

The Association of Electoral Administrators



Response to the Cabinet Office consultation: Protecting the Debate: Intimidation, Influence and Information

Responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life

QUESTIONS

Question: In what capacity are you giving the information? Eg: as a voter, an elected representative, an organisation.

Organisation – the Association of Electoral Administrators (AEA). 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-governmental and non-partisan body and has 1,967 members, the majority of whom are employed by local authorities to provide electoral registration and election services.

The AEA welcomes the opportunity to respond to the Cabinet Office consultation on 'Protecting the Debate: Intimidation, Influence and Information'.

Section 1: A New Electoral Offence

Question 1: Do you agree that the new electoral offence should apply electoral sanctions to existing offences of intimidatory behaviour, such as those identified by the CSPL, listed in Annex A, and equivalent offences in Scotland and Northern Ireland?

Yes, the Association agrees that the new electoral offence should apply electoral sanctions to existing offences of intimidatory behaviour. However, the new electoral offence should apply to candidates and campaigners for all election types and referendums in the UK and not just Parliamentary elections which is what is mainly covered in the consultation explanation for this question.

Whilst we support the introduction of the new electoral offence, consideration must be given to the impact it could have on the electoral process if the offence were to be committed by a candidate.

The Association of Electoral Administrators



Question 2: We propose that the new electoral offence will attract the sanction of being barred from standing for elected office for 5 years. Do you agree?

Yes, the Association agrees. However, we pose the additional question as to how the proposed offence will affect existing elected members, e.g. if a person standing for election to a district council is sanctioned but they are also already acting as a county and/or parish councillor, what will the effect be on those other elected positions?

Question 3: We do not propose that the new electoral offence should remove an offender's right to vote. Do you agree? (taken from page 9). Please note the question on page 24 is worded differently: 'Do you think the new electoral offence should remove an offender's right to vote.'

Yes, the Association agrees that the new electoral offence **should not** remove an offender's right to vote.

Question 4: We think that offences committed against candidates and campaigners during all types of polls should attract the additional electoral sanctions. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 5: We propose that offences against campaigners during a referendum campaign should attract the additional electoral sanctions. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 6: We propose that the existing definition of when someone becomes a 'candidate', with reference to any election campaign, would be clear and workable for the new electoral offence. Do you agree? If not, please explain.

Yes, the Association agrees as this will allow for consistency.

In the consultation paper under this section 'Who would be protected' (4.5) we note the following '... but we do not propose the new electoral offence would include additional protection for Returning Officers and their staff who are adequately protected under criminal law'. Whilst we note the point of being adequately protected under criminal law provision is being made for candidates, in the current environment, we believe that Returning Officers and their staff are also at increased risk. We are therefore of the strong opinion that this position be reconsidered and that

The Association of Electoral Administrators



Returning Officers and their staff are included and protected in the same way as those proposed for candidates.

Question 7a: Do you think the new electoral offence should extend to campaigners? If so, please explain which campaigners you think should fall within the scope of the new electoral offence, given the above considerations. If not, please explain.

Campaigners at an election and referendum cover a wide range of people, many of whom act as volunteers. However, consideration should be given for the new electoral offence to be extended to election agents. Election agents are formally appointed by the candidate and will be involved in the election process supporting their candidate(s) throughout the whole election process. We would go further and suggest that the electoral offence should extend to covering anyone asked to act on behalf of a candidate or a registered campaigner at an election, which would include polling agents, counting agents and tellers.

Question 7b: If you think that campaigners should be included, do you have a suggestion as to how this could be done for use in the relevant legislation?

Formally appointed election agents should be included in the legislation that makes provision for candidates.

Question 8: Do you agree that protection should start from the period of notice of elections? If not, please explain.

Yes, the Association agrees that as the date the notice of election is published is clearly defined in law, this would allow for consistency for all election types. The legislation will also need to be worded to allow for other polls, i.e. notice of referendum for the protection of campaigners.

