



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Counting Arrangements for the General Election – An AEA Issues Paper

1. Introduction

1.1 The next General Election must be held not later than 3rd June 2010. There has been some publicity about the counting arrangements for the election and, in particular, the question of whether the counts should take place immediately after the close of poll at 10 p.m. on polling day or delayed until the following morning.

1.2 Given that there has been considerable change in electoral arrangements since the last General Election in 2005, the Association has decided to publish this issues paper setting out the various issues that need to be considered in deciding when the count in particular constituencies should be held. The paper is offered within the general context that the decision is one for (Acting) Returning Officers alone¹. This is also consistent with the advice offered by the Electoral Commission². This paper is prepared on the basis of the situation that applies in Great Britain given that many of the issues raised in the paper are not applicable to the Northern Ireland situation.

2. Legislative change/Combination of Polls

2.1 There have been a number of legislative changes since the last General Election which have the effect of changing the considerations that need to be taken into account in deciding when the count should take place. These are:

- New parliamentary constituency boundaries
- Postal voting identifiers
- Additional duties on polling day
- Extended voting hours for local government elections and the link to administration of postal voting

2.2 In addition, there is a further complication relating to the possibility that the General Election poll might be combined with the polls for the local government elections scheduled to be held on 6th May 2010.

¹ See PE Rules, rule 44 (RPA 1983, Schedule 1)

² See letter from EC to all AROs – 10 September 2009

Constituency boundaries

2.3 The new parliamentary constituencies following the last general review of constituency boundaries come into force with the dissolution of parliament and will contain whole local government wards. The new boundaries will, in some cases, cross local government boundaries with the consequence of different parts of the constituency having registers of electors administered by different Electoral Registration Officers possibly using different electoral management software (ems) systems. In such cases, the appointed Acting Returning Officers (RO) for the constituencies in question will have to take responsibility for areas which they do not normally administer and come to practicable working arrangements with colleagues from those areas. Such arrangements will be different from any such arrangements that applied in 2005.

Postal Voting Identifiers

2.4 Since the last General Election, postal vote identifiers have been introduced for all electors applying for a postal vote. Part of the process now requires that a postal voter has to complete a postal voting statement and return it with their postal ballot paper. The statement requires the voter to provide their signature and date of birth (unless a waiver has been granted). The information on the statement is then compared with that previously provided and the postal vote will be rejected if the RO is not satisfied with the results of the comparison exercise. Although the law only provides for 20% of the returned postal votes to be checked at each postal vote opening, good practice suggests that 100% should be checked and most ROs aim to achieve this level. This checking is normally carried out using dedicated i.t. systems linked to the ems system.

2.5 This issue is exacerbated by the fact that postal ballot papers can be returned to polling stations or to the RO's office by no later than the close of poll and by the possibility of undertaking sweeps using the Royal Mail service at the end of polling day. All such postal votes received through these delivery options have to be processed and checked using the above systems.

Additional duties on polling day

2.6 Changes to the law relating to the following issues require experienced electoral services staff to be on duty in the elections office for most of polling day. These issues include:

- replacement for lost or spoilt postal ballot papers
- amendments to the register of electors
- emergency proxy votes.

2.7 In addition, there will undoubtedly be at least one postal vote opening session during polling day to deal with postal votes returned in the mail on that day and with any postal votes collected from polling stations as part of early polling station inspections. Clearly, these requirements mean that such staff cannot be at the count venue during the day making the necessary preparations for the count.

Voting hours

2.8 Voting hours for all elections now end at 10 p.m. in line with the previous arrangements for parliamentary elections, including combined polls. This means that the postal votes received through the arrangements described in the previous paragraph cannot be processed until after 10 p.m.

