

The Association of Electoral Administrators



Response to the Committee on Standards in Public Life (CSPL) Public Consultation – Review of Electoral Regulation in the UK

Organisation:

Association of Electoral Administrators (AEA).

Summary of Organisation:

Founded in 1987, the AEA is the professional and qualifications body of electoral administrators in the United Kingdom. It is non-governmental and non-partisan with just under 2,000 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.

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Consultation Questions:

The fundamental values that should underpin the regulation of election finance in the UK

Question 1: What values do you think should underpin the regulation of donations and loans, and campaign expenditure by candidates, political parties and non-party campaigners in the UK, and why? Such values may include, though are not limited to, concepts such as transparency, fairness and accountability.

The regulatory remit of the Electoral Commission

The Commission has a duty to:

- a) maintain registers of political parties and campaigners;
- b) publish financial returns from political parties and campaigners, covering spending at elections, statements of accounts and reports of donations and loans; and
- c) monitor and take all reasonable steps to secure compliance with the campaign finance laws. Under this duty, the Commission publishes guidance on the law, provides advice in response to queries from parties, campaigners and the public and conducts investigations.

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1.1 We agree with the values of transparency, fairness and accountability as outlined above. In addition, consistency, efficiency, and integrity should also underpin both the regulation of donations and loans and campaign expenditure by candidates, political parties and non-party campaigners in the UK.

- Consistency - a consistency of approach for all offences in that they are investigated and enforced.
- Efficiency – regulations should be rationalised so they are simpler and less confusing as outlined in question five.
- Integrity – ensuring honesty and trust within electoral finance.

1.2 AEA members have a role to play in campaign expenditure as they collect in expense returns on behalf of Returning Officers (RO) or Proper Officers (PO). This process is paper-based and often requires much prompting to receive returns, primarily for local government elections.

1.3 We believe it is difficult for campaign spending to be properly scrutinised through a paper-based system and urge the UK Government to introduce an online returns process.

1.4 We would also ask for a review of the process relating to uncontested elections. Where there is no contest it seems a gross waste of council resources to continually chase for zero returns from people unfamiliar with the electoral expenses system.

Question 2: Does the Electoral Commission have the powers it needs to fulfil its role as a regulator of election finance under PPERA? It would be helpful if responses would consider the Commission's role in a) monitoring and b) investigating those it regulates.

2.1 As mentioned in question one, we would suggest making the expenses process an online exercise will greatly assist the Electoral Commission in monitoring returns.

2.2 Powers relating to investigation are largely outside the AEA's remit. However, we would stress the importance of ensuring investigations are conducted by those with a detailed knowledge of electoral law and campaign finance.

Question 3: What could the Electoral Commission do differently to allow it to perform its role as a regulator of election finance more effectively?

3.1 At UK parliamentary general elections, ROs are required to submit to the Electoral Commission copies of expenses returns made to them. The original returns are then held by the RO and made available for public inspection for a period of two years from submission at individual local authority level. There is no single place of inspection for the UK. The RO and their staff effectively act as intermediaries in the regulation of election finance, with their employing local authorities meeting the costs. Consideration should be given to the Electoral

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Commission providing a single location for inspecting returns in addition to them being made available by each local authority.

3.2 Consideration should also be given to developing an online facility for candidates to submit their election expenses returns, allowing both the candidate and agent to securely approve the final return. Such a system could also provide a means for inspecting returns, declarations, and associated papers.

3.3 In the UK Government's response to our [2015 post-election report](#), it highlighted that the development and maintenance of such an online platform would likely incur substantial cost. However, it was prepared to consider the recommendation further with the Electoral Commission, in consultation with key stakeholders such as electoral registration officers (EROs) and political parties.

3.4 In our [2017 post-election report](#) we expressed our disappointment as to the lack of progress on this issue, and made the following recommendation:

A full and thorough review of the processes that deal with the recording of candidates' expenses should be undertaken, including consideration of the return to, and subsequent reporting of, expenses to Returning Officers and the possible provision of online reporting and inspection mechanisms.

3.5 We have continued to raise this issue in subsequent post-election reports.

Question 4: Are there aspects of the Electoral Commission's role which detract from its function as a regulator of election finance?

4.1 The Electoral Commission has different roles relating to political parties and the administration of the electoral process:

- it is the regulator of political party funding in the UK to ensure the integrity and transparency of party and election finance;
- it registers political parties and maintains the register of political parties;
- it sets performance standards for electoral registration officers and returning officers;
- it produces guidance for elections and electoral registration; and
- national referendum responsibilities are its responsibility, including as the chief counting officer.

4.2 The Electoral Commission in its current role has oversight of all aspects of the electoral process. It is an excellent provider of guidance, supporting resources and good practice, providing a consistency of approach across the UK. The guidance it produces for ROs, EROs and administrators is invaluable, and its work goes a long way to ensuring the smooth conduct and transparency of various elections, referendums, and electoral registration.

4.3 It also provides essential guidance to candidates and political parties.

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4.4 We would urge the Government to see the Electoral Commission's role as a holistic one, working across all aspects of electoral administration, rather than thinking each set of responsibilities detracts from the other elements of its work.

Question 5: Are there aspects of the rules which affect or detract from effective regulation of election finance?

