



## **Scottish Independence Referendum – 18 September 2014**

### **Review**

#### **Scottish Assessors Association Electoral Registration Committee**

The Scottish Independence Referendum was the most successful electoral event in the experience of the Committee. The voter engagement, planning and partnership working between Scottish Government, the Electoral Management Board for Scotland, the Electoral Commission (EC), the Chief Counting Officer (CCO), Counting Officers (COs) and Electoral Registration Officers (EROs) worked extremely well to deliver a robust referendum for the 4.28M electorate and Scottish people as a whole.

As with any major process there are components that when scrutinized, can be improved. The issues raised below highlight a number of areas worthy of further consideration.

#### **Register of Young Voters**

EROs were required to issue a prescribed<sup>1</sup> young voter registration form to every household when they conducted the postponed 2013 annual canvass between 1 October 2013 and 10 March 2014. They were then required to prepare and maintain a confidential register of young voters<sup>2</sup>.

The inability to combine the traditional household canvass form with the young voters registration form complicated the canvass process and resulted in the otherwise unnecessary printing of some 2.5M forms. This was an extremely unfortunate missed opportunity however the close working between EROs, education authorities, educational establishments and care providers ensured that EROs were able to identify the whereabouts of young voters and ensure that every opportunity for them to register to vote was provided.

The complex rules<sup>3</sup> around the entitlement for an under 18 year old to be added as an attainer to the register of local government electors that were essentially determined by the date of receipt of the completed application/canvass form by the ERO led to a lack of understanding and confusion amongst the public and campaign organisations as to which

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<sup>1</sup> SIR(Franchise)Act 2013 Sch 2

<sup>2</sup> SIR(Franchise)Act 2013 s.4

<sup>3</sup> Scottish Independence Referendum (Franchise) Act 2013 Guidance for Electoral Registration Officers, Electoral Commission, July 2013 item 2.16

register a young person should be on. Whilst the local government register is available for public inspection, the confidential young voters register was not.

EROs experienced significant difficulties with their third party electoral registration software suppliers, who, despite having been funded, failed to deliver robust, fully tested and functional software upgrades to deal with the register of young voters within the necessary timeframe.

#### Pre-referendum planning and briefings

The CCO/EMB briefings were successful and allowed common issues to be considered in debate. A briefing was also provided for Police Scotland.

Guidance on electoral registration matters was initially provided by the Electoral Commission. Following the passing of the Scottish Independence Referendum Act (SIRA) on 14 November 2013 guidance for EROs fell within the domain of the CCO<sup>4</sup>. Practical guidance was essentially derived through the SAA ERC Committee with the Chair reporting to the EMB and CCO regularly.

#### Publicity

Public engagement in the referendum was unprecedented and exceeded all expectations. Whilst this is an extremely positive outcome that the Committee hopes will continue into the future, aspects of the publicity raised particular challenges for EROs. The primary issue was that thousands of registered electors thought that they had to re-register specifically to participate in the referendum. In addition, the message for voters to check whether they are registered simply cannot be serviced under the existing registration regime. The only means that an elector can currently check that they are registered to vote, is for them to visit their local ERO or council office and ask to inspect the electoral register. In the case of young voters whose name was on the confidential register of young voters, that option was not available to them and the ERO could only confirm their registration in writing.

In the age of online access to public services and daily interaction by telephone and email, the fact that registers can only be inspected under supervised conditions at ERO/council offices raises significant challenges – especially when each household received a leaflet from the EC advising citizens ‘If you aren’t sure whether you’re registered to vote, your local electoral registration office can tell you.’<sup>5</sup> The volume of enquires that EROs received from 11 August onwards was completely unprecedented and demanded pragmatic management responses to ensure the smooth running of the referendum.

Policymakers and stakeholders need to review access to registers prior to broadcasting such advice. The public need to understand exactly how they can check the electoral register and this clearly raises issues around the tension between transparency and privacy. As a short-term measure, national publicity needs to focus on receipt of poll cards rather than checking the register.

