

Response to the Scottish Government's Consultation Paper on Electoral Reform

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CONSULTATION ON ELECTORAL REFORM

RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

QUESTION 3: Do you agree that the Electoral Management Board and the Board’s Convener should be given the same functions in relation to Scottish Parliament elections as they already have for local government elections?

The Electoral Management Board has been a major success for Scotland since it was first launched. One major challenge that electoral officials face can be the absence of a community through which they can get advice and learn best practices from peers. In some parts of the UK, such a community is sometimes lacking. The Scottish EMB has helped to forge this and by many measures, electoral administration is running more smoothly than in other parts of the UK. It discharged its functions very successfully in the Scottish Independence referendum and has a very positive reputation. It therefore makes sense to extend its powers to Scottish Parliament elections.

QUESTION 5: Should the Returning Officer appointment for Scottish Parliament elections continue to be on an appointment on a personal basis, independent from Scottish Government and local authority control?

AND

QUESTION 6: Should the role of the Returning Officer become part of the job description of local authority Chief Executives? (This is not currently the case and would require renegotiation of terms and conditions.)

It should be noted that Returning Officers do a very good job – and this is despite a rise in recent challenges. My research has suggested that these challenges include:¹

- **The volume and complexity of electoral law has increased.** There has been a considerable increase in the legal complexity of elections in Britain as a result of a rise in the frequency of elections and types of elections since 1997. Across the UK, in addition to Westminster, local government, parish council, and European parliamentary elections, there are now elections for the Greater London Council, Scottish government, Welsh government, mayor and police, and crime commissioner and more frequent referenda. Many of the contests are run under a different electoral system. This has added to the complexity of election administration and makes administrative errors and poor organizational performance more likely. As one official explained during my study:

‘Poll management is different . . . One year is very different from the next year. A few years ago . . . a combination of elections was the rarity. Now it’s completely tipped up on its head. and there are often different laws for different types of elections.’

- **More stakeholders.** Electoral officials often face increased problems coordinating the rising number of actors involved in the provision of electoral services. Some staff are often reliant on a small pool of private organizations such as printers, since councils do not have in-house facilities. The outsourcing of this work has not always been successfully completed by private contractors.

¹ 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); Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York); 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.

- **Rising public criticism.** There is evidence that election administration has been increasingly politicized, with local candidates and campaigners making accusations of fraud against other candidates, or malpractice against administrators.
- **The role of social media.** The development of the 24/7 news media and social media have placed additional pressures on electoral administrators by amplifying any mistakes. During the Scottish Independence Referendum, there were many claims being promoted on social media that the count was being rigged, usually without concrete evidence.
- **Austerity.** There has been a broad squeeze on the funding of elections across the UK have put greater pressures on electoral officials.

Significant reform of their roles is not therefore needed. The independence of Returning Officers is much prized and valued aspect of Scotland's democratic system. It is vitally important that the officials that are running elections undertake their tasks without fear or favour.

The only other way in which this independence could be assured is to give the role of Returning Officer to the Electoral Management Board. Other countries, such as Canada, operate a more centralised system in this way. However, research² shows that centralisation can lead to lost local knowledge, which is important in running elections. There also seems to be no general appetite in Scotland for the EMB to expand in this way, so the status quo is recommended.

QUESTION 7: Do you have any other comments or suggestions about who should have the role of Returning Officer or how Returning Officers should be paid?

Concerns have been raised in the media and Scottish Parliament about the payments that Returning Officers are receiving.³ It has been reported, for example, that they are receiving 'extra payouts'. These concerns need to be taken seriously. At a time when there is widespread austerity in the public sector and most people are not seeing major increases in their incomes, reports of excessive executive pay could undermine popular confidence in the electoral process.

The news coverage has, in many respects, been unfair to Returning Officers. They do a very difficult job at a considerable amount of personal risk. A financial payment would seem to be warranted given that it is a job that they do in addition to their other tasks. It is not a 'bonus' akin those received in the private sector at a corporate level. It is payment for their work

Some Returning Officers pay their staff for the additional work that they do at election-time from this fee. Research on working in electoral services has found that they can be highly pressured environments where staff work a very high number of additional hours, especially around the time of an election.⁴ My forthcoming book reveals that half of electoral officials considered leaving their jobs within the year running up to February 2016.⁵ Removing the fee could directly affect junior officials and have negative knock-ons for morale and equity in electoral services

Nonetheless, the current system might not be fit for purpose any more for four reasons:

² Toby S. James (2017) 'The Effects of Centralising Electoral Management Board Design,' *Policy Studies*, 38(2), pp.130-148.

