



Cabinet Office

**The Government's Response to the Electoral Commission's
Reports on the EU Referendum**

*Incorporating response to recommendations from the
Association of Electoral Administrators*

December 2017

Foreword

I am grateful to the Electoral Commission for its reports on the referendum on the UK's membership of the European Union in June 2016 and I am today publishing the Government's response. I welcome the Commission's overall conclusion that the referendum was delivered without any major issues. I am proud of the administrators who ran this poll and their hard work to ensure this was a well run democratic exercise. The Electoral Commission should also be commended for its part in running the poll and collating the result, in particular the leadership of the former Chair who acted as the Chief Counting Officer for the poll.

The EU referendum was one of the biggest democratic exercises in our history with over 33 million people from England, Scotland, Wales, Northern Ireland and Gibraltar casting a vote. The Government worked closely with local authorities, civil society organisations and partners to reach harder to engage groups and promote voter registration. Prior to the EU referendum their activities contributed to nearly 3 million applications to register to vote being made.¹

It remains crucially important that the Government continues to have a regular and productive conversation with the relevant stakeholders to develop and review electoral and referendums policy, including the Commission and the Association of Electoral Administrators (AEA).

These reports lay out a number of recommendations relating to the EU referendum. I am grateful to all of the organisations that contributed to the effective running and monitoring of referendums, and I hope we can continue to work together to deliver a democracy that works for all.

Chris Skidmore MP
Minister for the Constitution
December 2017

¹ Between 6 May and 9 June 2016 (the extended deadline for registering to vote in the EU Referendum).

Introduction

1.1 On 23 June 2016 a referendum on the UK's membership of the European Union was held across the UK and Gibraltar. This was the fourth referendum, and the second UK-wide referendum, held using the framework set out in the Political Parties, Elections and Referendums Act 2000 (PPERA).²

1.2 The EU referendum was legislated for in the European Union Referendum Act 2015, which received Royal Assent on 17 December 2015. As with other recent referendums it applied, with modifications, relevant provisions in PPERA for the purpose of the EU referendum.

1.3 The Electoral Commission is required by statute to publish a report on any referendum held under the terms of the Political Parties, Elections and Referendums Act 2000 (PPERA), as well as elections to the UK, European and Scottish Parliaments, to the National Assembly for Wales, to the Northern Ireland Assembly and for elections of police and crime commissioners.

1.4 In September 2016 it published a report on the administration of the EU referendum.³ This was followed in March 2017 by a report on the regulation of campaigners.⁴ This Government response covers the 28 recommendations made in these reports.

1.5 Where relevant in this report, we have also addressed a number of recommendations from the report of the Association of Electoral Administrators (AEA) *Pushed to the absolute limit: 2016 – the electoral year never to forget*, which covers the EU referendum and the other polls held in the first half of 2016.⁵ We have already published responses to the other recommendations in the AEA's report in the Government response to reports on May 2016 PCC and GLA Elections⁶.

² In addition, the 2014 referendum on Scottish independence was held under Scottish Parliament legislation that echoed the PPERA framework.

³ Electoral Commission, *Report on the 23 June 2016 referendum on the UK's membership of the European Union*: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/215279/2016-EU-referendum-report.pdf

⁴ Electoral Commission, *Report of the regulation of campaigners at the referendum on the UK's membership of the European Union held on 23 June 2016*: https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/223267/Report-on-the-regulation-of-campaigners-at-the-EU-referendum.pdf

⁵ Association of Electoral Administrators' (AEA), *Pushed to the absolute limit: 2016 – the electoral year never to forget*: <https://www.aea-elections.co.uk/wp-content/uploads/2016/09/aea-rep-2016-pushed-to-the-absolute-limit-executive-summary.pdf>

⁶ The Government's response to the Electoral Commission's reports on the Police and Crime Commissioner and Greater London Authority elections: <https://www.gov.uk/government/publications/government-response-to-reports-on-may-2016-pcc-and-gla-elections>

Legal framework for referendums

2.1 We note the Electoral Commission's recommendation on the legal framework for referendums, namely that:

The UK Government should establish a clear standard legal framework for the conduct and regulation of future referendums

We recommend that important changes which have been applied to the legal framework for recent referendums (including in particular the role of Regional Counting Officers, the requirement for referendum campaigners to report donations during the pre-poll period and rules for campaigners working together) should be incorporated in PPERA to ensure that they will apply for all future referendums.

The UK Government should introduce legislation to make these amendments to PPERA now, rather than waiting until legislation is required for another future referendum.

We also recommend that the UK Government should use the powers provided to the Secretary of State in Section 129 of PPERA to make an Order providing the detailed conduct rules for the administration of any future referendum poll.

The UK Government should introduce this legislation now, rather than waiting until legislation is required for another future referendum.