5.1 We have recommended on a number of occasions, most recently in our [2019 statement](#), that:

The UK Government should consider and progress the Law Commission recommendations as a matter of urgency including addressing the issues raised in our response to the inquiry by the Public Administration and Constitutional Affairs Committee.

5.2 The Law Commission recommendations include bringing forward a single Electoral Administration Act to simplify electoral legislation. The complexity of current electoral law across so many separate pieces of legislation does not support the effective delivery of electoral services to voters. It makes the administration of electoral processes inefficient and introduces significant risk. We have passed the point where consolidating legislation will solve problems inherent in the electoral process. 'Root and branch' electoral reform and rewritten modernised legislation is urgently needed.

5.3 Likewise, there are separate sets of rules for election finance and spending for local government candidates, UK Parliamentary candidates, and political parties. These rules can be confusing, especially where there is overlap, and there are inconsistencies within the legislation. The different sets of rules need to be rationalised to make the process easier for everyone to follow.

5.4 In relation to enforcement, there are two different sets of legislation:

- Political Parties, Elections and Referendums Act 2000 (PPERA) which empowers the Electoral Commission to issue and enforce fines,
- Representation of the People Act 1983 (RPA) giving police the powers to investigate and prosecute.

5.5 Further details about the issues with this process are outlined in question six.

5.6 In addition, for certain elections like a UK parliamentary general election, ROs are required to publicise the availability of election expenses returns for inspection in local newspapers. In this digital age, the process seems archaic and incurs unnecessary expenditure when publishing the notice online seems far more appropriate and accessible. We first raised this issue in our [2016 post-election report](#) in the following recommendation:

That the requirement on ROs to publish the availability for inspection of candidates' election expenses returns in local newspapers at all applicable

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polls be revoked and that ROs be placed under a new obligation to publicise their availability on the web.

Question 6: What are the Electoral Commission's strengths and weaknesses as a regulator of election finance?

6.1 The Electoral Commission has many strengths in that it has a specialist knowledge of election finance regulations and the conduct of elections. It has a full understanding of all electoral and regulatory processes including offences, and provides invaluable guidance to ROs, political parties and candidates on the various funding returns. The Commission's guidance, supporting resources and good practice is outstanding.

6.2 The Electoral Commission can only investigate and issue a fine to a political party which has committed an offence under PPERA. However, it does not have the powers to investigate and bring forward a candidate's criminal offence for prosecution as that comes under the RPA, and has to be enforced, investigated and prosecuted by the police. In some cases, prosecutions can sit across both sets of legislation. This is a serious disconnect.

6.3 Police and Crown Prosecution Service (CPS) resources are stretched dealing with more serious criminal offences, and both organisations lack specialist electoral knowledge. As a result, we believe there have been few, if any, criminal prosecutions over the years¹. There is no deterrent to breaking the rules if the alleged offences are not taken forward to criminal prosecution. However, if the Electoral Commission was given statutory regulator powers, it could assist the police and CPS by bringing forward smaller criminal cases to magistrates' courts. An example of the type of case this could apply to is given in question eight.

The enforcement regime for election finance offences

The police may investigate offences under PPERA and RPA. In 2019, the police investigated 585 cases under the RPA; two led to a conviction and one individual was given a police caution. There have been no convictions for offences under PPERA.

The Electoral Commission has powers to investigate breaches of election finance rules and can issue fines (civil sanctions) up to a maximum of £20,000 for certain offences under PPERA.

Question 7: Are the Electoral Commission's civil sanctions powers to fine up to £20,000 adequate?

7.1 This question falls outside the scope of the AEA's work and, we therefore do not have an opinion to express.

¹ [Public Administration and Constitutional Affairs Committee](#) - 2 July 2020

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Question 8: Does the Commission's civil sanctions regime interact with the police criminal prosecution regime to form an effective and coherent system for deterring and punishing breaches of election finance laws?

8.1 As outlined in question three, following an election, candidates and their agents are required to submit an election expenses return and declaration to the RO or PO within 35 calendar days of the election result. It is an offence not to comply with these requirements. However, the CPS has continually failed to prosecute in cases where candidates and agents have failed to comply. This being the case, we would question whether the current legislation is relevant or effective.

8.2 In our previous post-election reports we have highlighted the need for an urgent review. If the requirement to make such returns is maintained in either its current or an adapted format, it must be properly enforced by the relevant authorities.

Question 9: In what circumstances would the regulatory regime be strengthened by the Commission bringing prosecutions before the courts for potential offences under election finance laws?

9.1 As outlined in question eight, if the regulatory regime was strengthened to provide the Electoral Commission with additional powers, some criminal offences not presently taken forward by the police and CPS could be taken forward in magistrates' courts and act as a deterrent.

Enforcement of candidate finance laws

There are different regulatory frameworks for political parties and candidates. The Electoral Commission has the power to investigate and sanction political parties and non-party campaigners for breaches of the rules. Under the RPA, civil sanctions are not available for candidates and criminal prosecution is the only enforcement approach available.

Question 10: Should the Electoral Commission's regulatory powers be expanded to include the enforcement of candidate finance laws?

10.1 Yes. Their regulatory powers should be expanded to include the enforcement of candidate finance laws rather than having to rely on the police taking enforcement forward.

10.2 At present, under PPERA the Electoral Commission is the regulator and under RPA police are the regulator. As such there is a crossover and it is not clear which organisation regulates each type of offence. A far better approach would be to agree on a single regulator.

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