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<sup>4</sup> SIRA s.24

<sup>5</sup> The 2014 Scottish Independence Referendum Voting Guide, EC, p.4

Many EROs encountered significant challenges from Scottish people living and registered to vote in other parts of the UK and from overseas electors who are registered to vote in Scotland but their franchise is limited to only UK Parliamentary and European elections. There was a lack of understanding and a feeling of injustice that gave rise to significant correspondence with some overseas voters. This was compounded by the EC website page for overseas electors that advised 'To register to vote at the independence referendum for Scotland, please fill in the form below'.<sup>6</sup> The webpage was subsequently corrected.

The appointment of public relations professionals by the CCO was a welcome development, but the demand for individual comment and statistics from EROs as the referendum date approached, frequently driven by increasingly significant social media activity, led to difficulties for EROs with resources being diverted to deal with media enquiries. The registration software packages used by most EROs were not always capable of dealing with the ad-hoc statistics requests. Social media networks required greater attention as an item on social media would go 'viral' within a very short timeframe. EROs received numerous unnecessary telephone and email contacts generated by inaccurate items on social media.

#### Referendum registration and absent vote application deadlines

Deadlines for registration and for absent vote applications immediately prior to the referendum were too late and inconsistent. Whilst EROs appreciate that there may be little appetite amongst policymakers to alter the 12-day registration deadline and 11-day absent vote application deadline, there are serious concerns that such deadlines will be unworkable for future elections/referendums given the requirements for individual electoral registration (IER) verification for all new applicants for registration or absent voting. Given the additional complication of the IER verification process being imposed on each registration application, and the extremely welcome increase in voter engagement, serious consideration should be given to the possibility of increasing capacity by increasing the time between deadlines and the electoral event.

The inconsistent times for deadlines is possibly more readily addressed. The midnight R-12 registration and R-6 emergency proxy attestation deadlines and the 5pm R-11 'cut-off date' deadline for postal and proxy applications and R-0 emergency proxy deadlines created difficulties. Noon deadlines would ensure that applications submitted on deadline would be received when local authority offices are manned and any applications left at any reception area can be quickly identified and directed to the local ERO.

The extremely high volumes of enquiries and applications lodged on R-12 and R-11 and the days immediately beforehand presented significant logistical difficulties for EROs. In some areas third parties claiming to promote engagement submitted volumes of applications on deadline on behalf of electors. Many of the applications related to existing voters and many others were incomplete. As such the provisions of the EC's Code of Conduct were not being followed and ERO resources were diverted and some citizens who had entrusted applications to third parties were not enfranchised.

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<sup>6</sup> [https://www.aboutmyvote.co.uk/register to vote/british citizens living abroad/register to vote.aspx](https://www.aboutmyvote.co.uk/register%20to%20vote/british%20citizens%20living%20abroad/register%20to%20vote.aspx)  
accessed 11 August 2014

Printers had scheduled data receipt times for the second issue of postal votes following R-11 that were completely unrealistic in light of the volume of applications that EROs received. EROs had to adopt unsustainable working practices to ensure data exports were made albeit that these were in some cases up to 48hours after the originally scheduled data export time slot. The volume of registration applications were such that many ERO offices had to maintain unsustainable working hours and weekend working through to the determination deadline at R-6 (10 September).

The registration hearings and appeals regime was particularly burdensome for some EROs prior to the referendum. The requirement for hearings is normally insignificant and rarely required. However the degree of public interest in the referendum resulted in EROs having to conduct a significant number of hearings. These can only be conducted by an ERO/Depute ERO and the majority of hearings were required to be held between R-12 and R-6 as several hundred apparently fraudulent applications to register to vote were received on/around R-12. Many of these applications have been referred to Police Scotland and this too placed additional pressures on EROs where Police investigations required statements. The high volumes involved meant that the statutory timetable did not provide sufficient capacity for EROs to carry out their statutory functions. EROs therefore had to work completely unsustainable hours over a prolonged period.

