

The Association of Electoral Administrators



Response to the Cabinet Office Consultation – Transparency in digital campaigning: Technical consultation on digital imprints

About you:

Trade association or representative body.

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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In section 9, we have included questions to monitor the regulatory burden of this regime on business (for example, technical, administrative, legal and communication costs associated with compliance). Would you like to answer these questions?

No.

Consultation Questions:

Proposal 1: Extension of regime

For full details on this proposal, please refer in the consultation document to Proposal 1 - Extension of Regime.

Question 1: Do you agree or disagree with this proposal for the extension of the imprints regime to digital election material?

Strongly agree.

Question 2: Please provide any further detail to explain your response here.

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.

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The use of imprints allows the electorate to clearly see material that is promoting a candidate(s) or political party. The extension of the regime will provide greater certainty for voters about what is campaign material.

Question 3: Do you agree or disagree that this regime will improve the transparency of digital election material?

Strongly agree.

Question 4: Please provide any further detail to explain your response here.

Imprints are already required for printed election material and it seems outdated they are not in place for digital material, particularly given the huge increase in such material. With electors embracing technology, new audiences are being reached and more people are engaging in democracy. Digital imprints showing who is promoting electoral material and, on whose behalf, will allow for consistency and greater transparency. It will strengthen public trust and ensure voters are aware of who is behind a campaign or post.

Question 5: What do you consider to be the main benefits of the digital imprints proposal?

As outlined in question 4 above the main benefits are: consistency, greater transparency, strengthening public trust, and ensuring voters are aware of who is behind a campaign or post.

Question 6: Do you have any other comments on this proposal?

Electoral law is outdated and often does not meet the expectations of voters or reflect modern technology and publishing platforms. Extending the use of imprints to digital material is a welcome step in a move to update electoral law in line with citizens' twenty-first century expectations.

In Wales, digital imprints will also need to comply with the requirements of the Welsh Language Act 1983 and the Welsh Language (Wales) Measure 2011.

Proposal 2: Material subject to the regime

For full details on this proposal, please refer to Proposal 2 - Material subject to the regime.

Question 7: Do you agree or disagree that the regime should be extended to registered political parties, registered third party campaigners, candidates, holders of elected office and registered referendum campaigners - both paid and unpaid (or 'organic') material?

Strongly agree.

Question 8: Please provide any further detail to explain your response here.

We believe extending it to all those outlined in question 7 will provide consistency, greater transparency, strengthen public trust and ensure voters are aware of who is behind a campaign or posts. It will also be simpler and less confusing with all categories treated in exactly the same way.

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In our response to the Cabinet Office consultation in 2018 – Protecting the Debate¹ we stated *'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 9: Do you agree or disagree that the regime should be extended to prospective office holders (both paid and unpaid, or 'organic', material)?

Strongly agree.

Question 10: Please provide any further detail to explain your response here.

As outlined in question 8, by extending it to all - including prospective office holders - would provide consistency, greater transparency, strengthen public trust and ensure voters are aware of who is behind certain campaigns or posts. It will also mean it is simpler and less confusing with all categories treated in exactly the same way.

However, we are concerned about how 'prospective office holders' would be defined. At what point does someone become a 'prospective office holder'? Unless this was clearly defined, we fear it would be difficult to monitor and confusing for many.

Question 11: Do you agree or disagree that the regime should be extended to unregistered third party campaigners promoting paid material only?

Disagree.

Question 12: Please provide any further detail to explain your response here.

As outlined in question 8, by extending it to all - including unregistered third party campaigners - would provide consistency, greater transparency, strengthen public trust and ensure voters are aware of who is behind certain campaigns or posts. It will also mean it is simpler and less confusing with all categories treated in exactly the same way.

Question 13: Do you agree or disagree with the distinction made in this proposal between paid and unpaid material?

Disagree.

Question 14: Please provide any further detail to explain your response here.

¹ [Protecting the Debate: Intimidation, Influence and Information, including responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life](#)

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The proposed distinction between paid and unpaid material is a complex area. The inclusion of 'costs to the campaigner if they have to pay a creative agency to create the material or pay staff to manage and share the content' also has an implication on candidates' spending limits and expenses. What constitutes 'unpaid and organic material' is key. Resharing and repurposing could easily lead to imprints not appearing through no fault of a candidate, political party or campaigners. We would welcome further thought as to how the distinction could be clearly explained and how any complaints of this nature would be handled.

Question 15: Do you agree or disagree that the regime should be expanded beyond what is considered election material (as set out in this proposal), to wider online political advertising?

Strongly agree.

Question 16: Please provide any further detail to explain your response here.

It will provide for consistency, greater transparency, will strengthen public trust and ensure voters are aware of who is behind a campaign or posts.