We reiterate our support for the Law Commissions' recommendations that primary legislation governing electoral registers, entitlement to absent voting, core polling rules and electoral offences should be expressed to extend to national referendums where appropriate, and that secondary legislation should set out the detailed conduct rules governing national referendums (mirroring that governing elections, save for necessary modifications). [Electoral Commission Recommendation 1]

2.2 The Government recognises the benefits of incorporating into PPERA the changes to the legal framework for referendums that have been developed and included in legislation on recent referendums, including the European Union Referendum Act 2015. The Government is considering incorporating these changes into the PPERA framework, but we note that the opportunity to amend PPERA would be subject to the availability of parliamentary time.

2.3 While it may be desirable to amend PPERA to incorporate these changes, and potentially any others following reflection on the EU referendum and any other reports (including the Commission's), new primary legislation to achieve that would be subject to the availability of parliamentary time. Revising PPERA at this point also runs the risk of the provisions becoming out of date, or further revisions being required. Given that a new referendum Act, making modifications to PPERA, would be needed ahead of any future referendum, this could provide a more

suitable legislative vehicle for permanent changes to be made to PPERA.

2.4 The Government also recognises the benefits that a generic conduct order for referendums would bring, and we will consider this issue further. We also, however, note the risk that any generic conduct order made under section 129 of PPERA runs the risk of becoming out of date or requiring amendment for the specific circumstances of any future referendum. In that case, the benefits of this approach over that taken for the EU referendum, where draft regulations building on lessons learned from the 2011 and 2014 referendums were published while the EU Referendum Bill was before Parliament, would be diminished.

Referendum legislation should be clear at least six months before it is required to be implemented or complied with

The UK Government should manage the development and approval of legislation for future referendums (including any secondary legislation containing detailed rules for the administration of the referendum poll and regulatory controls) so that it is clear at least six months before it is required to be implemented or complied with by campaigners or electoral administrators. [Electoral Commission Recommendation 2]

2.5 We note that the AEA has also recommended that election law should be in force six months prior to any poll to which it applies:

Except in cases of unforeseen emergencies and proportionate to the need, changes to election law should not be applicable to any elections within a six-month period from the date the legislation comes into effect. [AEA Recommendation 2-2]

2.6 The Government accepts a six-month gap between any new electoral legislation and the poll or polls to which it applies as an aspiration that it will aim to meet where possible.

2.7 We recognise that it is important to give administrators and electors as much time as possible to prepare for elections and referendums, and to this end we work with relevant stakeholders throughout the process of developing electoral legislation. While it was not possible to pass the relevant regulations six months prior to the referendum on 23 June 2016, we note that the Commission considers that, following the publication of draft regulations during the passage of the the EU Referendum Act 2015, it was able to prepare its guidance and directions for Counting Officers (COs) in sufficient time.

Referendums should not normally be held on the same day as other significant or scheduled polls

UK legislatures scrutinising proposals to hold any future referendum on the same day as other significant or scheduled polls should ensure they are satisfied that voters and campaigners will be able to participate fully in both the referendum and the other polls, and that electoral administrators can deliver both sets of polls. [Electoral Commission Recommendation 3]

2.8 We think that considering the position on a case by case basis is the right approach. There could be instances where proximity of polls could have negative consequences (in terms of turnout and engagement) and so we would not want to automatically rule out the ability to hold those polls on the same day.

Any Government considering providing funding directly to EROs for public awareness ahead of a future referendum or scheduled polls should consult EROs and the Electoral Commission in sufficient time to ensure that effective plans for local and national activities can be developed and implemented. [Electoral Commission Recommendation 4]

2.9 The Government will continue to work with local authorities, civil society organisations and partners with experience of reaching harder to engage groups to promote voter registration. Prior to the EU referendum their activities contributed to nearly 3 million applications to register to vote being made.⁷

2.10 This activity was part of a broader programme seeking to modernise electoral registration and ensure that the electoral registers are as complete and accurate as they can be. We will continue to engage the Electoral Commission in these plans. However, it is important that we retain flexibility to encourage participation in polls, including those called with less than six months notice, as in the case of the EU referendum.

Providing information for voters at future referendums

Governments should make use of all available owned channels to promote voter registration ahead of any major poll.

Ahead of the EU referendum, the UK Government mobilised its departments and associated organisations to make use of each and every available communications channel, platform, media space and real estate to drive voter registration ahead of the deadline.

This provided the campaign with unprecedented visual coverage across the country and reached millions of people for no capital expenditure.

Now that it is clear what can be achieved, this should become standard practice for any Government ahead of each scheduled electoral event. [Electoral Commission Recommendation 5]

3.1 The Government welcomes the recognition of its role in making an important contribution to promoting democratic participation.