³ BBC News (2016) 'Call to reform Scottish election chief payouts', <http://www.bbc.co.uk/news/uk-scotland-36161189>, 5th May 2016

⁴ Alistair Clark and Toby S. James (2016) 'An Evaluation of Electoral Administration at the EU Referendum,' Electoral Commission, September 2016, <http://www.electoralmanagement.com/wp-content/uploads/2014/04/Clark-Jame-EUREF-Final-Report.pdf>.

⁵ Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

- The frequency of elections has increased which has meant that payments have become more frequent and in large authorities *could* be excessive.
- There seems to be an imbalance in the formula, with much more money is rewarded to those Officers in urban, highly populated areas. However, challenges can be as substantial, albeit different, in more remote areas.⁶
- There is an absence of transparency. The maximum recoverable allowance (MRA) that Returning Officers could claim is set out in a statutory instrument. The amount that they claim and for what purpose is not routinely reported, however. Journalists therefore often inaccurately cite the MRA in the press, which fuels public concern. Returning Officers are currently exempt from the Freedom of Information Act – so there is no available method for collecting this information.
- There is evidence that electoral services, as a whole, are unfunded.⁷ There is therefore scope for systematically redistributing some funds either to more junior staff or other aspects of the electoral process.

It is therefore recommended that:

- The amount and purposes for which money is spent under the Returning Officer Fees and Charges is routinely and swiftly reported so that there is greater transparency. This would enable a more informed discussion about Returning Officer payments and may allay concerns raised by journalists. It would also be helpful for historic data to be made available.
- The current formula for paying returning officers is reviewed and reformed, with view to a more equitable distribution.
- Savings are made available to invest in other areas of elections or overtime for more junior staff.
- Freedom of Information exemptions for Returning Officers are reviewed/removed in consultation with Westminster.

QUESTION 12: Voting Machines

Would you be happy to use an electronic voting machine in a polling place instead of a traditional ballot paper? Would you like voting to be possible on more than one day? Would you like to be able to vote at any polling place in Scotland? Do you have any other comments?

Electronic counting

Electronic counting is not likely to make any meaningful difference to voter turnout. Instead, it speaks to another problem. There is a very significant financial pressure on local authorities. 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.⁸ In this context electronic voting *could*

⁶ Toby S. James (2014) 'Electoral Management in Britain' in Pippa Norris, Richard Frank and Ferran Matinez I Coma (eds) *Advancing Electoral Integrity* (New York: Oxford University Press); Toby S. James (forthcoming), *Comparative Electoral Management: Performance, Networks and Instruments* (Routledge: London and New York).

⁷ 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.

⁸ 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.

generate savings in terms of the staff and some venue hire involved in a count. This would need to be carefully costed, however, as there would be additional costs involving in purchasing and maintaining the equipment.

Voting time

Robust evidence repeatedly shows that making it easier for citizens to cast their vote can lead to small, but significant increases in voter turnout. Advance voting, where citizens can vote before the usual day of the poll, is especially popular with young people. Holding the election at a weekend or on a public holiday could also make a difference.⁹

It is worth noting that the UK has undertaken pilots with some of these innovations. One lesson from these pilots, drawn from my evaluation, was that it was actually all-postal elections that had the biggest effect on turnout. This involved sending a postal vote to citizens automatically instead of asking them to go to the polling station. In the first year of pilots (2000), all-postal voting took place in wards in seven local authorities, and turnout rose in every instance on the previous year. In Gateshead, turnout jumped up from 26.4% in 1999 to 57.3% with all postal elections.¹⁰ If increasing turnout is the aim, then all-postal elections should be considered.

Voting location

One notable innovation in the consultation paper was that reforms could be introduced to allow citizens to vote in any polling place in Scotland. This would be a considerable step forward. At the moment, citizens are restricted to voting at a polling station near where they live, rather than where they work. This would therefore make it more convenient for the citizen. However, it would require technology called electronic poll books. This would involve the electronic register for Scotland being centralised into one database and ICT installed in polling stations which connected to it in real time. Poll workers would then need to update the database in real time. This would require a major investment in infrastructure, but it would be a very positive step forward.

QUESTION 13: Internet and Mobile Phone Voting

If internet or mobile phone voting was available, would you choose to use that rather than vote at a polling place or by post? If internet or mobile phone voting was available, would you be more likely to vote? Would you like voting to be possible on more than one day?

As society changes, it is important that voting methods are continually reviewed to ensure that it is convenient and fits with citizens' everyday life style. For these reasons, I would welcome experimentation with these methods for local elections. The minister has already received a letter calling for these pilots from Webroots, to which I was a co-signature.

