



THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

Lessons learned from the EU Referendum

The AEA was founded in 1987 and is the professional body representing the interests of Electoral Administrators in the United Kingdom. It is a non-partisan body with some 1,900 members, the majority of whom are employed by local authorities to provide electoral services.

The role and purpose of referendums

1. What is the relationship between direct democracy and the UK's tradition of representative democracy?

No Comment.

2. What is the legal status of referendums and what questions are appropriate to be determined by referendums?

No Comment.

The regulatory system for referendums

3. How effective, and comprehensible, is the existing system of regulation for referendums in the United Kingdom?

Following the Law Commission¹ consultation on Electoral Law, the AEA supported the following recommendations in relation to national referendums:

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

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

4. How can the purdah provisions contained in s.125 of the Political Parties Elections and Referendums Act 2000 retain their effectiveness in an increasingly digital democracy?

The impact of social media and its impact was highlighted at the EU referendum as follows:

¹ [Law Commission – Electoral Law: A Joint Consultation Paper](#)

- Following the distribution of the Government's EU referendum booklet, members of the public reiterated on social media the misleading message that individuals needed to register for the referendum without clarification that those already registered did not need to take any action. The messaging through social media spiralled and had a significant impact on the number of duplicate registrations being received by Electoral Registration Officers (EROs).

5. What are the sanctions available for breaches of s.125; should these sanctions be strengthened?

6. Should referendums on constitutional questions include a minimum percentage threshold?

No comment. We believe that both of these are matters for Parliament.

The campaign

7. How sufficient was the purdah period provided during the EU Referendum campaign and should a longer purdah period apply in future referendums?

No comment. However consideration needs to be given to the overlap of polls in the future.

8. How effective was the designation process for lead campaigners, and will future referendums require further reform of the designation process?

No comment.

9. What role did the machinery of Government play during the referendum campaign and what were the consequences for Civil Service impartiality?

The Government's EU referendum booklet caused issues with the messaging along with its distribution timing before the May polls. The booklet contained the following wording:

"If you're aged 18 or over by 23rd June and are entitled to vote, this is your chance to decide. Registration ends on 7th June. Find out how to register at aboutmyvote.co.uk and register online at gov.uk/register-to-vote".

The EU referendum was a new form of poll for a number of electors. With the above messaging, there was the potential that it could lead to an increase in numbers of duplicate applications. This was indeed the case and the timing of the distribution was less than ideal, coming when administrators were working on the delivery of the May polls.

Electoral administration

10. How competently did the Electoral Commission discharge its statutory duties during the referendum campaign?

Overall the Electoral Commission (EC) and the Chief Counting Officer (CCO) generally discharged their statutory duties satisfactorily.

Whilst the coordination and communication at the early stages of planning for the EU referendum was excellent, the same could not be said for the latter stages. This was particularly evident in the period surrounding the Government online registration website crashing two hours before the deadline to register to vote at midnight on 7 June. Full details are provided at question 14.

The CCO issued 10 directions. The significantly reduced number compared with the referendum in 2011 was welcomed by electoral administrators (EAs). We do however continue to have concerns as to the compatibility of some of the directions with the legal framework.

The EC also reported that in the period leading up to the EU referendum, they had supplied their call centre with registration application forms that did not include information about the open register.

11. Has the Electoral Commission been given the appropriate powers and responsibilities in statute? Should they be altered in advance of any future referendums?

See response to question 3.

12. How appropriate is it for the Electoral Commission to be both a 'provider', in the sense of running referendums and elections, and a 'regulator'? Should these functions be executed by separate bodies?

The current arrangement provides the Chief Counting Officer with the support of the EC's staff and infrastructure. However, the question has to be asked as to how appropriate it is for the same body to be both the "regulator" and "provider". On balance, we believe that there should be separate bodies.

13. What were the main problems that arose regarding the electoral administration of the referendum?

The main issues that arose included:

- volume of duplicate registrations
- crash of the registration website
- availability of emergency proxies
- replacement of lost/undelivered postal votes
- overseas registrations and absent vote arrangements
- EC ITR despatch instead of postal vote application forms
- timetable in general.

14. What impact did individual electoral registration have on the referendum?

It had a significant impact. The introduction of individual electoral registration (IER) had seen registering to vote made easier by being able to register online. Significant numbers of registration applications were made ahead of the May polls and the EU referendum. Unfortunately, the ease of being able to register online, the various registration campaigns and the language and terminology used in the booklets and on social media, led to a significant proportion of these applications being duplicate, having been made by electors who were already registered.

