



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Formal response to the consultation on the proposed scope of the Chief Counting Officer's directions – Management of a referendum on the UK's membership of the European Union

1. INTRODUCTION

1.1 This paper sets out the AEA's views in relation to the questions raised in the consultation document published in August 2015. Our response also reflects on the lessons learnt and recommendations made in our report following the referendum held in 2011 "The administration of the referendums and elections across the UK in 2011"¹.

1.2 The AEA welcomes the CCO's intention to approach the management of the EU referendum in a similar way to that followed by the CCO for the Scottish independence referendum in September 2014 for the reasons outlined.

1.3 At the Scottish independence referendum the CCO sought to deliver by consensus where possible, by guidance where needed and by directions where appropriate and following consultation. The CCO chose to limit the use of directions to matters in which she considered consistency was essential in order to achieve the overall objective of ensuring confidence in the result, based on an accessible, consistent and efficient electoral process operated to the highest standards of integrity.

1.4 Following the referendum in 2011 our report² stated at paragraph 10.8:

"The UK Government should review the use of 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."

Paragraph 10.11 also went on to state:

"...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

¹ ["The administration of the referendums and elections across the UK in 2011"](#)

² ["The administration of the referendums and elections across the UK in 2011"](#)

has been identified, and on which there is consensus, would provide greater clarity and acceptance of the need for them.”

The above consultation paper with the limited number of directions proposed appear to meet the above.

2. Proposed Directions

1	Ballot papers	<p>Ballot papers must be white; tendered ballot papers must be pink</p> <p>Ballot paper numbers must contain a prefix made up of three alpha characters which will be specified for each counting area</p> <p>Ballot papers must be produced in the form specified by the CCO</p> <p>Taking into account the size of the electorate in the counting area, as a minimum, 120% of the total number of ballot papers that may be required in the counting area must be printed</p>
AEA Comments		
<p>The AEA supports the proposed colours for the ballot papers as the EU referendum would be seen as the primary poll if, in any circumstances, it was combined with another poll.</p> <p>The AEA supports the proposal of the ballot paper number containing a prefix made up of three alpha characters. However, we recommend that the CCO discusses the proposal with all the Electoral Management Software providers to ensure the proposal is compatible with their software for the production of ballot papers, notices and forms etc. Discussions should also be held with print suppliers before finalising the direction.</p> <p>The AEA supports the proposal that ballot papers must be produced in the form specified by the CCO and also recommends that the file format the ballot paper is provided in is in a format readable by both COs and print suppliers for proof reading purposes.</p> <p>The AEA supports the proposal that the number of ballot papers printed as a minimum be 120% of the electorate size in the counting area. However, in order to make the direction clearer, the CCO may wish to indicate which electorate figure the direction will be based on, i.e. 1st December register, or as at the date on which the notice of referendum is published (the total electorate figure as at the referendum will not be known until it is too late). In addition, funding will need to be provided for the additional ballot papers printed by the CO to meet this requirement.</p>		

2	Polling scheme	When allocating electors and staff to polling stations, as a minimum , the ratios as set out in the Commission’s election guidance must be complied with and in any case where a polling station has more than 2000 electors allocated to it, the CO must seek agreement from their RCO to their approach in that polling station, setting out how they intend to manage it so as to ensure that all voters allocated to it can vote easily and without delay
----------	-----------------------	---

AEA Comments

Whilst the AEA supports the proposal in view of the possible higher turnout at the EU referendum compared with other polls, the direction outlined above could have significant implications for the majority of COs which, in turn, will result in them having to seek agreement from their RCO if a polling station exceeds 2,000 electors.

Suitable buildings for use as polling stations are becoming more difficult to find in recent years following the closure and sale of many publicly owned buildings. This is in addition to increased rents for the hire of privately owned buildings. The last polling district review carried out by COs should have been based on the current EC ratio which, for a standalone poll, is that a polling station should not have more than 2,500 electors allocated to it. The proposed direction is 500 electors less with the maximum being 2,000 (over 2,000 requires RCO agreement). This could mean that a previous single polling station location may have to be split into a double station when the size and facilities available may not be able to accommodate an additional polling station. In larger polling district areas where there may already be a double/triple station, additional stations may be needed within the same building when space is already limited which will also have implications on the voter and security of the poll. We are also aware that time is limited and there may not be sufficient time to conduct a polling district review taking into account the revised electorate ratio before the EU referendum.

In addition to the issue of suitable locations and space available for the additional number of polling stations, there is also the issue of the difficulties in the recruitment of sufficient polling station staff, especially experienced staff to take on the role of Presiding Officer. With continued local authority budget cuts and reduced local authority staff resources, this means that less staff are available to be called upon to work on election day. The proposed direction will have implications with additional numbers of Presiding Officers and Poll Clerks required to conduct the EU referendum as well as additional Polling Station Inspectors because of the increased number of polling stations based on the revised electorate ratio.

