



**Law
Commission**
Reforming the law

Electoral Law in the United Kingdom A Scoping Report

11 December 2012

Law Commission

Scoping Report (11 December 2012)

ELECTORAL LAW IN THE UNITED KINGDOM

A SCOPING REPORT

THE LAW COMMISSION

About the Commission: The Law Commission was established by section 1 of the Law Commissions Act 1965. The purpose of the Law Commission is to promote the reform of the law.

The Law Commissioners are:

- The Rt Hon Lord Justice Lloyd Jones (Chairman);
- Professor Elizabeth Cooke;
- Mr David Hertzell;
- Professor David Ormerod; and
- Frances Patterson QC.

The Chief Executive is Elaine Lorimer.

Topic: This report covers electoral law in the United Kingdom.

About the project: The project on electoral law reform consists of three phases. The first phase is an exercise to determine the scope of the project; the second involves developing substantive law reform proposals; and the third consists of completing a final report and draft Bill.

This report marks the end of the first phase of the project and aims to set out our final recommendations on the scope of the substantive phase of the project. The scoping exercise was conducted by the Law Commission of England and Wales in cooperation with the Scottish Law Commission and the Northern Ireland Law Commission.

Geographical scope: England and Wales, Northern Ireland and Scotland.

An impact assessment will be developed in the substantive phase of the project.

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Availability: You can download this scoping report and other documents free of charge from our website at <http://lawcommission.justice.gov.uk/areas/electoral-law.htm>.

THE LAW COMMISSION

ELECTORAL LAW IN THE UNITED KINGDOM

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CHAPTER 1

INTRODUCTION

BACKGROUND

- 1.1 The electoral law reform project is part of the Law Commission for England and Wales' Eleventh Programme of Law Reform published on 19 July 2011. Owing to the size of the project, the task was structured in three phases, with a review point for the Law Commission and Government at the conclusion of each phase.
- (1) The scoping phase commenced with the publication of our consultation paper on 15 June 2012.¹ The consultation period having ended on 17 September 2012, this report makes our final recommendations as to scope, marking the end of the scoping phase.
 - (2) The second phase involves formulating substantive law reform proposals. We will publish a consultation paper, undertake a broad public consultation and report on our conclusions as to how electoral law should be reformed. The consultation paper is currently scheduled for publication in 2014, after the planned referendum on independence has taken place in Scotland. We will report on substantive law reform in the summer of 2015.
 - (3) The final phase will involve the production of a draft Bill or Bills to implement our conclusions at the second stage. The aim will be to complete the final phase before the end of February 2017, in order to allow sufficient time for implementation before the planned general election in May 2020.

OUTLINE OF THIS REPORT

- 1.2 This report analyses the responses received to the Law Commission's Consultation Paper, *Electoral Law in the United Kingdom*. In particular, we consider the views of consultees in relation to the 16 consultation questions on the scope of the project.
- 1.3 In this Chapter we outline the consultation process and the overall consultation responses. Chapter 2 considers the range of electoral events falling within the scope of the project, as well as the inclusion of the legislative framework for electoral law within scope. In Chapter 3, we address discrete topics within electoral law. Chapter 4 considers the law on legal challenge to the validity and outcome of elections, and electoral offences. Chapter 5 considers the inclusion within scope of national and local referendums.
- 1.4 In this report we follow the sequence of questions we asked in our consultation paper, by making a recommendation as to scope in relation to each question.

¹ Electoral Law in the United Kingdom (15 June 2012) Law Commission Scoping Consultation Paper, <http://lawcommission.justice.gov.uk/areas/electoral-law.htm> (last visited 22 November 2012).

DEVOLUTION AND A TRIPARTITE REFORM PROJECT

- 1.5 In our consultation paper, we stated that any review of the law on elections and referendums must be UK-wide. UK Parliamentary and European Parliamentary elections, as well as UK-wide referendums, by their very nature are subject to shared rules across jurisdictional borders. A review of these rules will concern all three legal jurisdictions of the UK leading to reforms of electoral law in Scotland, Northern Ireland and England and Wales.
- 1.6 The scoping phase of the project has been conducted by the Law Commission for England and Wales in cooperation with the Scottish Law Commission and the Northern Ireland Law Commission. It is necessary for the remaining stages of the project to be conducted as a tripartite joint project by all three Law Commissions.

Scotland

- 1.7 In Scotland, legislative competence for UK, Scottish and European Parliamentary elections and the franchise at local government elections is reserved.² The Scottish Parliament has legislative competence over local government elections in Scotland, except for the franchise. It has, within its general competence, legislated for new elections to Health Boards, National Park Authorities and the Crofting Commission.
- 1.8 Executive competence is shared for Scottish Parliamentary elections, with section 1 of the Scotland Act 2012 transferring some executive competence relating to the administration of Scottish Parliamentary elections to the Scottish Ministers. That includes provision relating to supplying or dealing with the register, limits on candidates' expenses, and the combination of polls for Scottish Parliamentary elections with elections within the Scottish Parliament's legislative competence. In exercising their respective powers under the Scotland Act 1998, the UK and Scottish executives will be under an obligation to consult each other.

Northern Ireland

- 1.9 The Northern Ireland Assembly has no legislative competence in respect of elections. Elections to the UK Parliament, including the franchise, are exceptions to the legislative competence of the Northern Ireland Assembly.³ European Parliamentary elections, elections to the Northern Ireland Assembly, and local government (district council) elections are also excepted matters.⁴ The Secretary of State has executive powers in respect of elections to the Northern Ireland Assembly, as does the Crown in respect of local government elections.⁵

Wales

- 1.10 The Government of Wales Act 2006 places local government, including "electoral arrangements for local authorities", within the legislative competence of the National Assembly for Wales. However, the local government franchise is listed,

² Scotland Act 1998, sch 5 para B3.

