

## Consultation response form

### Consultation on Electoral Reform

Please return this form to reach the Welsh Government no later than 10 October 2017

If you have any questions, please email:

RLGProgramme@wales.gsi.gov.uk

<b>Consultation on Electoral Reform</b>	
<b>Date</b>	10 October 2017
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#### Covering note

I am an academic based at the University of East Anglia whose research focusses on electoral management and administration. I currently serve as a Lead Fellow to the All Party Parliamentary Group on Electoral Modernisation in Westminster and have given written/oral evidence to many select committee enquiries. This most has recently included evidence to the Scottish Parliament Local Government and Communities Committee's Short Inquiry on Returning Officer Fees. I am therefore writing to submit my response to the consultation based on my research. I am more than happy to advise the enquiry further and answer any questions that you might have.

## **Q5 – Should Electoral Registration Officers have a greater range of sources available to them to assist citizens to be added to the register?**

There are many reasons why citizens do not vote. However, one reason is that wish to take part in the democratic process, but they are not registered because either:

1. **They already think that electoral registration is automatic.** Research has shown that citizens often don't register because they think that the government 'knows about them' because they pay their council tax and access other government services.<sup>1</sup> Research has also shown that when election-day arrives, citizens regularly attend polling stations to vote but they are turned away because their names are not on the electoral register. At the 2015 general election, two-thirds of polling stations turned away at least one voter.<sup>2</sup> This was also a common problem at the Brexit referendum.<sup>3</sup>
2. **They lack sufficient time to register.** A common research finding is that when the electoral registration process is made more convenient, more people register and then go on to vote.<sup>4</sup>

Moving towards a system in which the electoral registration process is automatic is therefore highly recommended. The influential report, *Getting the Missing Millions back on the Electoral Register*<sup>5</sup> helped to establish some cross-party support for this.

It is therefore an absolute priority that Electoral Registration Officers should be given access to a greater variety of sources so that they can keep the electoral register accurate and complete.

## **Q6 – Which data sources do you think should be used by Electoral Registration Officers?**

Data could be taken from the DWP database to automatically register 16 year olds when they are given their national insurance number.

For the wider population, utility information from the private sector could be made available to Electoral Registration Officers. Other information might

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<sup>1</sup> Toby S. James (2014) '[Electoral Management in Britain](#)' in Pippa Norris, Richard Frank and Ferran Martinez I Coma (eds) *Advancing Electoral Integrity* (New York: Oxford University Press).

<sup>2</sup> Alistair Clark and Toby S. James (2017) '[Poll Workers](#)' in Pippa Norris and Alesandro Nai (eds), *Watchdog Elections: Transparency, Accountability, Compliance and Integrity*. Oxford and New York: Oxford University Press.

<sup>3</sup> Alistair Clark and Toby S. James (2017) '[Fair and Free? Electoral Administration in the 2016 EU Brexit Referendum.](#)' Paper prepared for the Midwest Political Science Association Conference, Chicago, and the UK Political Studies Association Conference, Glasgow, April 2017, with Alistair Clark.

<sup>4</sup> Toby S. James (2012), *Elite Statecraft and Election Administration*, Palgrave, Basingstoke, chapter 2.

<sup>5</sup> James, T.S., Bite the Ballot and Clear View Research (2016) '[Getting the missing millions back on the electoral register.](#)' the All Party Parliamentary Group on Voter Registration, April 2016, with Bite the Ballot.

include DVLA records, NHS records and other data sources that they feel would be useful.

One approach to making the data available would involve legislation being enacted so that it is transferred automatically to Electoral Registration Officers. Another approach would be for citizens to be prompted to register to vote when they access other government services. This system has been used in the US so that citizens are prompted to register to vote when they renew their drivers licence. This generates millions of registrations every year.<sup>6</sup>

**Q7 – Should a wider range of local authority staff be empowered to assist citizens to obtain registration through access to the local government register and have the ability to amend it?**

If citizens are not registered automatically when they access other government services, then they could be prompted to do so by local authority staff in other departments.

