



# The timing of election counts

Issues paper

November 2011

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# 1 Introduction

## About this paper

1.1 This Issues Paper is about the timing of election counts across the UK. Its purpose is to:

- Review recent developments on the timing of counts at major elections across the UK
- Consider the practical factors that affect the counting of votes after polling stations close
- Consider the various perspectives held by: those who campaign in elections; those who are responsible for conducting election counts; media organisations who cover election results, and voters
- Raise questions as to whether the position needs to change on how decisions on the timing of election counts are made and, if so, how
- Seek views from people with an interest in these issues.

1.2 The Electoral Commission is an independent body which reports directly to the UK Parliament. We regulate political party and election finance and set standards for elections and electoral registration. We have no role in determining the timing of any election counts, although we do have a role in relation to the timing of referendum counts, explained later in this paper.

1.3 We are, however, responsible for publishing reports on the administration of elections and referendums; and in several of our recent reports, the question of the timing of election counts has been an issue. In our reports on the elections and referendum held on 5 May 2011<sup>1</sup>, we undertook to circulate an Issues Paper, identifying issues that have arisen at elections across the UK in recent years and to seek views from people with an interest in the timing of election counts.

1.4 The key issue is that many Returning Officers have considered that increasingly complex election counts would be better conducted the morning after the close of poll when staff are fresh and less likely to make mistakes, while governments, political parties and candidates have often pressed for

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<sup>1</sup> The Electoral Commission *Referendum on the voting system for UK Parliamentary elections Report on the May 2011 referendum; Report on the Scottish Parliament election on 5 May 2011; Report on the National Assembly for Wales general election 5 May 2011* (October 2011)

counts in major elections to take place immediately after the close of polls. This has led to controversies in the public domain ahead of major elections.

1.5 We are circulating this Issues Paper to enable views and perspectives to be shared by interested parties free from imminent decisions about the timing of the count in any particular election. In order to allow political parties and candidates to campaign and voters to make their choices on the substantive issues at the heart of the election, decisions on the timing of the count should be taken outside of the election campaign period proper. We hope that through inviting responses to the issues raised in this paper, and reporting on the outcomes, we can assist with achieving that, as well as strengthening the evidence base on which decisions about count timings are made.

1.6 This paper contains specific questions about issues on which we would particularly welcome your views. The section entitled 'Guidelines for responses', tells you more about that.

1.7 Following analysis of views we receive in response to this paper, we will seek to make recommendations, by mid-March 2012, on the timing of election counts and the way in which they are organised, taking account of the type of elections and a range of relevant circumstances. Our recommendations will be made where appropriate to governments across the UK, election Returning Officers and other people with relevant responsibilities.

## Submitting a response

1.8 We have sent this paper to: the UK Government, Scottish Government, Welsh Government, political parties, elected members who have expressed an interest in this issue, Returning Officers in Great Britain, the Chief Electoral Officer in Northern Ireland, news organisations, and to a number of agencies, professional bodies, and representative organisations including:

- Association of Electoral Administrators (AEA)
- Society of Local Authority Chief Executives (SOLACE)
- Society of Local Authority Lawyers and Administrators in Scotland (SOLAR)
- Electoral Management Board for Scotland
- London Elects
- Local government associations

1.9 We have published this paper on our website, where we also invite interested members of the public to submit views.

1.10 We also plan to discuss the issues at suitable forums and will be happy to arrange meetings with other interested individuals or groups on request.

## Contact details

1.11 We would be grateful if you could return any responses to the contact details outlined below, either by post, fax or e-mail. We are also happy to take any comments over the telephone. Please send your response to:

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1.12 The deadline for responses is 3 February 2012. Although we may take into account responses received after this date, we cannot guarantee that we will be able to do so.

1.13 However, if you anticipate any difficulties responding to this consultation, please do not hesitate to contact us. As discussed above, we will be happy to meet individuals and groups who wish to express their views to us in person, and this may also provide an option for those who are pressed for time in responding.

1.14 To assist us in analysing views, it will be helpful for respondents to make clear in what capacity or on whose behalf their response is submitted. We may therefore contact respondents for further information as to the status of their submission if it is not immediately clear in the response. In addition, we may wish to publish or make available for inspection responses to this paper.

## Guidelines for responses

1.15 We should particularly welcome responses to the questions in Chapter 3 on:

- The perspectives of those who conduct election counts; those who campaign in elections; media organisations who cover election results; and voters.

1.16 We should particularly welcome responses to the questions in Chapter 4 on possible ways forward, in particular:

- Whether tensions over the timing of election counts that have occurred before elections can be avoided within the existing legislative framework for managing elections, in essence by dialogue between those concerned and clear decisions announced well in advance of elections
- Whether legislative change, such as the further use of powers of direction to achieve greater consistency, is necessary.

1.17 The questions contained throughout Chapters 3 and 4 are also set out at the end of Chapter 4 for easy reference.

## What happens next?

1.18 We will review the responses received and consider what recommendations we should make as a result, including any changes to the relevant law or to current practice. We may make recommendations to:

- UK Government
- Scottish Government
- Welsh Government
- Returning Officers
- Electoral Management Board for Scotland
- London Elects
- The Chief Electoral Officer for Northern Ireland

1.19 We will publish the outcome of this exercise and any recommendations we make as a result of it by 16 March 2012.

1.20 By that time, decisions are already likely to have been made about the timing of counts at local elections to be held in May 2012 and so will be unaffected by any recommendations we might make. We hope, however, that some of the issues raised in this paper will influence how decisions are made for the elections in May 2012.

## 2 Recent developments

2.1 This chapter summarises developments at different elections over the last few years where tensions have emerged over the timing of election counts. The nub of the issue has been that many ROs have considered that increasingly complex election counts would be better conducted the morning after the close of poll when staff are fresh and less likely to make mistakes, while governments, political parties and candidates have often pressed for counts in major elections to take place immediately after the close of polls.

### Who decides when votes are counted?

2.2 Legislation specific to each election sets out by whom decisions on the timing of the counting of votes can be taken. Broadly, the timing of election counts is a matter for Returning Officers (ROs) to determine, subject to the requirement that counting begins 'as soon as reasonably practicable' after the close of poll. This means that each individual RO is responsible for making a decision in the circumstances of each election count.

2.3 The scope of ROs' decisions is prescribed at UK Parliamentary general elections and, in certain other elections, specified officers have a role.

2.4 Appendix A gives detailed information on who is able to make decisions about when votes are counted at each of the major elections across the UK. It summarises the type of election, the voting system used, the number of ballot papers, and the method by which voters make their choice.

2.5 The position on counts in referendums contrasts with that in elections. We include reference below to the two referendums held in 2011, as the timing of both referendum counts was governed by a power of direction to achieve greater consistency, rather than being a matter for individual ROs. Further, one of the referendum counts was held wholly during the daytime. A key difference from elections, however, is that a referendum has one overall result rather than comprising a series of individual contests.

2.6 Developments at recent elections are summarised below in the chronological order that they occurred.

### Scottish Parliamentary elections in 2003 and 2007

2.7 Until 2011, the Scottish Parliamentary elections were combined with local elections. In 2003, the Parliamentary count commenced immediately after polls closed, with local elections being counted not before 10 am the



following day. In our statutory report on those elections<sup>2</sup>, we noted a number of concerns about overnight counting. Following a review of the issues we undertook in 2005, we recommended in January 2006 that the counts for the 2007 Parliamentary and local elections should not commence until the day following the close of poll, taking into consideration that the Single Transferable Vote (STV) would be used for the first time in local elections in Scotland. This was also the strong advice of Returning Officers. However, Scotland Office Ministers decided to adhere to overnight counting for the Parliamentary elections.

2.8 A number of problems concerned with electronic counting occurred at the 2007 elections. An independent review of the problems was undertaken by election expert Ron Gould<sup>3</sup>. One of the recommendations made in the Gould report was that, if polls continued to close at 10pm, there should be no more overnight counting of ballot papers. He suggested that administrative and preparatory work may go on overnight with a view to readying the ballots for counting by a fresh team in the morning.

2.9 The UK Government Scotland Office undertook a consultation in 2008 on electoral administration issues after the Gould report and found that while a majority of respondents (53.8%) would prefer a next day count, 20.5% strongly supported the immediate counting of votes at the close of poll. Electoral administrators formed the majority of those calling for next day counting, while politicians and parties formed the bulk of those wanting close of poll counts.

## National Assembly for Wales election 2007

2.10 The election was the first in Wales at which applicants for postal votes were required to provide their signature and date of birth, so that these could be cross-checked by ROs with those provided when votes were cast. ROs were concerned that checking postal votes handed in during polling day would cause delay to the count.

2.11 However, all four of the main political parties and Welsh Assembly Government were strongly in favour of an overnight count. Political parties became frustrated that there was no Wales-wide, public decision by ROs. Broadcasters also found the lack of an early public decision problematic in terms of programme planning.

2.12 In the event, ROs did conduct constituency and regional counts overnight, but these continued well into the early morning, breakfast time, and

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<sup>2</sup> Scottish Elections 2007: Scottish Government Response to the Independent Review of The Scottish Parliamentary and Local Government Elections 3 May 2007

<sup>3</sup> Scottish Elections Review –The Gould Report, October 2007

into the afternoon of the day following close of poll in the case of one regional count.

