

## 1 Introduction

- 1.1** Local government funding has significantly reduced over recent years, requiring local authorities to robustly review the services they provide in order to ensure that, where they are required, they are delivered in the most effective and efficient manner possible. In many instances, this has led to significant reductions in core service funding and staffing establishments, which is likely to continue.
- 1.2** In recent years, electoral services have generally been protected from significant expenditure cuts as a direct result of the introduction of Individual Electoral Registration (IER) and Cabinet Office provision of specific funding to cover the additional cost burdens of the new system. However, as IER has become business as usual and local authorities continue to face challenging and significant funding pressures, electoral services are now being asked to justify existing budgetary provision, introduce efficiencies and make savings.
- 1.3** This guidance note provides information on Electoral Registration Officers' (ERO) duties and on local authorities responsibilities in providing resources and funding to enable the ERO to deliver the service.
- 1.4** The note is structured so as to firstly provide a general summary of relevant legislative, financial and procurement matters and then to set out greater detail as to the respective roles and responsibilities.

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## 2 General summary

### 2.1 Legislative framework

- Section 8 of the Representation of the People Act 1983 (RPA 1983) requires the local authority to appoint an officer of the council as Electoral Registration Officer for the area. Although an officer of the council, they are not under the direction and control of the council when acting as ERO.
- Section 52, RPA 1983 places a duty on the employing local authority to assign such officers to assist the ERO as may be required to carry out their functions.

- Section 54, RPA 1983, requires that any expenses properly incurred by an ERO shall be paid by the local authority that appointed them. “Properly incurred” relates to the discharge of their duties under the 1983 Act and other relevant legislation.

## 2.2 Financial framework

- The revenue support grant provided to local authorities by Government includes an element for the costs incurred by EROs in the delivery of their statutory duties.
- The additional costs incurred following the introduction of IER are funded by grants made under section 31 of the Local Government Act 2003.
- Section 54, RPA 1983 provides that, on the request of an ERO, a local authority may make an advance on account for registration expenses and in doing so, impose such conditions as it may approve.
  - It is likely that a local authority could be successfully challenged in the courts if it unreasonably refused to make an advance to the ERO that resulted in a position whereby the ERO was unable to discharge their statutory functions.
- Although a local authority may impose conditions, there will be a limit as to what is reasonable and, in that respect, it would not be appropriate for a local authority to impose such conditions as to prevent an ERO from performing their statutory duties.

## 2.3 Procurement

- Electoral law does not specify how procurement by EROs must be undertaken.
- However, on the basis of the section 54, RPA 1983 provisions, and that doing so does not prevent the ERO from discharging their statutory duties, it would be reasonable for a local authority, where making an advance to an ERO, to impose the condition that the ERO uses a particular procurement process or a particular supplier.

- It remains for the ERO to determine any procurement process required for the discharge of their duties and to ensure that expenditure is “properly incurred”.

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## 3 Appointment of the Electoral Registration Officer

- 3.1** In England, every district council and London Borough is required to appoint “an officer of the council to be [electoral] registration officer for any constituency or part of a constituency ... situated in the [local authority area].”<sup>1</sup>
- 3.2** In Wales, the same requirement falls on the relevant county or county borough<sup>2</sup>.
- 3.3** The ERO is independent of the local authority. Although the appointed individual will also be employed as an officer of the council, they are required to undertake their electoral registration duties and responsibilities in accordance with the law, even where this may conflict with other local authority responsibilities.

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## 4 Responsibilities of the Electoral Registration Officer

- 4.1** Although the council is required to appoint one of its officers as its ERO, it may not direct that officer in the performance of their duties.
- 4.2** Those duties and responsibilities become personal to that officer. If they breach their official duty to administer the process in accordance with the legislative provisions, they shall be liable on summary conviction to an unlimited fine (level 5 on the standard scale)<sup>3</sup>.