Combined Polls

2.9 In the event of combined polls, there are additional complications, namely:

- separate or combined ballot boxes
- the verification of the above
- the checking of the unused ballot papers
- the transfer of ballot papers between ROs for the different elections
- the security of the ballot papers
- in the case of cross boundary constituencies, the checking of postal vote identifiers by any “transferring” authority

3. The options available

3.1 The Rules provide that the RO is required to conduct the count as soon as practicable after close of poll. Clearly, the definition of what is practicable will depend to a very large extent on the particular issues relating to each constituency. It is not possible therefore to arrive at a one size fits all answer to this question. A prudent RO will want to give due consideration to all the various issues that apply to his/her constituency and the options available before reaching a decision on this matter. We suggest that there are four options for the verification and count arrangements. The RO needs to decide whether to conduct the verification and count immediately after close of poll on Thursday night or to complete some activities before conducting the actual count on Friday. The three main options in respect of Friday are:

- a) receipt of ballot boxes, completion of opening and checking of postal votes and securing all ballot boxes unopened at the close of poll, followed by separation and verification of ballot papers on Friday morning with the parliamentary count held on Friday and the local election count, if applicable, following on from the conclusion of the parliamentary count; or
- b) as above but with the parliamentary count and the local election count, if applicable, held concurrently on Friday morning at the end of the verification process; or,
- c) receipt of ballot boxes and securing all ballot boxes unopened at the close of poll with the completion of opening and checking of postal votes, followed by the separation and verification of ballot papers on Friday morning and the count(s) continuing at the conclusion of those processes.

3.2 Ballot boxes will be returned between 10 pm and perhaps as late as 11.30 pm, and the postal votes accompanying them will then need to be taken for opening and checking as soon as practicable. The time that is needed for that process and the

receipt and management of returned ballot boxes, the opening and the separation of ballot papers and subsequent verification should not be underestimated. In some cases, there will be two or more ballot boxes from each polling station, and, in the case of combined polls, it can be expected each ballot box will contain ballot papers for both elections. The ballot papers in each ballot box will need to be separated and counted, and reconciled to the ballot paper account(s).

3.3 Additionally, the unused parliamentary (and local election ballot papers in the case of combined polls) must be counted and also reconciled to the ballot paper account(s). This, in itself, is a time consuming exercise particularly at combined polls.

3.4 The postal vote checking and verification processes will need adequate and appropriate accommodation, staffing and supervision. It can be expected that the verification of the ballot papers for the parliamentary election and local elections (where there are combined polls), depending on the above factors, could take between three and five hours, suggesting that any subsequent counting may not start until perhaps 3 a.m. or later. This consideration needs to be carefully taken into account in deciding which of the options outlined in paragraph 3.1 above should be employed.

4. The issues

4.1 In reaching the decision as to when to hold the count(s), a number of important issues need to be considered. All of the issues will not apply to every situation but a large number will and they create a common theme for the remainder of this paper. The issues have been drawn from research undertaken across the country and which attempts to identify serious considerations impacting on the decision to be made and the consequences which flow from it. The issues are broken down into the sub-headings which follow.

4.2 *Postal votes*

- Postal vote verification, particularly where there are cross boundary issues, will delay the time at which the final ballot papers will be available for the verification and the count process itself. This would make a Thursday evening start even later for those constituencies affected by cross boundary issues, particularly where there has been no i.t. solution devised by the relevant software companies. The best case scenario would still require transportation of scanners and i.t. equipment, at considerable risk of failure. Teams would be required to ensure that there is coverage at all authorities concerned.
- Given the reliance on e-scanning technology linked to the ems system, there are concerns about moving the scanning equipment on polling day from the election office to the count venue. The risk of a scanning technology problem is considerable and the timing is so late in the process that, if there were a problem, it would severely delay the start of the count.
- It is not recommended that the scanning equipment used for postal vote checking should be moved for a number of reasons. Firstly, the count centres are not generally on the corporate network. The transfer of sensitive data and

software onto laptops or remote access connectivity is therefore required. (Not all count venues have internet access). Secondly, most suppliers recommend that scanners should not be moved or, where this proves necessary, to ensure that the scanner is fully cooled before moving and fully settled before attempting to use again. For these reasons, the opening of postal votes is conducted at the Council Offices with this work being completed some hours after the close of poll (experience from past elections indicates that this work can take between two and three hours).