2.13 In reporting on the election<sup>4</sup>, we noted the public importance of decisions on count timings and recommended that public announcements as to the timing of counts of future Assembly elections should be made as early as possible in the election planning cycle by ROs.

## Northern Ireland Assembly election in 2003 and 2007

2.14 The regulations governing the conduct of Northern Ireland Assembly elections do not specify any time frame that the counting of votes must begin. However, once started, counting must proceed continuously (allowing time for refreshment and overnight breaks).

2.15 The length of time taken to complete Assembly election counts in 2003 led to considerable frustration among candidates, political parties and the media. We concluded in our 2003 election report<sup>5</sup> that the count took longer than necessary. Shortcomings were identified in the overall management and utilisation of staff at some counts and the transparency of the proceedings was questioned. We recommended that the Electoral Office for Northern Ireland make greater use of technology to improve the speed of the count.

2.16 Similar issues arose in 2007 and, in reporting on the elections, we again noted how the more complex nature of single transferable vote (STV) counts had resulted in lengthy counts and frustration to political parties and the media. We again recommended a review of procedures used<sup>6</sup> with a view to improving the speed of the count.

## UK Parliamentary general election 2010

2.17 Until 2010, legislation on the timing of UK Parliamentary general election counts was similar to that for other elections, in that the decision on when to count votes was a matter for the ROs, subject to the requirement that counting began 'as soon as reasonably practicable'.

2.18 In advance of the elections, it became apparent that a number of ROs were planning to count votes the day following the close of poll. The main reason for this was that this was the first election based on constituencies where new requirements to check signatures and dates of birth on postal votes would be undertaken by ROs. Postal vote applications, against which

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<sup>4</sup> The Electoral Commission, *The official report on the National Assembly for Wales elections 3 May 2007* (July 2007)

<sup>5</sup> The Electoral Commission, *The official report on the Northern Ireland Assembly election 26 November 2003*

<sup>6</sup> The Electoral Commission, *The official report on the Northern Ireland elections 3 May 2007* (June 2007)

returned postal votes are checked, are held by electoral registration officers (EROs). A number of constituencies span local boundaries covered by EROs, meaning that ROs in those constituencies needed data from neighbouring EROs to enable checking, which posed technical challenges.

2.19 Following concerns amongst politicians and political parties about general election results not being available under the day after close of poll, new provisions were introduced for the general election in 2010, intended to ensure that Returning Officers began counting within four hours after the close of poll. The Constitutional Reform and Governance Act (CRAG), which received Royal Assent on 8 April 2010, less than a month before polling day on 6 May, required all Returning Officers to take steps to begin counting votes for the UK general election within four hours of the close of poll<sup>7</sup>.

2.20 This late change followed debate in the House of Commons and a high profile campaign to ensure that votes in the vast majority of constituencies were counted and the results announced during the evening and early morning following the close of poll on 6 May. MPs voiced concerns that ROs had taken decisions about the timing of the count without having consulted candidates and political parties about the possible implications.

2.21 CRAG also required ROs, for constituencies where counting did not begin within this timescale, to publish a statement setting out the steps taken and the time at which counting did begin, and send a copy of the statement to the Electoral Commission within 30 days of the declaration of the result.

2.22 The Commission was required to publish in its report on the election a list of the constituencies where counting did not begin within the prescribed timescale. ROs in 45 constituencies submitted statements to that effect. Of those 45, 23 had planned in advance to commence counting the morning after the close of poll. In the other 22, ROs reported that counting did not begin within four hours of the close of poll because the verification of ballot papers took longer than anticipated<sup>8</sup>.

## Wales referendum 2011

2.23 The Chair of the Electoral Commission, or a person to whom that responsibility is delegated, is Chief Counting Officer for a referendum.<sup>9</sup> In the

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<sup>7</sup> Prior to the 2010 UK Parliamentary general election counts in Northern Ireland commenced on the day after the poll and there were no overnight counts. In our 2005 report on the combined UK Parliamentary and local elections in Northern Ireland we recommended that where an election is UK-wide the count in Northern Ireland should commence at the same time as Great Britain.

<sup>8</sup> The Electoral Commission *Report on the administration of the 2010 UK general election 2010: Appendix A* (July 2010)

<sup>9</sup> For a referendum held under the terms of the Political Parties, Elections and Referendums Act 2000.

referendum held in Wales on 3 March 2011, the Chief Counting Officer had a power of direction to achieve consistency, meaning that she was able to direct local counting officers as to the timing of the referendum count. The referendum rules enabled the counting of votes to begin between 9 am and 12 noon on the day after the close of poll if the Chief Counting Officer made a direction to that effect<sup>10</sup>.

2.24 The Chief Counting Officer sought views of interested parties on the timing of the count. She did so at an early stage (November 2010) to assist effective planning by all concerned.

2.25 The CCO received mixed views from counting officers and electoral administrators as to when the count should take place. Those in urban areas predominantly preferred an overnight count on the grounds that, with one ballot paper, it could be concluded relatively quickly. However, others were concerned that severe weather may cause delays to the delivery of ballot boxes from polling stations to local count centres, especially in some areas of Wales. Electoral administrators therefore argued for discretion as to when the count should be held. Referendum campaigners and political parties argued for a traditional overnight count.

2.26 The CCO concluded that it was important to maintain the national nature of the count and start in a coordinated manner across Wales when all ballot boxes had been received at all count centres. There would be a much greater chance of achieving this if verification and counting started the following morning after polls have closed.

2.27 Further, a count during the day provided a greater opportunity to ensure that the delivery of the result was a democratic event in itself, which could be showcased by the media in Wales. This would ensure greater public access to the process. The CCO therefore issued a direction to counting officers that the counting of votes must not begin before 9am on the day following the close of poll.

2.28 The verification of votes and counting commenced on Friday, 4 March. There was one ballot paper with results declared on a simple majority. Electors voted 'yes' or 'no' by placing a cross in a box. Results in 22 local authority counting areas were announced from just before noon onwards and the final result was announced at shortly after 3 pm, a total length of time to verify and count votes of just over 6 hours.

2.29 Because the referendum was centrally coordinated, we have detailed data about the time taken to count votes. We were also provided by BBC

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<sup>10</sup> The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010, Schedule 3, Rule 33 (2)

Cymru Wales with viewing figures for their referendum results programmes. .  
We review this data in Chapter 3.

## UK referendum combined with scheduled elections May 2011

2.30 On 5 May 2011, a UK referendum on the voting system for UK parliamentary elections was combined with scheduled elections to the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly, and local government elections in England and Northern Ireland.

2.31 As for the Wales referendum held in March 2011, the Chair of the Commission was Chief Counting Officer for the UK referendum, with a power of direction to achieve greater consistency, meaning that she was able to direct counting officers as to the timing of the referendum count. In November 2010, she sought views of interested parties through issuing a paper about the timing of the count, proposing to direct that the counting of votes for the referendum should begin at 4 pm on Friday 6 May 2011.

2.32 The CCO took into account the following principles in deciding the timing of the referendum count:

- The results of scheduled elections should be available as soon as possible
- The referendum is a UK-wide poll providing one result for the UK as a whole
- The result of the referendum must be accurate

2.33 In December 2010, following receipt of views, where a majority either agreed with the CCO's proposal or had no objection, the CCO directed that the verification of ballot papers for the referendum should be concluded by 1 pm on Friday 6 May and that the counting of votes should begin at 4 pm. One third of those giving views about the timing of the referendum count did not agree that the votes should be counted at that time, instead suggesting a range of alternatives dates from Saturday 7 May to Monday 9 May. All of those proposing a later count were either counting officers or electoral administrators.

## Scottish Parliament election 2011

2.34 In the lead up to the Scottish Parliament election the Elections Convener of the Electoral Management Board for Scotland (EMB), on behalf of the ROs, prepared a paper for the Scottish Parliament Political Parties Panel setting out the pros and cons of both overnight and next-day counting. While ROs have consistently felt that the increasingly complex count would be best conducted the following morning when staff are fresh and less likely to make mistakes,

the majority of political parties have been of the view that the count should take place immediately following the close of poll.

2.35 In reaching a decision on when it is practicable to start counting votes, ROs have taken into account a range of factors including the availability of appropriately skilled staff, the practicalities of venues, the security of ballot papers and the geography of the constituency. They have consulted with local parties and candidates, the media and other interested groups before coming to a decision. For the combined election and referendum held on 5 May 2011, they also took into account the volume of ballot papers that would need to be dealt with as all three ballot papers (the two Scottish Parliament ballots and the referendum ballot) had to be verified before any Parliament results could start to be declared.

2.36 Ultimately, 61 of the 73 Scottish Parliament constituencies were verified and counted overnight. The ballot papers for the three Highland constituencies were verified overnight but not counted until the following morning. Of the remaining nine constituencies, all undertook the verification and counting from Friday morning.

2.37 Of those who opted to count overnight, the last declared at 8 50 am and the last electoral region at 3 36 pm on Friday 6 May, a total length of time to verify and count votes of 10 hours 50 minutes and 17 hours 36 minutes respectively.