In our response to the Cabinet Office consultation in 2018 – Protecting the Debate² we stated *'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.'*

We believe any political advertising should clearly show who is funding such advertising to not only enable transparency, but to also protect candidates and political parties from any advertising which may at first appear to be from the candidate or party concerned, but is actually from another source.

Question 17: Do you agree or disagree that the digital imprints rules should apply to all forms of elections and referendums (beyond those already listed in the proposal and excluding devolved elections and referendums)?

Strongly agree.

Question 18: Please provide any further detail to explain your response here.

Applying the rules to all forms of elections and referendums will ensure consistency of approach.

We would however like to see clear additional guidance on the use of imprints designed with new or inexperienced candidates and political parties in mind.

By way of example, there are almost 12,000 parish and community councils in Great Britain³ and in the region of 100,000 parish and community councillors⁴. Candidates at parish and community council elections do not have election

² [Protecting the Debate: Intimidation, Influence and Information, including responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life](#)

³ [Parish and Town Councils: Recent Issues](#)

⁴ [NALC Report – Local Council Elections 2019](#)

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agents and usually stand as an independent. If the rules were to apply to all forms of election, we believe additional guidance for this kind of candidates would be vital to ensure the rules were not unwittingly broken.

Question 19: Do you have any other comments on this proposal?

We believe clarity is needed about the reporting process for any suspected breaches of the rules, were they to be introduced. Returning Officers and their staff already receive numerous questions and complaints at election time about campaign materials. We would urge the Government to be clear about who complaints should be addressed to. Returning Officers would be unable to bear any additional burden related to policing new requirements.

Proposal 3: Details on the imprint

For full details on this proposal, please refer to Proposal 3 - Details on the imprint.

Question 20: Do you agree or disagree with the proposal on the details to be contained within the imprint i.e. the name and address of the promoter of the material and the name and address of any person on behalf of whom the material is being published?

Agree.

Question 21: Please provide any further detail to explain your response here.

The proposal is consistent with the rules for printed material. By including the proposed details it will assist the enforcement of spending rules and improve transparency. Recent changes in legislation have been put in place to protect candidates by making the publication of their home address optional on the ballot paper. We question the issues that could be caused by requiring the publication of candidate's home address on digital assets. This would be a particular issue for independent candidates, particularly at parish council polls where candidates are also required to be their own agent.

In our [2017 post-election report](#) we made the following recommendation in relation to election agents' home addresses, for the same reasons as candidates home addresses:

The requirement for election agents' home addresses to be published should be removed.

Question 22: Do you have any other comments on this proposal?

In Wales, digital imprints will also need to comply with the requirements of the Welsh Language Act 1983 and the Welsh Language (Wales) Measure 2011.

Proposal 4: Location of the imprint

For full details on this proposal, please refer to Proposal 4 - Location of the imprint.

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Question 23: Do you agree or disagree with the proposal for the location of the imprint - that the imprint must be located as part of the material where it is practical to do so and where it is not practical, must be accessible from the material?

Agree.

Question 24: Please provide any further detail to explain your response here.

We generally support the statement *'...that the imprint must be located as part of the material where it is practical to do so and where it is not practical, must be accessible from the material'*. This will provide greater transparency, and it will strengthen public trust and ensure voters are aware of who is behind a campaign or post.

We note in the explanation it states *'The Government is aware that in some instances it will not be practical, due to the nature of the design of some platforms, to make an imprint accessible as a part of the digital election material. This is why the proposed rules state that the imprint should be a part of the campaign material where reasonably practicable.'* We have concerns this statement could create a loophole within the rules, which will become the norm rather than an exception. Consideration should be given to the wording *'not be practical'* which should be explained using specific posting examples and guidelines for the most popular social media platforms, and clearly state where character limitations can lead to a clearly visible imprint in an account bio or about section.

Question 25: How do you think digital platforms can facilitate campaigners to include imprints?

In our response to the Cabinet Office consultation in 2018 – Protecting the Debate⁵ we highlighted mechanisms to be future-proofed in expectation of developments in media and technology and stated *'social media platforms should be considering and coming up with solutions. 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.

⁵ [Protecting the Debate: Intimidation, Influence and Information, including responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life](#)

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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 26: Do you have any other comments on this proposal?

The Government should also work with key media platforms to support transparency and take action on reported breaches. There may also be merit in referring back to the successful introduction of social media influencer advertising guidance⁶ back in 2019. This included the use of upfront and unambiguous hashtags to clearly identify paid for promotional material.

Proposal 5: Appearance of the imprint

For full details on this proposal, please refer to Proposal 5 - Appearance of the imprint.

Question 27: Do you agree or disagree with the proposal for what the imprint should look like - permanent, embedded and visible/audible, clearly readable/legible/audible and replicable?

Strongly agree.

Question 28: Please provide any further detail to explain your response here.