7 June (polling day minus 12), was the scheduled deadline for the receipt of applications for registration for the EU referendum. However, the Government online registration website crashed at 10.15pm until after the midnight deadline.

The Government attributed “unprecedented demand” with over 500,000 people trying to register to vote on 7 June. It is apparent that the system could not cope with the demand placed on it and that any contingency measures were wholly inadequate. This concern had been raised on a number of occasions through, but not limited to, bodies such as the Cabinet Office’s Expert Panel. Reassurances had been given that what actually occurred could never happen!

On the early morning of 8 June, the AEA was informally consulted on a number of options that were being considered by the Government and the EC.

The AEA Management Team unanimously agreed that any potential change to the registration deadline would introduce considerable risk to the administration of the EU referendum, not least because of the additional pressures it would place on EAs but also the precedent it could have on future elections and the potential for a challenge to the result of the referendum if it were close. This viewpoint was forcibly expressed to both the Cabinet Office and the EC.

Later that morning, the following appeared on the BBC website *“Continue registering to vote in EU referendum David Cameron says”*. A decision had been taken to introduce emergency legislation to extend the deadline without any further consultation with the AEA or its members, i.e. those who would need to make fundamental changes to the administration of the referendum process.

What followed was a clear lack of contingency planning and communications from the Cabinet Office and the EC to EAs, who had to deal with the phone calls etc. the next morning with no indication of what was happening or going to happen. EAs effectively had to read the BBC website for updates.

In essence, the public knew what was happening before the EAs who were responsible for delivering the actual service. This was also the case with the AEA, which could have utilised its communication channels to assist in updating its members.

The whole course of events raises the question of “when is a statutory deadline not a statutory deadline?” What appeared to be particularly disproportionate was the time the deadline was extended. The website crashed for just under 2 hours before the deadline and yet the extension was for 48 hours.

It is recognised that legislation of this type cannot be made retrospectively and this may have made the two days extra almost inevitable. However, by doing so, this had a significant impact on the processes over the following days. The effect of this, as

evidenced by our members, was to impact heavily on already exhausted staff, thereby placing the conduct of the entire EU referendum under significant risk.

The AEA supports the key principle set out by Gould in 2007 that "*Electoral legislation should not be applied to any election held within six months of the new provision coming into force*" and yet the legislation to extend the registration deadline was made just 10 working days before polling day.

It was only through the unstinting efforts of EAs and their employing local authorities that the risks introduced to the process did not have a catastrophic effect on the actual referendum itself.

Routes to registration: It became clear following the failure of the Government website that this was the only channel being offered to the public to register to vote. Prior to IER, application forms to register could be downloaded from the EC's website in addition to local authority websites. However, following the introduction of IER, the majority of registration applications are now being channelled online.

The AEA raised this issue with the EC prior to the revised registration deadline on the basis that no one really knew whether the situation faced on 7 June, when the website failed, would be repeated on 9 June. Whilst the AEA comments were considered, they were not actioned.

Practical implications of extending the registration deadline: Over the 48 hours extended period, a total of 437,000 applications were received. Following their receipt, applications for registration are listed for a minimum of five clear working days to allow for objections to them. They must also, as part of the IER registration process, be verified against DWP data. This meant that where an application was received just before the extended deadline on 9 June, the earliest the application could be determined by the ERO was midnight on 17 June.

Where an application fails verification, the applicant can produce documentary evidence in support in the first instance before moving to attestation, if necessary. The extension of the registration deadline meant that administrators had to deal with requesting and checking documentary evidence and attestations for an additional two days, which impacted on and further delayed preparations for other polling day requirements.

Effect on absent voting: The effect of the determination date being moved to 17 June meant that poll cards and postal vote data for electors with absent vote arrangements in place could not be produced or sent out to the electors until that date when their application had been determined. The likelihood of postal vote packs being sent abroad for the elector to cast their vote and returned in time to be counted on 23 June was extremely slim and, even within the UK, there would have been issues in postal votes being returned in time.

Another key implication of the extended deadline meant that the publication of the final notice of alteration to have effect for the referendum could not be published until 20 June. This meant that the publication of the polling station registers was also delayed, which reduced the time EAs had available to print and check them for accuracy before placing them with the polling station stationery.