- Where processing of postal votes has been centralised on administrative centres, the delay caused by the need to physically transfer the postal votes to and back from that centre can be considerable. For example, in one large unitary county, at the European elections in June 2009, the process was not completed until 2.30 a.m. and, in another authority, until 3.00 a.m.
- Adjudication for postal vote checking requires consistency across the constituency which has a resource and management implication particularly in cross boundary situations.
- In cross-boundary situations, delays could be experienced in declaring on election night where any parliamentary postal vote ballot papers were found in returned postal vote envelopes posted to the 'other/wrong' local authority. The RO would have to wait for all postal votes to be checked and returned for inclusion in the count. Where the result is very close, this could be a real and sensitive issue and good practice would suggest that the total number of postal votes should be known before the count starts to avoid any problems later in the process. Allowing the postal votes to be checked overnight linked to a Friday count would alleviate this.
- The number of postal vote packs handed in at polling stations is increasing and this is likely to be even larger at a General election given the increased turnout normally associated with such elections. For example, in one local authority at the European elections, over 1,000 postal votes were handed in at polling stations. This figure is likely to be higher for the General election, particularly given the shorter timetable for processing postal votes. These sorts of numbers have a serious impact on the final opening session after the close of poll.
- The level of expertise required for postal vote checking at this point is such that it is likely to have an adverse effect on the expertise required for the count supervision team.
- Most Returning Officers will want to ensure that all postal votes are checked and processed prior to commencing the verification and/or the count.
- Agents and their candidates have a right to be at the opening of postal votes and at the count. If the former is carried out at the Council offices or an alternative location from the count, agents and candidates will be deprived of this right if the count proceeds immediately after the close of poll. Delaying the count until Friday ensures that all those entitled to attend the last opening session for postal votes will be able to do so.

4.3 Staffing

- There are a number of health and safety issues. By 2.00 a.m. in the morning, probably later for a parliamentary election, the core election staff will have been at work for in excess of 20 hours. These staff carry out key roles, such as the count co-coordinating/management team and count supervision, which means that there is a greater risk of error due to tiredness and exhaustion. A Friday count means fresher staff more able to count, supervise and adjudicate properly, consistently and fairly.
- Staff who have been on duty as part of the core elections team or at polling stations cannot be expected to work all night as well. The core staff will undoubtedly have been working long hours in the weeks leading up to polling day. There is a potential breach of the Working Time Regulations which could lead to the RO being liable for prosecution and the penalties which would arise from a conviction under those Regulations.
- Good practice in complying with the above Regulations would suggest that a risk assessment should be carried out on the issue of the amount of time that staff should be expected to work without proper breaks. A risk assessment that has been properly prepared by competent staff is unlikely to conclude that requiring staff to work in excess of 18 hours without a proper break for sleep and refreshment is a safe and appropriate working method.
- As part of the health and safety issue, there is a serious staff welfare consideration which has the potential to raise legal implications for the RO. There is the real risk of people driving home in the early hours having been on duty since early on polling day and perhaps for more than 24 hours. This leads to a much higher risk of accidents with all the potential consequences which flow from that, including the possibility of corporate manslaughter allegations.
- Based on one authority's experience of the European parliamentary elections in June, (where the postal vote opening sessions totalled some 37.5 hours), it is anticipated there will need to be 50 hours scheduled into the five working days leading up to election day. To deal with the higher volume of postal votes and the expected higher return at a General election, it is anticipated there will need to be additional postal vote opening sessions over the weekend prior to polling day. This has an additional impact on the lengthy hours worked by the core election team.
- At a previous election, there were four re-counts and the declaration was made at 7.30 a.m., having started at 10.10 p.m. the previous evening. In hindsight, both the then RO and the elections manager realised that they were exhausted and probably incapable of making rational decisions by then, having been awake and on duty constantly for almost 27 hours.
- A Friday count would ensure that sufficient counting staff could be recruited (people are increasingly reluctant to work until 3-4 a.m. in the morning), and they would be refreshed after a night's sleep.
- A Friday count would mean that polling station staff would be available to work at the count. A polling day count means that such staff cannot be used, thereby greatly reducing staff availability and so making it unlikely that there will be sufficient count staff. It also means that enough reliable and trusted people could be recruited to actually count the votes. Attitudes have changed and these days it is very difficult to persuade people to work through the night

