



Cabinet Office

Government Response to the Public Administration and Constitutional Affairs Committee Report on Lessons Learned from the EU Referendum

December 2017

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Presented to Parliament
by the Minister for the Constitution
by Command of Her Majesty

December 2017

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**House of Commons
Public Administration and Constitutional Affairs Committee
Lessons Learned from the EU Referendum
Twelfth Report of Session 2016-2017**

Government Response to Recommendations

1. The Government welcomes the Committee's report. We recognise the importance of considering any lessons that can be learned from the EU referendum, for the legislation which governs referendums, the administration of referendums and the machinery of government during the referendum campaign.

Referendums and representative democracy in the UK

Using a referendum as a “bluff call” in order to close down unwelcome debate on an issue is a questionable use of referendums. Indeed, it is incumbent on future Parliaments and governments to consider the potential consequences of promising referendums, particularly when, as a result, they may be expected to implement an outcome that they opposed. (Paragraph 24)

2. The Government has been consistently clear, both before and after the referendum, that it would respect the outcome of the referendum. The Government is also clear that there must be no attempts to remain inside the EU and there will be no second referendum.

3. The current framework for referendums requires primary legislation before any UK-wide referendum can be held. There are thorough parliamentary procedures in place to ensure that any referendum legislation is scrutinised and debated. The European Union Referendum Bill was passed at Second Reading in the House of Commons by large majority (544 to 53).

Referendums are the creations of Parliament and the Government. Parliament and the Government are therefore accountable and must take responsibility for the conduct of referendums, and the fairness of the question, and there should be proper information about, and planning for, either outcome. (Paragraph 26)

4. The Government agrees that it should take responsibility for the conduct of the referendum and the fairness of the question. It did this by introducing the EU Referendum Bill and regulations for the conduct of the poll. The Electoral Commission was required to report on the intelligibility of the referendum question and the Bill adopted the wording of question as recommended by the Electoral Commission.

5. The EU Referendum Act 2015 required the Government to publish a report on alternatives to EU membership, which was published in March 2016 (entitled *Alternatives to membership: possible models for the United Kingdom outside the European Union*).

6. As set out in paragraph 28 below, the Government does not accept that it should have planned for either outcome.

The regulatory framework for referendums

The purdah provisions of section 125 of PPERA play a key role in the fair conduct of referendums and must continue to do so in future referendums. (Paragraph 42)

7. The Government agrees that the provisions of section 125 should continue to play a key role in the fair conduct of future referendums.

PACAC recommends that the Government should bring forward proposals to extend the section 125 restrictions so that they are in force for the full duration of a referendum period of ten weeks, as recommended by the Electoral Commission and so many other respected authorities. (Paragraph 61)

8. The Government believes that the 28-day period to which both ‘purdah’ and the restrictions in section 125 of the Political Parties, Elections and Referendums Act 2000 (PPERA) applied was the right amount of time. There needs to be a balance between the restriction on any government activity that might influence voters and the need for day-to-day government business to take place.

PACAC recommends that the Government bring forward consultative proposals for the redrafting of section 125. These proposals should provide greater clarity as to the status of online publications, for the purpose of the section 125 restrictions, and what constitutes “specifically seeking access” to materials, under the terms of the exception laid out in section 125(3)(a), in respect of online material available from government websites. (Paragraph 69)

9. The Government believes that it is sufficiently clear that the provisions of section 125 of PPERA apply to all methods of publication. However, the Committee rightly identifies that the nature of published material has changed markedly in the years since 2000, and may continue to do so. The arrangements reached for the referendum (whereby publications remained online, but links directing people to them were removed) worked well. The Government believes that any proposals for redrafting should be considered alongside any wider review into section 125 (see paragraph 11 below).

PACAC recommends that the Government undertake a wider review into section 125. Such a review should take into account PACAC’s recommendations that the length of the controlled period be extended, and for the provision to be redrafted so as to provide greater clarity on the question of what constitutes publishing. PACAC agrees with the Electoral Commission that this review should also aim to provide a tighter definition of the kinds of activities that should be restricted during the controlled, and referendum, periods. It should also explore the sanctions that should apply for the purposes of upholding section 125 and the investigatory powers that the Electoral Commission should enjoy to police the application of section 125. (Paragraph 75)

10. As set out above, the Government believes that 28 days is the appropriate length of time. In addition, the Government’s view is that the current arrangements for ensuring and enforcing compliance with section 125 are perfectly appropriate. The public bodies within the scope of section 125 are legally obliged to comply with it during the last 28 days of the referendum period and a failure to do so can be challenged through an application for judicial review.

