 In order to enable management and communication structures, the Electoral Commission retained what was formerly the ‘Coordination Group’ and ‘Working Group’ arrangement established for the 2009 European Parliamentary Elections. The AEA was represented on both of these groups.

**The 2011 Elections and Referendums Steering Group**

3.42 The ‘Steering Group’ was chaired by Peter Wardle, Chief Executive of the Electoral Commission. The Terms of Reference\(^{33}\) for the Steering Group set out three clear areas of activity:

1. To coordinate and monitor the planning and delivery of the spring 2011 elections and referendums.
2. To act as the point of liaison and communication between the Electoral Commission/Chief Counting Officer, the UK and Welsh Assembly governments, and Regional Counting Officers/Returning Officer and electoral administrator representatives.
3. To provide a forum for raising and considering issues of common concern and ensuring, where appropriate, consistency of approach across the UK.

3.43 The Terms of Reference also set out an expectation that there would be a relationship between the Steering Group and the ‘Working Group’.

Specifically, there was an expectation that the Steering Group would be ‘supported by an electoral administrator working group, convened by the Electoral Commission, to consider detailed electoral administration issues and provide advice to the Steering Group’.

3.44 The group met on a monthly basis between September 2010 and April 2011 with agendas and minutes published on the Electoral Commission website generally one week after the meeting to which they related.

3.45 The meetings provided a useful forum to bring forward proposals for the planning and management of the delivery of the referendums and the elections taking place in 2011. One particular feature of the project management approach introduced part way through the planning period for the referendum and elections on 5 May was a ‘dashboard’ report to the Steering Group. We considered this to be a useful and informative management tool.

The Elections, Referendums and Registration Working Group

3.46 The ‘Working Group’ also met on a monthly basis up to the 5 May, with a meeting on 26 May to enable a post-poll review discussion. Its membership comprised an appointee of each Regional Counting Officer and of the Greater London Returning Officer. The Cabinet Office, the AEA and the Scottish Assessors Association were also represented on the group.

3.47 The objectives\(^\text{34}\) of this group were to provide the Commission and the Chief Counting Officer with advice and support on the development and delivery of referendum and election instructions, guidance and resources, as well as to respond to any issues identified by the Steering Group and the electoral regions.

3.48 In addition, it was expected that the Working Group would:

“...articulate the needs of the electoral registration and elections staff in Great Britain... and ensure that their needs are reflected in the development of instructions, guidance and resources”.

Given the timescales for delivering the instructions, templates and resources there was often little time for Working Group Members to comment on drafts or proposals presented to them.

The Working Group was also described in the Terms of Reference as the forum that would enable:

“...effective communication between the Electoral Commission/Chief Counting Officer, the Cabinet Office, Counting Officers, Returning Officers, Electoral Registration Officers and suppliers”.

After each meeting the Working Group was required to report back to the Steering Group. However, there seemed to be little connection between this group and the Working Group. The AEA is not aware that issues were referred to the Working Group for consideration nor were issues or advice referred from that group to the Steering Group.

The EC/RCO Communications Network

This group was set up by recommendation of the Steering Group and comprised representatives of the Regional Counting Officers and the Electoral Commission staff involved in delivering the campaigns for the referendum and elections on 5 May 2011. The AEA was not a member of this group and we have insufficient evidence to make any comment on its impact or effectiveness.

Reviewing the lessons learned from the administration of the referendum and combined polls on 5 May 2011

On 17 May there was a meeting of the Electoral Commission and the Chief Counting Officer with the Regional Counting Officers at which it is understood there was a review discussion of the administration of the referendum and elections on 5 May.

The AEA and Cabinet Office representatives were advised that this was not a meeting of the Steering Group and that we were not invited to that meeting.

The AEA is unaware of any minute of this meeting being made available via the Electoral Commission’s website. Therefore, unfortunately any learning or evidence that came forward during that review discussion is not available for this report or indeed for anyone with an interest in electoral matters.

Equally, the AEA did not have an opportunity to provide the electoral administrator perspective in that discussion.
3.56 The AEA expressed its disappointment to the Chief Counting Officer and representatives of the Electoral Commission at a bi-lateral meeting on 18 May. We should note that we did welcome that opportunity to provide our initial views to the Chief Counting Officer. A note of the bi-lateral meeting was circulated to all AEA Members by the Chief Executive of the AEA and published on the AEA’s website.

3.57 The meeting of the Steering Group which was held on 16 June was the first such meeting after the referendum and elections on 5 May and the agenda did not specifically include a review discussion.

3.58 The AEA is concerned that the approach taken towards the Regional Counting Officer review meeting was not consistent with the transparent arrangements in place for Steering Group meetings and the Electoral Commission’s stated value of transparency about the way it works.\(^{35}\)

3.59 However, we welcome the Electoral Commission’s commitment to the continuation of both a strategic level Steering Group and the operational level Working Group. The AEA continues to be committed to representing the electoral administrator perspective in those forums.

3.60 In future, we believe that there should be more cohesion between the two groups and sufficient time allowed for review and comment on proposals and documents, particularly in relation to detailed processes.

Planning groups in Scotland, Wales and Northern Ireland

3.61 The AEA understands that there were various established planning groups and networks for the national elections taking place in Scotland, Wales and Northern Ireland. We have limited feedback on these arrangements.

3.62 In Scotland, the Interim Election Management Board worked well particularly as the Convener was also the Regional Counting Officer for Scotland. In addition, there was a ‘forms working group’ which successfully produced forms that were well received and capable of local adaption.

3.63 In Northern Ireland, because of the three-way combination, the Chief Electoral Officer put in place coordination arrangements involving staff from the Electoral Office for Northern Ireland, the local councils, and the Electoral Commission. We understand that this involved a considerable amount of work to manage.

\(^{35}\) Page 9, Corporate Plan 2011-12 - 2015-16; The Electoral Commission.
Recommendations

The UK Government should:

- consider the management structure for future PPERA referendums including the respective roles, responsibilities and powers and seek a consensus on how they should operate;

- review the impact of the use of the power of direction in respect of combined functions in the context of potential legal challenges to the other polls taking place.
4 Direction, advice and performance

“I have mentioned the power to issue directions. This meant that I was able to give specific and clear instructions to Counting Officers, and require them to report back on the actions they had taken to follow my directions, rather than issuing guidance and relying on goodwill in the hope that it would be followed, as is the case for elections.”

The Chief Counting Officer

The power of direction

4.1 Most significantly for the management of the referendums in 2011, the Parliamentary Voting System and Constituencies Act 2011 provided the Chief Counting Officer with specific powers to direct Regional Counting Officers and Counting Officers.

“The Chief Counting Officer may give Regional Counting Officers or counting officers—

(a) directions about the discharge of their functions;

(b) directions requiring them to take specified steps in preparation for the referendum;

(c) directions requiring them to provide the Chief Counting Officer with information that they have or are entitled to have.”

4.2 As a result of combination of polls on 5 May 2011, this power had an impact on the conduct of the polls at the national and local elections also taking place.

Combined functions

4.3 The Counting Officer became responsible for a number of functions that would normally be the responsibility of the Returning Officers for the other polls which were also taking place on 5 May 2011 and which were combined with the referendum poll.

4.4 These functions were as follows:

- The provision, staffing and equipment of polling stations.
- The notice of the situation of polling stations.
- The notification of the requirement of secrecy at polling stations.

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37 Para 5(5), Schedule 1, PVS&C Act 2011
• Signing certificates as to employment (allowing polling station staff to vote at the polling station at which they were working).
• The ability to authorise the removal of persons from the polling station.

4.5 The verification of all ballot papers at the count (then the Counting Officer would be responsible for counting the votes on the referendum ballot papers and the relevant Returning Officers would be responsible for counting the votes on the election ballot papers).

4.6 Combining the issue and receipt of postal ballot papers was discretionary and to be agreed between the Counting Officer and the relevant Returning Officer\(^{38}\). In most cases, this would be the same person. However, the key point is that the Chief Counting Officer could direct Counting Officers in the conduct of the functions for which they were responsible but could not direct Returning Officers.

4.7 If it was decided to combine the issue of postal ballot papers, the Counting Officer would be responsible for:

• The postal vote corresponding number list.
• The issue of postal votes (postal ballot papers and postal voting statements and accompanying information for voters).
• Marking back the returned postal ballot papers.
• The verification of the personal identifiers on the returned postal voting statements.

**What is the function or purpose of the power of direction?**

4.8 The Chief Counting Officer set out clearly that, in her view, the issuing of directions was ‘designed to ensure that Counting Officers across the UK can deliver the main aims for the referendum and combined polls\(^{39}\).’

4.9 These aims were as follows:

• That the polls are consistently administered.
• That the process is transparent.
• That the polls are professionally delivered.
• That they produce results in which all stakeholders are confident.
• That all voters have a good experience, with any person who is entitled to vote being able to do so.

\(^{38}\) Regulation 65 (RPR 2001 and equivalents in Scotland and Northern Ireland) as amended by each combination Schedule in the PVS&C Act 2011.
\(^{39}\) Text included in each of the five instructions modules for Counting Officers.
4.10 As the professional body representing the interests of electoral administrators, since 1987 the AEA has been working to promote and support the consistent and efficient administration of electoral registration and the conduct of elections in the UK. Therefore, we endorsed these aims. However, for the future, it would be helpful to have a clear shared understanding of what is meant by ‘all voters [having] a good experience’.

4.11 Reflecting on the nature of direction as a management tool, one might consider it to be a fairly blunt instrument. A direction, as we have noted earlier in this report, has the force of law. The requirement to follow a direction is unequivocal - a direction must be followed. A Counting Officer could be in breach of official duty\(^\text{40}\) for not following a direction.

4.12 The legal provision of a power of direction could be said to assume that there must be some scenarios that may need to be addressed that are not addressed through the rules and regulations governing the conduct of the referendum or elections. It also suggests that these need to be addressed in such a way as to provide absolute certainty that the desired action takes place.

4.13 For these reasons, it may be reasonable to conclude that the power of direction is designed to provide a remedy to a situation of some seriousness or to achieve activity that is deemed to be sufficiently necessary that it can only be addressed through a legal requirement. On this basis, one might question the necessity of directing, for example, that Counting Officers must ‘make contact with the communications department at [their] local authority and seek their input’.

4.14 This leads to considerations of proportionality in the use of the power of direction. In other words how, when (in what circumstances), and how extensively you use it. In this context, a direction might be employed to minimise a particular identified risk as part of a risk management strategy.

4.15 In responding to the Chief Counting Officer’s proposed directions, the Convenor of the Interim Electoral Management Board for Scotland, observed that, “Directions should in general be dealing with strategic principles rather than specific operational issues.\(^\text{41}\)”

\(^{40}\) S63 RPA 1983, Breach of official duty was applied to the Chief Counting Officer, Regional Counting Officer and Counting Officers at the referendum. On summary conviction the penalty is a fine not exceeding level five on the standard scale (£5,000).

\(^{41}\) Letter to The Electoral Commission, dated 9 December 2010.
4.16 It may also be reasonable to conclude that there may be different interpretations of the rules and regulations that a direction could serve to clarify. In other words, it allows for the possibility that the wording of the legislation is in some way deficient, or that there is more than one way of interpreting the legislation and/or delivering the outcome sought by the legislation.

4.17 This possibility is also recognised in PPERA in providing the Electoral Commission with a power to provide *advice and assistance* to Electoral Registration Officers and Returning Officers, political parties, permitted participants and recognised third parties. This does not appear to include Counting Officers at a PPERA referendum.

4.18 The assumption in the legislation, therefore, is that the Electoral Commission *advises* Returning Officers (as there is no power to direct these officers) and that the Chief Counting Officer *directs* Counting Officers. However, this does not necessarily mean that the framework is inherently or entirely inflexible. There are examples within the directions issued by the Chief Counting Officer where a more ‘advisory’ approach was taken, for example:

“(11) Take decisions as to whether to outsource as part of an assessment of costs, risks and benefits. The risks of outsourcing must be clearly identified, with contingency arrangements built into the process.”

4.19 This direction left the decision to the Counting Officer but provided the parameters within which that decision should be made.

4.20 Similarly, there was a direction\(^{42}\) requiring Counting Officers to prepare venue layout plans for the count venue. This was then supported in the instructions by advice on what factors to take into account when organising the verification and count (*Module 4 - Verification and count*, paragraph 3.18).

4.21 The PVS&C Act also sets limits on the use of the power of direction, in that it can only be used in relation to the functions of Regional Counting Officers and Counting Officers as set out in the legislation, or to require specific practical preparations to be undertaken. The power cannot be used to create new functions. In this way, one can conclude that the power of direction is fundamentally about *how* those functions set out in the legislation are discharged.

\(^{42}\) Direction 69
4.22 Issuing directions, then, presents a two-fold challenge. Firstly, to the person issuing the direction to ensure that it is lawful; that it addresses an issue on which absolute certainty (underpinned by having the force of law) is required, that it is clearly communicated, and is capable of being followed. Secondly, it presents a challenge to the person being required to follow the direction in that they must find a way of delivering what is being required of them.

4.23 Further, a general principle of any legal requirement is that it is in some way enforceable. We assume that this was the rationale for providing the Chief Counting Officer with a power to direct Counting Officers to provide her with information. The Electoral Commission, in addition to having responsibility to report on elections and referendums also has a power to set performance standards and to require relevant officers to provide reports and information, including returns on expenditure. ‘Relevant Officers’ includes Counting Officers for a PPERA referendum.

4.24 Following a consultation on draft performance standards for Counting Officers in May-June 2010, the Electoral Commission decided not to set or monitor performance standards for the 2011 referendums. Instead, the Chief Counting Officer used her power to require information to enable ‘real-time monitoring’ of compliance with her directions.

4.25 On 2 December 2010 the Electoral Commission issued Circular EC24/2010. Attached to the Circular were two important documents, a role description for Counting Officers and an update on key aspects of the Chief Counting Officer’s instructions for the 5 May UK-wide referendum. These documents set out the Chief Counting Officer’s intention to issue directions on a number of key areas and that these directions must be followed. The areas indicated were as follows:

- **Verification and count** - to be conducted in line with a set of principles.
- **Timing of the count** (a separate paper setting out the Chief Counting Officer’s proposal for the timing of the count had been published).
- **The referendum ballot paper**.
- **Polling station ratios** (number of electors per polling station and numbers of staff).
- **Deployment of poll clerks**.
- **Checking postal voting statements**.
- **Forms and notices** - using the power to specify modifications to the working and format of statutory voter-facing forms.
The approach to performance monitoring was communicated to Counting Officers in *EC25/2010* issued on 16 December. We examine this approach in more detail below.

**A UK-wide event**

In her speech to the Constitution Unit the Chief Counting Officer concluded that,

“Overall I feel that this new approach worked well. Counting Officers responded to the challenge of working in a different way. There were of course some comments and criticisms about our communication with Counting Officers to be dealt with, as people adapted to a new approach, but overwhelmedly we all pulled together to deliver for voters and for that I would like to thank those who worked so hard across the country to deliver the polls on 5 May.”

Administrators across the UK have indicated that whilst they recognise the UK-wide nature of the referendum and support the aim of consistency, the directions were too many, too prescriptive in areas where local flexibility would have been helpful, increased risks to the conduct of the polls, and increased costs.

“Whilst we were supportive of the objectives of running a national event to national standards the plethora of directions, bulletins, circulars and alerts created an environment where even our experienced team missed items and found the process unduly complex and prescriptive. This coupled with late releases and the reissue of material that in many cases was poorly cross referenced increased the risk of a procedural breach in what was after all a pretty basic electoral event.

The event was saved from failure not as a result of the directions but from the indifference of the electorate which reduced calls, enquiry volumes and ultimately turn out. The directive approach led to an increased risk of inadvertent procedural breach coupled with an unnecessary increase in cost.”

Elections Manager / Deputy Returning Officer, South East

“Too many directions and a one size fits all approach is not easy to manage. Well versed local procedures and practices were thrown aside, causing unnecessary difficulties in amending routines/processes etc.”

Electoral Services Manager, South West
“... the CCO focused too much on process related directions and didn’t seem to get an early grip on the legislative issues i.e. postal voting.”

Democratic Services Manager, Eastern

“One of the aims of the Commission was to promote consistency but you could not see the wood for the trees. It hindered the election process.”

Deputy Counting Officer, North East

“There was an excessive use of the powers of direction by the CCO. Some directions could have been advisory rather than mandatory with the end result still being achieved.”

Depute Constituency Returning Officer, Scotland

4.29 These comments by administrators in a number of different regions are indicative of the views of many. They raise a number of issues, some of which are specifically to do with the nature and use of the power of direction and some which point to wider issues.