To allow them to update and amend records may create quality control issues, however, that could compromise the completeness and accuracy of the register. Statutorily, the Electoral Registration Officer is responsible for the register. However, systems could probably be easily designed to allow the Electoral Registration Officer to review and approve/decline changes made by staff in other teams. Piloting and this would be a sensible first step.

**Q8 – What controls should be put in place to ensure the Electoral Registration Officer maintains overall control of the register?**

The Electoral Commission has previously used a performance management system to ensure that Electoral Registration Officers were undertaking every step to maintain the register. The performance of EROs was then made public online for citizens to check. An evaluation of this performance management system found that it was very effective at incentivising Electoral Registration Officers to introduce measures set by the Electoral Commission.<sup>7</sup>

The Electoral Commission revised the performance standards in 2016.<sup>8</sup> There is therefore scope for evaluating whether Electoral Registration Officers in Wales are meeting these standards and whether they are finding the standards useful in improving their practice.

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<sup>6</sup> Toby S. James (2012), *Elite Statecraft and Election Administration*, Palgrave, Basingstoke.

<sup>7</sup> Toby S. James (2013) 'Fixing U.K. Failures of Electoral Management', *Electoral Studies*, 32(4), December 2013, p. 597–608

<sup>8</sup> [https://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0004/198949/New-performance-standards-for-EROs-March-2016.pdf](https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/198949/New-performance-standards-for-EROs-March-2016.pdf)

**Q9 – Should the individual registration rules be relaxed to allow for block registrations in certain circumstances, protecting the right to vote for populations otherwise at risk of exclusion?**

Research on the anticipated effects of individual electoral registration warned that it would reduce levels of electoral registration significantly. This effect was expected to be especially high on young people.<sup>9</sup> Analysis of the effects showed that, overall, because of other measures that were simultaneously introduced, there was no major *overall* decline in levels of electoral registration. There was a major effect by age, however. As Table 1 shows,

Age group	Completeness of the electoral register (%)		
	2014	2015	Change during introduction of IER
16-17	51	45	-6
18-19	76	65	-11
20-24	70	67	-3
25-34	74	70	-4
35-44	85	82	-3
45-54	91	90	-1
55-64	93	93	0
65 plus	95	96	+1

Table 1: Changes in registration rates after the introduction of IER. Source: James and Sidorczuk<sup>10</sup>

The effects of individual electoral registration have also been more profound than previously thought. It has been much more resource intensive and been very expensive for local authorities to implement.<sup>11</sup> This had many side-effects such as Electoral Registration Officers ceasing to undertake voter outreach activities.<sup>12</sup>

Measures to redress the decline in registration levels amongst young people are therefore urgently needed. The block registration of students in university accommodation by their vice-chancellor is one such measure. Alternatively, they could be registered when they complete their university registration form each year.<sup>13</sup>

<sup>9</sup> Toby S. James (2014) ‘The Spill-over and Displacement Effects of Implementing Election Administration Reforms: Introducing Individual Electoral Registration in Britain’, *Parliamentary Affairs*, 67 (2): 281-305;

<sup>10</sup> Toby S. James and Oliver Sidorczuk (2016) ‘[Missing Millions](#)’, *Fabian Review*, 2 August 2016.

<sup>11</sup> Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

<sup>12</sup> Toby S. James and Tyrone Jervier (2017) ‘[The cost of elections: The effects of public sector austerity on electoral integrity and voter engagement](#)’, *Public Money and Management*, volume 37(7).

<sup>13</sup> Toby S. James, Josh Dell and Lord Rennard (2017) ‘[Too late for GE2017 – but now universities will have to play a role in registering students to vote](#)’, *Democratic Audit*, 2 May 2017.

It also makes sense to directly register citizens at other institutions at risk of being excluded. To not do so would risk people being missed off the register. It also involves a lot of unnecessary expense chasing people to register to vote, when simple, efficient solutions are available.

