

## The Electoral Commission - Observing at elections in the UK: Review of electoral observer scheme

### INTRODUCTION

The Association of Electoral Administrators (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 principle of observers at elections and accepts the international principles for observers. The UK observer scheme has been in place for 10 years and has provided the opportunity for our members to demonstrate how good they are at administering elections with open and transparent processes.

The Electoral Commission's review of the electoral observer scheme is welcomed by the Association, and it is hoped that our suggestions outlined in this consultation response will help further improve the process in the future.

### QUESTIONS

#### CLARIFYING AND MODERNISING THE APPLICATION PROCESS

- **Do you have views on the Commission's proposals for clarifying and modernising the application process?**

The Association welcomes the proposal to move the application process online rather than the current paper-based system.

We note that the application form asks the applicant to sign a statement at the end which includes the following:

*"I have not been reported or found guilty of a corrupt or illegal electoral practice anywhere in the United Kingdom in the five years previous to the date of this application."*

However, it does not ask for information relating to any other criminal disclosures, for example, violence and disorder, which in the light of recent security concerns we believe would be sensible to clarify.

The Code of Practice states:

**Paragraph 2.15:** *"We will aim to process all applications within 10 days of receipt of a completed application, although sometimes checks may take longer....."*

However, the consultation paper does not provide any details of what checks the Electoral Commission currently conduct whilst processing

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applications to ensure only suitable people are accredited as observers. We therefore ask the following questions:

- What checks are already in place?
- What mechanisms are in place for a Returning Officer to make further checks of the observer if security concerns are raised and in a timely fashion?
- What reassurance can be given that the checks in place are robust enough to ensure the safety of the process including candidates, agents, counting agents, Returning Officer staff and others present at an electoral event?

Whilst we support the principle that access to election events provides openness and transparency by allowing observers to attend, the issue of security also needs to be considered for the safety of the process, including those in attendance.

We believe that the situation has fundamentally changed as a result of the events that took place ahead of the UK Parliamentary general election in 2017, and that the management of observers needs to evolve to recognise the need for heightened security.

Returning Officers were required to increase security arrangements at both polling stations and count venues, which in many cases lead to tighter control over access, but at the same time were obliged to allow access to accredited observers without prior notice. From an election observation process, this is absolutely correct but from a safety and security position, extremely concerning.

Obviously, it is essential that the observer scheme follows the International Code as outlined in the consultation paper, which makes it clear that unimpeded access be guaranteed, which we fully support. However, our view of unimpeded access would not prevent for valid and logistic security arrangements in light of the 2017 UK Parliamentary general election.

Greater thought needs to be given in relation to observers attending electoral events. At present, observers are encouraged to give notice of attendance, however there is no requirement. In the interests of everyone's safety, a period of notice should be **required** for the attendance at the verification and count, as is the case for all other attendees such as counting agents.

We also believe that as a minimum, observers should be required to notify Returning Officers of their intention to attend at polling stations within their area of responsibility, ideally advising exact locations but not necessarily making this mandatory.

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In keeping with the idea and general principles of observation, this could be kept to a minimum by informing the Returning Officer by a specified deadline prior to attendance, except in exceptional circumstances at the discretion of the Returning Officer. This would allow the Returning Officer a short period of time to review any security arrangements in place as appropriate before the poll opens and/or the verification and count is commenced.

We consider these requirements do not contradict the International Code.

- **Do you have views on how we could further improve the accessibility of the application process?**

An online eform application process for ease of completion with the compulsory completion of fields before allowing submission, as well as the facility to upload a digital photo.

A reminder renewal email should be sent which also includes the link to the online application form.

The renewal application process is currently the same as a new application. Consideration should be given to making the renewal process simpler.

- **Is there anything else we should do to clarify and modernise the application process?**

The application process could provide a brief description of each element of electoral processes to ensure a better understanding by the applicant of what they will be able to observe.

Following submission, an acknowledgement of receipt of the application outlining the next stages of the process and timings.

## **CLARIFYING EXPECTATIONS ABOUT THE ROLE OF OBSERVERS**

- **Do you have any views on what additional information might be provided to electoral observers?**

In some cases observers may not have a full understanding of electoral processes. Therefore it may assist observers if they were provided with a copy of the Electoral Commission guidance so that they have a better understanding of the processes at postal vote issue and opening, polling stations and the verification and count before attending.