2.38 Of those who counted the following day, the last constituency to declare did so at 2 23 pm and the last region at 5 16 pm, that is 16 hours 23 minutes and 19 hours 16 minutes respectively after polls closed

## National Assembly for Wales general election 2011

2.39 The timing of the count became a controversial issue shortly ahead of the election, when it became publicly known that the Regional RO in North Wales and ROs in that electoral region had decided to count votes the day after the close of poll rather than overnight.

2.40 Although RROs and ROs consulted political parties and election candidates locally in deciding count timings, the decision of all regions was not known by national politicians until the end of March. All four political party leaders in the Assembly and the Assembly's Presiding Officer were then publicly critical of the decision, stating their concerns about the lack of a consistent approach across Wales and that the overall result of the election would not be known until the completion of counting in North Wales. There was a substantial amount of media coverage in Wales of the issue in April, shortly ahead of the election.

2.41 There had been discussions between ROs about count timings as part of election planning meetings convened by the Commission and led by the referendum regional counting officer in Wales, from November 2010. Despite

attempts to reach consensus, there were different views in different electoral regions and constituencies. Most but not all ROs in relatively urban more compact constituencies preferred overnight counting, as did those in local authorities with single constituencies. Those in more rural areas with some long distances between polling stations and count centres were the most concerned about overnight counting.

2.42 In the event, verifying three ballot papers (including the UK referendum) and counting constituency and regional votes proved a lengthy process in all regions, including in a number of urban areas that had previously been more confident about concluding the process in a reasonable time overnight.

2.43 Of those counting overnight, the shortest time to verify election and referendum ballot papers and to declare a constituency election result was over four hours after close of poll. Of those counting overnight, the last constituency to declare was at 7 18 am and the last region was 9 18 am on Friday 6 May, a total length of time to verify and count votes of 9 hours 18 minutes and 11 hours 18 minutes respectively.

2.44 Of those who counted the following day, the last constituency to declare did so at 1 31 pm and the last region at 1 48 pm, that is, 15 hours 31 minutes and 15 hours 48 minutes respectively after polls closed.

## Northern Ireland Assembly election 2011

2.45 As in 2003 and 2007, the Assembly election counts were the subject of sustained criticism from some candidates, political parties and the media. The primary cause of complaint concerned slowness and the general lack of information on how counts were progressing, rather than the timing of the count as such. Because the STV voting system is used for most elections in Northern Ireland, and this takes time to complete, the issue of achieving rapid results as soon as possible after the close of poll has not had the same emphasis as in the rest of the UK.

2.46 The apparent slowness of the count was particularly noticeable in May 2011, relative to the rest of the UK, because counting votes in the referendum on UK Parliamentary voting systems began at the same time throughout the UK. Counting votes in the referendum began at 4 pm on Friday 6 May. The referendum results from Northern Ireland came in at 2 am on Saturday 7 May, well after the result was known in the rest of the UK.

2.47 As at previous Assembly elections, the count process lasted two days in total. However, the verification of three sets of ballot papers (two for the Assembly election and the third for the referendum) resulted in significant delays in announcing turnout and first preference totals in the elections. Organisational factors also had an impact on the speed of the count, with evidence of inconsistent practice and the lack of an overall plan for the Assembly and referendum counts.

2.48 Following the election, the Chief Electoral Officer made a commitment to carrying out a full review of the arrangements in place for managing elections and conducting counts in Northern Ireland and to report on this in 2012. We welcomed this initiative. In our view, the difficulties encountered at the May polls made it imperative that the review's terms of reference were sufficiently wide to address the shortcoming identified. We have already made clear our view that one of the outputs should be a timetabled and resourced action plan for improving the future delivery of elections and counts in Northern Ireland<sup>11</sup>.

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<sup>11</sup> The Electoral Commission, *Report on the Northern Ireland Assembly election on 5 May 2011* (October 2011)



## 3 Key issues

3.1 This chapter sets out the key issues that arise when decisions are made by Returning Officers about the timing of election counts. It sets out the different perspectives of those who conduct elections and those who campaign in them. It highlights other relevant issues, including public access to election results through broadcasters' results programmes.

3.2 This chapter poses questions on which we would be particularly interested to hear views from respondents.

### Principles

3.3 In the Commission's view, a fundamental principle underpins decisions as to the timing of election counts and that is the need to ensure an accurate result in which voters, candidates and political parties have confidence.

3.4 That means that the period of time at which counts takes place must be such that ROs (or counting officers in a referendum) can resource and conduct a well-run count process from start to finish, ensuring the accuracy of the result.

### How is an election count conducted?

3.5 Before considering the factors that affect the conduct of a count, we summarise below how an election count is conducted.

3.6 After polls close, ballot boxes are sealed in polling stations and transported securely to the venue where the count will take place. Normally, but not always, this is a central location<sup>12</sup> within the local authority or constituency.

3.7 The count consists of two stages. First, used and unused ballot papers are verified - a legal requirement essential to achieving an accurate result and prevent fraud. Verification entails comparing the total number of ballot papers at the count with the number of ballot papers accounted for by each polling station, to identify any anomalies. This is to make sure that the number of ballot papers recorded as issued to voters matches the number of ballot papers that will be counted.

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<sup>12</sup> Sometimes local elections counts are conducted within electoral divisions at a number of venues across the local authority. In an election conducted on a regional basis, the count may take place at a location central to the region.

3.8 Accuracy at this stage is vital and the RO must seek to resolve any discrepancies. For example, where polling places contain more than one polling station, voters sometimes put their ballot paper in the wrong ballot box and that could account for a discrepancy.

3.9 After verification, the RO can calculate the percentage turnout and should provide candidates and agents with details of the verified total and the overall turnout.

3.10 The second stage of the counting is the sorting of ballot papers to determine the total number of votes cast for each candidate. The process must be transparent at all times. 'Doubtful' ballot papers, where the voter's choice could be in doubt, are adjudicated by the RO in the presence of candidates and agents.

3.11 There is a reconciliation process, where the total counted for each candidate is added to the number of ballot papers rejected for uncertainty, and that total is compared with the total number of verified votes. If the two figures agree, the RO will advise the candidates and agents. If the totals do not reconcile, the RO must seek to resolve any discrepancies.

3.12 Candidates and agents are entitled to ask the RO for a recount of votes. There is no limit to the number of recounts that may be conducted, but the RO may refuse to conduct a recount if they believe the request is unreasonable.

3.13 Once the count is completed, the RO will declare the results, giving public notice setting out the name of each candidate elected, the total number of votes for each candidate, and the total number of rejected ballot papers.

## The conduct of counts

3.14 A number of factors affect when it is reasonably practicable for ROs to start counting votes after polls close. The main factors are listed below. In essence they are all concerned with complexity in count processes, to differing degrees in the particular circumstance of each election count. The factors may apply either generally to a particular election or specifically in certain localities.

### **Electoral system**

3.15 It takes longer to count votes in some types of election than others. Counting an election where a simple majority is required is normally quicker than in a system where votes transfer and ballot papers may be looked at more than once, such as in the Single Transferable Vote (STV) system.

3.16 Some electoral systems use two ballot papers, such as the Additional Member System, and the result of the regional election is dependent on the

outcome of all constituency elections within the region. Where the results of a regional count cannot be announced until the constituency counts are concluded, the regional count can only be as fast as the slowest constituency count in the region.

3.17 For example, a region that includes constituencies or local authority areas with long distances to get ballot boxes to count centres (see below) or whose count processes are not efficiently conducted will be slow to reach a conclusion, however efficient the regional count process itself may be. Interdependencies therefore impact on the overall time taken to produce a result.

3.18 Interdependency also arises in the Supplementary Vote system, where it is vital to coordinate the timing of counts across a region or area involved, as any second stage count required cannot be confirmed or completed until the initial results are in from all local authorities within the area.

3.19 The issue of interdependency also applies to referendum counts, which normally have one overall result based on tallying local results, whether at UK-wide or sub-UK level.

## **Combination**

3.20 The combination of different elections or elections with referendums and is probably the single most significant factor impacting on the organisation of the count. The relative complexity of combining elections is affected by:

- Overlapping, conflicting and complex responsibilities for the conduct of the different elections or elections and referendum which can lead to difficulties in the conduct of the count. If the legal framework does not provide for formal combination of electoral processes, but provides only that two or more electoral events are held on the same day, ROs may have to conduct two or more counts separately.
- Whether or not the units in which the combined elections are counted locally are coterminous. For example, combined elections may be based on the same constituencies or may be based on constituencies and local authority areas. If local units are not coterminous, the voting areas will be different and the returning officer for each election may be a different individual; either scenario makes the organisation of the local counts more complex.
- The electoral systems that are in use – for example, whether they each used the same or similar electoral system or whether they are different. A combination of one or more complex electoral systems in turn increases the complexity of the count processes.

- Different ballot papers and voting systems in use on polling day can lead to confusion and errors by voters in correctly recording their choices, potentially increasing the number of ballot papers that ROs need to adjudicate.
- Verifying the ballot papers for the different elections. Before votes are counted, they are verified, which means the total number of ballot papers at the count is compared with the number of ballot papers accounted for by each polling station, to identify any anomalies. Where there is more than one election, or an election and a referendum, it is good practice (and in some cases a legal requirement) to verify all the ballot papers first – thereby ensuring that all ballot papers are accounted for. If that is not done, there is a possibility of ballot papers for one election being found in unopened ballot boxes for the other election, where placed in the wrong ballot box by voters, too late to be included in the count. This means that the verification process for combined elections with two or more ballot papers is likely to be lengthy.