**Q10 – Should we place a duty on Electoral Registration Officers to consider whether any individual groups within their electoral area should be specifically targeted in registration campaigns?**

The Electoral Commission already has performance standards requiring Electoral Registration Officers to reach particular groups. As noted above, these are very effective at helping them to do this work.

One reason why Electoral Registration Officers do not undertake such work is the lack of available resources. Research has shown that they are increasingly over-budget. Looking at the percentage of the budget that was spent by local authorities over the period from 2010-11 to 2015–16, we found that electoral services were usually within their budget for the first four years, but this situation worsened over time. In 2015–16 the average spending was 129% of the annual budget. One of the effects of this is to reduce their voter outreach work.<sup>14</sup> There should therefore be a detailed consideration of the funds that local authorities are providing their Electoral Registration Officers. An important part of this would be a requirement for Electoral Registration Officers to publish their budgets and spending. At present, they only give this information on a voluntary basis because they are exempt under the Freedom of Information Act. This provision should be reviewed.<sup>15</sup>

**Q11 – Should we introduce arrangements so that agencies who are aware of people moving have a duty to inform the Electoral Registration Officers?**

Yes, as noted in question 5, this could have a very positive effect.

**Q12 – What are your views on the development of a single electronic register for Wales?**

There is a very strong case for a single *UK-wide* electronic register. At present there are many local registers. Combining these would allow duplicate registrations to be eliminated, possible fraudulent applications to be identified and checked, and missing unregistered voters to be identified. It would also allow innovative and modern practices to be developed such as electronic poll books. At present voters have to vote in a designated polling station because

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<sup>14</sup> Toby S. James and Tyrone Jervier (2017) '[The cost of elections: The effects of public sector austerity on electoral integrity and voter engagement](#),' *Public Money and Management*, volume 37(7).

<sup>15</sup> Toby S. James and Tyrone Jervier (2017) [The Cost of Elections: Funding Electoral Services in England and Wales](#), ClearView Research: London, with Tyrone Jervier, June 2017.

only paper copies of registers are used. With a single electronic register, technology could be developed to allow them to in any polling station.<sup>16</sup>

A single electoral register should therefore be welcomed as it would have many of these advantages for Welsh local government elections. The new combined register could be used as a datasource for Electoral Registration Officers to check the accuracy and completeness of the parliamentary election in Wales.

### **Q18 – Should councils be able to choose to use all-postal voting at council elections?**

I wrote an evaluation of the pilots of all-postal voting in the UK 2000-2004. These suggested that all-postal voting could have a very significant positive effect on turnout in local and European elections. In many cases turnout rose in the pilots by 50 per cent compared to the previous election.<sup>17</sup> It could therefore have a major effect on turnout in Welsh local elections. All-postal elections have taken place around the world in US states such as Oregon and Washington.

Concerns have been raised about whether postal voting creates vulnerabilities for electoral fraud, however many of the loopholes that existed have been closed by earlier legislation.

### **Q19 – Should it be subject to pilot exercises first?**

Yes, there are advantage in undertaking pilots first and having the pilots evaluated by independent academic research, before proceeding on a permanent basis.

### **Q20 – Should councils be able to operate all-postal voting in an individual ward or a number of wards within a council area?**

For the purposes of consistency there should be a single practice across Wales. This would make it easier for voters to understand.

### **Q21 – Should electronic voting be enabled at local elections?**

Local authorities are under significant financial pressure, as noted above. Research has shown that in 2015–16 the average spending was 129% of

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<sup>16</sup> James, T.S., Bite the Ballot and Clear View Research (2016) '[Getting the missing millions back on the electoral register](#),' the All Party Parliamentary Group on Voter Registration, April 2016, with Bite the Ballot.

<sup>17</sup> Toby S. James (2011) '[Fewer “costs”, more votes? U.K. Innovations in Electoral Administration 2000-2007 and their effect on voter turnout](#)', *Election Law Journal*, 10(1), p.37-52.

the annual budget.<sup>18</sup> The prospect of electronic voting to make savings should certainly be explored.

