

European Union Referendum: Issues Briefing

14 June 2016

Overview

This briefing covers a number of issues that have attracted public attention in the past few weeks and where Parliamentarians may be asked to comment.

It is important that there is public confidence, as well as trust from Parliamentarians and campaigners in how the referendum is being run. As we have received a number of queries from Parliamentarians, including on behalf of their constituents, we are encouraging anyone who is commenting on the referendum and its conduct to read this note before they comment on the nature and extent of any issues that have arisen.

We will update it as new issues arise.

A separate [briefing](#) has been produced to outline how the referendum is being run, and provides additional detail about how the count process will work, which differs in some respects to elections.

Issues of interest

The Chief Counting Officer (CCO) is able to issue directions about the conduct of the referendum. It is the responsibility of Counting Officers (COs) and Regional Counting Officers (RCOs) to comply with them.

The CCO and Deputy Chief Counting Officer also provide guidance to COs and assist them in resolving issues. On a national poll of this scale - with 382 individual Counting Officers, 40,000 polling stations and over 100,000 staff - it is inevitable that in some cases it will be necessary to take action because of issues that have arisen in the delivery of the poll.

We have identified ourselves or been alerted to a number of issues in recent weeks where we have taken action and where it has been important to provide reassurance about what is being done. We will update this briefing if new issues occur between now and polling day. We are already publishing an issues log which can be found [here](#).

Non-receipt of overseas postal votes

The Commission was made aware on 7 June by the Counting Officer in Durham that some overseas voters registered to vote who applied for postal votes at the EU Referendum did not receive them after the first despatch. Upon further investigation we came to understand on 8 June that two other local authorities in England (Castle Point and Kingston upon Hull) had experienced the same issue.

Action was taken immediately to reissue postal votes so that all overseas postal voters are able to participate. Processes are in place to ensure no one is able to vote twice.

After looking into the matter the Counting Officer at Durham was able to identify that there was an issue relating to a batch of postal ballots sent out on 23 May which potentially affected 460 overseas voters. On 7 June, the Counting Officer, on the advice of the Chief Counting Officer took the decision to invalidate the batch of postal ballots that were issued on the 23 May and immediately reissued a new batch of postal ballots to the affected overseas voters.

The same issue has also affected 116 overseas voters in Castle Point and 133 overseas voters in Kingston upon Hull where new batches of postal ballots have also been reissued.

The Chief Counting Officer has advised the Counting Officers in these areas to email affected electors to inform them of the issue and provide further guidance and assistance.

All of the affected voters have been advised by the relevant Counting Officer that they should only return one ballot paper. Only one ballot paper per voter will be accepted and processes are in place to ensure that no one will be able to vote twice. We outlined this in a [statement](#) on 10 June.

Online registration service issues

The Government's voter registration website experienced technical problems from 10.15pm on Tuesday (7 June) night and these were not resolved until around the time of the registration deadline at midnight. A significant number of people (over 50,000) were on the website when it first crashed and many more will have attempted to go onto between 10.15pm and midnight.

In response, we concluded that it would be in the best interests of voters for Government to consider options for introducing legislation as soon as possible to extend the deadline.

As there was no other way of resolving this issue without a change in legislation, the Government announced on 8 June that it would introduce legislation to allow people who

make applications to register on Wednesday 8 and up to midnight on Thursday 9 June to vote in the EU Referendum on 23 June.

The UK Government was required to consult the Electoral Commission before laying this Order for approval by Parliament, and we received a draft of the Order on the afternoon on 8 June. Having reviewed the draft Order we were content that it would have provided the necessary legislative basis for extending the deadline for registration applications across the whole of Great Britain and Northern Ireland. We noted however, that the Order which was eventually tabled for approval by Parliament would apply only in Great Britain, and no longer included a provision to extend the deadline for registration applications in Northern Ireland as we had originally expected. We [wrote](#) to Nigel Dodds OBE MP to elaborate on our discussions with the Cabinet Office on this.

The Order laid by the Government provides that final alterations to the registers to be used for the referendum will be published three working days before polling day, rather than five working days.

Although we recommended that Parliament should vote in favour of the Order, we called on the UK Government to explain why it decided not to introduce legislation to extend the deadline in Northern Ireland. You can read our full briefing to Parliament on the Order [here](#).

Public awareness campaign messages

Leading up to the EU Referendum, we have seen a record number of applications to register to vote (2,614,711 during our public awareness campaign), which we are aware has caused concern that individuals will have submitted more than one application.

Although this will not result in duplicate entries on registers, it may have created an additional administrative burden on Electoral Registration Officers and their staff. We have communicated through various channels that only those who are not already registered to vote should have registered to vote by the registration deadline. However, we have heard from voters and electoral administrators that it would be helpful if people were able to check online whether they are already registered before applying. This is something we called on the Government to make available in 2015.

The Commission's [voter information booklet](#) which was sent to 28 million households advised in May, "If you're not already on the electoral roll, you need to register to vote by midnight on 7 June 2016 to vote in the EU Referendum." This message was also made clear in our external communications where possible, on our Aboutmyvote website, and on the Government's online voter registration website.

In our report on the May 2015 polls we noted that Electoral Registration Officers had told us that increased convenience and accessibility of online registration may have had the unintended effect of increasing the number of applications being made by people who

were already correctly registered. We recommended that the UK Government should develop an online service to allow people to check whether they are already correctly registered to vote before they submit a new application to register and this is an issue to which we expect to return in our statutory post-referendum report. The Government have not yet responded to our May 2015 report.