3.2 We will continue to use the channels available to us through departments, networks, associated organisations and civil society groups to encourage voter registration, in particular ahead of major polls. For instance, we made use of a

⁷ Between 6 May and 9 June 2016 (the extended deadline for registering to vote in the EU Referendum).

number of Government channels to help promote and augment the Electoral Commission's public awareness campaign ahead of the registration deadline for the 2017 General Election.

3.3 The AEA also made the following recommendation relating to the provision of information:

The UK Government and the Electoral Commission should work together to ensure more effective coordination in the provision of information about future referendums, along with consideration of a joint single booklet [AEA recommendation 8-3]

3.4 The most effective means by which to provide information to voters is likely to vary with the circumstances of each referendum. For any future referendum, the Government will consider what is the most appropriate method, if any, by which it should communicate directly with voters. The Electoral Commission's position as an independent body providing information for voters during referendum campaigns - including through their 'Voting Guide' booklet - may mean that it is inappropriate for it and the Government to provide information in a single booklet.

3.5 On the use of social media to raise public awareness and participation the AEA recommended:

The AEA, Cabinet Office and Electoral Commission and all other key stakeholders review their communication strategies and messaging procedures relating to social media to ensure it is regularly monitored and responded to appropriately, quickly, accurately and with clear messages to the public [AEA recommendation 8-5].

3.6 Social media is a key tool for reaching a wide audience, particularly younger people who may be less likely to be registered to vote. This was reflected in the high volume of Cabinet Office social media transactions prior to the EU referendum: for example there were nearly 3 million video views of content promoting electoral registration across Facebook, Instagram and Youtube.

3.7 The Cabinet Office used the Electoral Commission's Partner Guide to encourage stakeholders to re-share their campaign materials and messages, so that these remained consistent, clear and accurate. In addition a number of civil society organisations were funded to run bespoke activities tailored to under-registered audiences. All commissioned activity was closely monitored and evaluated. In addition we recognise that measuring, analysing and responding to comments posted on social media from organisations or individuals remains a challenge; opportunities and risks should be taken into account as part of routine communications planning. Again, the Government drew from lessons learnt at the EU referendum and continued to utilise social media platforms to help promote voter registration ahead of the 2017 General Election.

[Recommendations for the management and delivery of future referendums and other polls](#)

Northern Ireland should be designated as an electoral region for future UK-wide referendums, with the Chief Electoral Officer appointed as a Regional Counting Officer [Electoral Commission Recommendation 6]

4.1 The legislation for the EU referendum provided for Northern Ireland to be a single voting area for the purpose of the poll and for the Chief Electoral Officer to be the Counting Officer for Northern Ireland who was responsible for the running of the poll there. This approach is in line with section 128 of PPERA and it was considered unnecessary to provide for that person to be appointed as a Regional Counting Officer as well.

4.2 The Government will consider whether any changes should be made to the framework for delivering referendums in Northern Ireland.

4.3 The AEA also made the following recommendation about the administration of the referendum:

The UK Government should consider legislative provision for the appointment of sub-agents for future referendums [AEA recommendation 11-3]

4.4 Referendums held under PPERA have not previously allowed for sub-agents to be appointed by referendum agents. This is a matter we will consider further with the AEA in light of the points they have raised.

Access to the voting process should be improved for overseas electors

We will continue to work with the UK Government and Returning Officers or Counting Officers to identify practical steps which could be taken to improve access to the voting process for overseas electors at the next scheduled poll where they are entitled to vote, including:

- *Ensuring that all Returning Officers or Counting Officers include the correct postage on postal ballot packs for overseas electors, so that they can be delivered to voters and returned as quickly as possible before polling day, including increasing the funding provided by the UK Government to Returning Officers or Counting Officers for this purpose to allow them to use the Royal Mail International Business Response Service.*
- *Explaining the practical implications of different voting methods (such as postal voting or appointing a proxy) for overseas electors, particularly if they are making an application during the last month before polling day, including on the www.gov.uk/register-to-vote website.*
- *We will work with the UK Government and Returning Officers to develop workable and effective proposals, which could be included in the proposed Votes for Life Bill if legislation is required, to make it easier for overseas electors to cast their votes in time to be counted at elections. We will also continue our work with the Electoral*

Coordination and Advisory Board to consider how technology might be introduced into a wider range of election activity. [Electoral Commission Recommendation 9]

4.5 It is the responsibility of Returning Officers and Counting Officers, taking into account any directions or guidance issued by the Electoral Commission, to ensure that postal votes are delivered to electors who live abroad in good time for them to participate in a poll. The Commission gave guidance on when overseas electors should register to ensure they have a realistic chance of casting their postal votes.

4.6 The Government took action in the 2010-15 Parliament to make it easier for overseas electors to vote by post by lengthening the electoral timetable and removing the restriction on issuing postal votes ahead of the postal vote application deadline.

4.7 These changes mean that postal votes at elections can be sent out up to 8 working days earlier than before; and as soon as possible after the close of candidate nominations which is 19 working days before the day of the poll. Electoral administrators prioritise the printing and dispatch of postal votes to overseas electors in accordance with Electoral Commission guidance.