4.30 It is important to note a positive view on the directions. The AEA also received the following feedback.

“Overall we felt the directions of the CCO were fair and reasonable and did assist in standardising the project planning approach taking by administrators across Wales which must be applauded. However, the directions really needed to have been provided earlier, and a more comprehensive consultation should have been conducted. Much confusion and unnecessary uncertainty could have also been avoided if the process of providing electoral stationery templates had been better managed and organised and legislation laid at an early stage.”

Electoral Services Manager, Wales

“Good to be directed but it would have been better to have the whole picture to start with. How can we produce a risk assessment at the beginning of the process when we don’t know what the process is!”

Electoral Services Manager, South East

4.31 We set out below in more detail the specific nature of the concerns expressed by electoral administrators in respect of the approach taken to the use of the power of direction.
4.32 What comes through most strongly is that the use of this power cannot be seen in isolation from issues of communication, change management, the provision of advice by the Electoral Commission, the performance monitoring process, and costs and benefits.

The number and nature of the directions

4.33 The Chief Counting Officer issued five instructions modules for Counting Officers, as follows:

- Module 1: Planning and organisation
- Module 2: Administering the poll(s)
- Module 3: Absent voting
- Module 4: Verification and count
- Module 5: After the declaration of results

4.34 There were five sets of the five modules covering a standalone referendum (which applied in London and some other areas of England) and combination versions for Scotland, Wales, Northern Ireland and England.

4.35 These instructions contained directions covering almost every aspect of the administration and conduct of the referendum. In areas with combination there were 88 directions, many with sub elements to them totalling around 208 separate requirements.

“There was a lack of coherence in the directions and guidance which meant that a lot of time was wasted having to cross-reference information received (i.e. the number of different pieces received regarding the conduct of the count).

It was often unclear in later communications if directions mentioned were new or updated from previous directions received.”

Deputy Electoral Services Manager, London

4.36 Following a request from the AEA, the Chief Counting Officer issued the directions as numbered lists.

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43 http://www.electoralcommission.org.uk/guidance/resources-for-electoral-administrators/referendums; 84 directions for the standalone referendum; 88 in England, Scotland and Wales where there was combination, and 77 in Northern Ireland.

44 There are 120 ‘sub-elements’ to the numbered directions. The figure of 208 does not include any statements including ‘must’ that were also to be taken as directions.
The instructions also contained a number of requirements which were to be treated as directions, as indicated in the text as follows:

“The Chief Counting Officer’s directions to Counting Officers are set out at the start of each instruction module and also appear in boxes at the start of each chapter. Additionally, wherever the instructions state that a task ‘must’ be completed, this constitutes a direction. As Counting Officer, you are being formally directed by the Chief Counting Officer to follow these directions.” [Our emphasis]

The extensive use of the power of direction essentially created a set of additional rules for the conduct of the referendum and combined polls that sat alongside the statutory provisions approved by the UK Parliament and contained in the PVS&C Act.

This use of the power of direction contrasts significantly with the previous use of the power by Regional Returning Officers at European Parliamentary Elections. In 2009, for example, two directions were issued in Scotland, one with several sub-elements within it in the North West, and one in the East Midlands that was subsequently withdrawn.

These were strategic directions to focus attention on key issues of significance such as the introduction of postal voting identifiers (Scotland), and the need for project plans and risk management and contingency plans and 100% checking of postal voting identifiers (North West).

Format of the instructions

Each module for an electoral area, where the poll at the referendum was taken with an election, was subtitled, “This document sets out the Chief Counting Officer’s instructions to Counting Officers and the Electoral Commission’s guidance to Returning Officers”. Having both directions and guidance in one document had the potential to be helpful and negated the need to refer to two separate documents.

However, feedback suggests that this also caused confusion as the combined elements were not sufficiently signposted and the distinction between what was being directed and good practice guidance was not sufficiently clear.

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46 Paragraph, 1.23, Module 1 - Planning and organisation.
“The directions from the CCO were useful as guidance but difficult as prescription and there was no distinction between strategic direction and operational guidance.”

AEA Scotland and Northern Ireland Branch

“Directions were mingled in with suggestions of good practice which led to confusion.”

Electoral administrator, South West

4.43 For example, there was some confusion initially as to whether the following also applied to the other polls combined with the referendum poll.

“You must allocate ballot papers to polling stations based on 100% turnout of eligible electorate (i.e. all electors entitled to vote in person at the polling station).”

4.44 To be clear on this point the reader had to refer back to paragraph 1.10 which stated that the Chief Counting Officer’s directions would apply to any election-related functions which are conferred on the Counting Officer. To find a list of these functions, the reader had to refer to Module 1 - Planning and Organisation, paragraph 1.33. This was later clarified in Spring Polls Bulletin 6 (10 March 2011) (we comment on the various communication channels below).

4.45 The instructions also included repetition of the directions at the beginning of each module, and then at the start of each section (in boxes), and then again within the text. A number of administrators have referred to this repetition leading them to miss additional and important information in the text as they thought that the direction they had already read was simply being repeated.

“Often repetitive, and with no index, it made accessibility poor.”

Electoral Services Manager, East Midlands

“Whilst I understand the need for directions, the large scale repetition of information across the 5 modules made identifying what was actually a direction difficult ... “

Electoral Services Officer, East Midlands

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48 3.26, Module 2 - Administering the polls
Administrators have indicated that it would have been preferable for the modules to be contained in one guidance manual so that the preamble at the start of each module would not have been necessary, and to make for ease of reference.

“When you receive an election manual you can work your way through from start to finish and easily refer to any aspect of the election. The way the information came through for the referendum was less than desirable - even our local EC office had trouble finding information when I phoned them.”

Elections Manager, South West

Communication issues

“We have been inundated with circulars and emails since October with drafts, proposals, guidelines, templates and directions with no clear indication which referendum/elections they were referring to. We were still in the pre-Welsh Assembly Referendum stage when directions were being sent out to do things for the May referendum (e.g. project plans and risk registers).”

Electoral Services Manager, Wales

“Far too many unnecessary alerts, circulars and bulletins sent during very busy periods!! Many could have been combined - it was all too easy to miss something important.”

Head of Elections & Member Services, London

There appeared to be no coherent communications strategy underpinning the approach to communicating the various types of information to Counting Officers.

The instruction modules were supported by a significant number of resources and templates, some required and some advisory. The commitment of staff at the Electoral Commission to delivering a complete range of resources and templates should be recognised - it was a significant amount of work to achieve given the timescales and the fact that a substantial amount of the drafting was done while the legislation was still passing through the UK Parliament and therefore subject to amendment.

Equally, given the timescales for delivering the instructions, it is understandable that these were not produced in hard copy. They were emailed directly to Counting Officers and their staff as separate modules.
The first module was sent in the week before Christmas 2010 and the remaining modules over a number of days during the week 24-27 January 2011. Other resources were made available during January and February 2011.

We are aware of at least two regions in which the Regional Counting Officer’s staff had to forward on documents that had not reached the electoral administrators who needed them. Similarly, other communications such as Spring Polls Bulletins were not sent out consistently and it would appear that different mailing lists were being used. Also, communications were being sent by different Electoral Commission staff and so were not from a single, consistent email address. It has been suggested that a generic email address should be used to send out communications in future along the lines of: ‘guidance@electoralcommission.org.uk’

Further instructions and advice was provided through Electoral Commission Circulars and Alerts which are channels and formats well-recognised by electoral administrators. A total of 17 Circulars were issued between January and March 2011, of which 16 were in connection with the referendum and elections in 2011. Of these, EC03/2011 was specific to the Wales referendum on 3 March 2011. In addition, three Circulars issued in 2010 also related to preparations for the UK-wide referendum and other polls in 2011.

Four Alerts were issued between January and February 2011, and five Alerts between July and December 2010. Of these, two related specifically to the Wales referendum on 3 March 2011. A number of the Circulars issued had multiple attachments, some of which were sizeable documents.

Between January and March 2011, the Cabinet Office issued three updates containing information relating to the 5 May Polls.

In addition, Jenny Watson, in her capacity as Chair of the Electoral Commission, commenced issuing Spring Polls Bulletins on 4 February. There were 13 such bulletins in total, the last one being issued on 28 April.

49 EC14(2011) was in connection with the ‘Collection of April 2011 electoral registers’.
51 Update re the Parliamentary Voting System and Constituencies Bill (January 2011); Update for AEA Conference and Branch Meetings (February 2011); and Newsflash - Support for service voters in Afghanistan for the 5 May 2011 polls.
4.56 The bulletins were designed to communicate ‘live’ issues being considered by the Chief Counting Officer and to provide ‘direct and accurate statements’ on the conclusions she had reached on those issues.

4.57 However, feedback suggests that some of the requirements or advice contained within these bulletins may have been missed because they also contained less formal update information.

“The deluge of communication from the Chief Counting Officer was overwhelming. I am an experienced electoral administrator and I really struggled to keep on top of the directions and other missives and I know failed in some cases.”

Democratic Services Manager, South East

4.58 In some cases, instructions were followed by clarifications via multiple channels. For example, the various requirements and advice for the printing of the ballot paper (including the official mark) were contained in the relevant directions and instructions, and in EC02/2011, Alert 158, and Spring Polls Bulletins 1, 2, 3, 4 and 5.

**Consistency and assurance**

“The tone of the directions has spoilt the relationship that Elections Officers had built over the years with the Electoral Commission both regionally and at Head Office. There did not appear to be an acceptance of the experience that was available at local authorities around the country which meant that in some cases the directions were too prescriptive.”

Senior Elections Officer, East Midlands

4.59 At the heart of this issue is the concept of ‘consistency’ both in terms of practice (processes) and in terms of the voter experience (outcomes). What do we mean by ‘consistency’ in relation to the conduct of elections and referendums (or wider delivery of electoral services) in the UK? Disagreement about level of prescription in the directions would seem to indicate a lack of consensus on this point. What should be consistent and where is there scope for flexibility?

4.60 Consistency can mean ‘uniformity’, the same everywhere. However, an alternative approach might be to focus on outcomes and seek a high quality of service everywhere in accordance with principles, but allow flexibility in how this is achieved. This was broadly the intended approach to the conduct of the counts.
4.61 Consistency also 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 - the Chief Counting Officer, the framework for delivery involves 440 voting areas with Counting Officers delivering the poll locally, with 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.

“I feel that the directions needed to reflect better on the geographical areas. What works in London does not necessarily work in a mainly rural area.”

   Electoral Services Manager, South East

4.62 This presents a challenge in terms of achieving a uniform presentation and delivery of election materials and processes, but is beneficial in bringing local knowledge to bear. It is clearly a balancing act between an appropriate level of clarity and direction centrally, and sufficient flexibility to empower electoral services staff to take decisions locally. The issue most often cited is the direction on polling station ratios.

4.63 In her speech to the Constitution Unit, Jenny Watson stated that,

“At the referendum, consistency and assurance about the quality of electoral administration was achieved through my directions and performance monitoring.”

4.64 Administrators have concluded that this approach was influenced by the problems encountered at the General Election in 2010 and that the approach has been disproportionate to the scale of the problem. Those issues occurred in a very few constituencies and the Electoral Commission reported that ‘in the vast number of constituencies the elections were well-run’ with 96% of (Acting) Returning Officers meeting or exceeding all three of the standards in relation to planning and organisation.

“Those issues were the result of bad planning etc by a small minority of returning officers but as a result the Commission appeared to have little confidence in the electoral community as a whole. This resulted in a centralised and heavy handed approach which far outweighed the need to minimise risk and promote consistency. The Commission would have been better placed focusing on those few authorities that it had concerns about.”

   Deputy Counting Officer, North East
4.65 The key questions are in what way, to what extent, and at what cost the approach taken to the use of the power of direction and performance monitoring delivered the benefits and outcomes being sought in terms of consistency and ‘a good experience for all voters’.

4.66 The AEA does not undertake public opinion research and we therefore look forward to the findings of that undertaken by the Electoral Commission. It is hoped that this will clearly set out the levels of voter satisfaction with and confidence in the administration of the polls and enable all involved in electoral administration to understand how far it is possible to attribute these to the approach taken by the Chief Counting Officer.

4.67 We address the issue of voter facing materials in Chapter 5 - Voting materials and notices and the polling station ratios in Chapter 8 - Managing the polls.

Applying for an exception to a direction

4.68 Given that a direction has the force of law, the Chief Counting Officer acknowledged that there may be circumstances where complying with a direction she had issued may not be possible or ‘may pose an unacceptable risk to the delivery of the referendum or combined polls on 5 May’.

4.69 It might seem remarkable that the Chief Counting Officer would issue a direction that could potentially pose a risk to the delivery of the polls. However, as with all legal requirements, there is the possibility of creating ‘unintended consequences’.

4.70 On 16 December (EC25/2010), in setting out the approach to the Chief Counting Officer’s instructions it was indicated that,

“If Counting Officers consider that they have a legitimate reason for not following a direction, they must apply directly to the Regional Counting Officer for an exception. Counting Officers may only deviate from the directions if an exception has been granted. The Chief Counting Officer will agree with Regional Counting Officers how exceptions should be considered and what factors should be taken into account in reaching their decisions. Further information on this process will be communicated separately in early 2011.”
4.71 The meeting of the Steering Group held on 14 January 2011 discussed this process in some detail as noted by the minutes. This discussion resulted in an action for the Electoral Commission to bring guidance on the exceptions process to the next meeting.

4.72 Regional Counting Officers had already received some early applications for exceptions, most in relation to the direction on polling station ratios. The AEA confirmed in a letter to Jenny Watson on 27 January 2011 that the process and decisions on whether an exception would be allowed or not were needed urgently in order for Counting Officers to plan effectively for the polls. A draft of the exceptions process was presented to the next meeting of the Steering Group on 10 February and subsequently updated with comments being provided by email, including from the AEA.

4.73 The exceptions process was issued on 17 February 2011 as an appendix to EC06/2011 which announced that the Parliamentary Voting System and Constituencies Act 2011 had received Royal Assent.

4.74 Administrators have indicated that clarity about the exceptions process was needed much earlier. A decision, for example, on whether to allow an exception to the direction on polling station ratios impacted on the printing of poll cards for the relevant areas as well as on the practical equipment and staffing of the relevant polling stations.

4.75 In the event, we understand that very few applications for an exception were received and very few were granted. Given that the process was for ‘exceptions’ which indicates that the circumstances or reasons for applying should indeed have been ‘exceptional’, this is perhaps not surprising.

“Far too many directions; even with valid reasons for not following them to the letter, it seemed to be almost impossible to get an exemption.”

Elections Manager, North West

4.76 We also have feedback that obtaining a decision in response to an application for an exception took too long and that an estimated time for a response was not always given on acknowledgement of the application.

**Applying to use an alternative count model**

4.77 There was some confusion over whether the ‘application’ (referred to in direction 67 (a)) to use an alternative count model to that provided by the Chief Counting Officer, was also part of the exceptions process.
In other words, were Counting Officers being directed to use that model and what was required in order to be able to use an alternative model?

“In ... Spring Polls Bulletin 3 (paragraph 3 Counting Methods) the CCO says ‘I have not directed that you should use a particular verification and count method’ and offers ‘a count model which you are free to adopt if you think fit’. This appears to be flatly contradicted by direction no 67(a) which requires us to make an application to the RCO (in other words, apply for an exception) if we do not propose to follow the EC model.”

Senior Elections Officer, Yorkshire & the Humber

The AEA first raised the need for clarity on this issue on 3 December 2010 in response to consultation on the proposed approach to directions. The process was clarified and a template for these applications was issued in EC16/2011 on 25 March when elections across the UK were underway.

Monitoring performance at the referendums and elections in 2011

“I felt overwhelmed by the number of directions and the detail included. Once the election process had started, it became impossible to ‘tick off’ directions as they were completed. The issuing of directions was counter-productive as it meant that you focused on the details rather than on the key risks. The weekly checklists which had to be returned to the EC weren’t user-friendly to complete – a lot of the questions being asked had already been included in the project plan which was submitted in January. The consolation is that there are no performance standards to be completed. If the directions and checklists could be ‘streamlined’ to be less onerous during a high stress period, they would provide a good alternative to performance standards.”

Electoral Services Manager, Eastern

The new approach to ‘real-time’ performance monitoring was set out in EC25/2010 which was issued on 16 December. The first stage in monitoring performance was a review of project plans required to be submitted by Counting Officers by 28 January 2011. At this time, the planning and organisation module of the instructions had been circulated (late December), but the remaining instructions modules including the detail of the requirements for the poll, absent voting and verification and count processes had only just become available in the week commencing 24 January.
4.81 Counting Officers were also required to provide signed statements (at the same time as submitting project plans on 28 January) confirming that they had the resources required to deliver the referendum and to confirm staffing arrangements (by 11 February). A number of Counting Officers qualified their statements subject to understanding more fully what they were being required to deliver and subject to confirmation that the amounts and assumptions in the Fees and Charges Order would meet ‘the full reasonable costs of the referendum including 100% of the additional cost of the Chief Counting Officer’s directions’.