A further advantage of electronic voting is that it would allow the use of electronic poll books. At present citizens can only vote in their designated polling station to ensure that they do not vote more than once. However, electronic voting machines could be connected to the internet to prevent double voting.

### **Q22 – Should remote voting be enabled at local elections?**

Remote internet voting was piloted in the UK in 2002, 2003 and 2007. This allowed citizens to cast their vote from any personal computer with an internet connection using personalised information provided on their polling card. My evaluation noted that the effects of internet voting are difficult to identify because other electronic and nonelectronic pilots were often run simultaneously. When all-postal voting was available in 2003, 8.5 per cent of votes were cast via the internet. When all-postal voting was not available, this figure went up to 14.8 per cent. Internet voting was much more frequently used when it was available up until the close of the poll (in many pilots it was unavailable on election-day).<sup>19</sup> Overall, however, the evidence that internet voting increases turnout is currently limited. It might simply make it easier for those who already vote.

### **Q23 – Should electronic counting be introduced for local elections in Wales?**

The consultation paper rightly notes problems in Scotland in 2007 and lessons should be carefully drawn from there.

### **Q24 – Should mobile polling stations be enabled at local elections?**

See Q25.

### **Q25 – Should we enable returning officers to make use of polling places in addition to fixed polling stations?**

Mobile voting has been piloted before. In three pilots, all in 2000, mobile voting booths were deployed around the authority area to allow the public to vote in person. These were used by only a handful of voters (91, 652, and 414) and therefore had a negligible effect on overall turnout. Given the low number of

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<sup>18</sup> Toby S. James and Tyrone Jervier (2017) [The Cost of Elections: Funding Electoral Services in England and Wales](#), ClearView Research: London, with Tyrone Jervier, June 2017.

<sup>19</sup> Toby S. James (2011) 'Fewer "costs", more votes? U.K. Innovations in Electoral Administration 2000-2007 and their effect on voter turnout', *Election Law Journal*, 10(1), p.37-52.

pilots, there might be scope for revisiting this. But there is currently limited evidence that it could boost turnout.<sup>20</sup>

**Q26 – Should we enable local elections to be held on more than one day and on days other than a Thursday?**

There were some pilots of advanced voting in the 2000s, where citizens could vote in advance of election-day. There was little evidence that these led to an increase in turnout.<sup>21</sup> The lessons from overseas, however, is that advance voting and Sunday elections can increase turnout. Advance voting is particularly popular with young people.

**Q29 – Should electors attending a polling station be required to produce ID before they are allowed to vote? If so, what types of identification should be accepted?**

Existing research has so far shown that electoral fraud in polling stations is very rare and much less common than is reported by the media and claimed by politicians. In a study of the 2015 general election, less than one per cent of poll workers were concerned about activity in their polling station.<sup>22</sup>

In contrast, studies from overseas have shown that voter identification requirements can lead to lower turnout.<sup>23</sup> Introducing voter ID requirements to Welsh local elections doesn't therefore currently seem to be a proportionate response.

If voter ID requirements are introduced then a voter identification card should be introduced, following the model used in Northern Ireland. Under this system citizens are provided a form of ID free of charge. Lessons may also be drawn from the forthcoming voter ID pilots in the May 2018 English local elections.

**Q30 – Do the advantages of requiring ID outweigh the risk of deterring voters?**

See Q29.

**Q38 – Do you agree that the statutory chief executive role should include that of returning officer?**

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<sup>20</sup> Toby S. James (2011) '[Fewer "costs", more votes? U.K. Innovations in Electoral Administration 2000-2007 and their effect on voter turnout](#)', *Election Law Journal*, 10(1), p.37-52.

<sup>21</sup> Toby S. James (2011) '[Fewer "costs", more votes? U.K. Innovations in Electoral Administration 2000-2007 and their effect on voter turnout](#)', *Election Law Journal*, 10(1), p.37-52.