for what is a very modest payment (linked to the overall financial resources allocated by Government). Those that do volunteer tend to be the people who have already staffed a polling station (see above point).

- For a Friday count, staff arrive refreshed after a night's sleep and are much more likely to perform better as a result. Expert advice on sleep deprivation confirms this conclusion.
- Friday counts lead to a much smoother operation because small things like mislaid ballot paper accounts or delayed ballot boxes are all sorted before the count. The count can be started on time and will end more quickly. Count staff much prefer to work during the daytime. The count hall is lighter (natural light rather than totally artificial during the night) and less mistakes are made as staff are not exhausted.
- Friday counts allow more time for the core team to prepare the count venue given that staff from the team are likely to be fully occupied on polling day.
- There is the opportunity for additional count staff to be drafted in from the local authority if there is an overwhelming turnout.

4.4 Accuracy of the Result

- The primary aims for the conduct of any election have to be its integrity and the assurance for everyone concerned that the result is reliable and accurate. To achieve the second aim, it is essential that the count is conducted in as an efficient manner as possible.
- It follows that the primary concern of ROs should be the efficient and effective conduct of the count to ensure an accurate result and that candidates and their agents can be satisfied that the proper and required processes have been followed to deliver that result.
- A Friday count allows certainty for all concerned including candidates and their agents. If there is a need for recounts, they can be completed on the same day. If the process is started on the Thursday, any repeated recounts would inevitably fall to the next day or possibly the day after that after allowing for a proper adjournment for rest and sleep.
- The Count should not be a race but a serious and accurate process. It is about accuracy not speed and the temptation and expectation to rush through to the result will be removed if the count is undertaken during the day by staff who are in a proper position to undertake the count in a professional and transparent manner.
- There are no prizes for delivering the first result. The real prize is for delivering an accurate result which is widely accepted and not subject to legal challenge. Candidates and the electorate have the right to expect such an outcome and equally have the legitimate right to complain if the integrity of the election is compromised in any way by those responsible for the conduct of the count.

4.5 The Gould report recommendations

- Following the Scottish Parliamentary and local government elections in 2007, the Electoral Commission commissioned a report from an independent and international expert, Ron Gould, on the issues and problems which emerged

from those elections. After carefully weighing up the pros and cons of the alternatives, the report recommends that, if the polls continue to close at 10.00 p.m., there should be no overnight count. It suggests that a “fresh team” could work overnight to receive ballot boxes and prepare for an immediate start of the count on the following morning. That recommendation is a very clear statement and is entirely applicable to this issue.

- The Gould report also recommended that the electors should be at the heart of the electoral process. This recommendation has been widely accepted. The electors’ interests are best served by their will being reflected in the results of the election which demands that the results emanate from counts that have been conducted in the most efficient manner and that the results are accurate.