4.82 The details of the real time monitoring checklists were issued on 25 March in EC16/2011 with a requirement for Counting Officers to respond to the first data request the following week on 1 April, with subsequent reporting dates being 8, 15, 21 and 28 April. A number of election documents were required to be returned with the completed checklists. The Steering Group had been given three days (21 - 23 March) to comment on the draft checklists.

4.83 Many administrators expressed frustration about the timing of this notification and the dates for return of the performance monitoring data.

“Performance monitoring. The timing for the submission of the responses was obviously set by someone who has never been involved in the conduct of local elections. The first questionnaire had to be submitted by 1 April. That week was extremely busy dealing with district and parish nominations (over 600 nominations). The performance monitoring questionnaire was therefore very low on my list of priorities. Likewise for the submission date of 15 April - when postal vote despatch took priority.”

Electoral Services Manager and Deputy Counting Officer, South East

“Timing of performance monitoring obviously clashed with key peaks in work load so it was difficult to submit on time and I just hope my RO doesn’t get penalised as a result.”

Electoral Services Manager, West Midlands

“Performance monitoring was an additional burden, when we were already faced with a complex combined election.”

Electoral Services Manager, South East
However, the management dashboard document for the Steering Group meeting on 7 April showed a high level of compliance with the reporting requirements.

This is also reflected in feedback received by the AEA as not all administrators found the checklists to be a significant burden.

“The performance monitoring wasn’t too bad and wasn’t too cumbersome. However some of the questions did seem to be a bit insulting to experienced election officers.”

Electoral Services Officer, North West

“I was quite happy with performance monitoring - it was pretty light touch and took just a few minutes to deal with on each occasion information was requested.”

Returning Officer/Counting Officer, South East

“Use of the ‘live’ ongoing monitoring system was [preferable] to the standard post election performance monitoring.”

Elections Manager, North West

Some administrators expressed the view that this was a ‘tick box’ exercise and that they would want to see evidence of the benefits of the approach. Many were unclear as to what had been done with all the information provided as they had received no feedback as a result of submitting their checklists and attached documents.

The AEA understands that in total some 22,500 documents were submitted and reviewed as part of the performance monitoring process which is a significant task (both for those providing them and for those tasked with reviewing them) particularly given the timescales for undertaking the work. Clearly, a number of these documents are ones that should be produced as part of good practice - for example, project plans and risk plans.

In adopting this approach to monitoring performance it was indicated that the aim was to “achieve a balance between having sufficient assurances that directions are being followed across the board and ensuring that the Counting Officer resources are not diverted from the administration of the poll and that the Commission and RCO resources can be focused on monitoring those areas where the risks are perceived to be greater”.
The feedback outlined above suggests a mixed response to whether the approach achieved that balance particularly in areas with significant numbers of other polls being delivered.

While some administrators have expressed a preference for the real-time monitoring as compared with the post event performance standards regime, they have been clear that, if this approach is to be used for future performance monitoring, there needs to be advance notice of both the data required and the dates on which it is to be provided. This would enable administrators to incorporate this reporting activity into their election planning.

We also understand that there were instances where interventions were made by the Electoral Commission with specific Counting Officers, but we have no further information on these instances and therefore cannot comment on the efficacy of this approach, compared with the resource required to deliver the monitoring.

Managing change

“The level to which outstanding leaders see ‘people as the route to performance’ goes way beyond the traditional mantra of ‘people are our greatest asset’. The task of leaders is to build confidence, help people to be enthused, grow and develop people, create a trusting environment, engage and pass on power. By doing this innovation, improved quality, greater customer care and higher productivity will be achieved.”

Exceeding expectation: The principles of outstanding leadership

The Electoral Commission’s report on the 2010 elections argued for reform, support and maintenance of ‘the basic building blocks of electoral administration’, emphasising that, “… it is not enough simply to trust that people and systems will be able to adapt and cope with change without proper time to prepare.”

The issuing of directions on all aspects of referendums and elections delivery and the real-time performance monitoring represented a significant shift in the management of an electoral event. This new approach was brought into effect within six months of the event to which it applied.

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52 Exceeding expectation: The principles of outstanding leadership; Ian Lawson and Brian Cox; The International Journal of Leadership in Public Services - Volume 6 Issue 1 - February 2010; http://www.theworkfoundation.com/Assets/Docs/UJLPS-6%201%20Lawson.pdf
Feedback suggests that as a result of this new approach some electoral administrators (including experienced administrators) felt constrained and less confident in using their own judgement in connection with the polls on 5 May 2011.

“...officers [were] scared not to comply although micro management took you away from the day job of actually organising polls. Information repeated continually but had to read everything in case new info included.”

Electoral Administration Team

Some administrators have expressed a sense of ‘discouragement’.

“I don’t believe that micro-management of this nature serves to improve performance; it only acts as a discouragement to professional officers with many years experience.”

Electoral Services Manager, Yorkshire & the Humber

Other administrators have referred to the need for their knowledge and expertise to be respected.

“I feel the tone of the directives, although well meaning, come across as though Electoral Administrators are being talked down to by the Electoral Commission. A more consultative and less dictatorial approach would have got administrators on-side from an early stage. A minority of councils had problems at the last elections and learning points have been taken on by them. The fact remains that electoral administrators are experienced in their work and should therefore be respected by the Electoral Commission as we will be supporting them at the referendum.”

Electoral Services Manager, South East

In the extract from Jenny Watson’s speech with which we opened this Chapter, she refers to something that is often cited in relation to electoral administration in the UK, the reliance on the goodwill of those tasked with delivering electoral events. The suggestion is that the new approach taken to managing the polls in 2011 meant that it was not necessary to rely on goodwill.

Can one quantify the impact of goodwill or, conversely, the lack of it? In any context goodwill usually means a willingness to ‘go the extra mile’ in order to deliver something; for a business, goodwill is a quantifiable asset.
4.99 In the electoral context, administrators who work additional hours for several weeks and then work from six a.m. on polling day through to nine p.m. the following day without sleep, or with barely an hour or two’s sleep, may be said to be demonstrating goodwill. Whilst this is an example from members of one Regional Counting Officer’s staff, many administrators will recognise the scenario.

“The team is now stretched more so than at the UK Parliamentary and Local Elections 2010. Tiredness has begun earlier this year. I am catching up with my work on a Saturday. There are still 3 weeks to the Elections and I am concerned that my nuclear team will experience sickness and not be able to attend the workplace at key "fault line" times in the processes.”

Electoral Services Manager, South East

“The use of directions and performance monitoring completely disregarded the local knowledge, professionalism and dedication of the teams that deliver elections within legislation with very short timescales, whilst making sure candidates are satisfied with the process year in year out. The running of successful elections depends on close teamwork and goodwill. It is a shame the CCO did not appear to appreciate this fact over the last few months.”

Electoral Services Manager, South East

4.100 There should be no doubt that a fair amount of goodwill was required to deliver the polls on 5 May 2011.

Recommendations

- The UK Government and the Electoral Commission should consider the recommendations set out in Chapter 10 - A model for future referendums.
5 Voting materials and notices

“Over 46 million people are registered to vote in elections in the UK. Voters should be able to ‘make their mark’ easily and confidently, knowing that their vote will be counted in the way they intended. Ballot papers and other voter materials should not create barriers to that.”
“The guidance should also help to bring greater consistency to the design of materials used across the UK, so that voters have a similarly good experience wherever they are voting.”

“There is no easy solution to designing voter materials. The circumstances of each election vary, including the number of candidates or parties standing, the body or office being elected to, the number of seats being elected to, and whether or not the election is combined with another election. These variations affect the requirements of electoral stationery, which makes it impossible to take a ‘one size fits all’ approach.”

Making your mark - good practice for designing voter materials: guidance for government policy makers\textsuperscript{53}

Prescription, adaptation and design

5.1 All voter-facing election documents are prescribed in the relevant election rules. This provides certainty and clarity as to the wording of the specified forms and notices, including the ballot paper and postal voting stationery.

5.2 In our report on the elections in 2010, we commented that most prescribed election stationery and notices are often not user-friendly or in plain language. In other words, the forms as set out in the legislation are not the finished article in terms of design or production.

5.3 This is recognised in the legislation in that it provides for adaptations or forms ‘to like effect’ to be used. In the Schedules to the PVS&C Act it allows adaptation of the forms ‘so far as circumstances require’.

5.4 This approach allows for local information such as contact information and maps on poll cards to be included. It has also resulted in the many different printing contractors, and software companies producing different election ‘products’ which have been developed over a number of years with input from electoral administrators learning the lessons from each iteration.

5.5 It has resulted in some variation in wording and presentation, including the use of pictorial instructions (now recognised in the legislation) in an effort to make the prescribed forms more accessible for voters.

5.6 The other key factor in the production of voting materials is the relationship between the design and the fixed and variable data required, all of which has to be tested. This becomes even more crucial when polls are combined as multiple versions of documents such as poll cards and postal ballot packs are required according to the different polls in which an individual voter is eligible to vote. The following example gives a clear picture of the level of complexity involved in producing accurate stationery for combined polls.

“We had 33 of our 34 District Wards contested, and 10 Parish Councils, with a total of 27 Parish wards. This meant a total of 60 contests, plus the referendum, but, unlike some authorities, we printed the name of the parish on the rear of the poll card, which, of course, was done before we knew where there would be contests.

Therefore, we had:

- 60 different ballot papers
- 81 different combinations of poll card
- 61 different combinations of postal votes, which meant that we had to maintain 122 lists of rejected ballot papers.”

Democratic Services Manager, South East

5.7 In our 2010 report, we recommended that, in order to improve accessibility to the electoral process, all voter materials should undergo appropriate usability analysis, and relevant representative groups consulted as part of their development. There is clearly benefit in terms of economies of scale and consistency from this being done centrally.

5.8 In making this recommendation, the AEA envisaged that such a review and testing of voter materials would represent a significant piece of work both in time and resources to deliver it effectively. In addition to the consultation indicated above, it would require input from representatives of the elections management software companies and the main printing companies involved in the production of voting materials and notices.

5.9 Our recommendation supported the view that the forms prescribed in legislation ought to be fit for purpose and intelligible for voters. They ought to set the standard for quality and accessibility.
The Chief Counting Officer’s power to ‘modify’ forms

5.10 On 1 September 2010, in response to the proposals contained in the *Parliamentary Voting System and Constituencies Bill (the Bill)*, the AEA noted its understanding that the Electoral Commission planned to modify the prescribed forms for the referendum and combined polls on 5 May 2011, and to user-test these forms. Given the complexity involved in printing voting materials outlined above we expressed concern regarding the timescales for this work.

“Whilst we support the principle of undertaking such work in a considered way over an appropriate period of time that allows for proper consultation, usability testing, and input from administrators, we have grave concerns about the scale of the proposed project given the timescales available to achieve this for a referendum on 5 May 2011.”

5.11 We emphasised the necessity of early clarity as to the format of all forms to be used at the referendum and other polls and, applying the Gould principle of six months, we recommended that all forms were available by the end of October 2010.

5.12 The PVS&C Act provided the Chief Counting Officer with the power to modify certain forms\(^{54}\) ‘for the purpose of making a relevant form easier for voters to understand or use’. In doing so, the Chief Counting Officer may ‘specify modifications that are to be made to the wording and appearance of the form’. Counting Officers were required to use the forms as modified by the Chief Counting Officer.

5.13 The power to specify modifications did not extend to poll cards for parish elections in England and these poll cards could not be combined with the poll card for the referendum. Nor did it apply to any of the forms used by voters for the other elections who were not entitled to vote in the referendum.

5.14 The power did not include the referendum ballot paper. The referendum question had been assessed by the Electoral Commission and the question and design of the ballot paper, including directions as to printing were on the face of the PVS&C Act.

5.15 Appendix A: *UK parliamentary voting system referendum and combined elections - voter-facing forms and notices*, EC25/2010 set out the Chief Counting Officer's intention to modify the following forms:

\(^{54}\) Paragraph 10, Schedule 2, PVS&C Act 2011.
- Postal voting statement.
- Declaration of identity (Northern Ireland Assembly elections).
- Poll cards - ordinary; proxy; postal proxy.
- Guidance for voters (required to be displayed in polling stations).
- Instructions for voters (required to be displayed in polling booths).

5.16 In EC25/2010 the Chief Counting Officer had also signalled her intention to direct Counting Officers to issue a non statutory ‘postal voting quick-start guide’ in all referendum and combined postal ballot packs. The format was indicated as being, ‘a two-sided A4 sheet based on the existing Making your mark template but adapted for 5 May polls’.

5.17 The approach to this work was set out as follows:

“1.7 We have consulted the Elections, Referendums and Registration Working Group (ERRWG) and a number of stationery/print/software suppliers in developing our approach to this work. We have aimed to achieve consistency and ease of access and understanding for voters while trying to avoid extensive or substantial changes that would introduce unacceptable levels of risk to the production process.”

5.18 EC02/2011 was issued on 28 January, and contained the Chief Counting Officer’s modifications to poll cards, postal voting statements (in Great Britain), and declarations of identity (in Northern Ireland). The template ballot paper was published on 4 February (Alert 158) and the postal voting ‘quick-start guide’ was published on 18 February (Alert 159). The template polling station notices were published on 25 February (Alert 160).

5.19 It was a hugely ambitious undertaking given the timescales and one that did result in logistical difficulties for administrators and printers.

The referendum ballot paper

5.20 Whilst the referendum ballot paper could not be ‘modified’, the Chief Counting Officer did provide a template for Counting Officers to use and could determine such logistical issues as the size of the ballot paper and the colour. The ballot paper template (front of ballot paper) was issued in Alert 158 on 4 February 2011.

5.21 There have been complaints that the ballot paper template could have been made available much earlier as the ballot paper and directions as to printing were on the face of the Bill.
5.22 This would have enabled the preparatory work to take place, including consideration of the impact of the size of the ballot paper in the design of postal ballot packs. Clearly, ballot papers could not have been printed (without risk) until there was certainty that the PVS&C Act would receive Royal Assent.

5.23 Clarifications regarding the size of the ballot paper were issued in Spring Polls Bulletins 1 and 3.

5.24 In addition, there was no template for the back of the ballot paper. Clarifications and further advice on what should be included on the back of the ballot paper were included in Spring Polls Bulletins 2, 4 and 5. This included clarification regarding the placing of the ballot paper number and official mark following incidents where voters in Wales had cut their ballot papers. The advice recognised that some Counting Officers had already printed the ballot papers.

“Changes were also made to forms after we had downloaded them. New advice was issued regarding the printing of the Referendum ballot papers - however, our printer had already started printing them at this stage!”

Electoral Services Manager, Eastern

“The what seemed to be the ever-changing instructions relating to the official mark and the UIM were hard to understand.”

Democratic Services Manager, South East

5.25 The referendum ballot paper was, by necessity, somewhat different in appearance to an election ballot paper although the same layout principles were applied. We have received some feedback that postal voters ‘missed’ or did not recognise the referendum ballot paper and that it would have been helpful to have wording along the lines of ‘referendum ballot paper’ clearly at the top of the ballot paper.

“The referendum ballot paper could not have been more poorly designed! It is my view, based on the number of telephone calls that we received together with the numbers of missing Referendum ballot papers, that large numbers of postal voters were effectively disenfranchised because the ballot paper design was poor and led postal voters to ‘miss’ it in their packs.”

Electoral Services Manager, West Midlands
The colour of the referendum ballot paper - grey - has also attracted some comment as being difficult to distinguish from white or lilac ballot papers in some lighting conditions - for example, for voters with sight impairments, and for count staff at the verification and count.

The modified forms and notices

Overwhelmingly, administrators have said that the forms were available too late in the process - far beyond the time they had already agreed the formats and specifications for postal voting stationery and other materials with their printers. Discussions with printers typically take place in the autumn before a May poll.

“Instructions and forms relating to them were issued relatively late in the day. It was clear that the Electoral Commission had underestimated the amount of time it would take them to fully prepare for the referendum. Some of the templates were clearly not thought through correctly as they were not fully compatible with the instructions issued i.e. the template for the poll card did not easily allow for inclusion of a map.”

Senior Elections Officer, South East

A number of the templates initially contained errors, more so for the Welsh referendum than for the referendum on 5 May when lessons had clearly been learned.

“What can be said! Many items were late and had errors on them.”

Elections Manager, Wales

“Templates for poll cards, PVS etc, polling station notices should have been issued much sooner so that they could be printed well in advance of the busy election period where possible.”

Senior Electoral Services Officer, Eastern

Some administrators have expressed that they were unclear as to the scope for amending the templates.

“EC site is not straightforward to use, particularly if you are searching for information/forms. Templates needed more information attached to them regarding what changes you could/could not make i.e. poll card template.”

