

Welsh Government Consultation on the electoral administration and reform White Paper

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This is a submission to the Welsh Government Consultation on the electoral administration and reform White Paper. It is based on prior academic research that I have conducted. I would like to specifically draw the government's attention to two key reports on voter registration and electoral data that have recently been published. These are:

- Is it time for Automatic Voter Registration in the UK?
<https://www.jrrt.org.uk/avr-report-blog/>
- The UK's Electoral Data Democratic Deficit, available here:
<https://www.electoralintegrityproject.com/electoral-data>

My broader research is available here: <https://tobysjames.com/publications/>. Copies of any gated items can be sent on request.

Chapter 1

1. To what extent do you agree or disagree with the six principles for electoral reform of equity, accessibility, participation, improving citizen experience, simplicity, integrity?

Partially Agree

Please explain your answer:

The principles set out here are broadly in line with established international principles of electoral integrity - and those which are used by academic researchers. For example, in my own research I have defined electoral integrity as 'the realisation of principles in the conduct of election that are necessary to support the broader realisation of democratic ideals'. This involves five principles:

- opportunities for deliberation
- equality of contestation
- equality of participation
- electoral management delivery
- institutional certainty and clarity about electoral rules.

With this in mind, I would suggest revising the principles set out in the consultation:

- On 'Equity' I would suggest adding the sentence 'Proactive efforts are undertaken to enhance the participation of groups of citizens with low levels '. The reality is that citizens do not find themselves in equal situations and turnout therefore varies across age, cohort, ethnic, educational and income groups. Uneven access to resources can be a barrier to participation.
- On 'Simplicity' I would suggest adding the sentence that 'Administrative systems should also be as cost effective and efficient as possible and consider the strain on electoral officials.' Given finite resources provided by the public purse, it is important that the cost effective mechanisms are considered.
- On 'integrity' I would suggest adding a sentence that 'Reforms to electoral law should be evaluated using robust evidence'. This can help to ensure confidence and legitimacy is maintained.

I also suggest adding a sixth principle:

- Rule certainty: the rules for elections are not changed closer than six months prior to an election.

There is an important principle that changes to election laws re not introduced close to the election itself, as noted by the Gould principle. Otherwise there might be practical challenges for electoral officials. It can also be unfair to candidates and parties contesting the election. Furthermore, it can lead to accusations that the incumbent government is changing the rules to maximise it's own electoral interests.

Also see:

James, T.S., Alihodzic, S., 2020. When Is It Democratic to Postpone an Election? Elections During Natural Disasters, COVID-19, and Emergency Situations. Election Law Journal: Rules, Politics, and Policy 19, 344–362.. doi:10.1089/elj.2020.0642

Chapter 2

2. Should the Welsh Government commit resource to considering how electronic remote voting could operate for devolved elections?

Yes

Technology is increasingly evolving and it is important for voting methods to use this technology where it can improve the quality of elections. Technology should therefore be kept under review.

There is a careful balance to be made, however, between protecting ballot secrecy, voter confidence and voter turnout.

The case for remote voting is greatest for Welsh electors living overseas because the postal voting system cannot reliably ensure that they can participate at elections. Research has found, for example, that many citizens living overseas were unable vote in the EU referendum because they received their postal vote too late to return. This should be the initial focus of analysis.

3. What impacts, if any, do you think the proposed introduction of an all-Wales database of electoral registration data would have on the electoral process (such as registration and electoral services)?

We have conducted an evaluation of the voter registration system for Wales and the UK. An all-Wales dataset would be an important advance in the ability of Wales to deliver well run elections.

Redress completeness and accuracy deficiencies. Under-registration is a major problem in Wales. The Electoral Commission has estimated that there are between 410,000 and 560,000 people in Wales who were eligible to be on the local government registers but were not correctly registered. The same report estimated that between 200,000 and 330,000 names were inaccurate entries. See: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/accuracy-and-completeness-electoral-registers/2019-report-2018-electoral-registers-great-britain/national-estimates-accuracy-and-completeness>

A major barrier to redressing completeness is the fragmented nature of the electoral registers. It is not possible for respective local electoral officials to easily access the registers across Wales to identify missing names or duplications. An all-Wales register will help to address this. The use of a single national electoral register is a key policy recommendation of the JRRT report on electoral data: <https://www.electoralintegrityproject.com/electoral-data>.