### **Change to electoral systems or electoral processes**

3.21 A significant change to an existing electoral system or a change to an electoral process is an important factor. Where a new electoral system is being introduced, voters, ROs and their staff, political parties and candidates are working with a system they are unused to. For example, the introduction of a proportional electoral system in place of first past the post may involve voters ranking several candidates in numerical order rather than choosing one candidate by placing one cross in a box.

3.22 The system of counting votes will have been untested (however much rehearsed in advance) by ROs and their staff in the particular election.

3.23 Further, voters will be new to the electoral system and the potential for errors on ballot papers increases – voters using crosses instead of numbers, for example. This adds to the number of ballot papers that have to be adjudicated by the RO.

3.24 Similarly, a significant change to an electoral process can mean revisions to existing count practice and new systems in use counting votes. The notable recent example of this has been in the checking of returned postal votes (see below) which, when first used at elections held in England and Wales in 2007 and in Scotland from 2008, brought challenges for ROs and their staff and extended the time taken to check postal votes before they could be counted.

3.25 Changes to electoral processes will become consolidated into electoral administration practice over a period of time, but on first introduction, can mean that a longer time than usual is taken to complete a count.

### **Ballot paper: number of choices and format**

3.26 The number of choices on the ballot paper and its format and design can affect the efficiency and speed of the count. For example, a ballot paper that has a large number of candidates or political party lists (12 or more) will be large and either require voters to fold it or it may be printed with two columns. When this comes to the count, large ballot papers can be unwieldy and require unfolding, meaning the process is slower.

3.27 Counting more choices on ballot papers self-evidently takes more time as do ballot papers in multi-member elections.

3.28 The design of the ballot paper can also be a factor: election count staff count piles of votes and double-check them by 'flicking', so designing an easy to use, accessible ballot paper that both cuts down voter error and enables speedy counting is important<sup>13</sup>.

### **Volume and management of returned postal votes**

3.29 In England, Scotland and Wales, ROs are required to match signatures and dates of birth on returned postal votes against those provided by electors on their postal vote applications. This measure is designed to prevent voting fraud. At every election, a proportion of postal votes are handed in by voters at polling stations on polling day, rather than being returned by post in advance. Although ROs are able to collect and open returned postal votes from polling stations on polling day, there remains a proportion still to be opened at the count, along with those collected by Royal Mail in 'sweeps' of delivery centres before close of poll. Depending on the size of postal voting in an area and turnout, this can be as many as a few hundred votes.

3.30 ROs must have systems in place for checking returned postal votes at the count. The process can be more complex in constituency elections which span local authority boundaries, since the postal vote applications are retained by electoral registration officers who are not necessarily based in the same local authority as the RO and data must be shared.

3.31 The management of returned postal votes at the count should be carefully planned by ROs including, for example, testing IT systems at count venues so that the size of the task and the likely time to complete it can be effectively estimated in advance.

### **Geography**

3.32 The geography of a local authority area or constituency can affect the time taken to get ballot boxes from polling stations after the close of poll to the count centre. In rural areas polling stations can be long distances from

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<sup>13</sup> The Electoral Commission *Making Your Mark. Good practice for designing voter materials: guidance for electoral administrators*, 2009

count centres, meaning that some ballot boxes may not arrive at count centres until around midnight after polls close at 10 pm.

3.33 In more compact, urban areas, distances from polling stations to count centres are generally shorter meaning the majority of ballot boxes will be received more quickly after the close of poll.

### **Election turnout**

3.34 The larger the number of votes cast, the longer it can take to count them, if turnout is higher than predicted and/or if insufficient count staff have been deployed to deal with the volume of votes. Sometimes, the size of the count venue is a constraint on the number of count staff that can be deployed. ROs should have plans in place to mitigate the impact that higher than expected election turnout can have on the time taken to count votes.

### **Marginality of election**

3.35 A marginal constituency where the contest is close can result in both a higher turnout, with more votes to count, and calls from candidates and agents for recounts. ROs in such constituencies and elections need to include time for potential recounts in their planning.

### **Security and safety**

3.36 Ensuring the safety and security of staff, candidates, agents and others at count venues, along with the security of ballot papers, is intrinsic to the organisation of the count. ROs need to take account of the circumstances at the time, any specific known threats or risks and any security assessments from the police. This has been particularly an issue Northern Ireland, for example, where prior to the UK Parliamentary general election in 2010 counts were not held overnight for security reasons. Sometimes, therefore, security issues may take precedence over any decision on the timing of the count and counts may even have to be moved at a late stage for security or safety reasons.

3.37 When sealed ballot boxes are received at count centres from polling stations, they are either opened soon after arrival or, if verification and counting of votes is taking place later, they must be stored securely. For counts that do not take place until the day after close of poll or later (as in European Parliamentary elections) ROs need to make arrangements for secure storage. There may be additional costs associated with storing ballot boxes, including for transport of ballot boxes if not stored in count centres.

### **Weather**

3.38 Depending on the time of year when the count takes place, the potential for severe weather can be a factor affecting when to count votes. It can cause transport difficulties both for getting ballot boxes from polling stations and for getting staff to count centres, bearing in mind that travel is during night time.

In combination with the geography of the area, this can be problematic for polls being conducted at a time of year when there is the possibility of hazardous driving conditions.

### Resources, including staff and venue

3.39 The availability of resources constrains the conduct of counts, including the availability of suitable venues and the number of count staff employed. The cost of counting votes is met from public funds and parameters for the amount that can be spent on employing staff and hiring venues to conduct counts is set out in secondary legislation specific to each major election in the UK<sup>14</sup>.

3.40 Employing more count staff, who are casual workers sometimes also employed by the local council in other capacities, can help to complete the count more quickly but may not offer the solution to completing a complex count in a short time. A significant constraint can be the availability of suitably trained and experienced managerial staff to conduct counts. For example, ROs responsible for two or more constituencies (up to six) usually appoint deputy ROs, who are usually senior managers in the RO's local authority. Where they have to work overnight and into the next day managing counts, while fresh teams of counting staff may be employed, suitably experienced senior managers can be more difficult to replace.

3.41 Tiredness of core staff has been one of the key factors leading ROs away from overnight counts, because of the risk of compromising the accuracy of the result. The following comments are typical of those reported after recent combined elections:

“I don't think it is right to expect anybody to work for nearly twenty four hours without a break. I and several colleagues were up at 5 am on polling day and did not get home until 4 30 am on the Friday. I had to be back in the office at 8 am to get the Parliamentary result put on the website and then go over to the count venue. Because of a recount in a multiple vacancy ward our Borough council election count did not finish until 6 15 pm on Friday. That means I worked for around 38 hours with only one hour's sleep” **Electoral administrator**<sup>15</sup>

The scale of events was difficult to manage. We decided to verify on Thursday night, leaving Friday clear for the local count in the morning and the referendum count in the afternoon. In practice, there was very little time between the events. This impacted worse on the Electoral

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<sup>14</sup> For local elections, spending limits are not specified in legislation. Local authorities are responsible for meeting the costs of their own elections.

<sup>15</sup> Association of Electoral Administrators Beyond 2010: *the future of electoral administration in the UK* (July 2010)

Services manager and other key staff, who worked 39 hours from Thursday morning to Friday night.” **Electoral Services Manager**<sup>16</sup>

### **Electronic counting**

3.42 Electronic counting has been used at Greater London Assembly elections, Scottish Parliamentary and local elections, and in smaller pilot schemes at local authority elections from 2000. There are significant capital and resource costs involved in planning and implementing electronic counting. We have made a number of recommendations to the UK Government about electronic counting<sup>17</sup>, including that it should undertake and publish a cost-benefit analysis for its use.

3.43 While we acknowledge that a case for using technology to support administrative processes may be made on economic, efficiency or accuracy grounds, e-counting does not always deliver the speed it promises. For example, counting the last set of GLA elections in 2008 was forecast to take 12 hours from the registration of the first ballot boxes to the declaration of results, and in practice took 15 hours to complete.

3.44 Further experience and analysis of electronic counting will be available after the GLA and Scottish local elections in May 2012.

### **Count methods**

3.45 The method used by the RO for counting votes may have an effect on the length of time it takes to count votes. We know from data we recorded at the referendums held in March and May 2011, where count information was centrally coordinated by the Chief Counting Officer, that similarly sized local authorities or constituencies sometimes take different lengths of times to count a similar number of ballot papers, even though they seem to use similar numbers of count staff. One factor that accounts for that is the management, organisation and methods.

3.46 Whilst we believe that it is more important to count accurately than to count quickly, we recommend the use of a ‘mini count’ method of counting. We have some evidence that shows that this is an efficient and accurate counting method and maintains the principles of a well-run count, including transparency.

**Are there any other general factors that impact on the administration of election counts?**

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<sup>16</sup> Association of Electoral Administrators *The administration of the referendums and elections across the UK in 2011* (July 2011)

<sup>17</sup> The Greater London Authority elections 2008 Report on the administration of the 1 May 2008 elections. July 2008



## Perspectives of governments, political parties and candidates

3.47 The perspective of governments, political parties and candidates is, in essence, that they want to know the result of major elections as soon as possible after polls close. Elections are a critical part of our democracy; governance across the UK can continue or change as a result of them and the outcome of individual contests have personal impact on candidates' careers and livelihoods.