Senior Elections Officer, North West
5.30 Administrators have expressed concerns that the complexity of election printing was not appreciated. This is also reflected in comments from a printing company describing the impact of the modifications to election stationery as resulting in a significant amount of development work to complete, including a complete refresh of the company’s current designs particularly in relation to postal ballot packs and poll cards. This additional work resulted in increased costs.

5.31 In addition, printers producing stationery for combined polls had to maintain two separate versions of the election products - one version (the modified stationery) for voters eligible to vote in the referendum and another (the existing election product as prescribed in the relevant rules) for voters who were not eligible to vote in the referendum. Both solutions had to be tested before stationery could be issued. There were some reports of administrators having to work with test and live data at the same time due to the lateness of the templates to be used in postal ballot packs. Again, this resulted in increased work, the risk of test data ‘bleeding’ into the live data, and increased costs.

Poll cards

5.32 The templates and text for poll cards were published on 28 January 2011. There were subsequently a number of questions and issues raised and the Chief Counting Officer responded quickly to amend the templates and text and on 3 February issued EC04/2011 explaining the changes.

5.33 There was confusion, for example, regarding whether information about parish elections in England could be included on the combined referendum and local elections poll card. The instructions had indicated that the poll card could include ‘such other information as you [the Counting Officer] consider appropriate’ (module five, 5.1), but had not specifically referred to parish election information. Paragraph 5.4 set out that ‘by law, the referendum poll card cannot be combined with the poll card for a parish election’. The ability to include a reference to parish and town council election on the referendum poll card was subsequently clarified in EC04/2011.

5.34 The poll card template also necessitated the inclusion of variable data on the back of the card, where there is usually standard wording only. This resulted in an additional printing process to in-fill that data and meant that the variable data on both sides of the card had to be checked taking more time than was previously the case.
“I also have concerns about the changes to the poll cards, with the variable data on the back. It will mean a lot of extra checking - we normally just have a quick flick through the backs and concentrate on the fronts. This will all take much more time and I am concerned colleagues may not have realised this.”

Electoral Services Manager, London

5.35 In order to be able to include a map, some of the poll cards were issued as letters, which some voters found confusing.

Postal ballot packs

5.36 The number of combined polls in some areas meant that some printers were unwilling (on the basis of risk) to offer a fully combined referendum, local authority and parish elections postal ballot pack.

“The triple combination caused a problem for the printer who could not handle three sets of data for a combined postal pack. The Parish Election Postal Votes had to be issued separately.”

Electoral Services Manager, South East

5.37 The inter-dependence of various elements of the postal ballot pack was also highlighted by the requirement to include a ‘quick-start guide’, the template for which was needed at the same time as the template postal voting statement given that their content was not mutually exclusive.

5.38 In response to feedback from administrators, printers and stationery suppliers, the requirement to use the template provided by the Chief Counting Officer was withdrawn on 4 February55. This was further clarified on 18 February in Alert 159 - all postal ballot packs were required to contain a guide that explains to the voter how to use the various items in the pack, and how to return it correctly. However, this did not have to be based on the Chief Counting Officer’s template.

5.39 Some of the modifications to the postal voting statement appear to have caused some voter confusion.

“The revision to the postal voting statement caused some confusion with electors. Some rang to advise that the ballot paper number on the statement did not match that on the reverse of the ballot paper. They were reading the unique identifying mark. The change in the wording by the Commission led to several electors certifying in the

55 In Spring Polls Bulletin 1.
signature box that they were indeed the elector who had been sent the ballot paper.”

Deputy Counting Officer, North East

“Postal votes - we have never had so many postal vote statements in Envelope A as we have using the EC quick guide and statement wording this time - at least 50% are in the wrong envelope. We have also had numerous calls from people requesting new envelopes as they’d sealed them up and realised after. Also, more statements than ever missing altogether.”

Electoral Services Manager, Eastern

**Notices in polling stations**

5.40 The modified guidance for voters (required to be displayed in polling stations) and the instructions for voters (required to be displayed in polling booths) were greatly simplified from those in the legislation particularly in areas with combined polls. They included simple pictorial illustrations of the various processes that take place in the polling station along the lines of those used previously by some administrators in their own notices.

“The new forms were well received and easy to understand. It was easy to train staff in the placing of notices because there weren't as many. Similar modifications to the close of poll paperwork would be welcomed.”

Elections Manager, North West

“The A2 and A3 polling station notices were a significant improvement.”

Elections Manager / Deputy Returning Officer, South East

“Forms and notices are clearer. I was particularly happy with the instruction not to display any other notices in the polling station. I agree that too much information can be confusing to the elector.”

Electoral Services Manager, North East

5.41 Feedback also suggests that it would have been helpful for notices to have been included in presiding officers’ sundries boxes produced by election suppliers.

5.42 Similarly, earlier availability of the templates and some joined-up working with elections management software companies could have made these notices available via the system being used by administrators.
5.43 This would have enabled the variable data to be automatically inserted rather than the manual process that was required for the notices to be used on 5 May.

“With combined elections, we need 13 different combinations in respect of the number of elections and the number of seats. Had we been allowed to use our election management system, it would have automatically chosen the right selection.”

Elections Manager, North West

5.44 This administrator noted that it would have been helpful to have been able to save the PDF of the notices once the variable data had been entered.

“Several of us asked for this to be changed but nothing happened. In areas with up to three elections in a polling station, this was a nuisance and the notices could only be prepared when we knew just where the contests were. In previous years we could prepare and save the notices well in advance and just print off whichever combination was needed. Where there were long ward or parish names, they couldn’t be typed in without abbreviation.”

Elections Manager, North West

5.45 The size of the notices caused some issues for some administrators who have indicated that some flexibility would have been helpful. The larger sizes resulted in some electoral services teams being unable to produce them in-house.

Polling station handbooks and information for candidates and agents at elections

5.46 Electoral administrators have reported that there were delays in the availability of these resources so that they were received after briefings had taken place.

5.47 In particular, there is feedback that the new format of the guidance for candidates and agents is not as helpful in providing advice locally. The information is not as detailed as it was previously and it is contained in a number of documents rather than one document.

The Electoral Commission website

5.48 The modified materials were made available to administrators on the Electoral Commission website.
Administrators have said that this was difficult to navigate and that it was not always easy to find, download and save the forms and, in some cases, caused the user’s system to ‘crash’.

“The EC site needs to be revamped in relation to the Welsh version of the forms - not in same order as the English site and many of them missing.”

Electoral Services Manager, Wales

“The EC website is a nightmare to navigate. I wasted hours searching for forms I couldn’t find….Also, there were long periods when the EC website wasn’t functioning properly and I simply couldn’t access anything.”

Elections Manager, South West

There is feedback that regional offices were helpful in emailing direct links to specific documents in order to assist administrators who could not find the forms they needed.

We received similar feedback regarding the navigation of the political party registration information including emblems.

Future work on designing voting materials and information

The voting materials and notices for the referendum and combined polls were much simpler and better designed compared with the prescribed versions.

Despite the considerable practical difficulties caused by the timing of this substantive change to key voting materials for 5 May 2011, there has been positive feedback about the design of the materials.

“The forms were very clear and easy for the electors to understand. They made a refreshing change from the existing and dated notices.”

Deputy Counting Officer, North East

“We believe the resources provided were probably the most comprehensive ever provided by the Commission, but unfortunately the majority of the templates and official notices were flawed and need to be adjusted prior to use. However, we would urge the Commission not to lose faith and continue in providing these resources not just for referendums but for all election types also and simply learn from the mistakes made.”

Electoral Services Manager, Wales
It is unfortunate that voters who were not eligible to vote in the referendum did not receive materials in the new formats. This will, no doubt, have resulted in some members of the same household receiving poll cards and postal ballot packs that looked markedly different. Further, Returning Officers will not be able to use the notices for polling stations at elections as these do not conform to those prescribed in the relevant rules.

“The CCO forms and notices were, on the whole, pretty good. Whilst there could be room for some improvement/change, they were clear and accessible. In particular, I would like to be able to use their prescribed PVS (or very similar) in the future but the legislation prevents this.”

Returning Officer/ Counting Officer, South East

“I have a major concern over having to change all our stationery to suit the CCO directions, as at the next election we will revert back to our usual stationery that our voters are familiar with. Talk about voter confusion.”

Electoral Services Manager, West Midlands

In order to build on this work, and to support the future development of well-designed and accessible voting materials and notices, we have set out in this report the issues and learning points identified by electoral administrators.

Recommendations

The UK Government should:

- review the prescribed voting materials and notices for elections in the light of the learning from the modification of forms by the Chief Counting Officer;

- allow sufficient time and opportunity for electoral administrators and printers to input their experience into the development of new voting materials and notices;

- bring forward changes to the legislation to allow for these improved forms to be available for use at all elections.
6  Absent voting

The election timetable and applications to register to vote and for absent voting facilities

6.1 The AEA continues to receive feedback on the statutory election timetable and, in particular, the deadlines at 11 days before the poll.

6.2 In our report on the elections in 2010, we recommended that the statutory election timetable should be reviewed and legislation brought forward to achieve consistency across all elections and to lengthen the current UK Parliamentary timetable. Specifically, we identified that the 11-day registration and absent vote application deadlines should be reviewed and aligned. Currently, applications for absent voting facilities must be received by 5 pm and applications for registration by midnight on the same day.

6.3 The AEA strongly urges the UK Government to take the opportunity to change the statutory election timetable including lengthening the current UK Parliamentary election timetable.

Postal voting applications for 5 May 2011

6.4 There is no prescribed postal vote application form. Applications may be submitted in any form so long as they contain the necessary information (set out in regulations) and the personal identifiers (signature and date-of-birth) are set out in the format prescribed in legislation\(^{56}\).

6.5 Postal voting has become an integral part of the campaign strategy of political parties and campaign groups. As a result, it has become standard practice, certainly by the main political parties, to produce postal vote application forms for distribution with or attached to their campaign literature.

6.6 The political parties use the postal vote lists and the electoral registers supplied to them in accordance with regulations\(^ {57}\) in order to target their mailings. There have been issues in the past where some forms were difficult for the Electoral Registration Officer to process electronically due to the paper quality or layout of the form, and also issues relating to the return address for the form.

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\(^{56}\) Regulation 51, RPR 2001 (as amended).
\(^{57}\) RPR 2001
As recently as the elections in 2010\textsuperscript{58}, there were media stories about forms being sent back to a political party address before being forwarded to the Electoral Registration Officer by the political party, rather than directly to the Electoral Registration Officer.

The primary concern was that these applications might not reach the Electoral Registration Officer before the deadline for applications (5 pm, 11 days before polling day) resulting in electors being effectively disenfranchised. Electoral Registration Officers have, in the past, received these applications from political parties in batches some of which have included hundreds and sometimes thousands of applications delivered close to the deadline for applications. Many of these applications have previously duplicated existing postal vote arrangements.

This practice has, in the past, involved electoral administrators in considerable additional work at a key pressure point in the election timetable, not least because every application has to be checked to establish whether it is a new application or duplicates arrangements already in place.

In addition, there has been concern that some electors do not understand what they have signed. There have also been concerns that this makes them vulnerable to electoral fraud. In addition, campaigners can be accused of committing electoral fraud where they offer to assist voters in completing and returning their postal ballots.

In response to these concerns, in 2005 the Electoral Commission agreed with the main political parties the postal voting \textit{Code of Conduct for political parties, candidates, canvassers and campaigners} (the \textit{Code}) on the handling of postal vote applications and postal ballot papers in England and Wales and this code has been in place since then.

This code was updated for 2011 to include campaigners at the referendum on the voting system for UK Parliamentary elections\textsuperscript{59}.

The \textit{Code} sets out two key principles to which all candidates and campaigners should adhere and the first of these directly relates to the administration of the postal voting process:

\textsuperscript{58} \url{http://www.timesonline.co.uk/tol/news/politics/article7113482.ece}

\textsuperscript{59} Endorsed by the Parliamentary Parties Panel; http://www.electoralcommission.org.uk/__data/assets/pdf_file/0008/109538/PPP-minutes-Sept-2010-FINAL.pdf
“Candidates, campaigners and supports should assist in the efficient and secure administration of elections and referendums and uphold the secrecy of the ballot.”

6.14 It also sets out a number of recommended actions for parties and campaigners in relation to postal vote applications, including the following:

“14. Because of the risk of suspicions that the application may be altered and the risk of the application form being delayed or lost in transit, the local Electoral Registration Officer’s address should be the preferred address given for the return of application forms.

15. If an intermediary address is used, forms should be despatched unaltered to the relevant Electoral Registration Officer’s address within two working days of receipt.”

6.15 This has been the preferred position since 2005 for all the reasons given above. However, events in respect of the referendum on the 5 May 2011 have again brought into question the practice of campaigners being involved in producing and distributing postal vote application forms.

6.16 It should also be noted that any costs arising from the receipt and processing of postal vote applications are electoral registration costs and are therefore deemed to be incurred by the Electoral Registration Officer, and, by virtue of section 54 of the Representation of the People Act 1983, the local authority.

The Yes to fairer votes postal vote application campaign

6.17 As allowed by electoral legislation, the Yes to fairer votes campaign organisation produced its own postal voting application form. The organisation communicated this to Electoral Registration Officers by email at the end of March 2011. The form was mailed along with campaign information to a significant number of electors on the electoral registers across England. We do not know the full extent of the mailing.

6.18 However, across London alone, we understand that there were 1,258,133 of these postal vote application forms mailed to electors representing around 22% of the electorate. There are 32 London Boroughs and the City of London making 33 in total. In seven authorities, applications were despatched to between 50% - 70% of the electorate; in a further seven the figure was between 28% and just over 44%; in six the figure was between 11% and 19.5%. There were two authorities where there was no mailing and, in the remaining authority areas, the mailing involved less than 9% of the electorate.
6.19 This mailing coupled with the confusion arising from the provisions in the legislation as to the arrangements for postal vote applications for the different polls caused a range of difficulties both for electors and for electoral administrators. It also resulted in complaints that the Electoral Registration Officer and/or or the council were supporting the “Yes” campaign.

“...there were a number of issues with AV applications applying to either the local election or the referendum and this was a major problem with the ‘yes to fairer votes’ campaign, firstly that we had not been made aware of the campaign and received a large number of complaints, secondly the campaign group had printed our fax number as a contact telephone number incorrectly, thirdly they targeted a large number of electors who already had postal votes, fourthly they told us they had sent out a few hundred applications when in reality they had sent out just over 11,000.

We received over 1000 applications back in a week and had to employ another member of staff just to check whether the electors already had a postal vote in force for all elections and then to process the form.”

Electoral Services Officer, North West

Legal requirements and recommended practice

6.20 The form conformed to the specifications (in the regulations) for the data capture of the elector’s date of birth and signature. It had a barcode printed on it, and the elector’s name and address details were pre-printed. The return address given on the form was that of the Electoral Registration Officer in the elector’s area, although this information was not always correct.

6.21 However, some aspects of the content of the form were not entirely helpful to the elector. For example, instruction number 6 on the form stated:

“Pop it in the post. It has to be sent in by 5pm on Thursday 14th April”

6.22 The deadline for postal vote applications for the referendum, and any elections on 5 May 2011, was 5pm on Thursday 14 April. Therefore, the instruction should have made it clear to the elector that the application had to be received by the ERO by that deadline.
6.23 The application was in respect of the referendum only.

“How long do you want a postal vote for? For the referendum on May 5, 2011”

6.24 The form did not offer the option of a permanent or temporary postal vote arrangement, and it did not offer the option of a postal vote for the other elections taking place on the same day as the referendum. In this respect, the form did not conform to the recommended practice set out in the *Code of Conduct*, as follows:

“If you develop a bespoke application form, it should conform fully with the requirements of electoral law, *including all the necessary questions and the options open to electors.*” [Our emphasis]

6.25 In areas where there were other elections taking place on 5 May, this was not in the interests of voters who would have been effectively disenfranchised from voting at the other polls if they had applied for a postal vote on one of these forms thinking it would cover all elections on the same day. For anyone going on holiday or unable to attend a polling station for any reason, this would have presented a real barrier to them being able to vote in the elections.

6.26 While there was time, administrators could write back to the elector clarifying this situation and inviting them to apply for a postal vote for the other elections, as per the advice given by the Chief Counting Officer\(^{60}\).

“...the Public think we are mad if we have to send out another form in order that they can vote in the local elections also. It is about time something was done as this would be of benefit to the voter so if parties wished to send out postal applications then the appropriate template to cover all scenarios should be made a legal requirement.”

Electoral Services Manager, Eastern

6.27 For any applications received close to the deadline, this option was not viable.

6.28 It would appear that *Yes to fairer votes* attempted to ensure that their form complied with the legislation, by seeking feedback from the Electoral Commission.