11. On the question of a wider review, the Government does not agree that it is the opportune moment to review section 125. Firstly, any changes identified by such a review are likely to require primary legislation. As the Committee knows, there is limited

parliamentary time for legislation other than that which is related to exiting the EU. There is a risk that any changes identified by the review would need to be updated due to changes in technology before legislation could be introduced. Any future referendum held under PPERA would require an Act of Parliament, which would provide the opportunity for the incorporation both of best practice from the referendums of the last 12 years and of any other updates to PPERA that are needed because of developments in technology, or other unforeseen changes.

The Electoral Commission and administration of the referendum

PACAC therefore endorses the Electoral Commission's recommendation that the Government should develop an online service to enable people to check whether they are already correctly registered to vote. While PACAC is aware of the technical issues that would need to be overcome to deliver such a service, it would be of invaluable assistance in preventing the Register to Vote website from collapsing due to high levels of demand again ahead of future elections and referendums. (Paragraph 92)

12. We have already introduced technical improvements which mean that a website issue during a peak time is extremely unlikely to arise. These were tested during the 2017 General Election and showed to be effective. As part of continually improving our website, further technological improvements to further enhance resilience may also be implemented.

13. 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. 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 Electoral Registration Officers (EROs) and their staff at what is already a busy time. For this reason, we are committed to exploring what solutions may exist to make life easier for administrators without creating new registration barriers for the citizen.

14. It is not clear that there is widespread citizen interest in checking registration status, nor that offering a look-up tool would affect citizen behaviour in the run-up to a poll. Since registration status is not binary, especially when applications are being processed, it is possible that a look-up tool would generate increased enquiries to EROs thus adding, rather than reducing, burdens.

15. The Committee is right to acknowledge there would be major technical, security and privacy issues around consolidating the registers to allow a live registration check, especially given that a checking tool would require an elector to prove their identity in the course of making an application. Similar issues were found previously 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 coalition Government took the decision to abandon that project as it would not have represented value for money to the taxpayer.

16. Recent exploratory work on the potential costs of a look-up tool have shown that they far exceed the costs of processing duplicate applications. There is also no obvious solution to the technical barriers to implementation. Both factors point towards needing to find an alternative solution, most likely implemented at a local level. We will continue to work with the electoral community in addressing this issue.

PACAC supports the recommendations of the Equal Experts report, in particular in ensuring more frequent performance tests of the website are conducted, including those that test it destruction. (Paragraph 97)

17. The 'Register to Vote' digital service has undergone significant improvements since the incident on 7 June 2016, incorporating many of the recommendations made in the independent review. For instance, a number of significant technical improvements were made to ensure a higher user capacity for the recent polls in May and June 2017 which exceeded any level of previous user demand. These improvements have helped to further strengthen the resilience of the Register-to-Vote service and its ability to respond to incidents such as that seen on 7 June. This was illustrated at the 2017 General Election - the digital service worked seamlessly and coped successfully with huge volumes of applications (over 2.9 million were submitted between 18 April and 22 May 2017) including a record number of applications (622k) on the registration deadline day itself.

18. Rigorous performance testing of the website has been an integral element of this work. Immediately following the incident on 7 June 2016, an extensive programme of system performance testing was instigated for the Register to Vote website. This testing was completed over a three month period and covered a range of scenarios, up to and including testing to destruction. The service infrastructure was then migrated to a new service provider in December 2016, and performance and system testing of this new platform was an intrinsic part of the migration plan. The migration implementation was approved after satisfactory completion of the system testing.

19. Going forward we are completing regular quarterly testing and ad-hoc tests following any relevant system changes. We also carried out testing as part of our preparations for the polls in May 2017 and the 2017 General Election. The testing plans do include different scenarios and capacity testing and they have been developed incorporating the recommendations from the Lessons Learned Review and in consultation with our technical advisers and Government Digital Service (GDS) colleagues.