3.48 At the same time, governments, political parties and candidates want an accurate result. No-one campaigning in an election wants the outcome of a contest to result in a challenge to the election through a petition to an election court, followed by a by-election. At worst, where problems with the administration of a major election count are on a larger scale, the outcome can be diminished public confidence in the democratic process, with those concerned, including politicians, blamed in the public domain for system failures.

3.49 Existing governments, leading politicians and the main political parties have regularly called for traditional, overnight counts at elections to the UK Parliament, Scottish Parliament and National Assembly for Wales. Chapter 3 'Recent developments' explains the particular tensions that have occurred at those elections. In some cases, decisions of ROs have been strongly opposed and criticised in the public domain by national politicians.

3.50 Political stakeholders point to the importance of our political traditions, including the symbolic change that can be seen by the public in a swift change in government and the theatre that can be a feature of election night. For example:

"It would completely destroy the atmosphere of the [general] election count if the count is done the following day."<sup>18</sup>

"I am a traditionalist in terms of thing that the election night is part of the process. It is something that brings people in to view politics where they would not normally do so."<sup>19</sup>

"Consistency of count timing is entirely justified for general elections – unlike local elections – as the general election is a UK-wide process to one, national body."<sup>20</sup>

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<sup>18</sup> Yorkshire Evening Post, quoting Labour MP Fabian Hamilton, 12 September 2009

<sup>19</sup> Ibid.

<sup>20</sup> Then Conservative Party Chairman, Eric Pickles MP, quoted in Daily Telegraph, 15 September 2009

3.51 Another point that has been raised by politicians and political parties in the context of elections to the Scottish Parliament and the National Assembly for Wales is that of parity with elections to the UK Parliament. Since UK Parliamentary general elections are counted overnight, it is seen as important that elections to the devolved bodies are counted overnight. At minimum, they have argued for a consistent approach. In all three bodies, a change of national government is at stake.

“This is a Welsh general election and we believe it is wrong that the people of North Wales should be treated differently, when it comes to them hearing local results at this important election ..If North Wales declarations are delayed, then the overall result of the Welsh general election would be delayed. We believe that such a delay would be unacceptable to the people of Wales as a whole – not just to the people of North Wales.”<sup>21</sup>

3.52 Even though elections may result in no overall majority and a new government may not be in place for several days after an election, senior politicians point to the desirability of getting underway speedily any consideration of governing by minority or starting coalition talks.

3.53 In Northern Ireland, where there is no legal requirement to count votes as soon as practicable after the close of poll, but there is a requirement to count so far as practicable continuously (subject to breaks), political parties, candidates and the media have been frustrated at the length of time taken to complete counts and declare results.

3.54 In some instances, criticism from national politicians has been about what they see as the failure of ROs to take account of the national importance of elections and focussing largely on issues of electoral process at local level. They have sometimes expressed concerns about the failure of ROs to have dialogue with politicians at national level.

3.55 There have also been concerns that ROs have not given reasons for their decisions until challenged after the decision has been made, and even then sometimes with limited explanation. In part those issues gave rise to the UK Parliament introducing a requirement for (Acting) ROs in UK Parliamentary general elections to give a report to the Electoral Commission if they do not begin counting within four after the close of poll.

3.56 For their part, ROs will say that national politicians fail to engage with or understand specific challenges that are faced in delivering accurate election results overnight. ROs have felt aggrieved at political pressure which they feel increasingly risks the accuracy of results.

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<sup>21</sup> Letter from leaders of Welsh Labour, Plaid Cymru, Welsh Conservatives, and Welsh Lib Dems, to the North Wales Regional Returning Officer, 14 April 2011

3.57 This scenario has not been anything like such a feature, however, at local elections. Local elections are primarily concerned with local outcomes, although of course the outcome of local elections as a whole is important nationally to the fortunes of political parties and for UK and devolved governments to the extent that outcomes can reflect voters' views on national governance.

3.58 A further important factor in local elections is that leaders of local political parties and councillors regularly engage with local authority Chief Executives, most of whom are ROs in local elections, so there may be a better informed local dialogue between about the timing of election counts in the context of the local circumstances. The volume of the elections, with the number of contests and candidates, for example, is a known quantity at local level, as are factors like local geography. An increasing number of local election counts have taken place the day after the close of poll, following dialogue or consultation between ROs, candidates and parties locally, without significant political opposition. In Scotland, local election counts have not been held overnight since 1995 (with the exception of by-elections).

3.59 In Northern Ireland the Chief Electoral Officer has the power to direct local council Chief Executives (who act as deputy ROs for local elections) as to when to commence their counts. Where there is a stand-alone local election, the counts normally take place on the two days after polling day. However, when elections are combined, as they were in May 2011, they are conducted on the following Monday and Tuesday after polling day.

**Are there any other significant perspectives from governments, candidates and political parties on election counts?**

## Broadcasting election results

3.60 Traditionally, the principal means by which the public are engaged in and informed about election results is dedicated election results programmes and broadcast and other news media. Results are now available online via news organisations websites, local authority websites, and increasingly via social media such as Twitter, including from candidates themselves.

3.61 Broadcasters need to plan their results programmes and election coverage and generally seek early decisions from ROs to facilitate this. Planning can be made more difficult by late decision-making or have to be based on assumptions.

3.62 Politicians often cite election night results programmes as embodying what the public expects and helping to keep the public engaged in the democratic process. Election results programmes can have a level of excitement when results are reported in rapid succession but can also be filled with long periods of commentary and analysis before any actual results come in.

3.63 There is relatively little evidence in the public domain about viewing figures for broadcast results programmes and it is not possible to make direct comparisons between election night results programmes and daytime programmes because there are no examples of results programmes covering major elections that have been broadcast mainly during the daytime.

3.64 We do have some comparative evidence relating to electoral events and viewing figures in Wales. The Chief Counting Officer (the Chair of the Electoral Commission) for the referendum held in Wales on 3 March 2011 sought views, including from broadcasters, about a daytime count for the referendum. In seeking views, she suggested that a count during the day could provide a greater opportunity to ensure that the delivery of the result was a democratic event itself, which could be showcased by the media in Wales. This would enable greater public access to the process.

3.65 BBC Cymru Wales, in its response to the Commission, commented that “the average audience during the results programme would be much higher if the counting was on Friday...during the likely key results slot of around 4am/4pm, the television audience could be three times higher”. The BBC also anticipated that the impact for S4C audiences would be similar, albeit on a smaller scale and that the average radio audience would be “significantly higher for a day count than an evening count”.

3.66 ITV Wales gave a similar assessment of the likely audience for a results programme when comparing late afternoon with early hours of the morning.

3.67 After the referendum, BBC Cymru Wales provided us with viewing figures for their referendum results programmes, comparing the daytime referendum results programme with a late night election results programme. The audience during the main referendum results window from 2-3 pm on 4 March was 70,000 on BBC1 Wales and 11,000 on S4C. In contrast, the audience for the results of the UK Parliamentary general election in 2010 was much lower. When most of the general election results were coming through, between 2 30 and 3 30 am on 7 May, the audience was 15,000 on BBC1 Wales and 2,000 on S4C. By contrast, voter turnout was 37% at the referendum compared with 65% in Wales at the general election.

3.68 For the Wales referendum, we also developed a dedicated website to publish, in real time, totals from each voting area and how these added to the overall referendum result as the count progressed. On 4 March, the website was visited over 7,000 times during the day, with an average visit time of 13 minutes.

**We would particularly welcome views of broadcasters and news organisations on the timing and audience size for their coverage of election results.**

What impact might daytime counts have on public access to election results via broadcast and news coverage?

## Public views

3.69 Audience size from broadcast and news organisations is probably the best available indicator of public interest in election results. There is no recent public opinion research or other evidence on public views as to when election counts are held. We ourselves commissioned public opinion research about people's experience of elections and we commissioned research about media coverage of the combined polls held in May 2011, but none of this specifically relates to the timing of election counts.

3.70 At election time, the Commission receives only a tiny number of public enquiries about the timing of election counts, even when there is on-going media coverage of issues about count timings, and ROs tell us that they similarly receive very few public queries about the issue. Television and radio broadcasters from time to time carry 'vox pops' and radio phone-ins that cover particular controversies about the timing of election counts but these can only convey a very small and unscientific snapshot of public views.

**We welcome any general views from members of the public about when election counts should be held.**

## 4 Ways forward

4.1 In our view, it is in the interest of voters that action be taken to avoid controversies arising over the timing of election counts shortly before elections take place. When notice of election is published by Returning Officers or the writ moved for a UK Parliamentary general election, signifying the formal start of the election campaign, debate in the public domain as to when votes are going to be counted should be unnecessary. During an election campaign, voters should be able to focus on the substantive issues of the election. Broadcasters should be able to plan well in advance how they will communicate election results.

4.2 In this chapter we seek views on potential ways forward to achieve this, particularly in relation to:

- UK Parliamentary general elections
- European Parliamentary elections
- Scottish Parliament elections
- National Assembly for Wales elections
- Northern Ireland Assembly elections
- Local elections

4.3 We also look ahead to the Police and Crime Commissioner elections scheduled for November 2012 and to future electoral events.