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<sup>1</sup> Section 8(2), Representation of the People Act 1983

<sup>2</sup> Section 8(3), Representation of the People Act 1983

<sup>3</sup> Section 63, Representation of the People Act 1983

## 4.3 The personal responsibilities include the:

- duty to maintain a list of UK Parliamentary and local government electors for the local authority area<sup>4</sup>;
- duty to maintain a list of relevant citizens of the European Union entitled to vote at European Parliamentary elections<sup>5</sup>;
- requirement to take reasonable steps to obtain information for those purposes and to ensure that persons who are entitled to be registered (and no others) are<sup>6</sup>;
- requirement to conduct an annual electoral registration canvass<sup>7</sup> and to give persons invitations to register to vote<sup>8</sup>;
- requirement to take steps to encourage participation by electors in the electoral process<sup>9</sup>;
- requirement to meet such standards of performance as set by the Electoral Commission<sup>10</sup>.

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## 5 Electoral Commission performance standards for EROs

### 5.1 Currently, the Electoral Commission requires EROs to meet two performance standards, which can be summarised as follows:

#### 5.1.1 Performance standard 1: Framework for the delivery of registration activity

- Clear understanding of the particular challenges in your registration area;
- Strategy for responding to the challenges in your registration area;

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<sup>4</sup> Section 9, Representation of the People Act 1983

<sup>5</sup> Regulation 5(2), European Parliamentary Elections (Franchise etc.) Regulations 2001

<sup>6</sup> Section 9A, Representation of the People Act 1983

<sup>7</sup> Section 9D, Representation of the People Act 1983

<sup>8</sup> Section 9E, Representation of the People Act 1983

<sup>9</sup> Section 69, Electoral Administration Act 2006

<sup>10</sup> Section 9(A), Political Parties, Elections and Referendums Act 2000

- Robust project planning methodology employed to enable delivery of activity to maintain accurate and complete registers.

## **5.1.2 Performance standard 2: Delivery of registration activity to maintain accurate and complete registers**

- Effectively deliver your registration plan to ensure your register is as accurate and complete as possible;
- Delivering a service in which residents and other stakeholders can have confidence.

**5.2** Full details of what the ERO needs to do to achieve and demonstrate that the outcomes have been met are set out at Appendix A.

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## **6 Staffing resources**

- 6.1** The employing local authority has a duty to “assign such officers to assist the [electoral] registration officer as may be required to carry out [their] functions”<sup>11</sup> and to pay any expenses “properly incurred” in performance of their duties<sup>12</sup>.
- 6.2** The staffing resource must therefore be at a level that is both appropriate and sufficient to enable the ERO to safely deliver their prescribed registration duties, especially against the backdrop of significant business process change introduced by IER alongside the complexities faced in the conduct of elections and referendums.

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<sup>11</sup> Section 52, Representation of the People Act 1983

<sup>12</sup> Section 54, Representation of the People Act 1983

## 7 Resourcing electoral registration

- 7.1** In England and Wales, core electoral services teams and the resourcing of electoral registration is provided for by local authorities.
- 7.2** Although the revenue support grant provided to local authorities by Government is not ring-fenced, it includes an element for the costs incurred by EROs in the delivery of their statutory duties. It is from this grant and the other sources of non-ringfenced income (council tax, business rates, fees and charges, etc.) that the local authority must fund the ERO's activities.
- 7.3** The additional costs incurred following the introduction of IER have been funded by Section 31 grants (Local Government Act 2003) from the Cabinet Office in England and Wales. Although these new burdens payments are not ringfenced to electoral services, there is an expectation from Government that they will be used for the purposes intended, i.e. to meet the additional costs introduced by IER processes on top of the business as usual costs that are to be met by the local authority from its regular revenue sources.
- 7.4** The ongoing funding arrangements after the 2017/18 financial year are uncertain at present.
- 7.5** During the introduction of IER, the Section 151 Officers (Local Government Act 1972) for each local authority were required to sign a declaration confirming that the local authority funding for electoral registration would remain the same and not be reduced as a condition of the Section 31 grant payment provided by the Cabinet Office during the transition period. This was intended to ensure that the UK Government was only funding the additional costs of IER.
- 7.6** As local authority budgets come under severe pressure, the Section 151 officer may need reminding of the original conditions for the Section 31 grant payments. Although the funding declaration requirements no longer directly apply, any reduction in local authority funding to electoral services could result in a reduction in the Section 31 funding made by the Cabinet Office if it is deemed that those resources are being used for business as usual rather than IER new burden reasons.
- 7.7** You may find it necessary to contact the Cabinet Office MERP team for a statement to confirm what the implications would be to the

local authority if it decided to reduce the local authority funding to the service.