#### Poll cards

The early issue of poll cards (14-15 August) reflected the registration application position as at 10 July. Whilst this was successful in terms of elector engagement this led to difficulties for the public as subsequent updates to the register, although notified, and subject to a second issue of poll cards, were not understood. The result being that some 165,000 poll cards had been issued that would be superseded prior to the referendum. The early issue of poll cards also resulted in an increase in enquiries closer to the poll as electors had mislaid their poll cards.

#### Absent Voter Lists

The early issue of postal ballot packs (26-28 August) generally reflected data extracts from EROs of around 12-14 August this accounted for 680,000 postal voters. Again, this was successful in terms of voter engagement but raised expectations for electors who applied to vote by post in mid-late August, as most areas had a second issue of postal ballot packs scheduled to take place after R-11 (3 September). The data extract for the R-11 postal ballot packs are essentially required to be held over until R-6 (10 September) to allow the registration determination deadline to pass, however established practice is that EROs come under significant pressure to release this data on R-11 or as soon as possible thereafter to allow the volumes of postal ballots to be printed and issued as soon as possible after R-11. As stated above, the R-11 data extracts were generally delayed by 48hrs to R-9 (Friday 9 September) due to the high volumes of registration and absent vote enquiries and applications received by EROs. The second issue of postal ballots exceeded 100,000 ballot packs. The EC household publicity booklet provided the application deadlines<sup>7</sup> but failed to provide any indication of when postal ballot packs could be expected to be received.

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<sup>7</sup> The 2014 Scottish Independence Referendum Voting Guide, EC, p.5

A move to adopt and publicise a standard all-Scotland postal vote application deadline for the first issue of postal votes was considered by the EMB in late July, but data extract and printing schedules had been determined at that point in many areas. This and information on likely postal ballot pack receipt dates could however be a possible beneficial development for major electoral events in the future.

#### Cancellation/changes to absent voting

The early issue of postal ballot papers and the provisions for absent voters to cancel or alter their absent voting arrangements created significant challenges for EROs. The rules requiring the return of the ballot paper<sup>8</sup>, statement and envelopes were not practical as cancellations/alteration of absent voting arrangements were often required due to changes of address where the voter/proxy no longer had access to the ballot paper address.

The criteria for cancellation/alteration were not sequenced by the legislation, whilst this was administratively untidy, it nevertheless made the practical receipt and initial processing of applications submitted to EROs less complicated. EROs were required to accept applications to cancel or alter the arrangements by electors regardless of whether the requirement for the voter/proxy to return the postal ballot paper, statement and envelopes had been met.

EROs were however faced with numerous voters changing their preferences in terms of absent voting, and on many occasions the preferences of a particular voter changed several times, sometimes within the same day. This impacted disproportionately on registration resources to satisfy fairly ephemeral voter considerations such as a standing list absent voter deciding around R-12 that they would like to vote in person due to the historic nature of the referendum and cancelling their issued postal ballot by email to the ERO on R-12 but then deciding that they would like to vote by post after all, and submitting a further application on R-11.

#### Emergency Proxies

The emergency proxy provisions were extremely unsatisfactory. Normal election timetables allow postal vote applications up to E-11 and proxy applications up to E-6. For the referendum, the 5pm R-11 'cut-off date' applied to both postal and proxy applications<sup>9</sup>, but non-attested emergency proxy applications could be submitted up to midnight on R-6, thereafter attested applications could be made until 5pm on R-0 (18 September)<sup>10</sup>.

This confused all parties to the process.

Eligibility for an emergency proxy had been recently extended for the European Parliamentary Elections on 22 May 2014 to include unforeseen absences due to occupation, service or employment commitments<sup>11</sup>. SIRA widened the eligibility criteria further to include any unforeseen unavoidable absence<sup>12</sup>.