The proposed direction will also increase costs in relation to the additional polling station staff required and the increased rental charges because of the increased number of polling stations. Both of these will need to be funded.

Whilst there is provision within the direction for cases where a polling station has more than 2,000 electors allocated to it, the CO must seek agreement from their RCO to their approach setting out how they intend to manage it so as to ensure that all voters allocated to it can vote easily and without delay. This requirement will have implications on the RCO assessing CO's proposals for those polling stations affected without having the detailed local knowledge. It may also be useful if the EC could provide suggested guidance for COs to follow in those cases, along with some suggested criteria for the RCO to assess any proposals received for approval to ensure there is a consistent approach across the country.

3	Poll card despatch	Ensure that poll cards are received by voters within a period of five working days starting with the day after the last date for publication of the notice of referendum
----------	---------------------------	--

AEA Comments

The above direction appears to be generally based on the Scottish independence referendum with the current format of poll card.

The direction is also based on ensuring that the poll cards are **"received"** by voters within a period of five working days starting with the day after the last date for publication of the notice of referendum. Poll cards are generally delivered by a mail delivery provider i.e. Royal Mail, or by hand via local authority recruited staff. The CO could be working with a third party such as Royal Mail who do not have a duty to meet the CCO Direction and the CO cannot impose this direction on to Royal Mail in relation to the delivery of the poll cards. The Royal Mail website states that *"2nd Class mail will deliver your letters and parcels in two or three working days, including Saturdays. Choose 2nd class becauseit's not urgent, you just want to stay in touch"*. Funding is based on 2nd class mail postage rates which means in effect there will be no guarantee or way of ensuring the elector receives their poll card within the direction period stated.

At the Scottish independence referendum, COs were directed to ensure that poll cards were **handed over** by their printer for despatch over a two day period. If the direction was worded in a similar way to the Scottish independence referendum by referring to "handed over", the outcome would result in the voter receiving their poll card in the same timescale proposed along with an element of flexibility for COs. The direction would be easier to monitor, and the reliance on the third party i.e. Royal Mail to deliver within the timescale to meet the direction would be removed. With the current wording, a CO could fail to meet a legal direction due to the failure on the performance of a third party i.e. Royal Mail.

With the wording as stated in the proposed direction, the provision of five working days starting with the day after the last date for publication of the notice of referendum would facilitate the delivery by local authority staff for those that use that method. It would also include a weekend (assuming five

clear days) which is essential for any hand delivery by local authority staff who are generally employed during the week.

Subject to the date of the EU referendum, the CCO may need to review the proposed direction in the interests of the voter to ensure there is no overlap between polls so that voters are not confused by receiving the EU referendum poll card just before other statutory polls held in May 2016 or May 2017. In addition, there are likely to be significant printer capacity issues if printing is required for the scheduled May polls and EU referendum around the same time.

4	Postal ballot despatch	<p>Ensure that postal ballot packs being sent to overseas addresses are despatched within a period of five working days starting with the day which is two working days after the last date for publication of the notice of referendum</p> <p>Ensure that postal ballot packs are received by voters at UK addresses within a period of five working days starting with the day which is nine working days after the last date for publication of the notice of referendum</p>
----------	-------------------------------	---

AEA Comments

Whilst the AEA supports the early despatch of postal votes especially in the interests of the voter, there are some practical issues that need to be considered and addressed to make this possible. These are in addition to the removal of the date on the ballot paper.

Some electoral management software packages export all the postal vote data in one file which means that overseas voters are exported along with all the postal vote data with UK addresses. If the functionality was made available within the electoral management software to export a separate file of just overseas voters, this would make it easier for COs to then meet the requirement outlined in this direction. At present in some cases, printers are having to physically check all the batches of prepared postal votes for a local authority and then extract them to enable them to be posted earlier.

The requirement in the direction for UK addresses is that postal ballot packs are "**received**" by voters within a period of five working days. As outlined in direction number 3 above, the wording "received" causes several issues in relation to delivery timescales (postal votes will be despatched 1st class), and the use of a third party to deliver the postal vote packs.

At the Scottish independence referendum, COs were directed to ensure that postal votes were **handed over** by their printer for despatch over a three day period.

5	Timing of count	Ensure that the verification and counting of votes is commenced as soon as reasonably practicable after the close of poll. For the avoidance of doubt, the count processes must be carried out overnight, commencing at the close of poll
----------	------------------------	---

AEA Comments

The AEA does not raise any objections to the proposed direction requiring that the count processes must be carried out overnight, commencing at the close of poll.

This is based on our understanding that the EU referendum will not be combined with any other polls and, as a result, will be a standalone poll.