In addition the reverse of the observer badge could include some key reminders and web addresses for observers, for example, the observer Code of Practice, the requirement of secrecy, notice of attendance to the Returning Officer etc. This would act as a reminder for notification of attendance at an electoral event held sometime after their accreditation and badge has been issued.

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- **Is there anything else we should do to clarify expectations about the role of an electoral observer?**

The Association welcomes the proposals outlined in making the Code of Practice easier for observers to understand. We support setting out the behaviour expected of observers, including guidance for electoral officials around facilitation of electoral observation.

In addition, the guidance should include details of the process as well as including what to do before attending, including notifying the Returning Officer of attendance in advance, an overview of the electoral event, expectations for the electoral event the observer is attending, and details as to what an observer is entitled to and not entitled to, as well as do's and don'ts. The observer guidance could also include a short fact sheet covering these points for each electoral event type, for example, attendance at postal vote issue and opening, polling station the verification and count, which also cover the different voting systems for each election type.

When attending an electoral event, observers should be asked to sign a written declaration confirming they have read and understood the secrecy requirements, Code of Practice, and that they understand what they can and cannot do.

- **Do you have any views on how we could further improve the information made available to ensure access to and the understanding of electoral proceedings?**

The guidance could provide the website link for aboutmyvote to provide the local authority details through the 'find your local authority page' for ease of prior notification of attendance. Although, it would appear Returning Officer contact details are not included only Electoral Registration Officer details. However, the postcode search will allow identification of which local authority the observer should notify.

The Electoral Commission electoral observer webpage could include a copy of the Code of Practice, guidance, fact sheets as outlined above, links to aboutmyvote to provide local authority details and the Requirement to Secrecy.

The Electoral Commission should also look to promote their observer guidance to Returning Officers, police and other stakeholders by cascading it via key stakeholders including SOLACE, the AEA, the police and political parties.

## IMPROVING GUIDANCE ON THE PRACTICALITIES OF BEING AN OBSERVER

- **Do you have any views on our proposals to improve guidance on the practicalities of being an observer?**

Page 8 of the consultation states:

*"We propose that, in future, observers should be strongly encouraged to tell administrators in advance where they propose to visit. This will help to ensure that observers can get the most out of their visits. It will not, however, preclude them from making unannounced visits or changing their plans."*

The Association has concerns that the guidance does not go far enough in relation to the attendance at polling stations and the verification and count. In our 2017 report post-election report ["It's time for urgent and positive Government action - The AEA's review of the 2017 local government elections and the UK Parliamentary general election"](#) we highlighted the following:

*"Secondly, authorised Electoral Commission observers are entitled to attend any polling station or count centre without giving prior notice. Whilst the Electoral Commission issued advice to observers asking them to contact the relevant RO prior to their visit, many did not. In accordance with current legislation, they were entitled to attend which, of itself, can present security issues. The Government is asked to look at these issues urgently."*

This was supported by the following members' quote:

*"I also think that the EC need to have more stringent vetting procedures for EC observers at counts, especially in today's current climate and security concerns that we all have to deal with. For me, unless they are employed by the EC or they have a specific reference from someone in the EC then you can't just be given a pass to attend a count as an observer."*

The Association feels that the proposals outlined do not go far enough in relation to the security issues at the verification and count and suggests a more stringent approach as outlined in our response to the first question.

Page 8 of the consultation also states:

*"We will also clarify the powers electoral officials have when dealing with misconduct and ensure they have a route for raising concerns directly with the Commission."*

Returning Officer guidance and procedures also needs to consider people who apply to be observers with previous conduct issues at electoral events, and for those observers that choose to attend an event where the

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Returning Officer is aware of conduct issues relating to the person concerned and the local authority. We are aware of issues that have arisen at previous elections and are keen to ensure the safety of the Returning Officer and their staff is of key importance.

- **Is there anything else we should do to improve guidance on the practicalities of being an observer?**

In addition to our suggestions outlined earlier, consideration should also be given to enhancing the Returning Officer guidance by providing a fact sheet of the key points covering what observers rights are and what they can and cannot do.