Question 9: Should there be a period before notice of election for a scheduled poll during which this offence applies? If so, what would be a suitable time period of protection? If not, please explain (taken from page 9). Please note the question on page 29 is worded differently: 'Should there be a period before notice of election for a scheduled poll, for example during the long campaign period, during which this offence applies? If so, what would be a suitable time period of protection? If not, please explain.'

Intimidation could stop someone from standing so we support a designated period before notice of election is posted. We do not have a view as to what that period should be but it should be clearly defined, well publicised and appropriate for all election types. We note however that

The Association of Electoral Administrators



there may be practical issues in respect of by-elections, where the election date is not known in advance, so the time period will need to be carefully constructed.

Question 10a: Do you agree that protection, under the new electoral offence, should end seven calendar days after the close of poll?

Yes, the Association agrees.

Question 10b: If not, when do you think protection under the new electoral offence should end?

N/A – see question 10a.

Question 11: Do you agree that protection, under the new electoral offence, should apply during the referendum period, as determined by the relevant referendum legislation? If not, please explain.

Yes, the Association agrees.

Question 12: Do you agree that a new electoral offence should only be applicable in cases where a candidate or campaigner is intimidated because they are a candidate or campaigner?

Yes, the Association agrees but, as referred to in our response to question 6, we believe that Returning Officers and their staff should also be covered by the new offence.

Section 2: Intimidation of Voters – Undue Influence

Question 13: Do you agree that the law of undue influence requires greater clarity in its application? If not, please explain.

Yes, the Association agrees.

Question 14: If it is decided to simplify the existing offence of undue influence, we do not propose to materially change the element of the offence relating to physical acts of violence or threat of violence. Do you agree? If not, please explain.

Yes, the Association agrees.

The Association of Electoral Administrators



Question 15: Any act, whether lawful or unlawful, which is intended to cause harm to the individual and is carried out with the intention to make a person vote, vote in a particular way, or deter them from voting and should be captured within this offence. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 16: We propose to retain reference to 'direct and indirect' acts which cause the elector harm. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 17: We propose that the redefined offence retains reference to offences committed by or on behalf of a perpetrator in relation to acts that cause the elector harm. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 18: We propose that the scope of section 115(2)(a) continues to include those acts which are carried out before and after the election. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 19: Do you agree that the offence should continue to cover actions of duress? If not please explain.

Yes, the Association agrees.

Question 20: Any redefined offence would still look to cover actions of trickery. Do you agree? If not, please explain.

Yes, the Association agrees.

Question 21: Do you agree that the scope of the offence should remain the same, subject to including a specific reference to intimidation at polling stations? If not, please explain.

Yes, the Association agrees but with 'at polling stations' being more clearly defined to include both the inside and outside of polling stations, as well as any clearly defined area/zone immediately surrounding the polling place designated by the Returning Officer as appropriate.

The Association of Electoral Administrators



Question 22a: Do you agree that the offence should specifically capture intimidatory behaviour carried out inside or outside of the polling station? If not, please explain.

Yes, the Association agrees with the addition of any clearly defined area/zone immediately surrounding the polling place designated by the Returning Officer as appropriate.

Question 22b: If so, do you agree that the definition should include behaviour which falls below the current requirement of physical force, violence or restraint?

Yes, the Association agrees.

Section 3: Increasing Transparency in Digital Election Campaigning

Question 23: Do you as a voter believe that the current system as applied to printed election material promotes transparency and gives confidence in our systems?

Yes, the Association agrees, however under current legislation and Electoral Commission guidance there is some confusion and misunderstandings by candidates and agents as to what is actually required currently in law. For example, in a multi-member ward the imprint on the leaflet with some political parties thinking they have to write the name and address of every candidate/agent on the leaflet in case other political parties challenge them if they don't.

Question 24: Should the imprint rules in PPERA be commenced for Northern Ireland?

Yes.

Question 25: Should the imprint rules for Northern Ireland elections be the same as for the rest of the United Kingdom?

