

The UK Government's response to the report of the Electoral Commission on the May 2016 elections to the National Assembly for Wales

September 2017

Foreword

I am pleased to publish the Government's response to the Electoral Commission's report on the May 2016 elections to the National Assembly for Wales.

I welcome the Commission's report and the findings from its public opinion research that the majority of voters had a positive view of the electoral process and were confident that the elections were well run. I am grateful for the work of the Commission in supporting this.

This response is set in the context of the Wales Act 2017 that delivers a clearer, fairer and stronger devolution settlement for Wales. The Act provides for an historic transfer of powers to the National Assembly for Wales which includes the devolution of Assembly elections and local government elections in Wales. For the first time the Assembly will be able to determine how its members are elected, the constituencies and regions used in those elections and who can vote in those elections. It will therefore be a matter for the Welsh Government to take forward these recommendations for the next Assembly election. The Government will support the Welsh Government as it takes on responsibility for these powers.

Alun Cairns
Secretary of State for Wales

Introduction

1. The Government is grateful to the Electoral Commission for its report on the administration of the 5 May 2016 elections to the National Assembly for Wales (the “Assembly”).
2. We welcome the Electoral Commission’s research finding that 88 per cent of voters were satisfied with the administration of the elections. The 2016 Assembly elections were combined with the Police and Crime Commissioner elections in Wales. This response addresses the 11 recommendations contained in the Commission’s report on the Assembly elections in Wales. The Government has responded to the Electoral Commission’s report on the Police and Crime Commissioner elections separately.
3. As the Commission notes, the Wales Act 2017 devolves to the Assembly powers to decide the arrangements for future Assembly and local government elections in Wales. For these elections the Assembly will be able to decide the electoral system, the voting age, the number of constituencies and regions and their boundaries, the timing of elections, the eligibility of candidates to stand for election and to sit as Assembly Members if elected and the conduct of the elections themselves. These powers will be devolved as part of the new “reserved powers” model of Welsh devolution on a date to be determined by the Secretary of State in regulations. The Government will also transfer the necessary ministerial functions to Welsh Ministers via a Transfer of Functions Order under section 58 of the Government of Wales Act 2006.
4. In responding to this report, it is important therefore to note that the Assembly and the Welsh Government will be responsible for the administration of the next Assembly elections planned for May 2021 and for implementing most of the recommendations made by the Electoral Commission.

Legislation

Recommendation 1: Timely and accurate legislation in Welsh and English

To ensure greater accuracy, we recommend that a wider discussion is had on the most effective way to check draft regulations for elections in Wales before they are laid leading to establishing a user group to consider any Welsh language regulations during the drafting period. The group should include, but not be limited to, Electoral Commission staff, and representatives of the Wales electoral community.

We would also re-emphasise that all legislation relating to electoral events, including funding legislation is clear (either by Royal Assent to primary legislation, or by laying secondary legislation for approval by the Assembly/Parliament) at least six months before it is required to be implemented or complied with – this would include accurate and timely prescribed forms in both English and Welsh. Any delay to the publication of Welsh

language forms puts elections teams and voters in Wales at a significant disadvantage and can pose a risk to the relevant election.

5. In its report the Electoral Commission highlights errors in the Welsh language forms in the *National Assembly for Wales (Representation of the People) (Amendment) Order 2016*. These errors were subsequently corrected in a further amending order. A thorough review has been carried out of the Cabinet Office's Welsh translation services, and the service provider has changed its procedures to ensure that translation services are accurate in the future.
6. As noted elsewhere, powers over elections to the National Assembly for Wales will be devolved to Wales through the Wales Act 2017. It will therefore be a matter for the Welsh Government to make the necessary provision for the next Assembly election in 2021 including the prescription of forms. The Government will give careful consideration to arrangements for producing Welsh forms for polls that will remain reserved. We already involve electoral administrators in Wales in the production of forms and we will continue to do so including by working with the Commission's Welsh Language Legislation Advisory Group.
7. The Government also recognises the need to have electoral legislation in place in good time to allow for the effective running of polls. Where possible we endeavour to meet the target, along with other partners, to have legislation in place six months before the date of a scheduled poll. However we do not think it appropriate to set an arbitrary time period with an absolute deadline.
8. We note that the vast majority of rules for elections and referendums are well established and understood, allowing administrators and parties to begin preparations before all legislation has been passed. The Government also recognises the importance of communicating any proposed changes well in advance of making legislation both during policy development and during the formal consultation process. In preparing the *National Assembly for Wales (Representation of the People) (Amendment) Order 2016* we engaged with the Electoral Commission, the Association of Electoral Administrators, the Society of Local Authority Chief Executives, electoral administrators in Wales and the Welsh Government.
9. It is important to note that a number of factors can impact on the ability to make all such legislation in advance. These factors are often linked to process, for example, the availability of parliamentary time to debate and approve the draft Orders, or changes to the real-world situation, which are better taken into account closer to the day of the poll. Equally, it is possible for a lacuna or inaccuracy to be found during the six months preceding a poll. We do not think it sensible to impose a blanket ban on making changes within that period, given that changes which could be made can be beneficial to the electorate and/or the effective running of the poll.