“We have been asked to clarify again whether or not we approved the form used by Yes to Fairer Votes. We were shown a draft of the

\(^{60}\) *Spring Polls Bulletin 10; 7 April 2011.*
form and confirmed that it met the relevant legal requirements. We also recommended a clarification as to the deadline for receipt of the completed form by EROs. We did not approve this form: we do not consider that it would be appropriate for us to formally ‘approve’ material used in this or other campaigns.

Yes to Fairer Votes did not share the detail of how they intended to distribute the form, and were under no obligation to do so. Even if they had, this would have been sensitive and confidential information which we would not have been able to disclose.61"

**The impact on the administration of postal voting**

6.29 There was initially confusion as to whether the referendum-specific applications would ‘override’ existing postal voting arrangements in place for other elections, and the Chief Counting Officer responded by clarifying that existing postal voters’ lists were not affected62.

6.30 In any event, there were duplications arising from the fact that a voter with existing postal voting arrangements for elections taking place on 5 May could automatically have a postal vote for the referendum if the polls were combined.

6.31 All applications had to be checked so that any genuinely ‘new’ applications could be processed and determined by the Electoral Registration Officer and postal votes issued by the Counting Officer. This led to a significant increase in workload for some electoral administrators.

“11 day ‘peak’ significantly increased particularly by the ‘Yes’ campaign targeting almost 12% of our electorate with unsolicited postal voting applications (including significant numbers sent to existing postal voters).”

Electoral Services Manager, South West

**Distribution**

6.32 Further difficulties were caused by the arrangements for the distribution of the forms, and the return of the form to the Electoral Registration Officer by the elector.

6.33 Administrators have questioned the data used for the mailing, and in some cases there were errors in the data.

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61 Ibid.
“We’ve just unearthed a bit of a problem with the address printing of these Yes postal votes. We have had a couple of issues about wrong addresses which you should look out for. ...Seems to be where street number is less than 10 it brings the flat number into the street number. Not happening all the time but does mean some are going to wrong address and people are ringing to say they have forms for people that don’t live at their address.”

Registration and Electoral Services Manager, London

6.34 In one area, the forms had another Electoral Registration Officer’s contact address printed on them resulting in forms being returned to the incorrect address 30 miles away.

**Costs incurred by Electoral Registration Officers**

6.35 The form provided the elector with the following instructions on returning the form:

“Fold this form so that the address on the other side is visible when in the envelope. *Attach a stamp if the address does not say FREEPOST.*” [Our emphasis]

6.36 In advance of the mailing we understand that Yes to fairer votes had contacted EROs to ask for the return address for postal vote applications. Some EROs reported that the ERO’s freepost address had been requested. In some instances, the freepost address details had been given by electoral staff. In some instances, this information had been refused and the general address for correspondence had been provided. Where a stamp was required to cover the postage, many electors did not follow the instruction and did not attach a stamp.

6.37 The result of this arrangement along with the large number of duplicate applications (outlined above) is that Electoral Registration Officers (and therefore local authorities) picked up the bill for any forms returned using a freepost address, and the excess charges incurred where the forms were returned but without a stamp. The fees and charges for the referendum covered the expenses of Counting Officers and not those of Electoral Registration Officers.

“...this Council is receiving large numbers of surcharged items (£1.32 a go) from electors applying for a postal vote, 70% of whom are already registered. Electors mistakenly think, and not unreasonably so, that the reply is freepost. I have drawn the matter to the EC’s attention.”

Deputy Counting Officer, East Midlands
“I was in the process of seeking to advise staff that they would be permitted to claim overtime next week for the processing of the ‘Yes’ postal applications ... we have a huge pile of them .. and they are coming in at the rate of about 200 a day ... on the basis that this cost to the local authority could be reclaimed. This authority has a moratorium on overtime, is in the process of deleting over 450 posts and is generally seeking to downsize all its budgets.”

Deputy Counting Officer, London

6.38 In a time of austerity and local government cuts, it cannot be value for money for the taxpayer to fund the return of significant numbers of duplicate applications for a postal vote and the additional administration costs involved in processing them.

6.39 In addition, given that political parties and campaign groups can undertake widespread mailings of postal vote application forms to many thousands of electors with no requirement to inform the relevant Electoral Registration Officers, how are local authorities to plan on the basis that they may or may not have to meet the costs of processing the additional forms and possibly meet the costs of postage, including surcharges?

“We were told over 13,000 applications had been sent out in our area. We did contingency plans ordering more PV stationery and arranging a separate issue session for Saturday 16 April. In the end not one form, not one phone call - was it genuine or an April fool?”

Senior Electoral Services Officer, Eastern

Issue and receipt of postal votes

6.40 Combined polls and therefore combined postal ballot packs result in an increased complexity with each ballot pack containing multiple elements that must all be issued correctly and then be completed and returned correctly by the voter. Generally, feedback suggests that while there were some issues (some fairly serious) in a number of areas requiring additional work to rectify and manage, overall there were no widespread problems. However, a number of administrators have remarked on the impact of combination (and combined postal ballot packs) both for voters and for the administration of the process.

“The issuing process was made more complicated with the AV and the directions. The data-files had to be split and sent in different batches. This also leads to higher cost. The combination and recording of received PVs more complicated.”

Electoral Services Manager, South East
“We received many envelopes containing the wrong ballot papers and Postal Voting Statements which took a lot of time to record and to try and match. Our worry is that with combined elections becoming the norm that people will find postal voting hard to understand...”

Elections Officer, East Midlands

6.41 The additional bank holidays in the run up to the polls on 5 May 2011 meant that, for many electoral administrators, postal votes were not returned until closer to polling day and including an increase in those returned to polling stations in some areas. This in turn had an impact on the work required late on polling day and at close of poll in order to process the returned postal votes.

“The impact of the Bank Holidays saw a sharp dip in the response from postal voters. Even in March when the overall turnout was just 29% we managed a 80% return on Postals. In May we struggled to reach 70% with an overall turnout of 36%. ...as a result of the Bank Holidays, we saw a sharp increase in the number of postal votes returned to polling stations on the day, which thankfully we had predicted and had staff in place.”

Electoral Services Manager/ Deputy Returning Officer, Wales

“Nearly 700 postal votes handed in at the polling stations on election day. PSIs were collecting these through the day but most were handed in at night making the final opening a long process. They were not just being handed in from individuals, one person handed in 50.”

Elections Manager, North West

Royal Mail Sweep

6.42 The Chief Counting Officer directed Counting Officers to use the Royal Mail Sweep facility and negotiated a national agreement with Royal Mail which included sweeping primary Mail Sorting Offices on the evening of the poll for returned postal votes for the referendum and the other elections taking place.

6.43 Arrangements for secondary sweeps were by agreement between the Counting Officer and the Royal Mail locally.

6.44 In order to use the Royal Mail Sweep product, we understand that Counting Officers were required to purchase a licence from Royal Mail incurring additional costs.
6.45 There are divergent views as to the value of the sweep facility. This was introduced in 2004 when there were all-postal pilots taking place in four European electoral regions at the European Parliamentary Elections.

6.46 In 2011, we have again received feedback from administrators in a number of different areas that small numbers of postal votes were returned via the Sweep facility - as few as four and often in the region of only 20 postal votes - with more being returned the day after polling day.

6.47 We have also received very mixed feedback regarding the performance of Royal Mail with reports of Sweep arrangements being changed throughout the process, multiple requests for the same information, delays in responding to enquiries from administrators, a lack of delivery with postal votes being delayed, and an apparent lack of communication between the national and local level within Royal Mail.

Absent vote identifiers

6.48 The AEA continues to receive feedback from electoral administrators that the requirement to provide absent vote identifiers causes confusion for some voters and leads to some voters, particularly the elderly, being disenfranchised.

“Many voters seem not to be fully aware of the PVI checking process so that if their signature has changed since they signed their form they their vote will not be accepted. We are unable to inform voters that we have rejected their vote and their vote will never count unless they give us a copy of their new signature. We would like to be able to try and inform these voters that we need another copy of their signature as currently they are excluded from the democratic process and there is nothing we can do about it.”

Elections Officer, East Midlands

6.49 Under the current legislation, Electoral Registration Officers are required to write to all electors five years after the identifiers have been provided. Given that that the initial collection of identifiers was in 2007, this means that the first refresh is due in 2012.

6.50 Whilst this will address in the short-term the issue of signatures having changed over time, it does not address the point raised by the administrator above and by the AEA in our report on the 2010 elections.
Recommendations

6.51 The AEA recognises that it is important that campaign literature reaches voters so that they are able to cast their vote in an informed manner regarding the alternative candidates or, in this case, the alternative arguments at the referendum poll.

6.52 In using direct mailing to voters, parties and campaign groups might reasonably conclude that attaching a postal voting application is helpful to the voter and might assist them in increasing turnout for their candidate or campaign.

6.53 On the other hand, we have presented evidence that such campaigns can lead to voter confusion and potentially to disenfranchisement, and can incur unnecessary costs for the Electoral Registration Officer.

6.54 Looking at international comparisons, Canada does not allow the use of forms other than those provided by Elections Canada and, in Australia, parties and candidates wishing to reproduce the postal vote application form may obtain a camera-ready copy of the approved postal vote application form from the Australian Electoral Commission's National Office in Canberra.

6.55 The UK Government should:

- bring forward legislation to change the statutory election timetable including lengthening the current UK Parliamentary election timetable;
- prescribe in legislation the postal voting application form;
- amend the legislation to provide Electoral Registration Officers and Returning Officers with the necessary powers to access and act on voters’ postal vote rejection data.

6.56 The Electoral Commission should:

- review the Code of Conduct for political parties, candidates, canvassers and campaigners with input from political parties and electoral administrators;
- consider what practical advice can be provided to campaign groups in order that any future mailings are more effectively targeted so as to avoid duplicating existing absent voting arrangements.
7 Public awareness activity

“The Electoral Commission (as distinct from the Chair of the Commission in her capacity as Chief Counting Officer) will be responsible for undertaking public awareness work in relation to the referendum and elections. The Commission will run a public awareness campaign ahead of the 5 May 2011 polls which will aim to ensure that voters are aware of the events taking place, and how they can take part.”

7.1 The ‘centrepiece’ of the Electoral Commission’s public awareness work was a booklet to be mailed to every household in the UK. This was supported by advertising on television, radio, press and websites.

7.2 The Electoral Commission also developed materials based on the campaign that could be used locally by Counting Officers.

7.3 The AEA does not undertake public information research. However, electoral administrators are well placed to provide feedback on the impact of the public awareness work given that they were directly in contact with the public throughout the referendum period. The AEA has received some feedback, and although this is not extensive, we share this here so that the Electoral Commission can consider any learning points, including successes, in reviewing its work on the referendum and other polls in 2011.

The referendum booklet

7.4 Most of the feedback we have received indicates a view that the referendum booklet was informative and well-received both by administrators and by voters.

“As usual the public awareness booklet and publicity carried out by the EC were good. In my opinion this work is best carried out by the EC who have enough resources to make a meaningful impact. Locally we concentrated on the local election.”

Electoral Services Manager, South East

7.5 Feedback suggests that in some areas of England where there were no local elections the booklet caused some confusion among voters as it referred to local elections as well as the referendum.

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63 Update on key aspects of the Chief Counting Officer’s instructions for 5 May 2011 UK Parliamentary voting system referendum, EC24/2010.
“Voters confused in London as booklet mentioned local elections on front cover!”

Head of Elections and Member Services, London

“Because we only ran the referendum, we had several calls from postal voters asking where their local ballot papers were because publicity indicated they were being held. Some voters couldn’t grasp that we had no local elections at all.”

Electoral Services Officer, North East

7.6 There were concerns about the coverage of the mailing and a number of administrators have informed us that they and members of the public had not received their copy of the booklet.

“I didn’t receive my information booklet and neither did any neighbours or polling staff. It was a good booklet if you had it!”

Electoral Services Manager, South West

“I thought the AV booklet was very good. However, not all households received it including me!”

Elections Manager, Eastern

7.7 The timing of the delivery of the booklet in some areas had an impact on public enquiries, because of the interaction with the timing of other information about the poll communicated via the mailing of poll cards, and the issue of postal votes.

7.8 The Chief Counting Officer had directed that poll cards must be despatched by 28 March. EC15/2011 issued on 25 March advised Counting Officers that the distribution of the referendum booklet would commence on 4 April and should be concluded by 8 April. However, it was acknowledged that this may continue through to 15 April. This should have meant that the booklets had been delivered before postal votes were being despatched (from 18 April - as directed). The advertising campaign was to run from 1 April to 15 April and was designed to support the booklet and to encourage the public to look out for their copy of the booklet or to download a copy from www.aboutmyvote.co.uk

7.9 Counting Officers were advised that any enquiries about the campaign, ‘for example to say that they have not received their booklet’, should be directed firstly to the aboutmyvote website or to the Electoral Commission helpline.
The information booklets should have been made available to the public at the same time as, or before the poll cards were issued. Many queries arose because electors received poll cards and did not understand what the Referendum was about.”

Electoral Services Manager, North East

“Counting Officers were directed by the CCO that they must despatch their poll cards by Monday 28 March. Ours were released on Friday 25 March. By Monday 28 March we were received telephone calls from the public who were wanting information about the referendum. However, the Electoral Commission did not start its publicity campaign until Friday 1 April. Therefore, for the first four days after the poll cards were released to electors there was very little information about the referendum on the aboutmyvote website and the freephone helpline was not operational. Staff had been instructed by the CCO that we should not discuss the voting systems with electors. This lead to a number of complaints from electors who accused us of being deliberately unhelpful.”

Electoral Services Manager, London

“..the Household leaflet on the Referendum had not reached all households in our area (less than half) by the time our postal votes had landed so this created extra calls which we then had to refer to the EC helpline.”

Electoral Services Manager, Eastern

7.10 Administrators have suggested that, given that local authorities were taking calls from electors who had not received the booklet, it would have been helpful for them to have had a number of spare booklets to be able to provide to the public rather than require people to have to either call the helpline or download the booklet from the website.

7.11 We received comments that the booklet was missed by some electors as they had been delivered along with other ‘unsolicited mail’. Concerns were also expressed about the late availability of audio formats of the booklet.

“...on 1 April we requested audio copies of the booklet to distribute to a number of electors. These only arrived with us yesterday [19 April] - after the deadline for applying to vote and applying for a postal vote. We have apologised to the electors who requested these copies but I do feel that the Commission has let these electors down by failing to provide information to them in a timely manner.”

Electoral Services Manager, London
Information about the referendum in polling stations

7.12 In EC09/2011, Counting Officers were directed to use a set of FAQs as it was ‘essential that polling station staff at the referendum are and are seen to be neutral and not biased in any way’.

“While it will be entirely appropriate for staff to explain to voters how to mark the referendum ballot paper, there are aspects relating to the subject matter of the referendum where it would be inappropriate for polling station staff to comment.”

7.13 The principle of remaining neutral is one well understood by electoral administrators and which is routinely communicated in briefings to polling station staff.

7.14 Equally, it is not usual to provide information to voters in polling stations about the choices to be made at an election beyond the information contained on the ballot paper (including on large print versions). This principle was applied in respect of the referendum.

7.15 However, given that the referendum booklet was designed to explain in a neutral way the referendum question, the ‘first past the post’ and ‘alternative vote’ systems, and what would happen in the event of a ‘yes’ or ‘no’ result at the referendum, many electoral administrators could not understand why this was not made available as information to voters in the polling station.

“My own home address didn’t receive the booklet and we had a number of comments from other electors about this. It would have been much more helpful if we’d been able to have a few copies in each polling station to read. Instead of which we came across as being unhelpful - which goes against the grain.”

Elections Manager, North West

“EC awareness booklet was good but should have been the basis for non-biased Polling Station information.”

Registration Services Manager, South East

“...it would have helped to have had some of the EC booklets that were delivered to all households also made available on polling day in polling stations.”

AEA Scotland and Northern Ireland Branch
7.16 In advance of the poll administrators expressed concerns about the potential for voter confusion with resulting problems arising from a lack of information in the polling station with regard to the referendum question and the two voting systems being decided upon. However, the AEA did not receive evidence of this risk materialising in any significant way on polling day, although there were instances of voter confusion.

“The FAQ list provided by the CCO was inadequate in respect of voters getting a better understanding of the issues and this resulted in many voters remaining confused.”

Acting Electoral Services Manager, South West

“I anticipated a higher number of people coming in to the polling station to ask about the actual AV system. This did not seem to happen and therefore I only presume that the information campaign was to some degree successful.”

Deputy Counting Officer, South East

7.17 As reported at the General Election in 2010, some voters appeared to identify more strongly with personalities than with the issues.

“Is anyone else getting calls from people who want to vote for Joanna Lumley? Not much interest in Colin Firth, surprisingly!”

Registration and Electoral Services Manager, London

Encouraging participation

7.18 The position regarding public awareness work undertaken by Counting Officers and electoral administrators working within local authorities caused some confusion.

