

The Association of Electoral Administrators



Response to the PACAC inquiry examining the case for comprehensive reform of electoral law

1. Organisation:

The Association of Electoral Administrators (AEA).

2. Summary of Organisation:

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 in excess of 1,900 members, the majority of whom are employed by local authorities to provide electoral registration and election services. There are eleven regional branches of the Association covering the United Kingdom.

3. Contact Details:

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4. Terms of reference - questions:

1. How urgent is a systematic simplification, updating and consolidation of electoral law?

We are strongly of the view that simplification, consolidation and modernisation of the legislation relating to electoral processes is long overdue and that without urgent and, in some cases, radical reform, significant and unnecessary risk will continue to exist within our democratic processes.

In our review of the 2017 local government and UK Parliamentary general elections¹, we called on the UK Government for a fundamental rethink of the electoral process in the UK and stressed that without positive and urgent action, we had significant concerns that the many weaknesses and

¹ [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](#)

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contradictions identified in current systems and procedures will cause the UK's electoral system to further fracture and fail.

In recent years, those responsible for administering the electoral process have been placed under severe pressure, having had to deliver combined polls, two UK Parliamentary General elections (one of which was unscheduled), the EU referendum and the introduction of individual electoral registration. At the time of drafting this response, many electoral administrators are delivering the scheduled local government polls on 2 May 2019 and at the same time preparing to conduct an unscheduled European Parliamentary election to be held just three weeks later. Following that, radical canvass reform will introduce further fundamental change to electoral registration processes in 2020.

In its interim report on electoral law², the Law Commission perfectly summed up the complexity of the legislative framework administrators are required to navigate through when stating "... electoral law is complex, voluminous, and fragmented. More than 25 statutes and many more pieces of secondary legislation govern elections." With numerous pieces of legislation for each election type, and with all the legislative amendments over the years being bolted on to existing legislation, the administration and conduct of the electoral process is becoming ever more complex and consequently at risk of being incorrectly applied.

The need for effective change and improvement of the fundamental processes that underpin our democratic system is therefore becoming more and more urgent.

a) What are the risks, costs or benefits of continuing a piecemeal approach to reform?

As inferred above, we are becoming increasingly concerned that the piecemeal approach to electoral reform is introducing unnecessary risk and confusion. This approach has led to inconsistencies between the rules used at different elections, some long-standing but some occurring as recently as this year.

For example, the restrictions on the publication of candidate address provisions introduced for principal area and parish council elections in England for May 2019 have still to be brought into law for Police and Crime Commissioner and Greater London Authority elections. Separate enabling legislation is required, which means that were there to be a casual vacancy election before any were made, candidate home addresses would

² <https://www.aea-elections.co.uk/wp-content/uploads/2014/08/law-comm-electoral-law-interim-report-040216.pdf>

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need to be disclosed, a situation that would be confusing for candidates and administrators.

This also results in significant cost implications for Government as a result of the need to draft several enabling pieces of legislation. There are similar implications for the Electoral Commission being required to produce, and subsequently update, several pieces of guidance.

Ideally, we would like to see an overarching piece of legislation, which contains specific schedules covering each election type as well as the combination requirements. It is recognised that different election types have different voting systems and count processes, so the ability to have one single piece of legislation that covers all types of poll will be difficult to achieve.

We would also like to see that rather than amending and incorporating existing rules into a new document, as the Law Commission has been attempting to do, any overarching piece of legislation should be drafted from scratch, written with 21st century electoral processes at its heart.

The benefit of having one overarching piece of modern legislation with all the schedules included would reduce the risk of error and make it easier to administer. It would also mean less bureaucracy and overall would reduce the financial costs and Parliamentary time.

In our view, it would also enable more effective evaluation of electoral processes across all election types, thus ensuring that the implications of policy changes proposed by Governments can be fully understood and developed in ways that better serve citizens.

2. How could systematic simplification and standardisation of electoral law across the UK be achieved in a way that respects devolution in Scotland, Wales and Northern Ireland?

In our view, it is imperative that a coordinated approach to drafting legislation is taken, with systems in place for each devolved administration to coordinate and implement the legislative changes at the same time. Ideally, as pieces of electoral legislation are changed for a particular election type, then these should also be changed at the same time for all other election types.