In addition, as an appendix to the Returning Officer guidance, information should be included for the police which sets out details of offences, do's and don'ts and why an observer may be asked to leave an event or not allowed in, including the statutory reference.

Section 6E of the Political Parties, Elections and Referendums Act 2000 states:

*'(1) Attendance and conduct of observers' states that the relevant officer may limit the number of persons who may be present at any proceedings at the same time .....*

*(2) If a person who is entitled to attend any proceedings by virtue of section 6C or 6D misconducts himself while attending the proceedings, the relevant officer may cancel the person's entitlement.*

*(3) Subsection (2) does not affect any power a relevant officer has by virtue of any enactment or rule of law to remove a person from any place.....'*

The Code of Practice currently does not cover all aspects of section 6E and needs to be stronger with the full statutory provision (section 6E) being included so that both observers and Returning Officers are aware of the legal position.

## **ESTABLISHING A VOLUNTARY FEEDBACK PROCESS FOR OBSERVERS**

- **Do you have any views on our proposal to establish a voluntary feedback process for observers?**

Any feedback received, both good or bad, should be discussed with the relevant Returning Officer to review and action as appropriate for future polls.

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- **Is there anything else we should do to facilitate observers providing feedback on their observations?**

No other than observers being encouraged to provide Returning Officers with feedback of their experiences and observations after the event.

## UPDATING THE CODE OF PRACTICE FOR ELECTORAL OBSERVERS

- **Do you have any views on the draft revised Code of Practice?**

The revised Code of Practice is welcomed. In addition to our comments below, it is hoped that the points raised in our consultation response above can also be considered and included in the Code of Practice.

**Paragraph 2.7** refers to electoral events observers are entitled to attend:

- *The issue and receipt of postal ballot papers*
- *The poll*
- *The verification and counting of the votes*

As outlined above consideration should be given to include a fact sheet on each of the events outlining the general approach for each event of what happens and the purpose, as well as some do's and don'ts in relation to the conduct of observers at each of the events. For example, some observers may be under the impression if they attend the postal vote opening sessions they will get an indication of how the electorate are voting, however by law the ballot papers are kept face down during the opening process.

In addition, a full copy of the Requirements of Secrecy should be included in the guidance.

Both the fact sheets and Requirements of Secrecy should be included as an appendix to the Code of Practice.

**Paragraph 4.16** states:

*"Accordingly, relevant officers should ensure that polling stations are large enough and suitably arranged to provide for efficient and secret polling in the presence of polling agents and observers...."*

Whilst every effort will be made by the Returning Officer to meet this requirement, there may be some instances whereby the Returning Officer has no option but to use a polling station which may not be large enough to accommodate numerous polling agents, observers, election agents and candidates all at the same time. Restrictions on the size of a polling station may be as a result of the limited venues, costs or availability.

**Paragraph 4.18** states:

*"Misconduct includes:*

- *Breaching or attempting to breach the secrecy of the ballot*

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- *Knowingly obstructing electoral proceedings*
- *Asking electors about their voting preference while observing at polling stations*

However, guidance would be welcomed for situations when an observer or candidate/agent attends an electoral event whereby they have a public disorder offence and/or are barred from attending the local authority premises which maybe is where the Returning Officer is holding an electoral event they would normally be entitled to attend.

Likewise, guidance should be provided for situations whereby the police have concerns following previous conduct at other events, or police intelligence.

**Paragraph 4.22** states:

*"Any observer removed for misconduct is not entitled to re-enter those proceedings for the remainder of them."*

Guidance should also be included in relation to attendance at future electoral events and proceedings for the same election later in the timetable, or for future elections. In addition, the risk of revoking their accreditation.

- **Are there any other amendments you would like to see to the Code of Practice?**

The following amendments should be considered subject to any changes being made to the guidance following the consultation:

Paragraph 1.1 – line 2: include "and referendums" after the word "elections"

Paragraph 1.2 last line – "must" embolden and underline

Paragraph 2.6 line 2: "*but you are strongly encouraged to do so*" embolden

Paragraph 4.5 line 2: "we **strongly** advise that it is good practice for them to do so" – insert the word "strongly"

**Peter Stanyon**  
**Chief Executive**

**17 October 2018**