Chapter 3

6. To what extent do you agree or disagree that the franchise for devolved elections should be restated in one bi-lingual Welsh Act?

Strongly Agree

Several research studies have shown that a major challenge that electoral officials face when running elections is the complexity and fragmentation of electoral law. Consolidating this into one piece of legislation is therefore strongly encouraged.

Electoral officials will, of course, still be faced with fragmented laws for UK wide elections - which will often have different procedures. The problem of legal complexity is therefore not entirely solvable by the Welsh government alone.

8. How can we best help people understand they have been automatically registered and feel confident that their data is protected, especially for people who may be vulnerable or wish to register anonymously?

If electors are added automatically to the electoral roll by EROs, then it would be sufficient, but also important, for the ERO to simply write to them to notify them of this. This would be in line with how automatic voter registration has worked

overseas. See: https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf.

It is vitally important that no automatic registrants are added to the open register, as this may be done without their knowledge.

9. To what extent do you agree with the removal of the open register in relation to devolved elections?

Strongly Agree

There are currently insufficient safeguards on who can use the open the register and for what purposes. Major concerns are therefore raised about the open register in our report on UK Electoral Data: <https://www.electoralintegrityproject.com/electoral-data>.

All electoral registers in Wales could be bought by a malign actor (either a political party, private company or overseas actor) to:

- spread disinformation about elections e.g. the election date, how to vote or information about parties and candidates
- micro-target specific groups and discourage them from voting e.g. people living in a certain area who are likely to support a particular party.
- generate detailed social profiles of individuals which can shape their privacy, and which could affect their life opportunities

It is strongly recommended that the open register is therefore abolished. It serves no electoral process and is not widely understood by the public.

10. Should the Welsh Government place a duty on local authorities to have data sharing agreements within the authority itself, and where applicable, with other authorities or organisations?

Yes

This would help them to have access to the key information that electoral officials will need to be able to increase register electors automatically. It will help promote the accuracy and completeness of the electoral register.

11. Are there any specific aspects of automatic registration that should be piloted before we move to an all Wales roll out?

Yes

The white paper focussed on the use of data within Wales, which is an important step. But Wales could use datasets by requesting them from the UK government and drawing up appropriate data-sharing agreements.

A crucial recommendation of the JRRT Report on AVR was therefore that:

- Recommendation #27: National data sources, such as those identified in recommendations 12-26 should be made available to EROs in Scotland and Wales, even if they not made available UK-wide.

The JRRT Report sets out multiple different stages of automatic voter registration, which could be introduced gradually to assess the effectiveness. Each would involve gathering/requesting data on electors when they interact with other Welsh/UK government services,

These recommendations were that:

- Recommendation #13: Citizens are automatically added to the electoral register when they are issued their NINo ahead of their 16th birthday.
- Recommendation #16: Adult citizens are automatically added to the electoral register when they apply or are issued a new NINo.
- Recommendation #17: Citizens should be able to 'opt-in' and effectively register to vote when they apply for a new Student Loan application from the Student Loans Company or make any changes of address.
- Recommendation #20: Citizens should be able to 'opt-in' and effectively register to vote when they apply for a passport and or a change in citizenship status
- Recommendation #21: Citizens should be able to 'opt-in' and effectively register to vote when they apply for a full/provisional driving licences and notify the DVLA of a change of address.
- Recommendation #22: Citizens should be able to 'opt-in' and effectively register to vote when they submit Disability Living Allowance and Attendance Allowance. •
- Recommendation #23: Citizens should be able to 'opt-in' and effectively register to vote when they submit new child benefit claims.
- Recommendation #24: Citizens should be able to 'opt-in' and effectively register to vote when they submit new claims for universal credit.
- Recommendation #25: Citizens should be able to 'opt-in' and effectively register to vote when they submit claims for Indefinite Leave to Remain.
- Recommendation #26: Citizens should be able to 'opt-in' and effectively register to vote when they submit their tax return.

See: https://www.jrrt.org.uk/wp-content/uploads/2020/04/Is_it_time_for_AVR_in_the_UK.pdf

12. To what extent do you agree or disagree that students should have the option to register to vote whilst enrolling at university?

Strongly Agree

Students are an under-registered group because they are mobile. Universities have annual re-enrolment processes which are well suited to combining with voter registration purposes.

12a. Should any data that is provided be subsequently shared, via a data sharing agreement, with the relevant Local Authority's Electoral Services Team?