Wales Delivery Group

Recommendation 2: Wales Delivery Group

A permanent Wales Delivery Group should continue to meet in order to further improve and streamline planning for future electoral events, and to provide opportunities for discussing key areas of common concern. The Commission will draft terms of reference and seek views from all key partners, with this work beginning by the end of 2016.

Recommendation 3: Colour of the ballot paper

For future elections the Wales Delivery Group should consider the colour of the ballot papers to be used for each election and issue an appropriate recommendation, thus providing ROs and their staff with clarity from an early stage.

Recommendation 4: Regional and cross-authority working

Working on a regional level represents a significant challenge for Regional Returning Officers, Constituency Returning Officers and electoral administrators and it is important that there are strong communication networks and systems in place to facilitate the planning process.

For future regional elections we will facilitate discussion, through the Wales Delivery Group, on how Returning Officers and electoral administrators could work on a cross authority basis to improve decision making and operational effectiveness.

10. The Government welcomes the work of the Electoral Commission's Wales Delivery Group in supporting the planning and delivery of elections in Wales. The Wales Office and Cabinet Office are both represented on the group and will continue to support its work.

Candidacy

Recommendation 5: Commencement of candidacy

The relevant Government should ensure that the date of publication of notice of election should fall on the same day as the dissolution of the Assembly, to avoid a period of time where spending is not regulated.

11. The Government notes the Commission's recommendation. The date of publication of notice of election must be no later than 25 working days before polling day and the Assembly must be devolved 21 working days before polling day. This is a long standing provision set out in the National Assembly for Wales (Representation of the People) Order 2007. The Welsh Government may wish to consider the Commission's recommendation following the devolution of powers over Assembly elections.

Campaign costs

Recommendation 6: Costs relating to an individual's disability and translation from Welsh to English and vice versa

Governments with legislative competence over elections within the UK should amend the definitions of political party and candidate spending so that reasonable expenses that can be attributed to an individual's disability are exempt, (as was recently set out in the revised Political Parties, Elections and Referendums Act 2000 rules for non-party campaigners).

As the PPERA non-party campaigner rules now exempt the costs associated with translating Welsh to English and vice versa, we recommend that equivalent legal provisions should be introduced by the relevant Government/s into the election rules covering campaign spending by political parties and candidates.

12. As we set out in our response to the Electoral Commission's report on the 2015 elections¹, the Government has amended legislation so that personal expenses are excluded from candidate spending limits at the following elections and by-elections: UK Parliamentary elections, Police & Crime Commissioner elections in England and Wales, Greater London Authority elections, Scottish Parliamentary, Welsh Assembly and Northern Ireland Assembly elections and local government (including Parish and Community Council) elections in England and Wales.
13. Personal expenses, which may include reasonable travel and living expenses of the candidate, may also cover disability-related costs. Personal expenses do not count towards candidates' spending limit and are not subject to candidate spending regulation, but candidates must report personal expenses on their spending returns. Current legislation on political party spending does not include any exemptions for disability-related costs or the costs associated with translating Welsh into English and vice versa. The Government agrees with this recommendation in principle in relation to UK Parliamentary general elections. It will be for the Welsh Government to take forward in relation to Assembly elections.

Party registration

Recommendation 7: Registration of party names and descriptions for use on ballot papers

We continue to recommend that where a candidate represents a political party on a ballot paper, it should be clear to voters which party the candidate represents. The legal provisions for registration of party descriptions present risks of confusion for voters and restrict the participation of political parties. The Welsh

¹ The UK Government's response to the reports of the Electoral Commission, the Association of Electoral Administrators and the Royal National Institute for the Blind on the 2015 UK Parliamentary General Election.

Government and other Governments of the UK should work with the Electoral Commission to reform the provisions on party descriptions.

14. The Government is committed to ensuring that it is clear to voters which party a candidate represents and that the legal provisions for the registration of party descriptions facilitates this. The Government will consult with political parties, the devolved administrations, and the electoral commission on this issue.