<sup>22</sup> Alistair Clark and Toby S. James (2017) '[Poll Workers](#)' in Pippa Norris and Alessandro Nai (eds), *Watchdog Elections: Transparency, Accountability, Compliance and Integrity*. Oxford and New York: Oxford University Press.

<sup>23</sup> Toby S. James (2012), *Elite Statecraft and Election Administration*, Palgrave, Basingstoke, chapter 2.

It is common for local authorities to appoint someone other than the chief executive

Also see Q39

**Q39 – Do you agree that any addition to salary in recognition of returning officer duties should be a matter for the local authority to determine?**

I gave extensive (written and invited oral) evidence to the Scottish Parliament in 2016 about the role of the Returning Officer and the fees that are paid to them. The findings from that enquiry might be useful for reference.<sup>24</sup>

There are several arguments in favour of the returning officer receiving a fee.

1. It should be noted that the Returning Officer do an exceptionally difficult job. They also do this exceptionally well. The job has become more difficult in recent years owing to:
  - Increased volume and complexity in electoral law
  - The need to work with a greater variety of stakeholders
  - Rising public criticism, especially through social media.
2. Returning Officers are personally liable for the conduct of the poll. If they are guilty of any act or omission in breach of their official duty then they are liable on summary conviction to a fine. They therefore face considerable personal risk.
3. The Returning Officer fee is given in recognition that they do their role in an independent capacity from their role in local government.
4. Returning Officers sometimes use their fee to pay more junior staff.

There are several arguments in favour of the fee being removed.

1. There would be considerable savings for the Welsh government. Electoral services are under severe financial pressure and funds could be used elsewhere.
2. Some Returning Officers are earning very vast sums. Research has shown that the median pay band in 2016 was £50,000-£54,999.<sup>25</sup> Elections are now much more frequent than they were which means that they are earning many more additional fees, on top of these reported fees, in their capacity as returning officer.
3. Negligible job market effects. Reducing (or eliminating) pay for additional responsibilities might be expected to reduce motivation, job satisfaction and performance for most occupations and positions. However, it is not likely to be the case for Returning Officers, given that they remain personally liable for the poll and will also be motivated by a public service ethic.

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<sup>24</sup> <https://tobysjamesdotcom.files.wordpress.com/2013/11/toby-james-evidence-on-returning-officer-fees.pdf>

<sup>25</sup> Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

On balance, a first immediate effect should be greater transparency in the process. The Maximum Recoverable Allowance is published, but it is not clear how much money Returning Officers do take and how much they give to junior staff as 'overtime'.

**Q40 – Should Welsh Government move to a system of calculating Assembly election costs on an agreed formula, based on the size of electorate?**

As noted in several places in this response (e.g. Q46), there is a need for a fundamental review of how elections are funded. Any agreed formula should be transparent and take into consideration the cost pressures identified by being facing by local authorities.

**Q46 - We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

A common theme in my evidence above is the financial constraints that local authorities are facing running elections and the lack of information about how money is spent, as flagged in Q10. The committee could consider the financing of elections in more detail.<sup>26</sup> I would therefore like to draw your attention to a recent research report that made recommendations including that:

- There should be a fundamental review of the financing of elections and electoral registration in the UK.
- Local authority election budgets and spending should be routinely published to the public in a standard accounting practice to ensure transparency. Electoral Registration Officers are not a public authority under the Freedom of Information Act 2000 and, as such, are exempt from the disclosure requirements imposed by it. The advantages and disadvantages of this provision should be reviewed.
- Data on local authority election should be used to identify the most cost efficient organisations so that best practices can be identified and shared. Under-resourced local authorities should be identified and sufficient funds allocated to their budgets.
- Practices such as automatic registration and re-registration should be piloted to identify efficient ways to compile a complete and accurate register.

Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

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<sup>26</sup> Toby S. James and Tyrone Jervier (2017) [The Cost of Elections: Funding Electoral Services in England and Wales](#), ClearView Research: London, with Tyrone Jervier, June 2017.

Keep my response anonymous