It is important that each devolved administration is able to make changes it sees fit to electoral legislation and practice. We therefore believe that were there were one overarching piece of legislation containing specific schedules to cover different and common election types, simplification and standardisation would be easier to achieve whilst at the same time

allowing for the devolved governments to introduce whatever changes they felt appropriate for their respective areas without adversely affecting the areas of common process.

The vast majority of electoral processes in the UK are administered in the same way, certainly in the cases of electoral registration and elections to the UK Parliament, but there is a danger that without care and oversight, devolution will introduce additional complexity, with risk to elector and administrator confusion and error, particularly at combined polls.

3. How far will the Government's current priorities for reform of electoral law achieve its stated goals of reducing fraud and increasing public confidence in elections?

It is well reported that there is no substantiated evidence of widespread electoral fraud in the UK. However, the Association is of the steadfast view that there needs to be absolute confidence in the conduct of UK elections and supports any measures that assist in this regard, so long as they do not create barriers to voters, create unnecessary burdens on Electoral Registration and Returning Officers and are deliverable by electoral administrators.

In our response to Sir Eric Pickles' Electoral Fraud Review and Call for Evidence³, we highlighted that the extent and nature of electoral fraud across the country varies, with some large rural areas where it is accepted to be almost non-existent.

Whilst it is noted that the UK Government has committed to 48 of the 50 recommendations, the Association still has concerns relating to the following areas:

- **Registration in more than one electoral area and the definition of 'residence'**

We have raised concerns in our post-election reports that the current provision within the law regarding 'residency' is not clear. Although individuals can register in more than one electoral area, it is an offence for them to vote more than once at the same election. However, there is no way of identifying how many people, unwittingly or otherwise, have voted more than once at, for example, a UK Parliamentary General election. We believe this is a concern that should be addressed.

We have previously recommended that the UK Government should review current legislation and provide further clarification in legislation

³ [Sir Eric Pickles Electoral Fraud Review and Call for Evidence](#)

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in relation to second homes, as outlined in the Law Commissions' consultation paper⁴ and that legislation should be amended to clearly identify what constitutes a valid second registration⁵.

- **Absent voting applications**

We have previously expressed - significant concerns in respect of the handling of absent voting applications and postal ballot packs.

The Electoral Commission maintains a Code of Conduct for political parties, candidates, canvassers and campaigners on the handling of postal vote applications and postal ballot papers in Great Britain⁶, which is agreed with the majority of national political parties. Unfortunately, adherence to the Code of Conduct is not mandatory and is only voluntary.

We believe there is a need for provision to be made within legislation to make these actions specific offences. The formalising of roles and responsibilities in legislation is likely to be more effective in ensuring integrity than the current reliance on voluntary codes. This would provide certainty as to what is and is not acceptable behaviour and practice for all stakeholders including EROs, ROs, party workers and voters.

In the AEA's response to the Law Commissions' Consultation Paper, we supported the proposal to make such activity an offence and have subsequently made further recommendations to the UK Government that it should set out in secondary legislation that absent voting applications should substantially adhere to prescribed forms and that electoral law should be changed so as to prohibit the involvement by campaigners in assisting the completion of applications, handling applications or postal votes or observing voters marking their postal ballot papers⁷.

- **Postal vote waivers**

We have previously highlighted that 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 set out how EROs may satisfy themselves that the applicant's request is genuine and that they

⁴ [Elections and Individual Registration – The challenge of 2015](#)

⁵ [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](#)

⁶ [Code of conduct for campaigners](#)

⁷ [Elections and Individual Registration – The challenge of 2015](#)

are 'unable to provide a signature or a consistent signature due to any disability or inability to read or write'.

Whilst it is right that electors are supported to apply for the means of voting that suits them best within the current provisions, the lack of a statutory declaration means that the waiver continues to present a potential risk to the integrity of the process.

In March 2015, the AEA responded to the Law Commission's Consultation Paper⁸ fully supporting the proposal and also suggested that the attestation should be extended to health professionals, including carers, to enable all electors who might require a waiver to be able to apply for one.

- **Emergency proxies**

We have previously reported on our concerns that there are significant administrative burdens in processing and checking that applications for emergency proxies meet the criteria set out and are valid before they can be granted. There have also been issues in relation to applications made by alleged self-employed electors.

We have therefore recommended that the UK Government should review and consider the circumstances for emergency proxy applications, including the deadline for receiving such applications⁹. In addition, we have recommended that a full and thorough review of absent voting arrangements should be undertaken¹⁰.