4.8 The AEA recommended that costs should be included in the allocations to Returning Officers (ROs) for polls resourced by the UK Government:

If Fees and Charges Orders remain the mechanism for funding specific elections and referendums, they should cover the additional costs of providing international return postage of postal votes for all future elections and referendums [AEA recommendation 2 - 6]

The Fees and Charges Order should cover all costs associated with the employment of staff including the administration of the pension requirements (if an exemption is not granted) and RTI payroll costs [AEA recommendations 12 - 7].

Overseas electors absent vote arrangements: The use of the international business response licence should be fully evaluated and, if it is deemed appropriate to be used in future polls, the service needs to be improved to provide a consistent approach globally, along with adequate funding being provided in the Fees and Charges Order [AEA recommendation 6-7]

4.9 ROs' (and COs') funding allocations, as defined in Charges Orders (or Regulations), are based on their expenditure at the previous poll of the same type. The current arrangements offer flexibility for ROs and COs in how they deploy these resources to deliver the poll efficiently and effectively. Where circumstances change we will consider whether additional funding should be made available.

4.10 On the requirement to provide an email address as part of the registration process, the AEA recommended:

All applications to register made through the digital service should be required to supply an email address as part of their application. This data

field should be mandatory and not discretionary as at present [AEA recommendation 5-14].

4.11 An application to register does not require an email address to be considered complete. Mandating their supply would disenfranchise those without email addresses or those who do not wish to supply personal contact information. As such, there are currently no plans to mandate the supply of email addresses as part of applications to register to vote.

4.12 On overseas elector registration and “Votes for Life”, the AEA recommended:

The UK Government should consider the registration and absent vote deadlines for overseas electors especially in view of the proposed introduction of legislation to remove the current limit of 15 years [AEA recommendation 5-18]

4.13 The Government is not attracted to different statutory registration and absent vote deadlines for different types of electors. The Government believes that where possible all electors should be treated equitably. We are of the view that better guidance to overseas electors, on the register to vote website and in other communications, is the appropriate way to encourage applicants not to wait until the last minute to register. Looking at how messaging on the register to vote website could be amended to better manage citizen expectations in respect of the absent vote process, particularly for overseas electors, is at the heart of a review of the register to vote website, which the Cabinet Office is currently undertaking.

4.14 The AEA recommended a consideration of the issue of absent voting arrangements for overseas electors:

The UK Government should consider ways in which overseas electors are encouraged, or indeed required, to make suitable absent vote arrangements at the time they register to vote. [AEA recommendations 6-6]

4.15 We agree that it is important that overseas electors are able to make suitable absent voting arrangements to enable them to exercise their right to vote. We took some steps, learning from the EU referendum, which were aimed at encouraging overseas electors to make suitable absent vote arrangements. For example, messaging on the register to vote website was amended leading up to the 2017 General Election to encourage overseas electors to appoint a proxy rather than apply for a postal vote in order to avoid the risk of their postal ballot pack either not being received or returned in time. We would wish to give this recommendation further consideration and consider whether other steps could also be taken to help address this issue.

Online registration and contingency planning

5.1 Both the Commission and the AEA made recommendations relating to the temporary outage of the ‘Register to Vote’ website on 7 June 2016 and the Government’s response.

The capacity of the UK Government's online voter registration website should be tested to ensure it can cope with significant volumes of applications close to the deadline ahead of future scheduled polls

The review, and the Government's plans for ensuring that the website does not fail in similar circumstances, should be published no later than 4 November 2016, six months before the next set of scheduled polls in May 2017. [Electoral Commission Recommendation 7]

Electors should be able to check online whether they are correctly registered to vote

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. [Electoral Commission Recommendation 8]

5.2 We note that the AEA reiterated their 2015 recommendation that on this subject:

The UK Government should review the online service with a view to restricting the same person from registering more than once. In addition, consideration should be given to the possibility of a lookup facility to allow electors to check if they are registered before trying to register online. [AEA Recommendation 5-6]

5.3 They go on to state that:

In light of the volume of duplicate registrations prior to the polls in 2015 and again in 2016, this issue needs to be progressed and addressed urgently.

5.4 On contingency planning the AEA recommended:

The Cabinet Office should urgently develop and test effective contingency plans, which should be shared with the wider electoral community prior to any major poll [AEA recommendation 5-11]

5.5 The Government commissioned an independent Lessons Learned Review in response to the outage of the Register-to-Vote website on 7 June 2016. Its findings were published on Gov.uk in November 2016.⁸

5.6 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. The service now has greater capacity and is more flexible at adapting to unprecedented levels of demand, as was seen before the registration deadline for the EU Referendum.