Candidate spending

Recommendation 8: Transparency and accessibility of candidate spending

To improve transparency and accessibility of candidate spending returns, we have previously recommended that Returning Officers should be required to publish spending returns online as well as through the existing methods of public inspection. We support recommendation 12-5 of the Law Commissions' review 12 of Electoral Law which proposes a method for implementing this change through legislation

15. Article 62 of the National Assembly for Wales (Representation of the People) Order 2007 requires that Returning Officers make available election expenses returns for inspection "at his office, or some other convenient place chosen by him". Whilst this does not expressly reference online provision, it does not exclude it.
16. A change would be required, however, if online publication were to be mandated as the Commission recommends. Such a move would require careful consideration of the practicalities for Returning Officers and the potential implications that could arise from an inconsistency in relation to the publication of expenses between Assembly elections expenses and those relating to other elections for which inspection of expenses returns is covered by primary legislation. The Government will consider this alongside the 2015 AEA recommendation for an online facility for submission of candidates' election expenses returns.

The Commission's powers

Recommendation 9: Extending investigative and sanctioning powers

We continue to recommend extending our investigative and sanctioning powers at major elections for offences relating to candidate spending and donations, including at National Assembly for Wales elections. It will be important for Governments and Parliaments across the UK to work together on introducing the Commission's new powers for different sets of elections.

17. The May 2015 UK Parliamentary General Election and May 2016 elections to the National Assembly for Wales and other devolved legislatures were each the first of their type for which the Electoral Commission was able to exercise the investigatory and sanctioning powers granted by the Political Parties and Elections Act 2009. As such, it is right to consider the extent and use of these powers in light of the experience of those polls.
18. The Government will keep this matter under review. Any change to enforcement powers would also need to consider whether existing procedures provide sufficient time for accurate returns to be made.

Social media

Recommendation 10: Reporting use of social media at future elections

We will give further consideration to how campaigners should report spend on social media at future elections. As spend in this area grows, there is the potential for less transparency if expenditure on social media is not easily identifiable within the spending returns, because social media is not a specific reporting category. This will need to be considered as part of reviewing all of the expenditure reporting categories to ensure that they remain proportionate and relevant to future trends in campaigning. In case any of these changes would need to be implemented through legislation, we recommend that the UK Government and Welsh Government and legislatures should consider the timing needed for implementing changes before the next major elections.

19. The Government notes this recommendation, and will consider it in line with the parallel recommendation in the Commission's UK Parliamentary General Election 2015 campaign spending report (Recommendation 3), carefully. While we recognise the need to ensure that the lists of activities for which expenditure must be reported keep up with developments in campaigning, we note that spending on social media is subject to existing spending and reporting requirements and consider that further work is needed to establish whether and how the specific category of social media should be added to the lists for candidates, political parties and third-party campaigners.

Electoral registration

Recommendation 11: Providing an online registration status check

Providing a way for electors to check their registration status at the beginning of the online registration application process would reduce the action required by voters to keep their register entry up to date, and would also reduce the impact on EROs of processing duplicate applications.

The UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they complete a new application to register.

Any such service would need to carefully manage and protect voters' personal information.

20. The huge volumes of applications to register to vote in the run up to recent polls, such as the EU Referendum and the 2017 general election, illustrate the transformative effect online registration has had in making electoral registration quicker and more accessible than ever before, for millions of people.
21. We know that one side effect of this overwhelmingly positive transformation has been a rise in the number of applications to register to vote from people already registered, particularly when there is a major electoral event such as a Referendum or parliamentary election. These duplicate applications represent an administrative burden for EROs and their staff at what is already a busy time.
22. For this reason, we are committed to exploring what solutions may exist that make life easier for administrators without creating new registration barriers for the citizen. While an online lookup tool is a potential solution, it is clear that this would be highly expensive, would raise potential privacy and data security concerns and could have the unintended consequence of making registration seem more complex and therefore be off-putting.
23. Similar issues were previously found when considering the creation of a 'Co-ordinated Online Record of Electors (CORE)', which would have produced a single database combining data from all of the registers held by EROs. The costs of building and running such a database were disproportionate to its potential benefits and the previous Coalition Government took the decision to cancel that project as it would not have represented value for money to the taxpayer.
24. We do not believe the evidence exists to support the view an online lookup tool is the right solution. Our preferred approach is to gather the evidence we need to identify the best solution. We are doing this by working with the electoral management software suppliers, the electoral community and others with an interest to better understand the impact, scale and cost of the burden created by duplicate applications. We will then analyse the evidence with a view to establishing the best way forward.