- **Electoral Fraud Reduction and Prevention**

At the UK Parliamentary General Election held in 2015, additional funding of £1½ million was provided by the Cabinet Office and shared between 17 local authorities identified as at risk in relation to electoral fraud. The funding was specifically for electoral fraud reduction and prevention initiatives for the elections that May. The funding was welcomed by those ROs but has not been provided since.

4. Are there issues that the Law Commission did not make recommendations on that should be addressed in any systematic reform of electoral law? If so what are they?

The Law Commission made some excellent recommendations based on existing legislation. However, it could be argued that in light of the

⁸ [AEA Formal response to the Law Commission – Electoral Law: A Joint Consultation Paper](#)

⁹ [Elections and Individual Registration – The challenge of 2015](#)

¹⁰ [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](#)

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significant changes in society since the law was originally written in the 1800's, the time has come to re-write electoral law starting from scratch given the increasing reliance on a digital environment.

- **Responsibilities**

To add to the complexities of electoral arrangements, the administration of the process is complicated. For example, the Cabinet Office is responsible for the majority of elections and the corresponding legislation, including the general franchise, elections to the UK Parliament, European Parliament, for Police and Crime Commissioners and for national referendums. The Ministry of Housing, Communities and Local Government (MHCLG) is responsible for neighbourhood planning referendums and parish polls. The devolved administrations also play a significant role, as does the Electoral Commission.

In order to allow for consistency of approach in administration and legislation, this fragmentation needs to be considered and addressed.

- **Funding**

The funding of the electoral process is extremely complicated and, it could be argued, not entirely transparent. Electoral registration costs are paid to local authorities through MHCLG grant funding, but the actual amounts paid and how they are calculated is very unclear. In addition, no detailed analysis of the true costs of the process, particularly since the introduction of individual electoral registration, has to our knowledge ever been undertaken, despite the AEA formally asking Government to do so on a number of occasions.

The funding of national polls needs overhauling. Whilst each RO receives a Maximum Recoverable Amount to spend on each election, the system of reclaiming expenditure incurred is unduly bureaucratic and seen increasingly by many ROs to be unfair. There is no doubt that local authorities are subsidising national polls, a situation that needs to be addressed.

- **The Electoral Commission**

The role of the Electoral Commission, and whether it should be expanded to include guidance and support for other areas such as parish council elections and parish polls, neighbourhood planning referendums and business improvement district polls, should be reviewed. In addition, the Commission's role in respect of performance standards and the provision of statutory guidance should be considered.

- **Accessibility**

Huge questions remain about the accessibility of the electoral process. Whilst legislation does make provision in some areas, e.g. through the supply of tactile voting devices and large print ballot papers, questions remain as to whether more could and should be done to assist individuals both registering to vote and then being able to cast their ballot independently and in secret.

- **Overseas electors**

The registration of overseas electors is an overly bureaucratic and costly process, which should be simplified. In addition, the available voting methods do not necessarily meet the needs of electors with, for example, applications to vote by post arriving too late for the postal vote pack to be posted abroad so as to allow for the postal ballot paper to be sent back in time to be counted.

With the changes proposed in relation to 'Votes for Life', it is essential that the method of voting for Overseas Electors is reviewed otherwise they will be registered to vote but could be unable to actually cast their votes.

- **Other issues**

We have raised many technical issues in the past that introduce significant risks to the electoral process, including:

- Current legislation only allows for electors to apply for a replacement for a lost postal vote from four working days before the poll, which is too late when the original ballot papers will have been sent up to 18 days before the poll.
- Commonly used names by candidates – the use of any part of a candidate's forename and/or middle name(s) should be permitted as a commonly used name, a situation that the current legislation as drafted does not permit.
- A full and thorough review of the access and supply arrangements that apply to the electoral register and the lists of absent voters should be undertaken, particularly those that relate to political parties, candidates and third parties such as Credit Reference Agencies.

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- The anomaly that allows for election agents' home addresses to be published in certain instances should be removed.
- A full and thorough review of all election and electoral registration deadlines should be undertaken as a matter of urgency, specifically those that apply to the registration of electors, overseas electors and absent voting.
- A full review of the combination of polls should be undertaken, such as which polls should be automatically combined, consideration of the maximum number of polls that should be combined on the same day and the combination of polls for parish and community councils and neighbourhood planning and council tax referendums with UK Parliamentary general elections.