4.6 Friday counts – current practice

- A number of parliamentary constituencies already count on the Friday. This is particularly true for large rural areas including parts of Scotland and Wales where there is a major issue about the delays and timing of receiving the ballot boxes at the count venue.
- Where the matter has been considered in consultation with candidates and agents, some areas have already decided to count on Friday. In areas which have moved recently to Friday counts, there has been a very positive response from candidates.
- In those areas, the core election teams have found the verification and postal votes process easier to manage and have been able to start the count with confidence that everything has been properly balanced up to that point. This has speeded up the counts and candidates have had more confidence in our processes and that we have balanced at every stage. Candidates prefer the clear structure and being able to see what is happening at each stage.
- Many responses have indicated that they have had no recounts since moving to Friday counts. Staff are fresher and can concentrate better on the task at hand. Counts have been finished in quicker time than overnight counts and have delivered highly accurate results.
- At the recent European parliamentary elections, the verification was largely carried out on days following polling day. Many of the verification staff commented that it was good to arrive, sit down, and then start to verify the boxes which were all lined up ready. The whole process was conducted in an organised manner with none of the usual rushing around with boxes or staff waiting for them to arrive.
- There is clear precedent for the ballot boxes to be secured overnight prior to verification, e.g. at the recent European parliamentary and County Council elections.
- The recent Norwich North parliamentary by-election count was held on the Friday morning and the count was completed in much less time than would have been the case if it had been conducted immediately following the close of poll. For example, the checking of the postal votes and the return of those papers to the count venue was not completed until 12.30 a.m., i.e. some 2½ hours after the close of poll.

4.7 Combination of Polls

- At a combined poll, the large numbers of ballot papers to be separated and then verified before the Parliamentary count can start, provides the most compelling reason of all for counting on Friday.
- Examples of the sort of problems faced where there is combination of polls are well illustrated in the following three responses.
 - If the parliamentary election is held on the same day as local elections, we have the following issues to face. For parliamentary purposes, we take in parts of two other local authorities, one of which has local elections. We would be doing separate issues for postal votes, but would undoubtedly have some of the other District/Parish postal ballots returned to us, if handed in at polling stations or indeed sent back in the post with their Parliamentary papers. The local election ballot papers from ballot boxes, plus any postal votes handed in at polling stations, plus any we open at our offices, have to be transmitted to the other authority for them to count. Our last ballot boxes do not arrive until roughly 1.30 a.m. If we have to conduct the verification and postal vote opening immediately following close of poll, then take (or have collected) all the other authority's ballot papers, there is more likelihood of errors creeping in simply because of staff exhaustion.
 - Gone are the days when we had perhaps just a few hundred postal votes to open and no matching of signatures (apart from checking that there was a signature) and dates of birth. Our constituency will have perhaps 10,000 postal votes from three different authorities and two different software packages. Some authorities may have ten times that.
 - In the event of a combined poll, the requirement for the additional splitting of the papers and the additional time to take with the completion of postal votes, it would not be anticipated that the verification and postal votes would be completed before 4 a.m. It would be unthinkable to commence a count at that point. In the event of the general election being counted on the Thursday night and declaring around 6 a.m., the election staff would have been on call or working for over 24 hours. They would need time to rest and the local count could not be realistically commenced until the mid-afternoon of the Friday with any required recounts possibly moving into the late evening of Friday or even the following day.

4.8 Risk Management

- The Electoral Commission places great emphasis on a risk management approach to the conduct of elections. This is emphasised in the good practice guidance which is issued to all ROs prior to any election. In assessing the risks involved with a count immediately following the close of poll, ROs need to take account of the issues raised in this paper. If it is possible to mitigate those risks by counting on the Friday, then that decision needs to be made regardless of any other factors or issues raised by outside parties particularly those who have no responsibility for the proper conduct of the count.

4.9 Financial Considerations

- Many responses made the point that considerable savings could be had by moving the count to the Friday. This also has to be seen within the context of HM Treasury requiring the Ministry of Justice to deliver efficiency savings in the conduct of elections with the aim of reducing the costs of national elections to the national exchequer.
- It is suggested that facilities and services such as hire costs, caterers and collection of equipment are easier to arrange and more cost effective for a daytime count.
- The cost of paying count staff is cheaper at a day rate than the night rate.
- Efficiency savings already made within local government means that, in some authorities, reductions have been made to the core team of election staff which has a direct impact on the total human resource available to undertake all aspects of the post poll activities.
- In terms of London where there will be borough elections in May 2010, the likelihood of combined parliamentary and local polls, would deliver cost savings by undertaking the two counts on the same day as well as dealing with staffing resources issues given that it would be more difficult to get different sets of staff for two different counts.