**7.8** There is also provision that, if the Section 31 funding provided by the Cabinet Office does not cover the full additional costs of IER, then local authorities can make a justification led bid for additional funding to cover the full additional costs of IER. Further details are available by emailing [ierservice@digital.cabinet-office.gov.uk](mailto:ierservice@digital.cabinet-office.gov.uk).

**7.9** As explained in section 4 above, the local authority may not direct the ERO in the performance of their duties as they are personal to that officer. This ensures the integrity of the process that might otherwise be influenced by the political nature of the council's executive and elected members.

**7.10** Although not fully tested in case law, the unreported "Milton Keynes" case, which was initiated by a councillor against the local authority, supported this requirement in relation to a proposal to reduce ERO resources:

- In summary, the local authority proposed resources that meant that it would only have been possible for the ERO to undertake the full household registration canvass once in every four years rather than annually.
- The preliminary judgement found this to be unreasonable on the basis that the duty to maintain an accurate and complete register rests with the ERO and as one of the specific duties placed on the ERO was to undertake an annual household canvass, the local authority was required to pay any registration expenses properly incurred in the performance of those duties.

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## 8 Risks

**8.1** Failure by the local authority to provide sufficient staff and resources to the ERO to conduct their statutory functions can introduce significant risks, which include:

- the ERO being liable on summary conviction to an unlimited fine (level 5 on the standard scale);

- the ERO failing to meet the Electoral Commission performance standards;
- inaccurate and incomplete registers of electors;
- increased potential for fraud;
- an election result being challenged by way of an election petition;
- legal challenge against the local authority;
- damage to the reputation of the local authority, ERO and electoral services;
- the health and wellbeing of the electoral services staff.

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## 9 Other references and guidance

### Key statutory references

Sections 8, 9, 9A, 9D, 9E, 52 and 54, Representation of the People Act 1983

Regulation 5(2), European Parliamentary Elections (Franchise etc.) Regulations 2001

Section 69, Electoral Administration Act 2006

Section 9(A), Political Parties, Elections and Referendums Act 2000

Data Protection Act 1998

### Other useful guidance sources

- Running Electoral Registration – Part 2: The registration framework (The Electoral Commission)  
[http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0006/162573/Part-2-Registration-framework.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/162573/Part-2-Registration-framework.pdf)
- Section 3, Parker's Law and Conduct of Elections (Lexis Nexis)
- Sections 4-034 and 4-035, Schofield's Election Law (Sweet & Maxwell / Thomson Reuters)



# Appendix A

## Electoral Registration Officer Performance Standards

<b>Performance standard 1: Framework for the delivery of registration activity</b>		
<b>Outcome</b>	<b>What does the ERO need to do to achieve the outcome?</b>	<b>What will demonstrate how the outcome has been met?</b>
<b>Clear understanding of the particular challenges in your registration area</b>	<ul style="list-style-type: none"> <li>• Identify and utilise data sources, as well as any other information you have, to highlight potential groups of electors who are less likely to be registered and develop a clear picture of the challenges in your area</li> </ul>	<ul style="list-style-type: none"> <li>• Public engagement strategy that includes:               <ul style="list-style-type: none"> <li>• a ward level data analysis of the area</li> <li>• priority areas identified by the ERO to target registration activity</li> </ul> </li> </ul>
<b>Strategy for responding to the challenges in your registration area</b>	<ul style="list-style-type: none"> <li>• Identify suitable internal and external partners who you believe can assist with ensuring all eligible electors are encouraged to register to vote</li> <li>• Develop a strategy to respond to the challenges identified and incorporate into your registration plan</li> </ul>	<ul style="list-style-type: none"> <li>• Public engagement strategy that includes how the ERO will use the channels available to reach identified groups and existing electors. Including:               <ul style="list-style-type: none"> <li>• direct contact routes</li> <li>• local partners</li> <li>• media and advertising</li> </ul> </li> </ul>
<b>Robust project planning methodology employed to enable delivery of activity to maintain accurate and complete registers</b>	<ul style="list-style-type: none"> <li>• Evaluate and update your registration plan as appropriate to deliver your strategy</li> <li>• Review the resources available to you taking into consideration:               <ul style="list-style-type: none"> <li>• The activities required and the ownership of these</li> <li>• The timescales within which they need to be carried out</li> <li>• Opportunities in the electoral calendar to maximise registration</li> </ul> </li> <li>• Ensure the training requirements of the different staff involved in delivery are met</li> <li>• Plan activities with the internal and external partners you have identified as being helpful to meeting the challenge in the area</li> <li>• Put monitoring and evaluation measures in place to ensure the maximum effectiveness of all activities</li> <li>• Develop and maintain processes to identify any patterns of activity that might indicate potential integrity problems, including what steps are to be taken to deal with any such problems</li> </ul>	<ul style="list-style-type: none"> <li>• Overall project planning documentation, including a risk register, which is kept under regular review, and which includes:               <ul style="list-style-type: none"> <li>• The objectives and success measures to be used to monitor the impact of activity</li> <li>• The resource requirements of the activity you plan to carry out</li> <li>• A timetable of deliverables and tasks for year-round activity</li> <li>• The partnership activity you have planned</li> <li>• The evaluation measures you have in place for all activities carried out</li> </ul> </li> <li>• Planning documents which clearly address potential integrity issues, how they would be identified and the actions to be taken in each case.</li> </ul>