⁸ Equal Experts UK Ltd, Register to vote website: lessons learned review for the Cabinet Office: <https://www.gov.uk/government/publications/a-clear-and-secure-democracy-register-to-vote-website>

5.7 These improvements help 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 successfully coped 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.

5.8 Additionally, recognising that activities outside our control could affect the operation of the website, we tested a number of scenarios and prepared relevant responses, including disaster recovery options, between the EU referendum and the May 2017 polls and 2017 General Election. This included working closely with the National Cyber Security Centre to ensure that comprehensive protections are in place against malicious attack. Ahead of the May 2017 polls and 2017 General Election, we also monitored performance of the website day and night and ensured technical experts were on hand if any issues were detected.

5.9 In respect of the recommendations related to providing an online service for citizens to enable them to check whether they are already registered, there would be major technical, security and privacy issues around consolidating the registers to allow such a live registration check to take place. These issues centre around the fact that a look-up tool of this nature would require an elector to prove their identity in the course of making an application. 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 Electoral Registration Officers (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 abandon that project as it would not have represented value for money to the taxpayer.

5.10 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 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. However, 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.

5.11 Recent exploratory work on the potential costs of a look-up tool has 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 establishing the best way forward for reducing the administrative burden associated with duplicate applications.

5.12 The AEA made the following recommendations concerning communications:

The Electoral Commission and the Cabinet Office should each develop a communications strategy that provides for various registration and election eventualities [AEA recommendation 3-2]

Both the Cabinet Office and Electoral Commission need to develop and test plans to effectively communicate in emergency situations with EROs and ROs [AEA recommendation 5-12]

5.13 The Cabinet Office recognises that lessons can be learnt from the experience of 7 June 2016, including the need to plan for and oversee more effective communications with EROs and ROs in the event of an incident. We have already developed a generic crisis communications plan which has drawn from the lessons learnt on 7 June 2016. This has been submitted to stakeholders, including representatives of the Electoral Commission and the AEA. These contingency plans for communicating with citizens and administrators, in the event of a website failure, were in place for both the May 2017 polls and 2017 General Election but given that the digital service worked flawlessly throughout this period, these did not need to be activated. We will of course keep these plans under review and ensure that they are in place for future polls.

5.14 The AEA also made two recommendations in relation to registration and the process for an absent vote. Responses to these are set out below.

The UK Government should publish an assessment of the risks associated with any proposed changes to legislation before making any legislative changes in the future [AEA recommendation 5-15]

The AEA has highlighted issues in relation to the European Union Referendum (Voter Registration) Regulations 2016 that amended the European Union Referendum (Conduct) Regulations 2016 in order to extend the deadline for people to register to vote in Great Britain for the European Union Referendum from the end of Tuesday 7 June to the end of Thursday 9 June. These Regulations were brought forward following the temporary outage of the register to vote website on the evening of the registration deadline for the European Union Referendum of 7 June 2016.

Clearly, the Regulations were made in response to a very challenging and particular set of circumstances. The Government acted quickly, but responsibly, working with the Electoral Commission to examine the options and reach the most appropriate and proportionate response to the issue which ensured that those who may have been affected by the issue had a further opportunity to submit an application to register to vote.

These Regulations did not change any other deadline associated with the European Union Referendum. This included the deadline for submitting an application for a postal vote, which closed at 5 pm on 8 June 2016. Changing the postal vote deadline for the Referendum was considered to present too great a risk to the successful delivery and return of postal ballot papers, given the proximity to the poll.

We shall continue to ensure that the implications, including any potential risks, of proposed changes to legislation are fully considered before making any legislative changes.

The Cabinet Office should review the processes and procedures for changing the wording on the www.gov.uk/register-to-vote to ensure the information displayed and any applications sent out automatically are accurate and up to date at all times, including when changes are made as a result of an emergency [AEA recommendation 5-16].

5.15 The register to vote website has transformed citizen engagement in electoral registration, with more than 21 million applications being successfully processed since its introduction. At the time, the EU referendum was conducted on the basis of the largest ever register, and more than 3 million applications were successfully managed between the May elections and 9 June 2016. This transformative effect of online registration has been demonstrated again by 2017 General Election: 93% of the 2.9 million applications submitted between the day the poll was announced and the registration deadline were made online. This culminated in a new record number of entries on the Parliamentary registers which exceeded the previous record from the EU referendum.

5.16 The Cabinet Office recognises the importance of ensuring the information displayed on this website, which is used by vast numbers of electors, is accurate. In the run up to both the polls in May and in June 2016, the Cabinet Office closely monitored the register to vote website, including its content and messaging. The Cabinet Office also worked closely with the Electoral Commission, the AEA and other stakeholders in order to check that the website messaging was accurate and to respond to any suggestions for small changes to wording in as timely a fashion as possible. The high user satisfaction levels experienced in the weeks before the deadline (90%+) are an indicator that the majority of users understood how to use the digital service.