It is important to note that the UK has experimented with internet voting before and the analysis of these pilots should be carefully studied when Scotland organises its own pilots. 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

⁹ Toby S. James (2012) *Elite Statecraft and Election Administration*. Basingstoke: Palgrave, p.44.

¹⁰ 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.

available, this figure went up to 14.8 per cent. Internet voting was also much more frequently used when it was available up until the close of the poll (in many pilots it was unavailable on election-day).¹¹ Scotland's pilots should therefore only try to introduce one innovation at a time and pilots should be carefully designed using social science criteria and expertise. If internet voting is possible up until the close of poll then this be very beneficial.

It is therefore recommended that:

- Scotland pilots advance voting, internet voting weekend voting, allowing citizens to vote at any polling station. However, these pilots should be undertaken in separate areas so that systematic comparisons can be undertaken. All-postal elections could also be considered.

QUESTION 23: What other action could the Scottish Government take to widen access to and remove barriers to voting and elected office?

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.¹² Importantly, those areas which have seen cuts in recent years are also less likely to have a public engagement and awareness strategy in place. This suggests that funding cuts are strongly associated with positive steps to build more inclusive elections.

It is therefore recommended that:

- A broader review of the funding arrangements for electoral services and registration is undertaken.

ADDITIONAL RECOMMENDATIONS

The consultation paper touched on a number of areas relating to electoral registration, however there are other important reforms which could be considered.

The full and proper resourcing of elections. As has been noted in previous replies to the consultation, electoral officials are under very significant financial restraint.

Automatic electoral registration

There are many reasons why citizens do not vote. However, one reason is that wish to take part in the democratic process. It has been estimated that there are roughly 7 million citizens not registered at their correct address in the UK. Although the electoral register is often thought to be higher in Scotland, there is still a significant problem and the consultation paper doesn't discuss this. Citizens are often not registered because of a lack of interest in politics. However, often it comes down to two administrative reasons:

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

¹¹ 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.

¹² 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.

pay their council tax and access other government services.¹³ 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.¹⁴ This was also a common problem at the Brexit referendum.¹⁵

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.¹⁶

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*¹⁷ 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. 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 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.¹⁸ It would be relatively easy for the Scottish government to establish a system whereby citizens are asked whether they want to register to vote when they access other public services in Scotland.

A single Scottish electoral register

At present there are many local registers. Combining these into a single register 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 discussed above. At present voters have to vote in a designated polling station because only paper copies of registers are used. With a single electronic register, technology could be developed to allow them to in any polling station.¹⁹

Legal Complexity

¹³ 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).

¹⁴ 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.

¹⁵ 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.

¹⁶ Toby S. James (2012), *Elite Statecraft and Election Administration*, Palgrave, Basingstoke, chapter 2.

¹⁷ 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.

¹⁸ Toby S. James (2012), *Elite Statecraft and Election Administration*, Palgrave, Basingstoke.

¹⁹ 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.

The legal structure for elections is, as the Law Commission has set out, 'complex, voluminous, and fragmented, with many statutes and secondary legislation governing a long list of elections and referendums.'²⁰ Research has shown that this is a challenge that electoral officials face. Any new Scottish laws should be written in a clear and transparent way. The Scottish government could also encourage the Westminster government to accept the Law Commission's recommendations and consolidate electoral law into a simpler format. This would make elections easier to administer.

Workplace conditions

Recent changes to the electoral registration process, combined with increased use of postal votes and an increase in last minute electoral registrations have created some difficult working conditions for staff in electoral services. The electoral administrator matters because organisations have a duty of care to them, and because, as I show in a forthcoming cross-national study, individual level stress, job satisfaction, recruitment methods, training and higher workloads can affect performance of the electoral organisation. Self-reported work overload in UK electoral services is higher than in any of the 40 countries included in the study.²¹ Internal communication fares poorly. Going forward, the Scottish government should therefore work in collaboration with partners to carefully monitor and improve workplace conditions because this can indirectly feed into the experience of voters.

²⁰ Law Commissions. (2016). [Electoral Law: An Interim report](#). London: Law Commissions

²¹ Toby S. James (2017) 'Building Better Elections: The Role of Human Resource Management Practices', Paper presented at Building Better Elections Workshop, organised by the Electoral Management Research Network at the ECPR Conference, Oslo, September 2017. Toby S. James, Holly Ann Garnett, Leontine Loeber and Carolien van Ham (2017) 'Improving Electoral Management: The organisational determinants of Electoral Integrity', presentation to the 14th European Conference of Electoral Management Boards, St Petersburg, May 2017.