Yes

Chapter 4

13. Do you agree that a statutory Electoral Management Board for Wales should be established?

Strongly Agree

The Electoral Management Body for Scotland has been very successful at bringing together electoral officials and forging a community of practice and knowledge sharing. Moreover, academic studies have identified a 'Scotland effect' as a result - with higher quality election delivery than in England and Wales.

See: <https://www.tandfonline.com/doi/full/10.1080/03003930.2020.1719075>

14. If answered Strongly Agree or Agree to Question 13, what should its functions be?

It should be the same as the Electoral Management Body for Scotland

15. Should the Electoral Management Board have powers to issue directions to Returning Officers and Electoral Registration Officers?

The Electoral Commission has had this power and used it in the past in referendums. Sometimes this has been to the detriment of electoral administration, but over time, the Commission worked out how to best use the tool.

Evaluating the use of central directions, in my recent book, I found that they would:

- bring more consistent services
- eliminate errors
- share new practices and ideas
- ease implementation

but also:

- increase financial costs

- increase staff time
- overlook local knowledge if misused.
- affect staff morale if misused

See: <https://www.routledge.com/Comparative-Electoral-Management-Performance-Networks-and-Instruments/James/p/book/9781032086422>, chapter 10.

16. Should the Electoral Management Board have the power to issue advice to Returning Officers and Electoral Registration Officers on the carrying out of their functions?

Yes

Please explain your answer:

For the reasons set out above.

17. What are your views on who should be members of the Electoral Management Board and how they should be appointed?

Memberships should include senior, experienced electoral officials. Academics could also be appointed. The posts, however, should be openly advertised and appointments made on the basis of merit and expertise.

18. To what extent do you agree or disagree with our proposals to provide for greater electoral certainty by extending the statutory time during which no final electoral review reports can be published and no electoral review orders may be made?

Strongly Agree

Yes, this is essential.

19a. At which point in the electoral cycle should the Commission be prevented from publishing electoral review reports:

Within twelve months of an ordinary election

39. What types of innovation in electoral administration would you like to see piloted in the future?

Expanded pilots of electronic poll books. They are a vital tool for identifying in real time who has and has not voted. This would enable electors to be contacted and reminded of the close of polls - which could also be piloted.

The creation of digital marked registers based on the electronic books would also be a further important innovation. This would enable civil society groups to mobilise voter participation.

Online candidate registration should be piloted alongside the establishment of a central Welsh elections website.

See: <https://www.electoralintegrityproject.com/electoral-data>.

40. How could we facilitate a more varied mix of local authorities participating in future pilots?

It should be compulsory by order of the Welsh Ministry.

41. What are your views on a power of direction for Welsh Ministers which would enable them to compel a local authority to pilot electoral innovations?

It should be done cautiously and ideally in collaboration with local authorities - who will need sufficient resource to invest in pilots. But if it is necessary to pilot practices then compulsion might be needed.

Chapter 5

45. Should the Welsh Government consider making provision for an online voter information platform? What information should be provided on the platform and who should host it?

Yes

There should be a central portal for Welsh elections. Our JRRT Report identified a serious information gap for electors. It should be hosted by the Electoral Commission- or a new Welsh Electoral Management Board. Long term, it should also connect to a central UK site.

It should contain information on:

- candidates
- voting/registration processes
- results

- complaints processes
- polling station locations
- names of EROs and ROs for respective areas to ensure accountability

See: <https://www.electoralintegrityproject.com/electoral-data>.

46. Who would need to provide information to an online voter information platform and how could they be supported to do so?

We have set out a vision for how this could work in the JRRT report on Electoral Data.

Chapter 6

66. Would you like to see advance voting and /or voting in a range of venues offered for devolved elections across Wales?

Yes

Early voting does not increase turnout substantially - this is clear and well established in the academic literature. However, it does increase voter convenience and the quality of service.

67. Do you support the introduction of an online absent voting application system in Wales? If yes, what would you like to see in place?

Yes

Postal voting does not work for enabling overseas electors to vote, given the electoral timetables and unreliable post. A system of online voting - or at least telephone voting - would appear to be the only possible way of overcoming this. The number of overseas electors will increase in future years given changes to the franchises.

68a. Do you think that such a system would help to reduce the number of postal votes rejected due to errors on PVS' and help raise public confidence in the postal voting system?

Yes

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