Overseas postal vote postage

Postal votes being returned by overseas voters for the EU Referendum use the International Business Reply Service (IBRS). This service is commonly used for international mail and does not require any additional postage to be affixed. A very small number of overseas voters in Belgium, France, Germany, Portugal and Spain alerted the Commission to instances where voters were incorrectly informed that the postal service in their respective countries cannot accept International Business Reply Service items.

As soon as we became aware of the issue the Commission raised these instances with Royal Mail, who followed up with their international counterparts to confirm that the IBRS was being accepted.

Once the Commission became aware of reports that the IBRS was not being recognised by some postal workers, we asked Royal Mail to look into them. Royal Mail was able to confirm that IBRS is accepted across all international posts. It was also able to reassure us that it is working closely with postal operators to ensure acceptance and return to the UK of postal votes. To reassure overseas voters, the Commission communicated this information on social media and by issuing a [statement](#) to media in the affected countries, advising voters that once a ballot is in the postal system (i.e. if it has been posted into a post box) it will be processed.

Non-eligible EU citizen voters

A press report on 2 June identified a Polish elector in the London Borough of Kingston-upon-Thames who received a poll card for the referendum, which was because they stated on their application for registration that they were British even though they were Polish. Separately, we became aware late on 1 June that there had been an issue with elections software provided by Xpress, used by a number of local authorities in England and Wales that meant that a small number of EU citizens mistakenly received poll cards and, in some instances, postal votes.

The occurrence of these two incidents understandably generated concerns that ineligible voters may be able to vote in the EU Referendum. Action was taken in respect of both cases to ensure that this was not the case.

On the same day that the Commission became aware of the software issue, the software provider issued a “patch” to resolve the issue which meant that if any postal votes had

been issued to ineligible electors, they were cancelled and that none of these electors will be shown as eligible on the electoral registers to be used at polling stations on 23 June. Any completed postal votes will be cancelled and will not be counted. All of the affected electors were also written to with an explanation of what happened and were told that they will not be able to vote at the referendum. By [9 June Electoral Registration Officers \(EROs\) who use the software had reported](#) to the Commission that a total of 3,502 electors had been affected by this issue.

The case in Kingston-upon-Thames was dealt with by the ERO who changed the individual's nationality status to Polish and marked them on the register as ineligible to vote at the referendum. The issue was referred to the police by the ERO who will be able to consider if a crime has been committed.

It is important to note that electoral registration process being followed for the EU referendum is the same as the one for all other electoral events in the UK.

The legislative framework for electoral registration gives EROs powers to require further documentary evidence from applicants where there are any concerns in relation to their nationality, and they can also request checks of a person's immigration status against Home Office records. This is made clear to all those applying to register to vote on both paper forms and online. Parliament has not, however, specified that checks on nationality must be carried out on all registration applications, nor has it provided EROs with access to the data they would require to be able to do so.

The Commission previously recommended in our response to the UK Government's 2011 White Paper on individual electoral registration that the Government should explore the feasibility of enabling EROs to seek confirmation from relevant agencies (such as the United Kingdom Border Agency) of an applicant's nationality and immigration status. The Electoral Registration and Administration Act 2013, which implemented individual electoral registration in Great Britain, did not provide such a facility for EROs.

Postal voting instructions

On 29 May, the Electoral Commission was alerted to the fact that the Counting Officer for Bristol City had issued pictorial postal voting instructions with their first wave of postal vote packs that could be interpreted as favouring one particular outcome in the referendum. The Counting Officer for Swale later confirmed that their postal votes included the same pictorial instructions as the ones used by the Bristol Counting Officer. Both Counting Officers amended the instructions to be used with any further postal vote despatch.

The issue has affected approximately 61,000 postal voters across Bristol and Swale.

Upon becoming aware of this issue, the Commission acted immediately to ensure that these instructions were not issued in any further instances.

While it is unlikely that postal voters in Bristol or Swale might be persuaded to vote in a particular way because of the graphic in these instructions, clearly it shouldn't have been used.

These instructions were not approved by the Commission. Counting Officers have discretion to include, in addition to the instructions prescribed by law, any additional instructions in their postal ballot packs to help voters complete their postal vote. In many cases, and as provided by Bristol and Swale, these will take a pictorial form.

On Tuesday 31 May, we contacted all Counting Officers to remind them that any instructions included in postal ballot packs must not be capable of being interpreted as leading voters to cast their vote for a particular outcome.

Both voting areas use the same printing company, who confirmed to us that no other voting areas that they provide printing services for are affected by the issue. No further cases have been identified elsewhere in the UK.

UK Government EU Referendum leaflet

In April 2016, the UK Government sent a leaflet to households across the UK, which contained material about the EU. The Commission received complaints and queries from parliamentarians and the general public about the implications of the cost of the leaflet on campaign spending limits which apply at the referendum.

The Commission was clear in its briefings to Parliament during the passage of the European Union Referendum Bill that governments should conduct no taxpayer-funded advertising activity during the regulated period. We also reiterated this to the UK Government.

The Electoral Commission is responsible for regulating the rules on spending in the run-up to the EU Referendum. The rules on spending apply during the regulated period which started on 15 April and ends on polling day; 23 June. The rules exclude spending that is met out of public funds, which includes spending by the government on the government information booklet.

After the referendum on Scottish independence, the Electoral Commission recommended that governments should conduct no taxpayer-funded advertising activity during the regulated period. However, Parliament decided not to put any legal restrictions on government activity until 28 days before the poll; 27 May. These are the same rules that were in place for other recent referendums. This is an issue that the Commission expects to return to in our statutory post-referendum report.

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