6	Method of verification and count	Ensure that your verification and counting arrangements are structured in such a way as to break down the verification and count into a number of self-contained 'areas' smaller than the counting area, with the totals for each of these 'areas' aggregated into a single total for the counting area
----------	---	---

AEA Comments

The AEA supports the direction of a 'mini count' approach and agrees with the CCO that a 'mini count' is an effective method of delivering an accurate and timely local total with a clear audit trail. The AEA recommends the 'mini count' approach in its verification and count training courses, and in its Foundation course manual.

However, whilst the 'mini count' approach appears to be a popular method of counting across the country, there may be a few COs who do not count using the 'mini count' approach. COs who have not conducted a 'mini count' for the counting of ballot papers previously will require additional guidance and support. They may also need to consider carrying out a local mock count using the 'mini count' approach to train their senior count staff and supervisors well in advance of the EU referendum.

In addition, those COs will also need to outline the new count processes to local party workers in advance of the EU referendum so that they are aware and understand the 'mini count' process with a view to them having confidence in the conduct of the count and the result. A brief will also need to be provided for the local media.

For those COs who have not counted ballot papers with the 'mini count' approach previously, the training and conduct of the 'mock mini counts' will obviously have additional cost implications in relation to printing, accommodation, training and staffing costs but are essential if the direction requires a change to the usual count processes in those areas.

The CCO may wish to define more clearly or provide further guidance on “a number of self-contained ‘areas’ smaller than the counting area”. For example, some counting areas will have more than one Parliamentary constituency within their counting area which, if counted in Parliamentary constituency areas, could meet the requirement of a number of self-contained ‘areas’. We are assuming the CCO means a smaller area, e.g. at ward level or one or more wards put together to create a smaller area. Defining the requirement more clearly would ensure that there is some consistency across the country in relation to the size of ‘mini counts’.

3. Specific Consultation Paper Questions

Do you agree that the proposed directions as set out above and summarised in Appendix 1 focus on those areas where consistency is essential in order to achieve the overall objective of ensuring confidence in the result, based on an accessible, consistent and efficient electoral process operated to the highest standards of integrity?

AEA Comments

As outlined in section 1 above, the AEA welcomes the CCO’s intention to approach the management of the EU referendum in a similar way to that followed by the CCO for the Scottish independence referendum in September 2014. However, as outlined in section 2 under the detailed directions, we have highlighted several issues and concerns in relation to some of the directions proposed which we believe need further consideration.

Do you foresee any particular issues with the implementation of these directions in practice?

AEA Comments

Please see section 2 above where we have highlighted any issues in detail about the individual directions.

Are there any particular issues relating to costs arising out of these areas of direction? Are there any aspects of the proposed approach which suggest that funding based on that made available for the 2015 UK Parliamentary general election would be insufficient?

AEA Comments

As highlighted in section 2 above under each individual direction, direction numbers 1, 2, and 6 will incur additional costs as outlined. Therefore, if the funding was to be based on that made available for the 2015 UKPGE, the funding would be insufficient to cover the additional costs incurred as a result of the above directions.

In addition, the CCO may wish to note that the funding provided for the conduct of the UKPGE was insufficient in some areas of the process as outlined in our post-election report: "Elections and Individual Electoral Registration – The challenge of 2015"³.

4. Other Issues for consideration identified at the 2011 referendum

4.1 Timing of directions

Para 6.3 of the consultation paper outlines that once the final directions have been agreed, the CCO will be able to communicate her agreed approach to COs and their staff by not later than 13 November 2015.

In our report⁴ published in 2011, paragraph 10.10 stated that

"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....."

Whilst we do not know the date of the EU referendum, it could be held any time before the end of 2017. It is important therefore that, once the final directions have been agreed, COs and their staff are notified immediately as the directions proposed will have implications on the COs' planning arrangements for the EU referendum as outlined above.

4.2 Format and monitoring of directions

The above consultation paper does not cover the format of the proposed directions. Our report in 2011⁵ highlighted that a CO should be able to clearly distinguish between what is a direction (legal requirement) and what is guidance and sets out a suggestion on how the direction might be structured in paragraph 10.14.

Our report also suggested that arrangements for monitoring should be set out early in the planning process, and preferably at the same time as any directions are issued. Early clarity on what is to be monitored and when and what information and evidence is to be required is essential. Our report also highlighted that, as with the performance standards regime, there should be consultation with COs on the proposed approach, including the above matters.

John Turner
Chief Executive

September 2015

³ ["Elections and Individual Electoral Registration – The challenge of 2015"](#)

⁴ ["The administration of the referendums and elections across the UK in 2011"](#)

⁵ ["The administration of the referendums and elections across the UK in 2011"](#)