### UK Parliamentary general elections

4.4 The scope of decision-making of (Acting) ROs at UK Parliamentary general elections is already prescribed, in that they are required to begin counting with four hours of the close of poll or report to the Electoral Commission with their reasons as to why they did not do so. This requirement, a change to the law, followed considerable debate in Parliament in 2010.

4.5 Because of this change, the position as to the timing of counts has in effect already been resolved, albeit by a change in the law as a result of political debate rather than by consensus involving (Acting) ROs.

4.6 In our view, the requirement could be problematic if a general election were combined with any other type of election or if, for example, there were a change to the electoral system or a significant change to electoral process. The workability of the requirement could depend on the particular

combination rules or how the electoral process change was introduced – a process change might require a revision to election rules in any event.

**Should the requirement for (Acting) ROs at UK Parliamentary general elections to start counting within four hours of close of poll be revisited in the event of combination or a significant change to electoral process?**

## European Parliamentary elections

4.7 The results of European Parliamentary elections cannot be declared until close of polls across Europe. It is current practice for European Parliamentary regional returning officers (RROs) in Great Britain to adopt a common time for counting votes so that most results can be announced on Sunday evenings after the close of poll<sup>22</sup>. Because of the pan-European nature of the poll, UK Government officials are invariably involved in planning discussions with RROs.

4.8 European Parliamentary RROs have a power of direction to achieve greater consistency, which they may use to direct local ROs as to the timing of local counts.

4.9 If a European Parliamentary election is combined with any other electoral event, such as another election or a referendum, it would be important to resolve the question of when votes should be counted at an early stage. In our view, however, this can be achieved through existing practice, providing that the rules for the combined electoral event are suitable and sufficient and in place at least six months before the combined event is held.

**Is any change required to the current practice of reaching decisions as to the timing of European Parliamentary election counts?**

## Northern Ireland Assembly

4.10 After the Northern Ireland Assembly election in 2011, the Chief Electoral Officer made a commitment to carrying out a full review of the arrangements in place for managing elections and conducting counts in Northern Ireland. The difficulties encountered at the May polls made it imperative that the review's terms of reference were sufficiently wide to address the shortcomings identified in the conduct of the count. One of the outputs should be a timetabled and resourced action plan for improving the future delivery of elections and counts in Northern Ireland. The CEO plans to consult the political parties on any proposed changes to the Assembly count.

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<sup>22</sup> In Scotland, not all local ROs count on the Sunday night, which means results have not been available until the Monday morning after close of poll. Northern Ireland does not commence counting until the Monday morning following close of poll.

As a review of the arrangements for managing elections and conducting counts in Northern Ireland is proceeding, we consider that no additional action is required at this stage. However we intend to publish a progress report on the CEO's review in October 2012.

## Scottish Parliament

4.11 In relation to elections to the Scottish Parliament, the Elections Convenor has sought to involve political parties at the national level in issues relating to count timings, articulating and co-ordinating the views of ROs. In the lead up to the Scottish Parliament election 2011, on behalf of the ROs, she prepared a paper for the Scottish Parliament Political Parties Panel setting out the pros and cons of both overnight and next-day counting and the factors which ROs took into account in reaching their decisions (see Chapter 3). The Panel includes representatives of political parties in the Scottish Parliament, together with Scottish Government and Scotland Office officials, the Electoral Management Board, the Boundary Commissions, Royal Mail, and the Electoral Commission.

4.12 While this did not avoid controversy, since ROs still felt under political pressure to count overnight, it did achieve some clarity ahead of the election.

4.13 Future dialogue should also be informed by the specific circumstances of the election, for example, whether there is any significant process change. It is also important that resolution is reached well ahead of an election, that is not later than January in the year that an election is held in May and we recognise that the Elections Convenor has sought to do this.

4.14 The evidence base for dialogue with political parties could be strengthened by taking account of issues raised in this paper. Discussion could be widened, building on previous initiatives, to include the views of interested parties early in the planning process, such as from broadcasters and news organisations in Scotland.

**Is any change required to the current practice of reaching decisions, led by the Elections Convenor, as to the timing of Scottish Parliament election counts?**

**What other views might be sought and how should this be done?**

## National Assembly for Wales

4.15 In relation to elections to the National Assembly for Wales, there is no statutory officer or election coordinator with a power of direction to achieve greater consistency. There is a Wales Election Planning Group, convened by Welsh Government officials, which is primarily an information-sharing body comprised of representatives of ROs, electoral administrators, political parties and the Commission. Further, Regional Returning Officers and ROs have planning discussions, facilitated by the Commission, at which count timings



are discussed. There is no established practice of seeking views or dialogue with senior political party representatives as such or with broadcasters.

4.16 Within the existing forums and practice for election planning, it would be possible to seek views of political party representatives and broadcasters and news organisations in Wales, to inform RROs' and ROs' decisions. That would strengthen the evidence base for making decisions. Future dialogue should also be informed by the specific circumstances of the election, for example, whether there is any significant process change or combination of elections.

4.17 In particular, decisions should be taken well in advance of an election campaign starting, that is by January for an election being held the following May. Regional ROs should share reasons for their decisions at national as well as local level as to when counts will be taking place within their regions.

4.18 However, there is no statutory officer in Wales with responsibility for coordinating the Assembly election akin to that of the Elections Convenor in Scotland or the Greater London Returning Officer and therefore no single lead amongst ROs. Dialogue could be undertaken and decisions could be reached either by:

- The five Regional Returning Officers leading dialogue collectively and seeking to reach consensus across the regions following views received, or
- Legislative change could introduce a power of direction to achieve greater consistency, to be given to a post of elections coordinator or convenor that would also need to be established; or to the Electoral Commission, similar to the position of the Chief Counting Officer in the Wales referendum

**What is your view on existing forums and practice for election planning in Wales being used to seek views of political party representatives and broadcasters and news organisations in Wales, to inform RROs' and ROs' decisions?**

**Should the five Regional Returning Officers lead dialogue collectively and seek to reach consensus across the regions following views received?**

**Or should there be legislative change to introduce a power of direction to achieve greater consistency?**

**If so, should that power of direction be vested in a new post of elections coordinator or convenor to be established; or in the Electoral Commission, similar to the position of the Chief Counting Officer in the Wales referendum?**

4.19 In the light of what occurred in 2011, it is clear that political leaders would prefer that all five electoral regions in Wales agreed to begin counting

at the same time. That might, however, mean that counts are more likely to take place the day after the close of poll rather than overnight, since some ROs in predominantly rural areas consider that concluding both constituency and regional count before breakfast time, taking account of receiving ballot boxes from distant polling stations, is not realistic even without another combined electoral event.

**Should all five electoral regions in Wales always begin counting at the same time, even if that means it is more likely that counts will take place the day following the close of poll?**

## Local elections in England and Wales

4.20 In relation to local elections in England and local elections in Wales, we note in Chapter 3 that there appears to have been a greater acceptance by politicians and political parties that local decisions on the timing of election counts are more appropriate. Local elections are primarily concerned with local outcomes, although of course the outcome of local elections as a whole is important nationally to the fortunes of political parties and for UK and devolved governments to the extent that outcomes can reflect voters' views on national governance.

4.21 It remains important that ROs continue to engage with local political parties, candidates and agents, so that there is a well-informed local dialogue between about the timing of election counts in the context of the local circumstances. An increasing number of local election counts have taken place the day after the close of poll, following dialogue or consultation between ROs, candidates and parties locally, without significant political opposition.

4.22 By the time we publish any recommendations we make as a result of receiving responses to this Issues Paper in mid-March 2012, decisions are already likely to have been made about the timing of counts at local elections in England and across Wales, so will be unaffected by any recommendations we might make. We hope, however, that some of the issues raised in this paper will influence how decisions are made for the elections in May 2012.

**Is any change required to the current practice as to determining the timing of counts at local elections in England and local elections in Wales?**

## Local elections in Scotland

4.23 Local elections in Scotland from 1999 to 2007 were held on the same day as Scottish Parliament elections. The last stand-alone ordinary election of councillors was held in 1995. The local elections to be held on 3 May 2012 will therefore be the first stand-alone elections for 17 years.

4.24 Because of the linkage with Scottish Parliament elections, counts for local elections have since 1999 been held during the day (Friday) following

the close of poll. The basis of this has developed from voluntary agreement to, latterly, legislative provision. Legislation for the 2012 elections requires that the RO make provision as soon as is practicable after the close of poll for the electronic counting of votes.

4.25 The elections in 2012 will also be the first local elections at which the Electoral Management Board and the Elections Convener are in place on a statutory basis. The Commission understands that the Elections Convener intends to consult with the Scottish Parliament Political Parties Panel, Cosla and others on the question of the timing of Scotland's local counts before a position is taken at an early date to enable effective planning. That consultation will include discussion of all relevant factors facing the election including the use of e-counting technology.

4.26 By the time we publish any recommendations we make as a result of receiving responses to this Issues Paper in mid-March 2012, decisions are already likely to have been made about the timing of counts at local elections in Scotland and so will be unaffected by any recommendations we might make. We hope, however, that some of the issues raised in this paper will influence how decisions are made for the elections in May 2012.

