

Response to consultation on street vote development orders

Organisation: The Association of Electoral Administrators (AEA).

Summary: Founded in 1987, the AEA is the professional body representing the interests of UK electoral administrators. We are a non-governmental and non-partisan body with over 2,000 members, the majority employed by local authorities to provide electoral registration and election services. Eleven branches of the Association cover the United Kingdom.

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Summary of response to consultation:

[The DLUHC consultation](#) paper “seeks views on the detailed operation of street vote development orders, which will inform the content of regulations using new powers in the Levelling Up and Regeneration Act 2023.”¹

We represent electoral administrators, and as such will only comment on areas of the consultation relevant to them.

We are concerned these referendum proposals introduce further electoral burden on local authorities. We are also worried they introduce new processes not used for any other poll, including removing the secrecy of the ballot.

Local authorities are responsible for delivering a range of polls, including Business Improvement Districts (BIDs) and Neighbourhood Planning Referendums (NPRs). Since changes introduced BIDs and NPRs, Electoral Registration Officers, Returning Officers and their teams have already seen a dramatic increase in their year-round workload.

The electoral sector is already undergoing significant change. The Elections Act 2022 has introduced a raft of changes across a range of areas. In addition, the repeal of the Fixed Term Parliaments Act and implementation of new UK Parliamentary boundaries has further increased demands.

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Local authorities do not have limitless resources. Capacity within electoral services teams is already stretched to near breaking point. Adding additional burdens, especially ones that do not follow embedded administrative rules, increases the risk of democratic failure.

DLUHC has recognised the challenges facing the sector. We would urge the same government department to assess the ability of Electoral Registration Officers, Returning Officers, Counting Officers and their teams to deliver yet another type of poll.

Consultation Questions

Preparing a proposal

Who can submit a proposal?

Question 1 – Do you agree that to be a member of a qualifying group an individual must be registered at an address in the street area to vote in a local council election on the date the proposal is submitted for examination? If not, please provide details.

It is for the UK Government to decide on who can be a member of a qualifying group. However, we would point out that only certain individuals qualify to register to vote in local government elections. While it would be an additional burden on local authority Electoral Registration Officers to prepare a ‘register of residents’, the current proposal could disenfranchise many people. It could also mean a street area was unable to submit a proposal due to the thresholds outlined in section 18 of the consultation.

We return to this point at question 41.

Examination

While not an answer to the questions in this category, there must be consideration around how the electoral register is used. In section 60, the consultation says:

“Relevant local authorities would be required to support the Inspectorate by providing access to the local electoral register;”

Under Regulation 113 of the RPR 2001, the Electoral Registration Officer must supply the register for a prescribed fee to:

(a) a government department;

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- (b) the Environment Agency;
- (c) the Financial Conduct Authority;
- (ca) the Prudential Regulation Authority; or
- (d) a body not falling within sub-paragraphs (a) to (ca) which carries out the vetting of any person for the purpose of safeguarding national security.

According to gov.uk, the Planning Inspectorate is an executive agency, sponsored by DLUHC.

They are not a government department per se, they are independent regulators.

The 2001 Regulations make specific provision for supply of the register to other non-departmental bodies and agencies – for example the Environment Agency etc listed above, and the Boundary Commissions under Regulation 101.

Under current legislation, the Planning Inspectorate does not appear to be entitled to a copy of the electoral register.

Local authorities can legally use the electoral register for:

- The discharge of a statutory function of the council or any other local authority relating to security, law enforcement and crime prevention
- Statistical purposes (without disclosing the name and address of any elector, whether that elector appears in the edited register or not)
- The purposes of a local poll under s116 of the Local Government Act 2003².

Validating proposals does not appear to be a local authority responsibility. They would not be able to undertake the task as part of their statutory duty.

Access to the register would need to be resolved via legislation to enable necessary checks.

Other issues around access to the electoral register include the inability for residents in street areas to receive a copy in advance, as registered political parties can. There would also need to be thought around how residents would confirm they are registered prior to submitting a proposal.

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Referendum

Who can vote in a referendum?

Question 41 - Do you agree with our voter eligibility proposals? If not, please provide details.

No.