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<sup>8</sup> SIRA Sch 2 para 30(7)

<sup>9</sup> SIRA Sch 2 para 7 & 19

<sup>10</sup> SIRA Sch 2 para 8

<sup>11</sup> European Parliamentary Elections Regulations 2004 as amended Sch 2 para 25A

<sup>12</sup> SIRA Sch 2 para 7(9)(a)(ii)

The broad eligibility criteria, electors' confusion around time limits and attestation, and the potential wide interpretation of what constituted an unforeseen unavoidable absence created significant challenges for EROs. This was compounded with the late provision/availability of the Electoral Commission's application forms (2 September) and their poor design – with no email/phone contact information requested for the proxy or supporter. The lack of email/telephone contact details for proxies in particular was extremely regrettable as it made communication of the application outcome extremely difficult particularly for applications made after R-6.

The forms also confused disability with medical emergency, as disability would normally be considered to be an ongoing condition that the elector would usually be aware of on/before R-11 and thus be able to make arrangements to vote by post or proxy as is the case for any elector.

The supporter requirements where attestation was required were extremely weak, with the any unavoidable absence option which only needed to be supported by any over 18 year old who knows the applicant essentially undermining the in-employment supporter requirements. Normally medical emergency proxy supporters must hold a specified medical-related qualification (this was not a requirement for SIRA) and the more rigorous employment emergency proxy supporter statement (again not required by SIRA) cannot be circumvented by the catch-all *any other unavoidable reason supported by anybody who knows the applicant* provided by SIRA.

There was widespread misuse/abuse of the emergency proxy provisions with electors making last minute applications to vote by proxy where they were clearly missed the absent vote cut-off date deadline of R-11. Some unsuccessful applicants made repeated applications and ERO resources were again placed under undue strain to deal with the widespread misuse/abuse of the emergency proxy provisions. One ERO referred a clear example of a fraudulent application to Police Scotland but was advised that an investigation was unlikely to be an effective use of resource.

The 5pm deadline for applications on R-0 (18 September) and the failure for any telephone/email contacts information to be required and therefore available to EROs made the carrying out of any checks to preserve the integrity of the absent voting system, or indeed the notification of the outcome within the necessary timeframe virtually impossible for EROs. Some 6,000 emergency proxy applications were allowed by EROs.

### Funding

The Scottish Government provided funding for software changes and the printing and distribution of young voter registration forms and associated rolling registration cost estimates by way of the SIR (Franchise) Bill Financial Memorandum<sup>13</sup>.

EROs have received no funding for the extraordinary costs incurred in the conduct of the actual referendum. The Financial Memorandum that was provided in the explanatory notes

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<sup>13</sup> Scottish Independence Referendum (Franchise) Bill (SP Bill 24) Explanatory Notes pages 13-18

to the Scottish Independence Referendum Bill identifies costs associated with the provisions of the Bill and specifically acknowledges that the costs of running the referendum will be incurred by the CCO, COs and EROs<sup>14</sup>. At item 67 the memorandum states 'The government will reimburse EROs for any fees and expenses incurred in the course of undertaking their functions in the referendum'<sup>15</sup>.

The corresponding Fees and Charges order does not however make direct reference to EROs.

The extraordinary demand imposed on EROs and their staff by an extremely engaged electorate, required a reactive response that ensured that every application was considered and processed within the strict statutory timetable. This was only achieved by offices being manned for up to 20hours per day 7 days per week for a number of weeks during late August and early to mid-September. The resultant costs in terms of additional hours, printing, postages, and incidental related costs amount to an estimated £700,000. EROs now wish to secure the reimbursement of this extraordinary expenditure.

Ian H Milton  
Chair, SAA Electoral Registration Committee

13 November 2014

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<sup>14</sup> Scottish Independence Referendum Bill (SP Bill 25) Explanatory Notes p. 49

<sup>15</sup> Scottish Independence Referendum Bill (SP Bill 25) Explanatory Notes p. 62