**We would suggest that the EMB undertake a full and inclusive consultative process prior to making a decision on the timing of counts taking lessons from consultative processes it has previously undertaken and informed by issues in this paper.**

## Elections for Mayor of London and London Assembly

4.27 The Greater London Returning Officer (GLRO) has based decisions on the timing of election counts following consultation with his election steering group. Prior to the 2008 elections, the GLRO liaised with political parties and prospective independent candidates in the build up to the elections and also had plans endorsed by the GLA Elections Review Committee.

4.28 Since the adoption of e-counting in 2008, the GLRO and Constituency Returning Officers have considered that the only practical choice was to commence counting on a coordinated basis on Friday morning following the close of poll. This takes into account the fact that all the ballot boxes from the constituencies, which are made up of two to four boroughs, need to be transported to a central count location.

4.29 It remains important that dialogue with local political parties, candidates and agents continues so that all those with an interest are well-informed about when counting will begin and the likely time that will be taken to count votes.

**Is any change required to the current practice as to determining the timing of counts at the Elections for Mayor of London and London Assembly?**

## Police and Crime Commissioner elections

4.30 The UK Government intends to hold elections for Police and Crime Commissioners in England and Wales on 15 November 2011, using the Supplementary Vote electoral system. It will be important that Police Area Returning Officers give consideration to the timing of election counts as early as possible when the regulations for the conduct of those elections are finalised. There are several significant factors in relation to those elections, including:

- Voters outside London are unused to the Supplementary Vote system
- Similarly, ROs and their staff outside London have not counted votes using Supplementary Vote (SV) before
- The particular nature of SV means it is vital to coordinate the timing of counts across the police force area, as any second stage count required cannot be confirmed or completed until the initial results are in from all local authorities within the force area.
- However, the local authorities within the electoral areas may not have coordinated the timing of their counts with any other local authorities in that electoral area before. Further, the electoral areas are in some cases different to electoral regions used for other elections, with different Area ROs. Tried and tested regional and local communication networks will not be in use, therefore, in every case.
- The elections do not involve the return of a government
- A number of candidates may be new to elections and electoral processes

**We recommend that Police Area Returning Officers give consideration to the timing of election counts as early as possible when the regulations for the conduct of Police and Crime Commissioner elections are finalised, taking account of the issues raised in this paper.**

## Looking ahead

4.31 Over the next few years, there is the potential for a number of elections being combined. Innovations in electoral processes will continue to be developed and electronic counting may become increasingly used. We have consistently called for developments like these to be properly planned and their cost-benefit and impact fully assessed. Whatever developments do occur and whichever elections are combined, however, the timing of election counts will continue to be a factor.

4.32 We do not believe there is any simple solution to avoid controversies over the timing of election counts, since those with a stake in the process can

have sharply divergent views and perspectives. However, we believe the following principles could improve the approach to the timing of counts at future elections.

We invite your views on the following principles:

- Dialogue should take place between politicians, political party representatives and ROs, and be informed by input from broadcasters and news organisations. Their input is important since it is through them that most voters get to know the results of elections.
- In order to allow political parties and candidates to campaign and voters to make their choices on the substantive issues at the heart of the election, decisions on the timing of the count should be taken outside of the campaign period proper.
- Decisions on election counts must be taken early enough to enable effective planning by ROs.
- Reasons for ROs' decisions should take account of views expressed and be explained, in all the circumstances of the case.

## Questions

- Are there any other general factors (not identified in this paper) that impact on the administration of election counts?
- Are there any other significant perspectives from governments, candidates and political parties on election counts?
- What impact might daytime counts have on public access to election results via broadcast and news coverage?

### **UK Parliamentary general elections**

- Should the requirement for (Acting) ROs at UK Parliamentary general elections to start counting within four hours of close of poll be revisited in the event of combination or a significant change to electoral process?

### **European Parliamentary elections**

- Is any change required to the current practice of reaching decisions as to the timing of European Parliamentary election counts?

### **Scottish Parliament elections**

- Is any change required to the current practice of reaching decisions, led by the Elections Convenor, as to the timing of Scottish Parliament elections?
- What other views might be sought and how should this be done?

### **National Assembly for Wales elections**

- What is your view on existing forums and practice for election planning in Wales being used to seek views of political party representatives and broadcasters and news organisations in Wales, to inform RROs' and ROs' decisions?
- Should the five Regional Returning Officers lead dialogue collectively and seek to reach consensus across the regions following views received?
- Or should there be legislative change to introduce a power of direction to achieve greater consistency?
- If so, should the power of direction be vested in a new post of elections coordinator or convenor to be established; or in the Electoral Commission, similar to the position of the Chief Counting Officer in the Wales referendum?

- Should all five electoral regions in Wales always begin counting at the same time, even if that means it is more likely that counts will take place the day following the close of poll?

### **Local elections in England and local elections in Wales**

- Is any change required to the current practice of a local approach as to the timing of counts at local elections in England and local elections in Wales?

### **Elections for Mayor of London and London Assembly**

- Is any change required to the current practice as to determining the timing of counts at the elections for Mayor of London and London Assembly ?

### **Looking ahead**

We invite your views on the following principles:

- Dialogue should take place between politicians, political party representatives and ROs, and be informed by input from broadcasters and news organisations. Their input is important since it is through them that most voters get to know the results of elections.
- In order to allow political parties and candidates to campaign and voters to make their choices on the substantive issues at the heart of the election, decisions on the timing of the count should be taken outside of the campaign period proper.
- Decisions on election counts must be taken early enough to enable effective planning by ROs.
- Reasons for ROs' decisions should take account of views expressed and be explained, in all the circumstances of the case.

# Appendix A: Legislative framework

This Appendix sets out who is able to make decisions about when votes are counted at each of the major elections across the UK. It summarises the type of election, including the number of electoral units (constituencies, regions or local authorities) involved, voting system, the number of ballot papers, and the method by which voters make their choice.

Election	Legislation
<p><b>UK Parliamentary general election</b></p> <p>650 constituencies</p> <p>Electoral system: First past the post (simple majority). One ballot paper. A cross is placed in the box opposite the candidate of voter's choice.</p> <p>Parliamentary constituency ROs are required to take reasonable steps to start counting as soon as practicable within the period of 4 hours from the close of poll.</p> <p>Electoral Commission is required to give guidance to ROs on the duty to start counting within 4 hours.</p>	<p><b>Representation of the People Act 1983, Schedule1, Rule 45(3)(A)</b></p> <p>'The Returning Officer shall take reasonable steps to begin counting the votes given on the ballot papers as soon as practicable within the period of 4 hours – starting with the close of poll.'</p> <p><b>Representation of the People Act 1983, Schedule1, Rule 45(6)</b></p> <p>'The Returning Officer shall so far as practicable proceed continuously with the votes, allowing only time for refreshment, except that he may, in so far as he and the agents agree, exclude the hours between 7 in the evening and 9 on the following morning.'</p> <p><b>Representation of the People Act 1983, Schedule1, Rule 45(8)</b></p> <p>'The Electoral Commission shall issue guidance to Returning Officers on the duty imposed by paragraph 3A.'</p>



## European Parliamentary Election

12 European Parliamentary regions in the UK.

Electoral system: In Great Britain the Party list system. One ballot paper. A cross is placed in the box opposite the political party of voter's choice. In Northern Ireland STV is used. One ballot paper. Candidates are ranked in order of preference 1,2,3 etc for as many or as few candidates.

Normally, voters in the UK go to the polls on a Thursday but results are not declared until polls close across Europe at 9 pm on the following Sunday. In Northern Ireland the counts take place on the Monday.

European Parliamentary Regional ROs have a power of direction over Local ROs in relation to the discharge of their functions in their region. It can be used at the RROs discretion and could include matters relating to the election count.

## Verification

### European Parliamentary Election Regulations 2004, Schedule 1, Rule 50

'The Local Returning Officer must make arrangements for the verification of the ballot paper accounts in the presence of the counting agents as soon as practicable after the close of poll.'

### European Parliamentary Election Regulations 2004, Schedule 1, Rule 51(6)

The Local Returning Officer must determine the hours during which the procedure under this rule is proceeded with.