In section 66 of the consultation, it says:

“We propose that individuals who are registered at an address in the street area (see paragraph 26) to vote in a local council election on the date the proposal is submitted for examination, would be eligible to vote.”³

This much stricter than other election and neighbourhood planning registration deadlines, which are 12 working days before the poll. The deadline for business neighbour planning referendums (BNPRs) is 17:00 11 working days before the poll. The proposal could be submitted months before the vote. Would new residents who have registered since moving to the property not be able to vote? Would those who have moved out of the street area still be eligible to vote because they were registered on the date the proposal was submitted?

The register used for any vote should be fixed after the examiner has made their decision. It should allow time for residents to register to vote and ideally mirror other election deadlines.

In section 66 it also says: “This means that absentee landlords and some foreign nationals who live in the street area will not be able to vote.”. For clarity, it would prevent anyone who is not a British, Irish, Commonwealth or qualifying EU citizen from voting.

In **section 67** the concept of business owners voting is introduced: “Individuals nominated to vote on behalf of non-domestic rate payers in the street area would also be eligible to vote, if they are also eligible to vote in UK parliamentary elections.”

There is no guidance on how a local authority would compile the necessary list of business owners. The lack of a business ‘register’ means work would need to be carried out once a referendum was scheduled. This would include contacting non-domestic rate payers to request nominations. The time this will take would need to be factored into any planning. It

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also undermines the statement we have already highlighted from section 66. It should not be the case that business owners can register later in the process than domestic residents.

For BNPRs, the registration process is as follows:

No later than the 25th day before the referendum, a registration notice should be published as the Business Registration Officer (BRO) considers appropriate. It must:

- specify that business vote holders who were included on the initial registration list were sent invitations to register;
- invite those who believe they have become eligible since the initial list was compiled to contact the BRO;
- inform those who were on the initial list and were sent an invitation but have since ceased to become liable to pay rates on any hereditament in the referendum area that they must contact the BRO.

We believe a similar process should be followed for street votes.

We also question why there is a franchise difference between residential and business voters. The local government franchise is being proposed for residents and the UK Parliamentary franchise for businesses. This means qualifying EU citizens could not be nominated to vote on behalf of a non-domestic rate payer. Inconsistencies make it more difficult for electoral administrators to implement change. This is a different franchise to BNPRs which use the local government franchise.

We are also unclear about whether someone who both lives in and owns a business in the street area would be entitled to cast two votes. This should not be permitted.

Question 42 - Do you think any other individuals should be eligible to vote in a referendum? Please provide details if applicable.

While we do not have an opinion on who should be eligible, we believe there should be franchise consistency for domestic and nominated non-domestic voters.

How will referendums be conducted?

We do not agree “the local authority’s Returning Officer will be responsible for organising and conducting the referendum”. The responsibility needs to fall between a local authority’s

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Electoral Registration Officer (ERO) and their Counting Officer (CO). EROs are responsible for the electoral register, Returning Officers are responsible for elections and COs are responsible for referendums.

Question 43 - Do you agree that street vote development order referendums should be conducted via postal voting only? If not, please provide details.

While we feel the only option for running these polls is by post, we do not believe the administrative detail has been thought through.

For someone to cast a vote by post, the ERO needs to have received an application which contains an individual's date of birth and signature, along with other application information and security identifiers.

When the elector casts their postal vote, the date of birth and signature provided on the postal voting statement, which accompanies the ballot paper, is checked against the application to make sure the ballot has been cast by the elector.

The consultation makes no mention of how the postal voters list will be compiled, what integrity checks are planned for returned postal votes, and how those not applying to vote by post will impact other areas of this policy, such as the voting threshold.

Consideration is also needed on how to support voters who may be unable to cast their vote by post, and the alternatives available to them.

Question 44 – Do you agree with our proposed referendum question? If not, please provide details.

The Electoral Commission has a statutory duty to comment on the proposed question, and we believe they are best placed to review it.

We would question how to make sure eligible voters are clear on the content of the street votes development order. While accepting an obligation on qualifying groups engaging with voters, we believe there would need to be a responsibility placed on the local authority to publicise relevant information.

For NPRs there is a requirement for the Proper Officer of the local authority to issue an information statement. Similar provision would seem sensible.