5.17 We continued this approach with the May 2017 polls and 2017 General Election and aim to do so again for future polls. We continued to liaise closely with stakeholders and respond to their concerns as quickly as possible ahead of the registration deadline. However, we also took a more proactive approach to communications during this period by providing regular bulletins to the electoral community on a range of issues. These included—

- providing details of the enhanced support arrangements;
- outlining updates we had made to the register to vote website aimed at reducing duplicate applications and thereby administrative pressures on administrators; and

- sharing intelligence on activity being undertaken by various groups aimed at promoting voter registration in order to help administrators plan locally for sudden spikes in applications.

5.18 We are currently undertaking a review of the register to vote website aimed at consolidating feedback from stakeholders and looking at where changes to messaging or the user journey could be made to benefit both citizens and electoral administrators. It is essential that the right balance is struck between making improvements but not undermining the success of online registration which has made registering to vote easier and more accessible for millions of people - We are therefore focused on ensuring that any changes arising from the review do not create new barriers to registration.

Regulation of campaigners at future referendums

Those eligible to register as a referendum campaigner should be the same as those eligible to register as non-party campaigners at elections [Electoral Commission Recommendation 10]

6.1 This was the case for the EU referendum and the Government will consider whether it should be added to the PPERA framework.

The responsible person should be required to sign the application to register as a referendum campaigner, and be barred from being the responsible person for any other registered referendum campaigner at the same time [Electoral Commission Recommendation 11]

6.2 The requirement for the responsible person to sign the application to register as a referendum campaigner and the prohibition of being the responsible person for multiple registered campaigners were in the EU Referendum Act 2015 and the Government will consider whether they should be added to the PPERA framework.

The Commission should be able to reject applications to register certain referendum campaign group names from unincorporated associations

We recommend that the Commission should be able to reject an application for registration as a referendum campaigner from an unincorporated association whose name, in the Commission's view, is: obscene or offensive or which, if published, would be likely to amount to the commission of an offence; or the same or similar to that of an already registered referendum campaigner, registered political party or recognised third party. [Electoral Commission Recommendation 12]

6.3 The power to reject unincorporated associations with obscene or offensive names seeking to register was available for the EU referendum and the Government will consider whether it should be added to the PPERA framework.

6.4 Unincorporated associations may be long-established organisations which then choose to campaign at a referendum. Giving the Commission a power to

reject an application for that organisation on the basis that it is similar to an already registered referendum campaigner, registered political party or recognised third party would be a disproportionate response to the problem which it seeks to prevent.

Unincorporated associations should be required to provide details of their membership as part of their application to register as a referendum campaigner [*Electoral Commission Recommendation 13*]

6.5 The Government will consider whether the details required of unincorporated associations seeking to register as referendum campaigners should in future be aligned with those for UK Parliamentary General elections.

Designation of lead campaigners should take place before the start of the referendum period; alternatively the referendum period should be extended

We recommend that, where the legislative timetable allows, the designation of lead campaigners should take place shortly before, rather than during the first six weeks of, the referendum period and that the deadline for applications should be set at 12pm (noon) on the closing day of the application period.

*However, if circumstances mean that the legislative timetable is such that pre-designation is not possible, then our 2011 recommendation to extend the length of the referendum period to at least 16 weeks should be adopted. This would go some way to giving designated lead campaign groups more time to plan and use the benefits available. [*Electoral Commission Recommendation 14*]*

6.6 The 'pre-designation' option used for the EU referendum, whereby the lead campaigners are designated prior to the 10-week regulated period, provided more time after designation for lead campaigners to raise funds and plan their campaigns before the start of the referendum period. We would expect it to be the default choice in any future referendum, although it may be that the circumstances of any particular referendum mean that this is not the most appropriate model to use.

6.7 Depending on the timing of any future referendum, we recognise that a noon deadline on the closing day for designation applications gives more time to the Electoral Commission to consider those that have been received. A noon deadline should be considered as part of the approach to designation and could be set in the legislation providing for any future referendum.

The UK Government should consult on options for redrafting section 125 PPERA to clarify the nature, scope and enforcement of the restrictions

Section 125 of PPERA should be significantly redrafted to clarify the nature and scope of the restriction on activities by Governments and other publicly funded bodies during the referendum period. It should be clear which activities are restricted, and whether there are any specific exemptions; it

should be clear when the restrictions apply; and it should be clear who is responsible for enforcing the restrictions, and what the penalties would be for any breach of the restrictions.

The UK Government should consult on options for redrafting section 125 of PPERA, with a view to introducing amending legislation as soon as practicable, sufficiently ahead of any specific legislation for a future referendum. [Electoral Commission Recommendation 15]

6.8 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.

6.9 On the question of a wider review, any changes identified by such a review are likely to require primary legislation. 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.