## Counting

### (52(1) of the European Parliamentary Election Rules.

The Local Returning Officer must make arrangements for counting the votes in the presence of the counting agents -

a) In the case of a general election of Members of the European Parliament, before or after the material time and in either case so that the requirements of rule 57(1) are satisfied as soon as practicable after the material time; and

b) In the case of the by-election, as soon as practicable after the close of poll

2) For the purposes of paragraph 1, the 'material time' means in relation to a general election of Members of the European Parliament, the close of the polling in the Member State whose electors are the last to vote in the

	election.
<p><b>Scottish Parliament elections</b></p> <p>73 constituencies</p> <p>8 regions</p> <p>Electoral system: Additional Member System</p> <p>Two ballot papers. On the constituency ballot paper, a cross is placed in the box opposite the candidate of voter's choice (first past the post) On the regional ballot paper, a cross is placed in the box opposite the political party list of voter's choice(closed list).</p> <p>Constituency ROs are required to count as soon as reasonably practicable after the close of poll.</p> <p>Regional ROs are also required to calculate and allocate the regional seats as soon as practicable after the statement from the CRO is received.</p>	<p><b>Scottish Parliament Elections Order 2010</b></p> <p>54.—(1) The Constituency Returning Officer shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll and shall give to the counting agents and the Regional Returning Officer notice in writing of the time and place at which the CRO will begin to count the votes .</p> <p>63(1) The RRO shall make arrangements for making the calculation and allocation referred to in rule 64 as soon as practicable after the RRO receives the statement prepared under rule 61 and the notification under rule 62(3) from each CRO in that region.</p>
<p><b>National Assembly for Wales general election</b></p> <p>40 constituencies</p> <p>5 regions.</p> <p>Electoral system: Additional Member System</p> <p>Two ballot papers. On the constituency ballot paper, a cross is placed in the box opposite the candidate of voter's choice. On the regional ballot paper, a cross is placed in the box opposite the political party list of voter's choice.</p> <p>Constituency ROs are required to count as soon as reasonably practicable after the close of poll.</p> <p>Constituency ROs must give written</p>	<p><b>National Assembly for Wales (Representation of the People) Order 2007. Schedule 5, Rule 54(1) and 54(2) and 61(2)</b></p> <p>At an Assembly election the constituency returning officer shall –</p> <p>a) Subject to paragraph 2 make arrangements for the counting of votes in the presence of the counting agents as soon as practicable after the close of poll</p> <p>b) Give to the counting agents and in the case of a regional election, to the Regional Returning Officer, notice in writing</p> <p>(ii) in the case where the power conferred by rule 55(3) is exercised, of the time and the place at which he will</p>

<p>notice to the relevant Regional Returning Officer of when they will count regional votes.</p> <p>Where the RRO has received the information required from each CRO, he shall certify the totals of the numbers. No time frame is specified for this to take place.</p> <p>The Secretary of State for Wales may direct Constituency ROs that the count of constituency and regional votes shall not begin until a specified time between 9 am and noon the day after the close of poll. The Secretary of State must give 28 days' notice of such a direction.</p>	<p>count the votes following completion of the proceedings described in rule 55(1)</p> <p>(iii) in the case of a direction under paragraph 2, of the time and the place at which he will count the votes following completion of the proceedings described in rule 55(1)</p> <p>(2) At an Assembly general election where there are polls at a regional elections; and constituency elections in the Assembly electoral region for which the regional election is held</p> <p>The Secretary of State may direct each constituency returning officer for an constituency within that Assembly electoral region that the counting of votes (as provided for in rule 55(5) in respect of the regional and constituency election shall not begin before such time between the hours of 9 in the morning and noon on the day following the close of polls for those elections as specified in the direction.</p> <p>3) A direction given under paragraph 2 shall be given not later than 28 days before the date of the poll at the Assembly general election in question.</p> <p>61(2) Where the RRO has received the information required to be conveyed to him under paragraph (1) from each constituency returning officer for an Assembly constituency in the Assembly electoral region, he shall certify the totals of the numbers referred to in paragraph (1) for the electoral region.</p>
<p><b>Northern Ireland Assembly</b></p> <p>18 constituencies – 108 MLAs 6 for each constituency</p> <p>Electoral system: Single Transferable</p>	<p><b>The Northern Ireland Assembly (Elections) Order 2001, Schedule 1, 44B(8)</b></p> <p>The Returning Officer shall so far as practicable proceed continuously with</p>

<p>Vote</p> <p>1 ballot paper. Voter marks a '1' and '2' for their 1<sup>st</sup> and 2<sup>nd</sup> choice candidate and so on. Vote for as many or as few candidates as you wish.</p> <p>No requirement that counting shall start as soon as practicable after the close of poll.</p>	<p>counting the votes allowing only time for refreshment, excluding (except so far as he and agents otherwise agree) the hours between 11 in the evening and 9 on the following morning.</p>
<p><b>Local elections in England and Wales</b></p> <p>Electoral system : England – First past the post (some single vacancy and some multi member ward).</p> <p>Wales – First past the post (some single vacancy and some multi member wards)</p> <p>Returning Officers are required to count as soon as reasonably practicable after the close of poll.</p>	<p><b>Local Elections (Principal Areas) (E&amp;W) Rules 2006</b></p> <p><b>Rule 44 and rule 45(8)</b></p> <p>44(1) The Returning Officer must make arrangements for counting the votes in the presence of counting agents as soon as practicable after the close of poll.</p> <p>45(8) The Returning Officer must so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that he may exclude the hours between 7 in the evening and 9 the following morning.</p>
<p><b>Local elections in Scotland</b></p> <p>Electoral system: Single transferable vote (STV).</p> <p>One ballot paper. Voter marks a '1' and '2' for their 1st and 2nd choice candidates.</p> <p>Returning Officers are required to count as soon as reasonably practicable after the close of poll.</p>	<p><b>The Scottish Local Government Elections Order 2011</b></p> <p>41 (1) The returning officer shall make arrangements for counting the votes in the presence of the counting agents as soon as practicable after the close of the poll, and shall give to the counting agents notice in writing of the time and place at which the returning officer will begin to count the votes.</p> <p>42.—(1) Subject to paragraphs (3) and (4), the returning officer shall provide an electronic counting system and the count shall be conducted by means of</p>

	such electronic counting system.
<p><b>Local elections in Northern Ireland</b></p> <p>Electoral system: Single transferable vote (STV). One ballot paper. Voter marks a '1' and '2' for their 1st and 2nd choice candidate and so on. Vote for as many or as few candidates as you wish.</p>	<p>Local Election Rules Schedule 5 of the Electoral Law Act (Northern Ireland) 1962 Rule 43</p>
<p><b>Parish and Community council elections in England and Wales</b></p> <p>Electoral system: England – Parish council – First past the post (some single vacancy and some multi member ward)</p> <p>Electoral system: Wales - Community council – First past the post (some single vacancy and some multi member wards)</p> <p>Returning Officers are required to count as soon as reasonably practicable after the close of poll.</p>	<p><b>Local Elections (Parishes and Communities) (E&amp;W) Rules 2006</b></p> <p><b>Rule 44 and rule 45(8)</b></p> <p>44(1) The Returning Officer must make arrangements for counting the votes in the presence of counting agents as soon as practicable after the close of poll.</p> <p>45(8) The Returning Officer must so far as practicable proceed continuously with counting the votes, allowing only time for refreshment, except that he may exclude the hours between 7 in the evening and 9 the following morning.</p>
<p><b>Elections for Mayor of London and London Assembly</b></p> <p>14 constituencies</p> <p>Electoral system: Constituency Assembly members - First past the post</p> <p>London members – Party list system – 1 vote next to a party</p> <p>London Mayor – Supplementary vote – two columns on the ballot paper – one for voters to mark their first choice and one in which to mark a second choice. Voters mark one 'X' in each column, although voters are not required to make a second choice if they do not wish to.</p>	<p><b>Greater London Authority Elections Rules 2007</b></p> <p>47(1) As soon as practicable after the close of the poll, the CRO must make arrangements for carrying out, in the presence of counting agents, the verification and counting of votes at the election.</p> <p>48 (1) The GLRO may provide the CRO with an electronic counting system consisting of computer hardware, software and other equipment of services, for the purpose of counting the number of ballot papers, to verify the ballot paper accounts and to count the votes cast</p>

	on them.
<p><b>Police and Crime Commissioner elections</b></p> <p>Electoral system: Supplementary vote</p> <p>There will be up to two rounds of manual counting by Local Returning Officers (LROs) across several local authority areas under the central direction of a Police Area Returning Officer (PARO). If there are two candidates the result will be determined by First past the post. If there are more than two candidates, the votes will be calculated under the supplementary vote system.</p> <p>LROs and PAROs will also need to decide the question of whether the count should take place centrally in the region or locally (with the overall Police Force Area results collated at a central location).</p>	<p><b>Police and Social Responsibility Act 2011</b></p> <p>Regulations are currently in draft.</p>
<p><b>Mayoral Referendums</b></p> <p>The UK Government may require a local authority to hold a referendum for an elected mayor.</p> <p>Returning Officers will be required to count as soon as practicable after close of poll.</p>	<p><b>Localism Act 2011</b></p> <p>Regulations for the conduct of polls are currently in draft. This legislation also has the potential to allow council tax referendums and later local planning referendums.</p>
<p><b>Mayoral Elections</b></p> <p>Electoral system: Supplementary Vote</p> <p>Mayoral elections would follow in areas that vote 'Yes' for a mayor in a mayoral referendum. Mayoral elections are also held in areas that have already elected to have an elected Mayor.</p>	<p><b>Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007</b></p>

## Appendix B: Potential combined elections

2012-13		2013-14		2014-15		2015-16		2016-17		2017-18	
Event	Date	Event	Date	Event	Date	Event	Date	Event	Date	Event	Date
London Assembly	May-12	English local government	May-13	English local government	May-14	UK parliamentary	May-15	Welsh assembly	May-16	English local government	May-17 Jun-17
London Mayoral	May-12			European parliamentary	Jun-14	Northern Ireland assembly	May-15	Scottish parliamentary	May-16		
English local government	May-12			Northern Ireland local government	TBA	English local government	May-15	London Assembly London Mayoral	May-16	Scottish local government	
Scottish local Government	May-12								May-16		
Welsh local government	May-12							English local government	May-16		
Police and Crime Commissioner	Nov-12							Welsh local government	May-16		
								Police and Crime Commissioner			

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## Democracy matters