Approval thresholds

Question 45 - Do you agree with the proposed approval thresholds? If not, please provide details.

We strongly disagree with proposed thresholds for the following reasons:

1. The consultation proposes 60% of the eligible electorate must vote.

This percentage could immediately be impacted by the all-postal decision. If EROs do not receive personal identifiers from residents, they cannot vote. We have based this on the assumption the UK Government will not weaken long-standing postal voting integrity measures.

If eligible electors must be registered on the day the proposal is submitted for examination, some may no longer live in the area at the time of the ballot, and therefore not be motivated to vote.

The electorate may be very small or, in the case of university areas and cities, have a more transient population. This could see one person make the difference between a 59% turnout and a 60% one.

Also, this consultation does not address campaigning and the potential impact of undue influence. We are concerned a threshold could see those in favour 'encouraging' people to vote, or those against, encouraging people not to.

2. It is proposed "at least one voter in at least half of the voting households in the street area votes in favour".

This proposal means local authority COs would need to record how someone voted. This fundamentally changes the principles of a secret ballot. It would mean postal votes would have to be opened in such a way as to show how someone voted.

There is currently no process to record how a vote is cast so serious consideration would need to be given as to how to implement this change.

It also again makes us concerned about 'campaigners'. Will people or groups of people be able to register as 'campaigners'? If so, would they be entitled to attend the

count? Would the qualifying group be able to observe the count? If so, these people would know how each individual has voted. We are concerned this could lead to post-poll issues, including intimidation.

Question 46 – Do you have any views on whether the 2nd threshold should be applied at the relevant local authority’s discretion? If yes, please provide details.

The second threshold says, “at least one voter in at least half of the voting households in the street area votes in favour”.

We do not believe there should be any discretion at a local level. Electoral administrators run polls in accordance with the law. To start making parts of the law optional without any clear guidance as to when to ‘ignore’ the law is not helpful.

In our opinion it is best the same rules apply in all areas and for all polls.

Additional points

1. There is no timescale for when a vote must be held after the examiner instructs a local authority to organise a referendum. For neighbourhood planning referendums (NPRs) including a business element, the timetable is 84 statutory days. It could not be less than this.
2. Street votes could not be combined with any other poll. This could lead to confusion when another election or referendum is being held in the area. There should be sufficient flexibility in the timetable for a CO to avoid postal votes being sent at the same time.
3. A new electoral area would need to be created. It is unclear in the consultation how the electoral area will be confirmed. Could, for example, the qualifying group deliberately seek to exclude some houses from the street area? Who will check that certain properties are not missing from the street area?
4. As is the case for NPRs, street areas may not be within local authority boundaries. If the street area sits across more than one local authority, who would lead on arrangements? We believe legislation would be required to designate a Chief CO (CCO) to provide access to the electoral register for the purposes of a street vote.

5. Postal voting is expensive. The consultation makes no mention of how the referendums would be funded? Can local government costs be recovered from central government, or will the local authority be expected to take all costs on?

Conclusion

We believe the referendum aspects of this consultation are poorly considered. We believe there is significant work needed to make the process fit for purpose. We also feel the Department for Levelling Up, Housing and Communities is not joined up in understanding the burden being placed on local authorities' electoral services departments.

Simon Hoare MP, Parliamentary Under Secretary of State (Minister for Local Government), Department for Levelling Up, Housing and Communities recently said to a House of Lords Committee on Voter ID –

“Rest assured...that we are conscious that we have created new systems and new things to do. We are not ignorant of the new burdens, responsibilities and challenges that this places on those who will implement them. We are not taking them for granted. We are not trying to pile as many straws on to the camel's back before it breaks”⁴

We fear street votes could be the final straw on local authority electoral administrators' backs.

Laura Lock
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23 January 2024

¹ <https://www.gov.uk/government/consultations/street-vote-development-orders-consultation/street-vote-development-orders#referendum>

² <https://www.electoralcommission.org.uk/running-electoral-registration-england/access-and-supply-electoral-register/restrictions-use-full-register>

³ <https://www.gov.uk/government/consultations/street-vote-development-orders-consultation/street-vote-development-orders#examination>

⁴ <https://committees.parliament.uk/oralevidence/13944/pdf/>