Yes.

Question 26: What are your views on whether imprints should be required on all digital electoral material or only where spending on such material has been over a certain threshold?

The Association's view is that imprints should be required on all digital electoral material to allow for consistency, greater transparency, ease of monitoring, and to ensure there is no uncertainty or confusion as to whether an imprint should be included or not.

The Association of Electoral Administrators



Question 27: Should any new rules on digital material only apply to what we would already consider to be “electoral material” or should broader categories be considered?

The Association is of the view, similar to that of the Electoral Commission after the Scottish Referendum, that future legislation should strike the right balance between ensuring there is transparency about who is campaigning and proportionate and modern regulatory requirements. The Association also supports the Law Commission’s conclusion that “the imprint requirement should extend to online campaign material which may reasonably be regarded as intending to procure or promote any particular result, subject to a reasonable practicability defence.”

Question 28: Do you agree that the requirement for imprints on election material can arise all year round, not just during election periods?

The Association agrees that any literature circulated by individuals that could be construed to either be election-related or related to the ongoing work of elected officials should bear an imprint.

Question 29: Should we prioritise regulating certain forms of digital communications over others? If so, please give reasons.

No, the Association is of the opinion all forms of digital communications should be regulated in the same way.

Question 30: What sort of mechanisms for including an imprint should be acceptable? Are there any technical difficulties that would need to be overcome to include text which is not accessible without a further step?

Electoral Commission's guidance for Candidates, Political Parties and Campaign Groups on social media posting should be followed, including displaying full imprint details prominently on profiles and shortened links to an imprint in a post if it cannot be added to an image.

Imprints should also be embedded in email and other electronic communications, as outlined in the guidance.

Question 31: Would you find an imprint in an overarching space such as a ‘bio’ on Twitter sufficiently visible?

Not necessarily, no. With posts often being shared and built upon, or images copy and shared away from an original post, including an imprint in a 'bio' does not guarantee that the link will be maintained. Where

The Association of Electoral Administrators



possible, an imprint, link to an imprint or alt-image description including the imprint, should remain.

Question 32: How can these mechanisms be future-proofed in expectation of developments in media and technology?

This is a matter that social media platforms should be considering and coming up with solutions for. On sign-up, a 'political party' 'candidate' or 'campaign group' category could be introduced which includes more functionality to include imprints, requiring them to be included - particularly in pre-election periods.

Reporting functions should also be available to flag any material that people believe has been posted by a candidate or agent is being used to promote or procure the election of a candidate at an election, or to influence voters to vote for or against a political party or a category of candidates, which does not carry the necessary imprint.

Where multiple reports are being made and accounts found to be flouting the guidance, the use of algorithms (coupled with human checks) could be deployed to dramatically reduce post reach or suspend accounts.

Question 33: Should those who subsequently share digital electoral material also be required to include an imprint and, if so, whose details should be on it - theirs or the original publisher?

Yes, any imprint should follow the post and/or graphic however widely it is shared. This should be embedded in such a way that this occurs automatically wherever possible.

Question 34: Do you think the responsible bodies have sufficient enforcement powers?

No for the following reason: The Political Parties, Elections and Referendums Act 2000 s.143 and Representation of the Peoples Act 1983 s.110 clearly set out what must be included on any election published material. Where any such election material is published in contravention of these requirements, the promoter of the material, any other person by whom the material is published, and the printer of the document are guilty of an offence. However, it can be a defence for a person charged with such an offence to prove that the contraventions arose from circumstances beyond his control or that he took all reasonable steps and exercised all due diligence to ensure that the contravention would not arise. As a result, the promotion of election material via social media needs to be considered to ensure sufficient enforcement powers.

The Association of Electoral Administrators



CONCLUSION

The AEA looks forward to working with the Government, the Electoral Commission and other key stakeholders in identifying and addressing the issues that arise as the policy is further developed.

Peter Stanyon
Chief Executive

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