Regulation of campaigners

7.1 The Government has also considered the Electoral Commission's Report on the regulation of campaigners at the EU Referendum.⁹ The Government's response to each of the recommendations is set out below

Campaign funding

Loan controls should be incorporated into PPERA

The absence of loan controls in the PPERA referendum rules is a significant gap in the regulation of referendums. The UK Government should bring forward the relevant secondary legislation to introduce loan controls at all future referendums held under the PPERA framework. [Electoral Commission Campaigning Recommendation 1]

7.2 Specific provision was made in the European Union Referendum Act 2015 applying loan controls to permitted participants. The Government agrees that loan controls should apply at future referendums and will consider whether, and how, these should be added to the PPERA framework.

⁹ Electoral Commission report on the regulation of campaigners at the EU referendum: https://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/223267/Report-on-the-regulation-of-campaigners-at-the-EU-referendum.pdf

The individuals and bodies eligible to register to campaign at referendums should be the same as the eligible non-party campaigners at elections. The ability of the additional eligible campaigners to donate and lend to other referendum campaigners should also be considered.

The list of individuals and bodies eligible to register as a referendum campaigner should be realigned with the list of eligible registered non-party campaigners under PPERA.

The ability of the additional eligible campaigners to donate and lend to other referendum campaigners should also be considered. It will be important that any changes to the categories of permissible donors and lenders are clearly defined, particularly in relation to political parties that register to campaign at a referendum. [Electoral Commission Campaigning Recommendation 2]

7.3 The Government agrees that the individuals and bodies eligible to register to campaign at referendums should be the same as registered non-party campaigners at elections; this was the case for the EU referendum and the Government will consider whether it should be added to the PPERA framework. The Government agrees in principle that all permitted participants, including political parties, should be able accept donations from the same categories of donor.

The Government and Parliament should re-visit the permissibility controls on companies

In light of the fact that the PPERA permissibility controls on companies do not fully reflect the recommendations from the Committee on Standards in Public Life, and the implications of the current company permissibility test highlighted by our investigations, the Government and, in due course, Parliament should re-visit the issue of the permissibility controls on companies to ensure that they meet the underlying policy intention of preventing donations and loans from foreign companies. [Electoral Commission Campaigning Recommendation 3]

7.4 This is a complex issue which is relevant to donations to political parties and campaigners at both referendums and elections. The Government will discuss this issue with the Electoral Commission.

The Commission's ability to pay the lead campaigner grant in instalments should be incorporated into PPERA

In order to safeguard public money and to ensure efficient administration of the grant, the Commission's ability to pay the grant available to lead campaigners in instalments should be incorporated into PPERA so that it applies for all future referendums. [Electoral Commission Campaigning Recommendation 4]

7.5 The EU Referendum Act provided for the Commission to pay the grant in

instalments. The Government will consider whether it should be added to the PPERA framework.

Campaign spending

The Government and Parliament should take into account the evidence from the EU referendum when considering whether the PPERA referendum spending limits remain appropriate

The Commission does not have a specific statutory role in advising on spending limits at UK-wide referendums held under PPERA. It is nevertheless important that the Government and Parliament take into account the evidence from the EU referendum when considering whether the PPERA referendum spending limits, including the registration threshold, remain appropriate in the context of any future UK-wide referendum. [Electoral Commission Campaigning Recommendation 5]

8.1 For the EU referendum, Parliament set spending limits at a higher level than those set out in PPERA. This was to reflect inflation since PPERA was passed in 2000. The Government agrees that it will be for Government and Parliament to set the limits for future referendums and in doing so should take into account the evidence from the EU referendum.

Campaign-related staff costs should be included in the limits on political party election and referendum campaign spending

To provide consistency between the controls on referendum campaigners, party campaign staff, candidates and non-party campaigners, as well as close a gap in a large strand of election and referendum campaign spending, campaign-related staff costs should be included in the limits on political party election and referendum campaign spending. [Electoral Commission Campaigning Recommendation 6]

8.2 As the Electoral Commission recognises, staff costs are not included for both political parties and other campaigners at referendums. This is a complex issue which the Government will discuss with the Electoral Commission.

Joint spending controls should be incorporated into PPERA

To help ensure the integrity and effectiveness of the referendum spending rules, appropriate controls should be incorporated into PPERA to regulate campaigners that engage in joint spending so that they apply for all future referendums. To improve transparency and enforceability, the controls should include a requirement that campaigners must include the names of those they worked with and how much they each spent in their post-referendum spending return.