7.19 PPERA places a restriction on the publication of promotional material by central and local government, or ‘any other person whose expenses are defrayed wholly or mainly out of public funds or by any local authority’64. Promotional material was defined as general information about a referendum, the issues raised by the question at the referendum, any arguments for or against any answer to the referendum question, or which is designed to encourage voting at the referendum.

7.20 This restriction did not apply to the publication of information relating to the holding of the poll or the issue of press notices. Equally, it did not apply to anyone acting on behalf of the Electoral Commission.

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64 S125, Part VII, Chapter III, PPERA.
7.21 The PVS&C Act required that the Chief Counting Officer must take whatever steps that officer thought appropriate to encourage participation in the referendum. This duty to promote participation also extended to Regional Counting Officers, Counting Officers and Electoral Registration Officers. The Chief Counting Officer directed Counting Officers to have in place a public awareness strategy with a clear plan for the effective delivery of information. Counting Officers also had to have regard to any guidance issued by the Electoral Commission.

7.22 In EC10/2011 the Electoral Commission asked Counting Officers to ‘take steps on behalf of the Commission, to raise public awareness of the referendum taking place on 5 May 2011’ and provided a range of materials to support this work.

7.23 Additionally, the PVS&C Act provided for the Minister to make separate funding available to Counting Officers (separate from the fees and charges) for undertaking this ‘participation’ duty. This was discretionary and only available up to the 28 day period before the poll.

7.24 We are not clear how much of this funding was taken up by Counting Officers and how aware they were of its availability. However, in response to a request from Cabinet Office, the AEA alerted its Members of the availability of the funding in our weekly newsletter on 25 March. Any funding that took place after 31 March could not be funded. Counting Officers were reminded that the Electoral Commission was taking forward work on promoting public awareness.

7.25 Whilst it is clear that the aim of PPERA was to ensure the integrity of the poll at a referendum through the provision of unbiased information to voters, this seems an overly complicated and confusing arrangement which should be reviewed and clarified.

**Activities and media used to encourage participation**

7.26 Administrators reported working with their local authority communications units. The need to undertake low cost participation work due to budget constraints was noted, and in that context the Electoral Commission materials were acknowledged as being particularly helpful.

7.27 In particular, administrators used the artwork for posters which were placed in council buildings, libraries and supermarkets.

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65 Paragraph 10, Schedule 1, PVS&C Act 2011.
“EC very helpful when [we] wanted the oversized registration form for publicity...”

Electoral Services Manager, North West

“We widely distributed and publicised all of the EC materials directed to us and we found this material useful.”

Elections Manager, North West

7.28 Council websites were a key communication channel for information as was the use of press releases, local radio and newspapers, and local authority magazines to highlight key registration and absent voting dates. This included the use of interviews and photo opportunities. However, the use of press releases was not universally successful.

“Local media were reluctant to publish many of our releases concerning the deadline dates for registration and postal applications.”

Senior Elections Officer, South East

7.29 One administrator reported attending a University democracy day in February in order to encourage students to register, and there were a number of references to messaging via student radio. In addition, there were examples of administrators using blue tooth messaging and twitter.

Recommendations

- The Electoral Commission should consider the feedback provided in respect of its planning for future PPERA referendum public information campaign work.

- The UK Government should review and rationalise the legislative framework for the provision of public information and the duty to encourage participation at future PPERA referendums.
8 Managing the polls

“Identify staffing requirements for polling stations and ensure that, when allocating electors and staff to polling stations, you abide by the Chief Counting Officer’s ratios:

- A polling station must not have more than 2,500 electors allocated to it.
- In addition to a Presiding Officer, there must be one Poll Clerk for polling stations with up to 750 electors.
- One additional Poll Clerk must be appointed for polling stations with up to 1,500 electors.
- One further Poll Clerk must be appointed for polling stations with up to the maximum of 2,500 electors." 66

8.1 In its report on the 2010 General Election, the Electoral Commission recommended that (Acting) Returning Officers should review their approach to planning for adequate polling station and staffing provision for all future elections and stated an intention to give ‘more prescriptive guidance’.

8.2 This recommendation and the Chief Counting Officer’s direction were a response to the problems that were witnessed in 27 polling stations in 16 constituencies at the close of poll on 6 May 2010. All involved in the administration of elections and referendums in the UK would agree that those scenes, whereby potential voters were unable to cast their votes, were unacceptable and is not a situation any elections professional would wish to see repeated.

8.3 However, it should also be recognised that while Returning Officers have the responsibility for the provision, staffing and equipment of polling stations, it is the local authority that has the responsibility for reviewing and designating polling districts and places. In most cases (depending on how widely or narrowly the polling place is defined) it is the designation of the polling place that determines which building a Returning Officer can use as a polling station.

8.4 In our response to the Cabinet Office request for views on specific provisions of UK electoral legislation requiring amendment, we recommended that the selection of ‘polling places’ in particular should be the responsibility of independent returning officers rather than of local authorities.

66 Different ratios applied for staffing in areas where there were no elections.
8.5 In our report on the elections in 2010, we recommended that,

“The Electoral Commission should consult on what types of buildings should be made available for Returning Officers to use by right as polling stations. This should include examining the barriers to using school premises and identifying solutions.”

8.6 At the polls in 2011, we continued to receive feedback about difficulties in finding suitable buildings to use as polling stations and, in particular, resistance from some schools to their use as polling stations on safety and security grounds.

8.7 Therefore, we urge the UK Government and the Electoral Commission to take forward our recommendations in the interests of the voter.

**Polling station ratios**

8.8 In England and Wales, the direction to abide by the polling station ratios resulted in a number of concerns and practical issues for electoral administrators, including the additional costs incurred.

8.9 In Scotland, no significant issues were reported as a result of the direction and in a letter to the Chief Counting Officer the Convenor of the Interim Electoral Management Board for Scotland concluded that,

“The staffing ratios directed by yourself as CCO had a positive impact, although they were in any case similar to staffing ratios that are generally applied by Scottish ROs.”

8.10 The ratios used in the direction were those previously used as a guide to planning polling station provision, and administrators have indicated their support for them ‘as a guide’ that also allows for local knowledge to be applied as part of a risk management strategy. However, the direction did not allow Counting Officers to use any discretion on the basis of their knowledge of previous or likely turnout, or other local factors.

8.11 A number of these issues are summarised by one administrator below,

“The staffing level directions were challenging to reach and meant that we had to recruit staff that had little or no experience. The staffing levels were wasteful of public money and did not allow the RO to use his local judgement. A total of 19 extra polling staff were employed over and above those used at the UKPGE which already had very generous staffing levels. At the UKPGE we had a turnout of 73.5% and no queuing issues, the extra staff at this poll were underutilised and bored for much of the day. This reflects badly on
the perception of the public sector with regard to prudential financial management.”

Elections Manager/ Deputy Returning Officer, South East

8.12 The issue of planning on the basis of local knowledge and an assessment of turnout was raised by many administrators who could not understand why, if they had planned well previously, they were now required to change their arrangements. That local knowledge also reflected rural as compared with urban environments.

“Much of our area is rural and does not justify 2 Poll Clerks, one would have sufficed. We always allocate additional resources to larger urban centres.”

Democratic Services Officer, East Midlands

8.13 As noted earlier in this report, there were very few applications for an exception to the polling station ratios with administrators reporting being advised by their Regional Counting Officer (in line with the guidance on exceptions) that exceptions to this particular direction were unlikely to be approved other than in truly ‘exceptional’ circumstances. In addition, the guidance stated that, “the CCO will need to be satisfied either that it is not possible to comply with the direction, or that compliance with the direction would introduce an unacceptable level of risk to the delivery of the referendum” (paragraph 1.10).

8.14 As a result, in one area, even where an administrator had local knowledge that students would not be present on polling day at a university where two polling stations were sited, they considered that they had no choice but to staff the stations according to the ratios,

“I ...sent 4 people up there (as instructed) to oversee an eventual 110 voters. What a waste of money!.... our local knowledge would have prevented us from spending this money.”

Electoral Services Manager, South East

Factoring turnout into planning for polling station provision

8.15 It may be reasonable to conclude that the direction was based on the assumption that there might be a significant turnout at the referendum poll, particularly in areas where it was combined with polls at national and local elections.
8.16 In its written submission to the Constitution Committee Inquiry into ‘Referendums in the UK’s Constitutional Experience’, Democratic Audit noted that “the apparent public enthusiasm for referenda voiced via opinion polls rarely translates into high turnouts when referenda are actually held”. The submission includes data on turnout rates.

“…. turnouts in referenda held in the UK since 1973 have ranged from 34.5 to 81.1 per cent, with the referenda on devolution in Greater London and North East England prompting fewer than half of the eligible electorate to participate. While the average turnout of 57.8 per cent compares favourably to turnouts in local elections, and falls only slightly short of turnout in recent General Elections, it remains the case that referenda have not tended to result in high levels of public participation.”

8.17 The submission also notes that the average turnout for the 35 mayoral referendums that have taken place was 30%, and average turnout on referendums on local government reorganisation and council tax levels remains well below 50%.

8.18 In advance of the referendum and elections on 5 May, media coverage had indicated that there may be a low turnout with some predictions for London being as low as 15%. A 40% turnout threshold was proposed as an amendment to the Parliamentary Voting System and Constituencies Bill (subsequently defeated).

8.19 In the event, the turnout was 42% across the UK, with turnouts in the different regions and nations of the UK ranging from 35.4% in London to 55.8% in Northern Ireland.

8.20 An alternative approach to directing that precise ratios be adhered to, would have been to direct Counting Officers to undertake a robust assessment of their polling station provision including the allocation of electors and staffing levels with regard to the ratios and a set of principles or assumptions (for example regarding estimated turnout based on previous elections within that local area). Evidence that this process had been conducted could have been required.

8.21 Along with the requirement for contingency plans and staffing, this would have provided assurance while also enabling local flexibility and innovation where appropriate.

Apportioning costs in respect of combined polls

8.22 In areas where the poll at the referendum was combined with polls at elections, it was unclear initially whether any of the additional costs arising from this direction would have to be met by local authorities, even though they would not have otherwise incurred these costs.

8.23 However, paragraph 5 (Cost of combined polls) of Part 1 of Schedule 5 (Combination of polls: England) of the Parliamentary Voting System and Constituencies Act contained the following provision,

“The cost of taking the combined polls (excluding any cost solely attributable to the referendum or to a particular relevant election), and any cost attributable to their combination, is to be apportioned equally among them.”

8.24 This was further clarified in an email sent to Counting Officers in March in which the Accounting Officer at the Electoral Commission confirmed that,

“...while [he] will normally expect the costs of combined polls to be split equally between the polls, he will consider claims for reimbursement of an amount that represents more than an equal split, if a Counting Officer provides evidence that the additional costs are solely attributable to the referendum.”

8.25 The evidence required was that the costs were ‘clearly greater than those incurred in running broadly comparable combined polls in 2009 and 2010’.

8.26 The AEA does not have complete figures of the additional costs incurred as a result of the direction on ratios across the whole of the UK, but we do have estimated figures from a range of authorities and these are included below as indicative of the range of costs that may ultimately be solely attributable to meeting the requirements of the direction.

8.27 From examples supplied to the AEA, the additional costs incurred by individual Counting Officers appear to range from around £3,000 to almost £37,000.

8.28 We do not know the scale in terms of the number of Counting Officers who will be making claims for reimbursement of these additional costs.

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68 Equivalent provisions were included in Schedule 6, Part 1, paragraph 3 (Wales); Schedule 7, Part 1, paragraph 3 (Scotland); and Schedule 8, Part 1, paragraph 3 (Northern Ireland).

69 The email referred to here is that sent in the North of England on 15 March 2011.
8.29 Also, we do not know what proportion of these costs will be met from the Consolidated Fund based on decisions on claims by the Accounting Officer. However, given the feedback we have received, the overall cost of meeting the direction on polling station ratios is likely to involve a considerable sum of money.

8.30 We also have indicative figures for the additional staffing and training costs incurred by some authorities in Wales. One authority incurred just under £6,000 in March and over £19,700 in May. Others incurred costs in the region of £2,000 - £3,000 variously at each event.

Venues

8.31 Not all buildings used as polling stations lend themselves easily to being split into multiple stations and, once the direction was known, there was no time to conduct a full review in order to identify other polling places. This meant that, in some cases, mobile units had to be used to provide the additional polling station within the same polling place. Significantly, mobile units are generally considered to be a last resort (often indicated as such in local authority polling district and places reviews) because of accessibility reasons, not least that of internal space.

"Had to have a portacabin for the first ever election at our authority."

Democratic Services Manager, South East

“We had to appoint 81 extra poll clerks, which we did manage to do but it increased the time taken to appoint staff. Some of our temp stations had extra poll clerks assigned, there really isn’t the room for 3 people in these units."

Elections Manager, North East

“1 temporary building had to have a gazebo erected outside to accommodate the extra staff.”

Electoral Services Manager, North West

8.32 Given the difficulties of identifying suitable buildings to use as polling stations, in a number of areas it had been normal practice to have one polling station with one Presiding Officer but to split the register and have additional desks staff with additional Poll Clerks. Voters would then be directed to the relevant desk by clear signage and by staff.
8.33 Changing this arrangement to split the station into two in line with the direction may well have had an unintended consequence in some areas as regards the verification process at the count.

“We always split large stations but do not necessarily appoint two presiding officers with two boxes. We have found it works better to have two teams each with a ‘senior poll clerk’ and a ‘super presiding officer’. The station will have one box and the presiding officer is responsible for allocating ballot papers to each team and calculating the ballot account. We find the box verifies much easier this way. Because of the direction, it took much longer to verify the larger stations as none of them verified with the ballot paper accounts.”

Elections Manager, Eastern

8.34 In some areas having to split a polling station into two stations caused issues both of voter confusion as arrangements were different to usual, and in one example - queues.

“As most of us thought turnout was low at around 42%. So all the extra Presiding Officers and Poll Clerks we had to recruit were not needed. The only problem we had during the day about queues was in a building that we only [usually] have one polling station, but ...we had to make into two. Had we left [it] at one there would have been no problems.”

Electoral Services Officer, South East

8.35 There were also comments that the ratios were unnecessarily inflexible.

“We had one polling station only 5 electors above the CCO threshold but we had no discretion on this and split the polling station. Was that really necessary?”

Democratic Services Manager, South East

Recruiting and training additional polling staff

8.36 The recruitment and training of additional staff involved a significant amount of additional work and costs in a number of areas. This also had an impact on the number of reserve staff available to cover where an appointed polling staff member either did not turn up or had to withdraw at short notice.

“Struggled to find enough available polling station staff following the increase in numbers...”

Electoral Services Manager, North West
“Extra polling staff required for the polls by the CCO’s directions made it difficult to maintain a reasonable list of reserve staff.”

Senior Elections Officer, South East

“Staffing for Presiding Officers is always a problem for us and it’s very difficult to get experienced people willing to take on the job, when it’s getting increasingly complex each time.”

Electoral Services Manager, West Midlands

“Poll clerks - it was hard to recruit enough staff to meet the CCO direction. We have used staff that, under normal circumstances, we would not have considered using.”

Electoral Services Officer, Yorkshire & the Humber

8.37 The additional recruitment and training had an impact on some core teams who were already stretched, and incurred the associated administrative costs such as paperwork, phone calls, and postage.

8.38 The feedback was not entirely negative, however, and one electoral administrator group in the North West noted that, ‘new staff were good as they listened to and read instructions’.

8.39 In addition, a number of administrators were able to promote previously experienced Poll Clerks to the Presiding Officer role.

Public and staff perception of the additional staffing of polling stations

8.40 We have feedback that administrators and polling staff in some areas received complaints from voters about the increased numbers of polling staff in some stations.

“On Polling Day staff received a number of complaints about how many people were on duty and how they thought Local Government was meant to be saving money.”

Elections Officer, East Midlands

“Had many complaints about the excessive numbers of polling station staff - from the staff themselves and from the general public. Excessive numbers of staff did not do anything for the public’s perception of ‘wasteful councils’.”

Electoral Services Manager, South East
“CCO staffing ratios should have been a guide rather than a direction. Local knowledge should also play a part and we had complaints regarding the large numbers of staff at some stations.”

Electoral Services Manager, Eastern

8.41 Some administrators expressed their own concern about what message the additional staffing sent out during the current climate of ‘austerity’.

“Staff employed at stations with apparently little or no work to do, sends a negative message to the electorate who are being told that other services will need to be reduced due to financial constraints.”

Elections Manager, North West

8.42 The issue of polling staff having ‘little or no work to do’ was also raised in the context of de-motivating these staff with concern about the potential impact on recruiting staff in future.

“Staffing at polling stations was tight due to the new quotas set by the EC. This was frustrating when during the day staff were sat with nothing to do and many saying they would not work again as they were bored…”

Electoral Services Manager, South West

Additional equipment costs

8.43 If you split a polling station into two stations, this essentially doubles the amount of equipment needed. In some areas, this necessitated the purchase of additional polling station equipment that would not necessarily be needed again.