# Appendix A

## Electoral Registration Officer Performance Standards

<b>Performance standard 2: Delivery of registration activity to maintain accurate and complete registers</b>		
<b>Outcome</b>	<b>What does the ERO need to do to achieve the outcome?</b>	<b>What will demonstrate how the outcome has been met?</b>
<p><b>Effectively deliver your registration plan to ensure your register is as accurate and complete as possible</b></p>	<ul style="list-style-type: none"> <li>• Using information sources available identify existing electors who may no longer be eligible and ensure that all necessary steps are taken to remove that elector from the register</li> <li>• Using information sources available to you identify and target new electors, and ensure that all necessary steps are taken to add them to register including:               <ul style="list-style-type: none"> <li>• Putting measures in place to encourage applications to register from identified new electors</li> </ul> </li> <li>• Ensure a full and effective canvass of properties is carried out including making personal visits by trained canvassers where voter registration material has not been responded to.</li> <li>• Utilise available direct contact methods to determine the accuracy of entries on the register and encourage applications from new electors</li> <li>• Maintain an audit trail to demonstrate the registration activity you have carried out</li> </ul>	<ul style="list-style-type: none"> <li>• Data that demonstrates local challenges have been met including:               <ul style="list-style-type: none"> <li>• Overall electorate figures</li> <li>• Number of attainers</li> <li>• Total number of electors deleted</li> <li>• Number of electors added to the register</li> <li>• Number of household enquiry forms issued and responded to and applications made as a result</li> <li>• Number of reviews of registration undertaken and total number of electors deleted as a result</li> <li>• Number of applications and registrations made through the exceptions</li> <li>• Number of electors registered through attestation</li> </ul> </li> <li>• Summary of activities carried out with partnership organisations and their impact.</li> </ul>

# Appendix A

## Electoral Registration Officer Performance Standards

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Performance standard 2 (continued): Delivery of registration activity to maintain accurate and complete registers		
Outcome	What does the ERO need to do to achieve the outcome?	What will demonstrate how the outcome has been met?
<p><b>Delivering a service in which residents and other stakeholders can have confidence</b></p>	<ul style="list-style-type: none"> <li>• Identify and investigate patterns of activity that might indicate potential risks to the integrity of the register and take appropriate steps to deal with any such problems.</li> <li>• Ensure there is provision of comprehensive, accessible information on how to register</li> <li>• Ensure there are clear response mechanisms in place for electors to use if assistance is required</li> <li>• Timely supply of the register to those entitled to receive it</li> </ul>	<ul style="list-style-type: none"> <li>• Details of how the approach to preventing and detecting electoral fraud is communicated to voters, candidates and other local contacts</li> <li>• Details of how feedback from electors is managed, including action taken and any changes to plans in response.</li> <li>• Date[s] supplied (including date[s] requested) for those entitled to receive the register on request</li> </ul>