We recommend that Cabinet Office, the Electoral Commission, local government, GCHQ and the new government Cyber Security Centre establish permanent machinery for monitoring cyber activity in respect of elections and referendums, for promoting cyber security and resilience from potential attacks, and to put plans and machinery in place to respond to and to contain such attacks if they occur. We recommend that the Government presents regular annual reports to Parliament on these matters. (Paragraph 104)

20. The first duty of Government is to safeguard the nation, and we take the issue of cyber security extremely seriously. In advance of the 2017 General Election, measures were put in place to safeguard and protect the UK's democratic processes.

21. Government departments, organisations and institutions all have a role to play in protecting their data and preventing adversaries from accessing information that could be misused. In the run up to the 2017 General Election, the National Cyber Security Centre (NCSC) played a vital role in helping organisations and individuals to do this, by:

- Providing Local Authorities and Political Parties with specific guidance and support to promote resilience and cyber security best practice;
- Providing Returning Officers with tailored advice on the security and continuity of their essential electoral systems;
- Monitoring key systems for unusual activity in order to enable a quick and effective response should there have been an incident.

22. The Cabinet Office convened a dedicated monitoring and response cell throughout the election period to ensure that any risks emerging in the immediate run-up to and during the election itself were coordinated effectively.

23. Going forward, the Government is fully committed to continually assessing the threat to UK democratic process and implementing further measures to mitigate these risks. The Government will continue to work closely and collaboratively with the Electoral Commission and the Association of Electoral Administrators (AEA) to achieve this. The Government will also continue to respond in the usual way to Parliament on questions as they arise.

We recommend that the Electoral Commission undertake a review of the designation process to examine where greater transparency could be achieved. This review should include consultation with campaigners from each of the campaigns that sought designation during the EU referendum. It should address whether earlier designation would have been fairer, and whether there should be a more explicit fit and proper person test for those applying for designation. (Paragraph 135)

24. The Government will work closely with the Electoral Commission on any review of the designation process.

The machinery of government during the referendum

We recommend that, in the event of a future referendum where Cabinet collective responsibility is relaxed, any guidance should be more precise as to the support that civil servants should not provide to dissenting Ministers, including a list of official departmental papers that would not be made available to those Ministers. All Ministers should continue to receive factual information in relation to the work and remit of their departments. (Paragraph 155)

25. The then Government set out its position on the EU Referendum. It is a clear requirement of both the Constitutional Reform and Governance Act and the Civil Service Code, that the Civil Service supports the government of the day to deliver its policies. This is why it was right and proper for the Civil Service to support the Government's position.

26. With the exception of papers relating to the EU Referendum, Ministers opposing the Government's position received full civil service support on all other official business in the normal way. No complaints were received from Ministers regarding the way this process was handled.

27. The guidance provided to civil servants and Ministers on the suspension of collective responsibility was in line with that issued during the 1975 referendum.

We recommend that in the event of future referendums civil servants should be tasked with preparing for both possible outcomes. While we recognise the important distinctions between General Elections and referendums, these preparations should include pre-referendum contact between the two designated campaigns and the Civil Service, along the lines of pre-General Election contact between opposition parties and the Civil Service. It should be reasonable to presume that the sitting Prime Minister and his/her administration will continue in office and take responsibility for the referendum result in either eventuality. (Paragraph 173)

28. The Civil Service supports the Government of the day to implement its policies. It is a matter for the Government of the day to decide how the Civil Service should prepare for the possible outcomes of future referendums (regardless of the issue).

29. During a General Election campaign, it is important that a formal process allows the Civil Service to have confidential contact with Opposition spokesmen about the implications of their policies on the organisation of departments. This is to ensure that, in the event of a change of government, the Civil Service is able to provide incoming Ministers with advice on their policies, to ensure there is a smooth transition.

30. The Government does not believe that an equivalent confidential process ahead of referendums is either necessary or practical. It is for the Government of the day to implement the outcome of any Referendum, irrespective of their policy position during the preceding campaign. The Government will continue, whatever the outcome of the referendum.

We recommend that the Government heed the lessons from this referendum of the implications of the use of the machinery of government during referendums on public trust and confidence in the institutions of government. (Paragraph 178)

31. The Government accepts the importance of considering any lessons that can be learned from the operation of the EU referendum. However the Government remains confident that the proper, impartial conduct of the Civil Service was maintained throughout this period.

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