“We had to order additional ballot boxes and polling booths. We were unable to find a supplier for cardboard polling booths that cost less than £35 per booth (for one use!).”

Electoral Services Manager, Eastern

“It was felt that there was sufficient funding to run both events and to comply with the CCO’s directions. In parts of Scotland there were issues about lack of equipment and urgent purchases had to be made.”

Depute Constituency Returning Officer, Scotland
8.44 Equipment costs for the referendum are included in the fees and charges, taking into account the depreciation of the equipment which is calculated according to a formula (as set out in the Counting Officers’ Expenses Guidance Notes).

8.45 Some items, such as notices, large print ballot papers, seals and stationery to be used in polling stations for the referendum can only be used once or are valid only for the referendum. These costs can be claimed in full. For other items, which are deemed to be usable at other electoral events, a proportion of the cost can be claimed.

8.46 The guidance addresses the point about equipment bought as a result of the Chief Counting Officer’s directions.

“(9.41) It has been suggested that the effect of the Chief Counting Officer’s directions in relation to polling station sizes and staffing ratios has resulted in the need for more equipment than would be usual for a local poll. Claims can therefore be made for such equipment on the same basis as for any other equipment. It will be available for local elections into the future, and although it may not be necessary to use it every year, it will prolong the life of the stock overall and mean that any replacement schedule will be extended. It will supplement existing stock already bought and paid for by Government grant.”

8.47 Given the likelihood of an increasing number of multiple polls on the same day as a result of central government initiatives such as the proposals for Police and Crime Commissioners, some administrators are concerned that the policy on meeting the costs of polling station equipment for ‘national’ events is likely to become out of step with the actual costs necessary to maintain and replace equipment that they would not otherwise need. This comes at a time when local government budgets are being cut.

8.48 It will be important to ensure that this issue is kept under review as the UK Government takes forward its constitutional reform agenda. This in the context of the number of national events increasing from two to four in any electoral cycle in England and from three to five in Northern Ireland, Scotland and Wales.

Close of poll

8.49 The AEA is not aware of any issues at close of poll on 5 May 2011.
8.50 One area in the North West reported,

“...a rumour about lots of students potentially gathering just before 10pm to vote and [we] put measures in place for this, but it didn’t happen.”

8.51 The Electoral Commission has recommended\(^7\) that any voter entitled to vote at a polling station and who is in the queue to enter a polling station at the close of poll should be allowed to vote.

8.52 Whilst the AEA understands the reasoning behind this recommendation, we continue to believe that any proposal to change the rules regarding the procedures at close of poll would need to be carefully considered in respect of the management of the process.

Recommendations

- The selection of ‘polling places’ should be the responsibility of independent Returning Officers rather than of local authorities.
- The Electoral Commission should consult on what types of buildings should be made available for Returning Officers to use by right as polling stations. This should include examining the barriers to using school premises and identifying solutions.
- Polling station ratios should be advisory for future national electoral events.
- The UK Government should review its funding policy for election equipment for national electoral events given the increased number likely by 2015.

9 Verification, counts and results collation

“The scale of the events was difficult to manage. We decided to verify ... on Thursday night, leaving Friday clear for the local count in the morning and the referendum count in the afternoon. In practice, there was very little time between the events. This impacted worse on the Electoral Services Manager and other key staff, who worked 39 hours from Thursday morning to Friday night.”

Electoral Services Manager, South East

“The main issue was complaints from candidates as to why the local results were taking so long, and why the verification had taken so long to complete. We were running 3 separate elections, with new processes and procedures and I really don’t see how it could have been any different. The impact on the count needs to be taken into account when events are combined.”

Electoral Services Officer, Yorkshire & the Humber

“A long night carrying out verification and count of Assembly votes and then an anticlimax on Referendum which just took an hour.”

Electoral Services Manager, Wales

“Timing and conduct of the count - With three polls and two STV counts this was a difficult area. In NI a ballot box was used for each poll. All three boxes per station were verified first. We requested an exemption from the 1pm deadline for completing the verification which was eventually granted. We began verifying overnight and continued into the next day. On completion of the verification we then commenced the NI Assembly count and on direction the Referendum count. The Assembly count in most cases ran into the Saturday and the Local Election counts were held on Monday and Tuesday 9-10th May. It was a long and exhausting process not helped by adverse comments from the media on the length of the counts.”

Northern Ireland

The timing of the verification and counts

9.1 The Chief Counting Officer had directed Counting Officers to complete the verification process by 1pm on Friday 6 May, and to commence the counting of the referendum votes at 4pm on Friday 6 May. This timing was decided following consultation and was intended to take into account that there were multiple polls across the UK and that there was a need to allow the counts for those polls to take place before the referendum count.
9.2 It was the Chief Counting Officer’s view that the referendum result should not delay the results at scheduled elections. It was recognised that in Northern Ireland additional resources would be needed to enable the referendum count to commence even though the counts for the Northern Ireland Assembly elections would not have been concluded. In addition, in England it was recognised that the counts at parish elections may not be concluded by the time the referendum count was due to start at 4 pm.

9.3 Whilst this decision was reached in a consultative way and the rationale for the decision was communicated clearly, the decision was needed at an earlier stage given that administrators were under pressure to book venues, a point made by the AEA at the meeting of the Steering Group on 4 November 2010.

9.4 Given the variety of scenarios for the polls on 5 May, both in terms of the variation in number of polls (depending on how many areas were up for election, how many contested and uncontested), the fact that in some areas there were no other polls taking place, the different voting systems, and the varying pressure to count ‘on the night’ or agreement that counting could start the next day, there was never going to be an easy solution to the timing of the referendum count that would meet all of these competing priorities and variables.

9.5 As a result, the experience for electoral administrators was different across the UK. However, a number of consistent themes have emerged which we set out below.

9.6 Counting Officers were required to conduct the verification and count processes in accordance with the Chief Counting Officer’s instructions, including conducting the count in accordance with a number of principles, and to follow the verification and count protocol in communicating figures and results to the Regional Counting Officer.

The verification and count protocol

9.7 The protocol used for the communication of verification figures and local results at the 5 May referendum was first used at the referendum in Wales on 3 March. This had been updated and revised to build on the learning from that referendum.
“Once the provisional results were obtained, these were relayed to the DCCO and following a period of delay authorisation was given to inform the Referendum agents of the results. A further period of delay occurred before formal authorisation was given to announce the result to coincide with an announcement at the Senedd. In hindsight it was felt that the verification and count protocol was overly complicated and confusing and required simplification.”

Electoral Services Manager, Wales

9.8 The protocol to be used at the 5 May polls was issued on 25 March with EC16/2011.

9.9 A rehearsal of the protocol, systems and process to be followed was undertaken during the statutory election and referendum timetables on 8 April. We have received a number of comments suggesting that, in line with project planning principles and good practice, this rehearsal should have taken place earlier and certainly before the election and referendum timetables had commenced. The timing of the rehearsal meant that core electoral services staff were out of the office for a whole afternoon in the middle of what is a demanding timetable in any event. This is not a comment on the value of undertaking a rehearsal.

“This does not fit well into the project planning model. For example, late notification that the rehearsal of verification and count totals would take half a day to achieve at a very busy time. The rehearsal, if project planned well enough, could have taken place far earlier when office pressure was not so extreme.”

Electoral Services Manager, South East

9.10 As a result of the learning from this rehearsal the protocol was amended and made available on the Electoral Commission website on 15 April.

“The results collation went well which surprised me (lessons must have been learnt from the trial).”

Elections Manager, Eastern

9.11 There is general agreement that the results collation system worked well, but that the processes for communicating the verification figures and results were overly bureaucratic and slow with queuing where a number of Counting Officers were ready to give their figures to the Regional Counting Officer (and staff) at the same time.

“Delays were again experienced in obtaining relevant authorisations from the RCO and difficulties were experienced in making contact
with the RCO central hub. ... No significant difficulties were experienced in sending results to the RCO via the Results Collation System which in itself was very straightforward."

Electoral Services Manager, Wales

9.12 There was some confusion over the information that would be required as part of this process, with Counting Officers having to call back as a result in order to locate and give the required information and to obtain ‘sign-off’. There seems to have been a disparity between the scripts used by Regional Counting Officer staff and the information that Counting Officers were expecting to provide.

“Only issue was the Regional [Counting] Officer asking for a Form C and I hadn’t had this before hand and couldn’t find it in the Count Protocol (as the Appendix C is a different document) so I hadn’t taken it with me and was confused by the request.”

Elections Manager, North West

“All was quite straight-forward, but long. However, we were surprised to be asked a number of questions by our Regional Office we weren’t anticipating when we submitted our verification figures and this led to delays.”

Electoral Services Manager/ Deputy Returning Officer, Wales

9.13 We have also received comments that the information required for the ‘live’ process seemed was not the same as that demonstrated in the rehearsal.

“The tests did not prepare us for the long list of questions asked on election night in relation to the verification figure. Why not?”

Deputy Counting Officer, South East

9.14 Administrators have also said that there was too much information on the process and that there were late changes to the instructions resulting in confusion. In some regions, the Regional Counting Officer’s staff attempted to clarify the process by producing a simplified checklist for ease of reference.

“It was not obvious as to which forms needed to be completed. The information that was needed to be sent to the Regional Counting Officer should have been put in a more simpler format - e.g. in bullet point form with just the required forms to be completed attached to the email.”

Senior Elections Officer, North West
“The count protocol and procedure for sending an emailed spreadsheet to the RCO and the requirement for testing was understood but again the volume of information that came through about this was ridiculous. At one point I had 72 pages of instructions and revised instructions, text protocol, flowcharts etc etc all to tell us how to complete a simple spreadsheet by email.”

Elections Officer, Scotland

“Verification and count documentation appeared over complicated for what should essentially have been the conveyance of a few figures.”

Electoral Services Manager, South West

9.15 A number of administrators have informed the AEA that they attempted to provide verification figures to the Regional Counting Officer overnight only to find that there was no one to take the figure as the Regional Counting Officer and staff had gone home.

The verification process

9.16 In order for everyone participating in elections and referendums to have confidence in the result of a poll, you must have a verification process. What this means in practice is that the Returning Officer/ Counting Officer’s staff count how many ballot papers are in the ballot boxes returned from polling stations and compare this figure with the appropriate ballot paper account completed by the Presiding Officers at each polling station. The final verification figure (which includes the postal ballot papers properly returned) is the number to be entered into the count (the counting of the votes on the ballot papers) for each poll. The final verification figure is then compared with the number of votes cast at the end of the count process.

9.17 This may seem self-evident to Returning Officers/Counting Officers, electoral administrators and seasoned political party agents. However, it is important to restate the function and significance of verification in order to set the context for the issues that arose on 5 – 6 May in relation to this process where there were combined polls. It may seem a tedious and mundane process to those observing and even those involved in the counting; however the importance of verification cannot be overstated.

9.18 The number of ballot papers in each ballot box used at a polling station is counted and the total compared with the number of ballot papers issued at that polling station.
9.19 In undertaking this work, the Counting Officer’s staff count the ballot papers in the ballot box and compare this with the Presiding Officer’s ballot paper account. The legislation also requires that all the unused ballot papers are counted as part of this process.

9.20 Sometimes there is a small discrepancy between what is issued and what is in the ballot box. Voters sometimes decide not to vote in a particular poll and take the ballot paper away with them when they leave the polling station, rather than refuse to accept the ballot paper from the staff or to place a blank ballot paper in the ballot box. Sometimes, there is an apparent discrepancy that is subsequently resolved because the ballot paper account, which sets out the Presiding Officer’s record of what’s been issued, has been incorrectly completed. The important point is, as far as is possible, to be able to explain and audit any discrepancies.

9.21 This process becomes more complex when polls are combined both for Presiding Officers in recording ballot papers issued for each poll and for the Returning Officer/Counting Officer’s staff in verifying. If one ballot box is used in the polling station for the ballot papers for all polls, then these must be separated out and counted. If a separate ballot box for each poll is used in the polling stations, voters inevitably place some ballot papers in the box for another poll. Again, it is important to identify these ballot papers and enter them into the count for the correct poll.

9.22 Once all the ballot papers for a particular poll in all the ballot boxes have been counted, and all discrepancies have been checked and the Returning Officer/Counting Officer is satisfied that there are no errors remaining, the total number of ballot papers from polling station ballot boxes is added to the total number of postal ballot papers. This total is the verification figure - the total number of ballot papers being entered into the count. All of this takes time.

9.23 Where there is one vote to be recorded on each ballot paper, for example, at elections for single-member electoral divisions or wards, and at the referendum on the UK Parliamentary voting system, at the end of the count the total votes for each candidate/option in a referendum plus the total number of rejected votes should add up to the verification figure. So, what goes in should match what comes out at the end.

9.24 Clearly, this is more complicated where there are multiple votes to be recorded on each ballot paper and requires careful recording of votes cast, as well as unused votes and rejected votes.
9.25 The use of a formula allows the actual votes for a particular contest to be reconciled with the potential number of votes to be cast based on the number of ballot papers counted and verified.

**Variances**

9.26 Counting Officers were required to inform the Regional Counting Officer if there was a variance for any ballot box between the number of ballot papers in it and the number recorded on the ballot paper account as having been issued.

“Despite the fact that we checked every incorrect box (actual to ballot paper account) 3 times, the RCO would not accept an overall difference of 15 on 35,434 papers insisting on a recount which came to the same figure. Thereby causing a great deal of frustration to over 250 people at the count who were there for local elections. Nobody there with any interest in the referendum.”

Electoral Services Officer

9.27 In a speech to the Constitution Unit on 15 June, the Chief Counting Officer expressed surprise and concern at the “readiness of some electoral administrators to write off potentially significant differences in the numbers of votes verified and the number counted as inevitable, and nothing to worry about”. Further, the Chief Counting Officer stated that the Electoral Commission’s report would focus on this issue as “we can’t ignore our concerns about a verification process where the numbers that the process produces can be seen as nothing more than a rough guide”.

9.28 The counting of ballot papers (the verification process) and the counting of votes on those ballot papers are serious processes and electoral administrators do take them seriously. For this reason, the AEA expects the Electoral Commission’s examination of the verification process to be considered, thorough and well-informed. The nature and scale of any ‘problem’ should be established and should be evidence-based.

9.29 Where necessary, this should involve a dialogue with Counting Officers and electoral administrators where there were issues with ‘significant differences’ in order to understand the context and causes of those differences.

9.30 The AEA is fully prepared to work with the Electoral Commission and the UK Government to offer support and expertise in identifying improvements to the verification process as part of any review of the legislation and practice.
Verifying unused ballot papers

9.31 However, a number of administrators have indicated that the requirement to count the unused ballot papers significantly slowed down the process of verification without adding any value except in instances where there was a variance. They suggest that the law should be changed so as to give the Counting Officer/Returning Officer discretion in having to check the unused only where there is a problem with reconciling the ballot paper account back to the verified figure.

“There is no added value in comparing the next number of the unused ballot papers with the total number issued by the presiding officer as recorded on the ballot paper account, unless an anomaly has been identified. The law should be altered to reflect this, ie make it permissive rather than obligatory.”

AEA Scotland and Northern Ireland Branch

The counting of the votes

9.32 The issue of whether to count overnight or the next day was again raised in respect of some of the elections taking place in 2011. In some areas, Counting Officers were under considerable pressure to count overnight in order to be able to declare results of elections as quickly as possible.

“We chose to verify all ballots on the night and carry on counting Welsh Assembly through [the] night. This was our choice based on local circumstances. One region, North Wales chose to count on the next day and were subjected to immense and unfair pressure to count on the night.”

Electoral Services Manager/Deputy Returning Officer, Wales

9.33 There is a strongly held view, particularly in Scotland, that there should not be overnight counts, as recommended by Gould, as it places a considerable burden on Returning Officers and their core teams to remain alert for a prolonged period (in excess of 24 hours) without adequate rest breaks.

9.34 With the referendum count commencing at 4 pm on Friday 6 May, it led to long hours and considerable pressure on core elections staff in a number of areas where there were combined polls. In some areas, the counting of the votes at the other elections continued into Friday evening alongside the referendum count. This is reflected in the comments at the beginning of this Chapter.
9.35 In England, the pressure appears to have been most acute where there were parish and town council elections also taking place.

“We went for a daytime count that started at 8am and finished at just after 9pm - we had counts for 26 District elections and 17 parish elections, two of which had very large ballot papers.”

Head of Democratic Services/ Deputy Counting Officer, South East

“...the timing of the Friday referendum count was difficult for core staff who had been working very long hours prior to the count, however the communication of the actual referendum results was excellent, very easy and very quick.”