The postal vote deadline is the day after the registration deadline, i.e. polling day minus 11 working days, the day after the deadline for registrations. However, with the change to extend the registration deadline, this meant that the postal vote

deadline was before the registration deadline. The deadline for applying for a postal vote at the EU referendum remained unaffected and was 5 p.m. on 8 June.

In order to make a valid application for a postal vote, an individual also needed to have made an application to register to vote by 5 p.m. on 8 June. Therefore, a postal vote could not be granted if a postal vote application form was received before the postal vote deadline but the applicant was not registered nor had applied to register by 5 p.m. on 8 June, even though the “new” deadline to register was midnight on 9 June.

This caused immense confusion amongst administrators until the EC published guidance on 9 June. This was after the deadline by which the postal voter needed to have submitted their registration application. The impact of this was to result in mixed messaging followed by different versions of letters being sent to electors.

It was also clear that the absent vote messaging on the Government website was out of date in the two-day period between the original and extended registration deadlines. During that period, instead of advising the applicant who was registering to vote that the postal vote deadline had passed, it was still allowing electors to request a postal vote application form. This was then sent to them automatically for completion and return to their Electoral Registration Officer. At this point, the EA had to inform the elector that they were too late to apply for a postal vote. All of this could have been avoided if the website wording had been changed to advise that they were already too late to apply for a postal vote.

It is understood that changes were not made to the website wording due to insufficient lead time being available to do so following the change in the registration deadline. This again shows a lack of foresight and contingency planning on the part of the Cabinet Office.

Duplicate registration applications: The introduction of online registration has increased the number of duplicate registrations due to the ease of being able to register online. The checking and processing of duplicate applications is a time consuming and costly process, which can also have other implications for electors who are already registered with an absent vote arrangement in place. It is an exercise that adds no value. In our 2015 report, we suggested that consideration needs to be given to the wording used in campaigns prior to an election to try to reduce the number of duplicate registrations. In addition, we also highlighted that there is no “look up” facility available online whereby a potential applicant could ascertain if they are already registered. If this had been available in 2016, it would undoubtedly have had a positive impact in terms of reducing the number of duplicate applications.

Registration addresses: As in previous years, there remain issues with the registration of applications at new developments. Reports were received that the registration website was unable to register occupants of new housing developments as the postcode did not exist to search their address.

15. What mechanisms are in place to ensure the integrity and robustness of the electoral register?

Whilst in recent years changes have been made in legislation to reduce the potential for electoral fraud, including the introduction of individual electoral registration and personal identifiers for postal votes, there remains other areas of concern within the electoral system. Outlined below are the areas relating to the electoral register.

Registration in more than one electoral area: The law regarding “residency” is not clear and leaves EROs to exercise their judgement in each case. For example, the ability for people to register at a “second home” and the lack of a firm definition for what constitutes a “second home”. Although people can register in more than one electoral area, they should not vote more than once at a national poll. To do so is an offence. However, there is no way of knowing how many people, unwittingly or otherwise, voted more than once at the EU referendum.

Postal vote waivers: Where an applicant for an absent vote is unable to provide a signature, they may request that the ERO waive this requirement. The law does not however set out how EROs may satisfy themselves that the applicant’s request is genuine. Whilst it is absolutely right that, where there is a genuine need, electors are able to apply for the means of voting which suits them best, the lack of a statutory declaration within the current provisions means that the waiver continues to present a potential risk to the integrity of the process.

Voluntary postal voting code of conduct: Again this year, reports of concerns were received for both the May polls and EU referendum in relation to this code. Legislation needs to be introduced to formalise this position.

These matters have been covered in the Sir Eric Pickles report: [Independent report: Securing the ballot: review into electoral fraud](#). The AEA will be considering the report in due course.

Planning

16. How adequate was the Government’s post-referendum planning?

No Comment.

17. What level of contingency planning should be provided by the Civil Service as to possible referendum outcomes? For example, should it adopt a model similar to that found in General Elections (whereby the Civil Service holds meetings with the Opposition before the result is known to prepare to implement its programme if necessary)?

As a matter of good practice we believe that there should be contingency planning, but it would depend on the subject matter of the individual referendum.

Important note

Further details of matters contained in our response along with recommendations for consideration by the Government can be found in our post May polls and EU referendum report which we are planning to publish in September 2016.

John Turner

Chief Executive

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