4.10 Consistency of approach

- It would be desirable to have national or regional agreement on when to hold the count. There is a general tendency towards regional processes e.g. following the work of the RRO Group at the recent European parliamentary elections and the Electoral Management Boards suggested in the Electoral Commission's structural paper. Greater co-ordination would indicate an ability to work in a joined up manner.

4.11 Public interest

- Much has been made in the media about the interest in early hours coverage of the election results. However, no hard evidence such as viewing figures has been made available to support this claim and it could well be that there will be more public interest in TV coverage on a Friday daytime when viewing figures could well be higher.
- A Friday count would probably result in more public interest being shown in this fundamental aspect of our democratic system (how many ordinary people stay up until 4 or 5 a.m. to watch results coming in?)
- If there is such public interest in the results, perhaps the counts should actually happen on Friday afternoon so that results are coming through for early evening, which would time perfectly with when the majority of people are coming home from work.
- Electors in London are used to counts being held on a Friday and the results not being available until then, e.g. London Mayor and GLA elections.

4.12 Thursday counts

- If the RO feels that the appropriate option is to count on Thursday night, it will be necessary to advise the candidates and agents that the verification and count will not commence until possibly after midnight to allow a period of time to check and process the postal votes.
- It needs to be recognised that in some areas (particularly those in tight urban areas, where there are no combined polls and where there are not cross boundary issues), it will be possible to satisfactorily hold the count starting on Thursday night. From those authorities' point of view, where it is possible to safely deliver a Thursday count, there is less disruption to staffing and the overall cost of the election could be minimised.
- A Friday count would involve an element of the authority's staff already involved all day at the poll being again involved on the Friday morning. Even if different count staff are used, this can cause some operational difficulties unless a conscious decision were made to only use non-Council staff.
- In the event that there are problems with a count started immediately after the close of poll, there is provision for the RO to adjourn the count until a later time.
- There are some advantages to a Thursday night count in terms of possible availability of premises for the count provided that the count is complete in time and, for some counting staff, they find it easier to work overnight rather than take a day off.

5. Position of Returning Officers

5.1 Various references are made in this paper to the position of (Acting) Returning Officers in terms of this question. ROs hold their office in an individual capacity which is not linked to the position they hold as an officer of their local authority. This gives them an independent status and they are only answerable to the courts in terms of the way in which they conduct their official duties.

5.2 In essence, this means that they should not be subject to political interference in reaching decisions about the conduct or timing of the count because these matters are for the RO alone to determine. This is clear from the statutory provisions relating to the appointment and duties applying to the post. These are not matters for members of local authorities to determine or indeed members of other elected bodies. This has been properly recognised by the Secretary of State for Justice³ and the Association welcomes this helpful statement.

5.3 It further follows that this individual legal position places responsibilities on ROs including a requirement to comply with electoral and other legislation. Reference has already been made in this paper to the possible effect of a RO failing to comply with, for example, health and safety legislation. In the event of a breach of legislation and legal action being pursued by an aggrieved party or a prosecuting authority, the action will be taken against the RO as an individual. This includes election petitions,

³ See <http://www.lgcplus.com/policy-and-politics/elections/straw-unable-to-stop-vote-changes/5006476.article>

civil actions and any prosecutions in respect of an alleged criminal act. It is for that reason that the paper seeks to draw attention to the significant and serious considerations that need to be taken into account in reaching a decision about the timing of the count in any particular set of circumstances.

6. Conclusion

6.1 This paper attempts to set out the issues that need to be considered in terms of reaching a decision on the question of when the counts for the forthcoming General election should be held. It is based largely on the views of experienced electoral administrators who are charged with delivering the counts and therefore the results under the direction of independent Returning Officers. It does not make any recommendation, one way or the other, because the Association properly recognises that the decision is one for ROs alone. However, it does set out to identify all the factors that need to advise that decision.

John Turner
Chief Executive

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