This will ensure voters can easily access and view the imprint on any device. It should also accommodate those needing additional accessibility requirements.

In our response to the Cabinet Office consultation in 2018 – Protecting the Debate⁷ we highlighted that *'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 29: What would campaigners need from digital platforms in order to comply with the rules?

As stated in Question 25, digital platforms should consider and implement transparent guidelines and solutions to make it easy for campaigners to follow the law.

This could include, but not be limited to, clear automated functionality to both prompt and enable the easy inclusion of imprints - particularly in pre-election periods. Giving the option of categorising social media account/s as 'political party' 'candidate' or 'campaign group' would be a way to trigger these additional prompts.

Any added functionality could most obviously be included in native digital advertising platforms when paid-for material is uploaded. It could also be

⁶ [Social media endorsements: being transparent with your followers](#)

⁷ [Protecting the Debate: Intimidation, Influence and Information, including responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life](#)

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extended more widely to general posting via common social media account management tools for organic posts, supporting larger teams and supporting third-party advertising and public relations agencies to keep clients' posts within the legal framework.

Clear guidance for users should be created and promoted by different digital platforms. For example, with regard to podcasts, clear instructions on how to include an imprint in the spoken introduction and episode notes could be helpful, particularly given the longevity of the medium in comparison to social media posts.

Question 30: Do you have any other comments on this proposal?

In Wales, digital imprints will also need to comply with the requirements of the Welsh Language Act 1983 and the Welsh Language (Wales) Measure 2011.

Proposal 6: Re-publishing of election material

For full details on this proposal, please refer to Proposal 6 - Re-publishing of election material.

Question 31: Do you agree or disagree with the proposal for the re-publishing or 'sharing' of material?

Agree

Question 32: Please provide any further detail to explain your response here.

In our response to the Cabinet Office consultation in 2018 – Protecting the Debate⁸ we highlighted that *'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'*. This could pose issues should a new imprint be required, and would need technical input from social media platforms to make this possible. We also counsel for clear guidance for campaigners on how to include a new imprint, along with examples of what counts as 'substantially altered'.

Question 33: Do you have any other comments on this proposal?

No further comments on this proposal.

Proposal 7: Territoriality

For full details on this proposal, please refer to Proposal 7 - Territoriality.

Question 34: Do you agree or disagree with the proposal that the regime will apply to all election material regardless of where it has been promoted from?

Strongly agree.

⁸ [Protecting the Debate: Intimidation, Influence and Information, including responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life](#)

Question 35: Please provide any further detail to explain your response here.

Applying the rules, regardless of the country it is being promoted from, will ensure consistency of approach, greater transparency, will strengthen public trust and ensure voters are aware of who is behind a campaign or post.

Question 36: Do you have any other comments on this proposal?

No further comments on this proposal.

Section 8: Enforcement

Question 37: Do you agree or disagree that the relevant authorities are in a position to effectively enforce digital imprints?

Strongly disagree.

Question 38: Please provide any further detail to explain your response here.

The table in the consultation outlines the current enforcement arrangements -

- 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.

However, there is no clear reporting mechanisms for offences and Returning Officers generally either contact their Single Point of Contact (SPOC) with the local police or the Electoral Commission for the offence to be considered.

In our response to the Cabinet Office consultation in 2018 – Protecting the Debate⁹ we highlighted that *'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.'*

In our response to the Committee on Standards in Public Life (CSPL) Public Consultation – Review of Electoral Regulation in the UK¹⁰ we highlighted that *'the Electoral Commission can only investigate and issue a fine to a political party*

⁹ [Protecting the Debate: Intimidation, Influence and Information, including responding to electoral recommendations and issues raised in the Committee on Standards in Public Life's report on Intimidation in Public Life](#)

¹⁰ [Committee on Standards in Public Life \(CSPL\) Public Consultation – Review of Electoral Regulation in the UK](#)

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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.

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'.

In addition, we believe the police and CPS are not always sufficiently supported due to deficiencies in legislative content. This has resulted in offences not being pursued through to the courts because of concerns that the law, as it stands, would not stand up to legal scrutiny. This has resulted in disappointment that what appear to be clear breaches of electoral law are prematurely and unsatisfactorily ended.

The Government should also work with key media platforms to support transparency, work together to create clear guidance and take action on reported breaches.

Question 39: Do you agree or disagree that civil sanctioning powers should be extended for use in relation to offences committed concerning election material in support of candidates?

Strongly agree.

Question 40: Please provide any further detail to explain your response here.

If the civil sanctioning powers are not extended there is no deterrent to breaking the rules. Also, if the alleged offences are not taken forward to criminal prosecution the benefit of the new rules will be diluted. In addition, the enforcement powers will need to be considered as outlined in question 38 above.

Question 41: Do you have any further comments on this section?

No further comments on this section.

Angela Holden

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2 November 2020