Electoral Services Officer, North West

**Declaring results at other elections**

9.36 Previously, the ballot boxes for all polls had to be verified before any counting could commence in any of the contests. This process could mean that it was some considerable time before any counting of votes was able to commence. However, it had the advantage of ensuring that verification for all polls was a distinct process and that all papers entering the various counts were accounted for before any counting of votes began.

9.37 For the polls on the 5 May 2011, the combination legislation was changed to allow counting to *commence* in one poll (where verification for that poll had been completed) before the verification process was finalised for all the polls that had been combined. However, there was a legal requirement to conclude the verification in relation to all the polls before any results in any of the polls were declared. This requirement was there to ensure that all ballot papers were accounted for before any results were declared.

9.38 A number of Counting Officers in England did not seem to be aware of the requirement in the legislation to confirm the verification figure for the referendum before announcing results in the other poll or polls combined with the referendum poll. This vital piece of new information may well have been ‘lost’ in the volume of information presented to Counting Officers.

9.39 In addition, administrators report that a number of Counting Officers came under pressure to declare the results in the other elections before the verification figure had been fully confirmed according to the protocol. Delays in obtaining confirmation in some cases put Counting Officers and their staff under pressure.
“Local government candidates could not understand why local election results could not be declared until the Referendum figures had been signed off. The referendum count should have been held on another day. The timing meant that we [were] still doing our parish counts at 10 pm on 6 May - including a very awkward one to elect 15 from 34 candidates. The referendum was not going to affect anything in the near future, while the district and parish elections were electing councillors to take office on 9 May and who had to start making decisions that week.”

Electoral Services Manager/ Deputy Counting Officer, South East

9.40 If this new arrangement (that allows for the counting of votes in some polls to be commenced before the verification for all polls has been completed) is to be used for other combined polls, there needs to be recognition by elected Members, political parties, candidates and agents of the importance of verification and pressure should not be applied to Returning Officers to announce results before the verification for all polls has been completed.

The Chief Counting Officer’s count model

9.41 We have noted earlier in this report, the confusion regarding whether the use of this model was required (directed) or discretionary.

9.42 We have received limited feedback about the model. For some administrators, it was the first time they had used a ‘mini-count’ model.

“We had not used ‘mini counts’ before but they worked extremely well - will use them again for District wide/Parliamentary elections.”

Senior Electoral Services Officer, Eastern

9.43 Other administrators found the model to be overly bureaucratic, and some report that they adapted the model.

Recommendations

9.44 The following measures could assist in alleviating the pressure on the small elections teams who are providing oversight of the various counts. Any use of electronic forms of counting must be capable of ensuring an accurate and transparent count process in which all participants have confidence.
The UK Government should:

- consider carefully the impact of combination of polls on verification and count processes as part of a wider review of combination, including the resulting pressure on core elections teams;

- review the current absolute requirement to count the unused ballot papers as part of the verification process so that the requirement need only be carried out in certain prescribed circumstances;

- consider allowing electronic forms of counting for the counts in respect of at least some of the polls where multiple polls are combined, for example at parish and town council elections.
10 A model for future referendums

10.1 What might a future model for PPERA referendums look like?

10.2 The AEA sets out the following to inform the wider debate in response to this question. In doing so, we have identified a number of issues and roles we believe need to be reviewed and / or set out clearly.

10.3 It may be that the Secretary of State chooses to undertake this work, or uses his powers to request that the Electoral Commission undertakes this work. The AEA would support either approach so long as that work was undertaken as part of a consultative and transparent process in which the evidence and any responses to consultation are open to public scrutiny.

The Chief Counting Officer

10.4 The role of Chief Counting Officer should be set out in detail in a public and accessible form. This should bring together the responsibilities and powers provided by PPERA and any proposed through a generic or future conduct order and should establish clearly the expectations of the role for the person undertaking it and for the wider electoral administration community. It should include an assessment of the support and resources (including expertise) required to deliver the role effectively.

Legislative framework

10.5 The work undertaken for the referendums in 2011 should be used to produce a generic conduct order for PPERA referendums. More importantly, this should include a clear set of combination arrangements that can be brought into effect quickly with minimum amendment. This should include agreement on which polls and how many polls can be combined on any date. These should be periodically reviewed to ensure that they remain up-to-date.

10.6 The legislation bringing forward a referendum, including the date of that referendum, should be brought into effect no later than six months in advance of the referendum poll.

The power of direction

10.7 The power of direction should be retained for PPERA referendums where there is a regional or national result.
10.8 The UK Government should review the use of the power of direction to achieve a consensus on its use. This should include consideration of the balance between the need for central direction and certainty on key strategic issues, and the value of allowing flexibility for local Counting Officers, and Regional Counting Officers to exercise their judgement based on local knowledge and expertise.

10.9 This should be used to inform the development of a generic conduct order for PPERA referendums, and to enable any future Chief Counting Officer to produce a statement setting out how it is proposed that directions will be arrived at, in what circumstances and on what basis.

10.10 Given that directions have the force of law, they should be issued no later than six months before the date of the poll at the referendum to which they relate. We recognise that there may be ‘emergency’ situations that could arise at any point that might necessitate the issuing of a direction. This should be done according to the process set out in the statement referred to above, and should be to address unforeseen or exceptional circumstances.

10.11 Earlier certainty about the rules for the conduct of a referendum, particularly in a combination scenario, should reduce the need for the extensive use of directions. A smaller set of directions focused on key areas of delivery where new or different arrangements need to be highlighted or where a specific risk has been identified, and on which there is consensus, would provide greater clarity and acceptance of the need for them.

The format of directions

10.12 Directions should be clearly identifiable as such. A Counting Officer should be able to clearly distinguish between what is a direction (legal requirement) and what is guidance. This is important for two reasons; clarity for the officers being required to follow the directions, and clarity for any judicial review or petition proceedings (particularly where polls have been combined).

10.13 In addition, a direction or directions impacting on a specific electoral process - for example, postal voting - should be in one place.
10.14 A direction might be structured as follows:

- **Number**
- **Direction** - what is being required.
- **Who is being directed** - Counting Officers and/or Regional Counting Officers.
- **Description including rationale** - why the direction is being issued; what it is designed to remedy or to achieve; why it is important; any relevant dates for implementation.
- **Any required steps** (if any) to be taken to deliver the outcome sought - including links to any templates that must be used (if relevant).
- **Any implications for or impact on combined functions** - including any potential resource implications and how these will be funded.
- **The process for seeking an exception** - including details of any criteria, evidence that will need to be met or provided.
- **How compliance with the direction will be assessed** - any monitoring arrangements, including what, when and how.
- **Relevant legislation** - the relevant rule(s) or regulation(s) that apply in relation to the matter on which Counting Officers are being directed.
- **Guidance** - a link to any advice and assistance available to Counting Officers to support them in meeting the requirements of the direction.

**Fees and charges**

10.15 The fees and charges for any future PPERA referendums should be in place at an early stage in the planning process and clarity as to the maximum recoverable amount provided to each Counting Officer six months before the poll at the referendum to which the fees apply.

10.16 The guidance for Counting Officers should also be available at that time and should clearly address the recovery of costs arising from any directions. In particular, there should be early clarity on what proportion of any costs will be met when the referendum poll is combined with the polls at other elections.

10.17 Advances should be paid in sufficient time to meet the actual costs being incurred by Counting Officers.
10.18 We have no view on whether the Counting Officer’s fee should be provided in full in advance or in part with the balance to be paid on the effective completion of the role. However, it should be clear to Counting Officers on what basis any assessment is made, and how the fee should be accounted for and recorded when accounts are submitted.

10.19 There should be training support for administrators in completing the accounts as part of a national training strategy.

**A communications strategy**

10.20 Learning from the 2011 referendums should be used to set out a communications strategy for any future referendums so that all involved know what to expect through the various communication channels. This will need to be reviewed periodically to ensure that it remains current and relevant.

10.21 This strategy should include -

- A clearly structured and recognisable format for directions and clarity as to how these will be issued.
- A clear separation between information being provided as an update and any requirements or advice.
- A clear separation between directions and guidance (even if within the same document).
- Robust arrangements for ensuring that mailing lists are up-to-date and accurate.
- There should be an easily navigable website for the communication of information, directions and guidance to Counting Officers and where to find information on that site should be communicated early in the planning process.
- Any communication requiring action by Counting Officers should be placed on the Commission’s website at the same time as it is issued (including directions, guidance and resources).
- An approach to providing briefings that ensures sufficient content at relevant stages in the planning process.

**A monitoring strategy**

10.22 This should be set out early in the planning process, and preferably (as indicated above) at the same time as any directions are issued. Early clarity on what is be monitored, when and what information and evidence is to be required is essential.
As with the performance standards regime, there should be consultation with Counting Officers on the proposed approach, including the timing and content of the reporting and provision of information and evidence. This would enable Counting Officers to highlight any potential issues as part of the consultation and for these to be considered and to inform the final approach both to direction and to monitoring.

In addition, advance awareness of the requirements would enable Counting Officers and electoral administrators to factor these into their planning for the referendum.

All monitoring / reporting dates should be included in the calendar issued with the project planning templates. Project planning templates should be provided (as a minimum) in MS Excel as well as in Word. Consultation should be undertaken on the feasibility and benefits of providing this in other formats, such as project planning software or as part of election management software.

**A national training strategy**

There should be an assessment of the need for training in the delivery of any specific referendum. This should consider the need for provision of training to support the delivery of any new processes that are either required or that are strongly recommended - such as the count model.

Clarity as to the rules for the conduct of the referendum and any directions to be issued will be needed at an early stage in planning (as indicated above) in order for such an assessment and training provision to be effective.

**Regional Counting Officers**

The AEA believes this role should be retained for referendums. However, for this role to be effective and to add value to the process, the approach to managing the referendum needs to be reviewed as indicated above.

There should be a transparent process for appointing Regional Counting Officers based on good practice in public appointments. The exception to this should be where a statutory officer is designated as Regional Counting Officer by virtue of their appointment to their existing statutory role.
The role description for Regional Counting Officers should be reviewed in the light of the experience at the 2011 referendums. This review should examine the balance between central direction and decision, and where the Regional Counting Officer can exercise their own judgement and local knowledge.
11 Conclusions

11.1 5 May 2011 will be remembered for the dramatic political outcomes from the polls that took place on that day, and not for any issues connected with the administration of those polls. And that is as it should be.

11.2 However, in terms of electoral administration, some significant questions were posed by the approach taken to the conduct of those polls as a result of powers vested in the Chief Counting Officer for the UK-wide referendum on the voting system to be used at UK Parliamentary elections.

11.3 This report offers an account of the experience of electoral administrators in delivering the polls on 5 May 2011 and offers a model for the future conduct of PPERA referendums as well as wider recommendations for improvements to the framework for electoral administration in the UK.

11.4 The Chief Counting Officer set out the following aims for the referendum and combined polls:

- That the polls are consistently administered.
- That the process is transparent.
- That the polls are professionally delivered.
- That they produce results in which all stakeholders are confident.
- That all voters have a good experience, with any person who is entitled to vote being able to do so.

11.5 The AEA and electoral administrators generally recognised that the coordination of a UK-wide event would require some level of direction and that this would be both necessary and desirable to achieve certainty and clarity.

11.6 However, the Chief Counting Officer’s extensive use of the power of direction to set out detailed requirements for the processes and procedures to be followed by Counting Officers represented a major shift in the management of an electoral event across the UK and, in effect, created an additional set of rules for the conduct of the polls.

11.7 The approach to communications with electoral administrators resulted in the significant and the new being lost in the plethora of requirements and information.
11.8 As a result of the new approach, additional costs were incurred in respect of all the polls in order to deliver the requirements of the directions.

11.9 For future PPERA referendums there should be consensus about the use of the power of direction and a balance between central strategic direction and the local knowledge and expertise that is vital to ensuring that arrangements for the poll reflect the needs and expectations of voters locally.

11.10 Late and complex legislation (due to the controversy surrounding the Parliamentary Voting System and Constituencies Bill delaying its progress through the UK Parliament) meant that administrators were again in the position of planning within an uncertain and unclear environment.

11.11 The experience for electoral administrators, and for the various contractors and local authority and other staff supporting the delivery of the polls on 5 May 2011, was one of delivering these despite rather than because of the framework within which they were required to deliver them.

11.12 Administrators are already expressing concern that this will be the context within which the elections of Police and Crime Commissioners as well as substantive new responsibilities arising from the Localism Bill will have to be delivered in 2012.

11.13 Running as a theme throughout this report has been that of the considerable impact on the administration of polls arising from the decision to hold the referendum on the voting system for UK Parliamentary elections on the same day as scheduled national and local elections across the UK. This required electoral administrators to manage complicated combination arrangements based on different franchises and voting systems.

11.14 In Wales, two referendums were delivered in quick succession, the second being combined with elections to the National Assembly for Wales. It is a credit to administrators in Wales that they delivered all of these events successfully. It also involved a significant and sustained period of pressure for the core elections teams.

11.15 The issue of combination cannot be allowed to drift with decisions on which electoral events should take place on the same day made as a matter of expediency and in the hope that administrators will continue to cope and to deliver regardless of the complexity and pressure.
11.16 It should be remembered that the delivery of elections and referendums requires a substantial commitment in people and resources across the whole of a local authority and in the current climate of budget and staffing cuts, core elections teams may well find themselves without the support and capacity they need in order to deliver quality electoral services to voters.

11.17 In looking forward to the multitude of electoral events currently scheduled or proposed for 2015, the AEA urges the UK Government and the Electoral Commission to ensure that the learning from the delivery of the combined polls in 2011 is used to inform a considered and wide review of combination issues.

11.18 In order to enable electoral administrators to put the voter first, it is essential that there is a simplified and consistent legal framework for elections and early clarity as to which events are taking place on a given date so that electoral administrators can plan with confidence and are supported to deliver with excellence. We do not believe that a central power of direction is needed to achieve this.
12 Recommendations

Framework

12.1 The UK Government should:

12.1.1 bring forward legislation to give effect to Gould’s recommendation that electoral legislation should not be applied to any electoral event held within six months of the new provision coming into force;

12.1.2 develop a generic conduct order for PPERA referendums;

12.1.3 undertake a thorough review of combination issues incorporating learning points from 2011, in particular focusing on which polls can safely be held on the same day, and the rules for combination and absent voting;

12.1.4 support the proposed Law Commission review and simplification of electoral law.

A different management structure

12.2 The UK Government should:

12.2.1 consider the management structure for future PPERA referendums including the respective roles, responsibilities and powers and seek a consensus on how they should operate;

12.2.2 review the impact of the use of the power of direction in respect of combined functions in the context of potential legal challenges to the other polls taking place.

Directions, advice and performance

12.3 The UK Government and the Electoral Commission should consider the recommendations set out in Chapter 10 - A model for future referendums.

Voting materials and notices

12.4 The UK Government should:

12.4.1 Review the prescribed voting materials and notices for elections in the light of the learning from the modification of forms by the Chief Counting Officer;
12.4.2 allow sufficient time and opportunity for electoral administrators and printers to input their experience into the development of new voting materials and notices;

12.4.3 bring forward changes to the legislation to allow for these improved forms to be available for use at all elections.

Absent voting

12.5 The UK Government should:

12.5.1 bring forward legislation to change the statutory election timetable including lengthening the current UK Parliamentary election timetable;

12.5.2 prescribe in legislation the postal voting application form;

12.5.3 amend the legislation to provide Electoral Registration Officers and Returning Officers with the necessary powers to access and act on voters’ postal vote rejection data.

12.6 The Electoral Commission should:

12.6.1 review the Code of Conduct for political parties, candidates, canvassers and campaigners with input from political parties and electoral administrators;

12.6.2 consider what practical advice can be provided to campaign groups in order that any future mailings are more effectively targeted so as to avoid duplicating existing absent voting arrangements.

Public awareness activity

12.7 The Electoral Commission should consider the feedback provided in respect of its planning for future PPERA referendum public information campaign work.

12.8 The UK Government should review and rationalise the legislative framework for the provision of public information and the duty to encourage participation at future PPERA referendums.
Managing the polls

12.9 The selection of ‘polling places’ should be the responsibility of independent Returning Officers rather than of local authorities.

12.10 The Electoral Commission should consult on what types of buildings should be made available for Returning Officers to use by right as polling stations. This should include examining the barriers to using school premises and identifying solutions.

12.11 Polling station ratios should be advisory for future national electoral events.

12.12 The UK Government should review its funding policy for election equipment for national electoral events given the increased number likely by 2015.

Verification, counts and results collation

12.13 The UK Government should:

12.13.1 consider carefully the impact of combination of polls on verification and count processes as part of a wider review of combination, including the resulting pressure on core elections teams;

12.13.2 review the current absolute requirement to count the unused ballot papers as part of the verification process so that the requirement need only be carried out in certain prescribed circumstances;

12.13.3 Consider allowing electronic forms of counting for the counts in respect of at least some of the polls where multiple polls are combined, for example at parish and town council elections.