5. What reforms are needed to the regulation of local campaigns, local campaign expenditure and electoral offences beyond the simplification, clarification and updating of the current law? In particular (but not exclusively):

a) Should the intimidation of a candidate or campaigner be an electoral (as well as a criminal) offence as recommended by the Committee on Standards in Public Life?

Yes, the AEA supports this approach, as we made clear in our responses to the Cabinet Office consultation: Protecting the Debate: Intimidation, Influence and Information¹¹.

b) How should the law on the intimidation (or "undue influence") of voters be reformed?

In our review of the 2017 elections¹², we recommended that the roles and responsibilities of polling station tellers should be recognised in law.

On the wider issue of intimidation, in our response to the Cabinet Office consultation, we responded "intimidation could stop someone from standing so we supported 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 there may be practical issues in respect of

¹¹ [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](#)

¹² [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](#)

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by-elections, where the election date is not known in advance, so the time period will need to be carefully constructed”¹³.

We also supported the Law Commission’s provisional proposal that the offence of undue influence should be restated to include pressure, duress or trickery as outlined in their consultation paper and also cover the abuse of a position of influence ¹⁴.

c) To what extent should candidates and agents be liable for the actions and spending of their supporters or third parties?

We consider that candidates and agents should be liable for the actions and spending of their supporters or third parties. We have previously highlighted¹⁵ that although candidates and their agents are required to submit an election expenses return and declaration to the appropriate officer after every type of election, and it is an offence not to comply with these requirements, the Crown Prosecution Service has continually failed to prosecute in cases where candidates and agents have failed to comply.

This begs the question whether the current legislation is either relevant or effective. Therefore, consideration should be given to an urgent review if the requirement to make such returns is maintained in its current or an adapted format, and the mechanisms for proper enforcement by the authorities clarified.

The question should also be asked as to why the expense returns are submitted to Returning Officers and not the Electoral Commission, who are the regulatory body. Online submission would allow for easy submission and allow access for ready access and inspection.

6. How does the electoral law need to adapt to reflect the impact of the internet and digital tools on local campaigns?

Electoral law needs to be readily adaptable and able to be changed quickly in order to reflect the impact of the internet and digital tools on local campaigns. In the past, local campaigns have generally been in the format of paper via a leaflet or flyer delivered by political party volunteers to households in the relevant electoral area. However, over recent years local campaigns have moved more online and now include social media.

¹³ [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](#)

¹⁴ [AEA Formal response to the Law Commission – Electoral Law: A Joint Consultation Paper](#)

¹⁵ [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](#)

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There is a requirement in electoral law for an imprint to be included on campaign material. Whilst the Electoral Commission guidance for candidates and agents¹⁶ states that an imprint should be included on digital campaign material, this is not a requirement by law. However, it is accepted that ensuring that any social media campaign material includes an imprint, especially when the post is shared via social media, would be challenging.

In our response to the Cabinet Office consultation, we stated that “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.”¹⁷

We also made the following comments in support of the Law Commission’s proposals:

“The AEA supports the regulation of online material as introduced in the Scottish Independence Referendum Act 2013 ... The way people communicate and access information over recent years has changed and publicity and media campaigns have adapted to this change to capture this vast audience via digital sources. With the present wide use of social media and the challenges and issues that can arise as a result in terms of the conduct of an election or referendum, there is a need for online material to be regulated.”¹⁸

Although the use of technology in electoral processes has traditionally been minimal recent experience has demonstrated a significant increase in the last few years. It is clear that the legislation governing this area is outdated and needs to catch up. Whilst not directly relevant to this question, which is specifically about campaigns, it should be noted that other areas of electoral law have not changed to consider the use of digital technology. For example, there is no online facility for candidates and agents to submit their expenses returns to the relevant officers, nomination papers cannot be completed and submitted online and the

¹⁶ [Local elections in England and Wales: Guidance for candidates and agents Part 4 – The campaign – page 11](#)

¹⁷ [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](#)

¹⁸ [AEA Formal response to the Law Commission – Electoral Law: A Joint Consultation Paper](#)

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delivery and return of the Writ at UK Parliamentary elections continues to be via hard copy.

In addition, whilst online registration went live via the Government online digital service in June 2014, anonymous electors and declarations of local connection can only register by completing a paper form.

Peter Stanyon

Chief Executive of the AEA

15 May 2019