To reduce complexity and allow the Commission to provide clearer advice and guidance to campaigners, the Government and Parliament should clarify what constitutes joint spending for the purposes of regulating referendum campaign expenditure. This should specifically include:

- *Making clear the scope of the legal term ‘a plan or other arrangement’*
- *Defining what is meant by the fact that referendum expenses must be incurred ‘by or on behalf of’ those involved in the joint spending, and*
- *Exploring whether or not the joint spending rules should explicitly say that regulated expenses should be incurred by every party involved, in order for those rules to apply.*

In addition to the above clarifications, when the joint spending controls are incorporated into PPERA, the Commission should be given a Statutory Code-making power to enable us to clarify any further matters should they arise in the future.[Electoral Commission Campaigning Recommendation 7]

8.3 The EU Referendum Act provided for the joint spending controls at the EU referendum. The Government will consider whether it should be added to the PPERA framework.

8.4 The Government notes that the Electoral Commission considers that further clarification of the rules is needed. We remain to be convinced that this is best covered in legislation rather than by guidance issued by the Electoral Commission. However, we are happy to discuss this further with the Commission.

An appropriate level of imprint information should be required on online and electronic referendum campaign material

To ensure that campaigners’ identity is clear to voters, an appropriate level of imprint information should be required on online and electronic referendum campaign material. However, before applying such requirements, the Government and Parliament should give careful consideration to the lessons learnt from the drafting and practical application of the imprint rules in the Scottish Independence Referendum Act 2013. We would welcome the opportunity to work with the Government on this. [Electoral Commission Campaigning Recommendation 8]

8.5 The Government will continue to work with the Commission on this issue, which is relevant to campaigning at both elections and referendums.

Reporting

Pre-poll reporting requirements should be incorporated into PPERA so they apply for all future referendums

To increase transparency during the months before the referendum poll and help encourage campaigners to ensure that they only accept donations from permissible sources, pre-poll reporting requirements should be incorporated into PPERA so they apply for all future referendums.

If the referendum legislation is passed but does not immediately come into force, the legislation should provide for the pre-poll reporting requirement to commence as early as possible. [Electoral Commission Campaigning Recommendation 9]

9.1 The EU Referendum Act provided for pre-poll reporting requirements for campaigners at the EU referendum. The Government will consider whether these should be added to the PPERA framework.

Campaigners that incur low levels of spending should only be required to submit a ‘nil return’ or declare the amount of spending incurred if below the registration threshold

To provide an appropriate balance between reducing the administrative burdens on campaigners that registered but only incurred low levels of spending, and providing transparency to campaign spending:

- *The requirements for registered campaigners to submit a ‘nil return’ or a declaration that they have spent less than the relevant registration threshold, rather than complete a full spending return, should be incorporated into PPERA so they apply for all future referendums.*
- *Where a campaigner submits a declaration that they have spent less than the relevant registration threshold, they should be required to provide a figure of the total regulated spending incurred. [Electoral Commission Campaigning Recommendation 10]*

9.2 The EU Referendum Act provided for campaigners that registered but only incurred low levels of spending to submit a “nil return” or a declaration that they had not spent more than the registration threshold. The Government will consider whether this provision should be added to the PPERA framework.

Campaigners should be required to include itemised information for pre-registration spending in their return

To improve transparency and reduce a potential incentive to delay registration, registered campaigners that submit a full spending return should be required to include itemised information for all regulated expenditure, including spending incurred before a campaigner registers with the Commission. [Electoral Commission Campaigning Recommendation 11]

9.3 Under PPERA the spending return is required to be accompanied by a declaration of the total amount of referendum expenses incurred by a campaigner before they became a permitted participant, but this is not itemised. Campaigners are required to submit itemised spending returns for expenditure after they become permitted participants.

9.4 Whilst there are transparency benefits to itemising expenditure, it also places a compliance burden on campaigners. We consider it unnecessary, therefore to

introduce greater controls on reporting of spending prior to registration as a permitted participant.

The return declaration requirements in the EU Referendum Act 2015 should be incorporated into PPERA

To enable campaigners to sign truthfully the return declaration when they have accepted an impermissible donation, the return declaration requirements in the EU Referendum Act 2015 should be incorporated into PPERA so they apply for all future referendums. [Electoral Commission Campaigning Recommendation 12]

9.5 The Government will consider whether this provision should be added to the PPERA framework.

Enforcing the rules

The Commission's current fine limit should be reviewed and increased

To ensure that our sanctioning regime provides a strong deterrent to non-compliance, our sanction limit of £20,000 should be reviewed and increased to a level that would act as a suitable deterrent reflecting the level of fines available to other commensurate statutory regulators and financial regulation regimes. [Electoral Commission Campaigning Recommendation 13]

10.1 The Commission's civil sanctioning powers apply to permitted participants at referendums, as well as political parties and third party campaigners at elections.

10.2 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 spending returns to be made.

Conclusion

11.1 The Government is pleased to see the generally favourable reports on the EU referendum. We welcome the views and recommendations of the Electoral Commission and the AEA, which continue to inform the Government in reviewing and developing referendum policy.

11.2 We look forward to working with these stakeholders to improve the integrity, security and effectiveness of referendums and elections, and to delivering a democracy that works for all.