³ Northern Ireland Act 1998, sch 2 para 2.

⁴ Northern Ireland Act 1998, sch 2 para 12.

⁵ Northern Ireland Act 1998 ss 34(4) and 84.

along with “electoral registration and administration”, as an exception to that competence.⁶ Although the matter is far from clear, for the purposes of the subject matter of this paper, legislative and executive competence for elections remains with the UK Parliament and UK Secretaries of State respectively. In any event the Silk Commission will hear evidence on the devolution settlement in Wales during the life of the project, which we will have to keep in mind.⁷

THE CONSULTATION PROCESS

- 1.11 Public consultation began with the publication of our scoping paper on 15 June 2012 and continued until 17 September 2012. We are grateful to all those who took part in consultation events and formally submitted responses. We also thank the Electoral Commission, the Association of Electoral Administrators (the “AEA”), the Cabinet Office and Scope for hosting and/or organising these events.

Written responses

- 1.12 During the consultation period, the Law Commission received 82 written responses. These were received from a wide range of consultees, including:

- (1) the UK Government (through the Cabinet Office) and non-departmental public bodies, including the Electoral Commission, the Boundary Commission for Wales, the Local Government Boundary Commission for Wales, and the Local Government Boundary Commission for England;
- (2) public bodies involved in electoral administration including the Electoral Management Board for Scotland and the Chief Electoral Officer for Northern Ireland;
- (3) political parties and individuals holding elected office;
- (4) representative bodies of electoral administrators, such as the national AEA, branches of the AEA, the Society of Local Authority Chief Executives (“SOLACE”), and the Scottish Assessors Association;
- (5) local government officials involved in electoral administration;
- (6) third sector bodies, including Scope, Mencap, Diverse Cymru and the Electoral Reform Society;
- (7) legal practitioners and members of the judiciary;
- (8) legal academics and social scientists interested in electoral law; and
- (9) members of the public.

- 1.13 A full list of formal written responses is provided in Appendix A.

⁶ Government of Wales Act 2006, sch 7 para 12.

⁷ Chaired by Paul Silk, former clerk to the National Assembly for Wales, the Commission on Devolution in Wales was launched by the Secretary of State for Wales on 11 October 2011. It will review in Part II the current non-financial powers of the National Assembly for Wales, and is due to report on Part II by spring 2014.

Consultation events

- 1.14 The Law Commissions' staff attended 17 events across the UK during the consultation period. These events were attended by a range of electoral stakeholders, including:
- (1) electoral administrators;
 - (2) senior (returning officer level) electoral officials;
 - (3) oversight bodies;
 - (4) members of the judiciary;
 - (5) legal practitioners; and
 - (6) academics.
- 1.15 A full list of the consultation events we attended is provided in Appendix B.

SUMMARY OF VIEWS

- 1.16 Most consultees responded to each question in the consultation paper, although a significant number made selective responses. Others wrote broadly in support of the project. In the following summary, we refer to the number of consultees who responded specifically to a particular question or on a particular issue.

Question 1: Elections and referendums covered

- 1.17 Of the 58 consultees who responded to this question, 57 agreed that the project should include the elections and referendums listed in the consultation paper and should be inclusive of any future polls that legislators may choose to introduce. One response disagreed with our inclusion of the elections for National Parks and the Crofting Commission in Scotland on the basis that they are sufficiently distinguishable as to make it expedient to exclude them. Many consultees suggested that we add parish and community polls, or local advisory polls.

Question 2: Legislative framework

- 1.18 There were 68 responses to this question. All of the consultees agreed with our proposal to review the legislative framework for electoral administration, including the place of rules within the hierarchy of primary and secondary legislation. This proposal flows from our assessment, which also received universal agreement, that the law was complex, voluminous, and fragmented.

Question 3: Core electoral parameters

- 1.19 Of the 58 consultation responses to this question, 41 agreed with our preliminary view to exclude the franchise, electoral boundaries and voting systems from substantive reform. Of those responses that disagreed, 11 wanted the franchise included, while a further 11 argued for the inclusion of electoral boundaries, and six for the inclusion of voting systems.

Question 4: Management and oversight

- 1.20 We received 55 responses to this question. Only four rejected our preliminary

view that the management and oversight of elections should be included. However, there was a significant difference of opinion about whether there should be a qualification to its inclusion. In particular, 34 responses agreed with our qualification that fundamental institutional change should not be within scope, though a number of electoral administrators were keen to see this project lead to a review of the role of the Electoral Commission. Another 17 responses rejected our qualification altogether, instead favouring the inclusion of fundamental institutional change within scope of reform.

Question 5: The register of electors

- 1.21 Of the 58 responses to this question, 57 agreed that we should include electoral registration and the meaning of “residence” within the scope of the project. Many responses thought a holistic approach was important and that the project should take account of the changes brought about by the introduction of individual electoral registration.

Question 6: Candidates and the campaign

- 1.22 We received 55 responses to the question whether we should include consideration of the rules on candidates and the campaign. All agreed with our preliminary view to do so, although some expressed a view that this should not extend to substantive reform of the rules governing electoral expenses and donations.

Question 7: Political parties and national campaign publicity

- 1.23 There were 44 consultees who responded to this question. Of these, 38 agreed with our preliminary view to exclude political party regulation and national campaign publicity.

Question 8: Manner of voting

- 1.24 All 62 responses to this question agreed with our proposal to include the rules on manner of voting within the scope of the project. Three consultees expressed their agreement on the basis that law reform should focus on the current methods of voting rather than introducing new ones.

Question 9: Polling day

- 1.25 We received 56 responses to this question, all of which supported consideration of the rules on polling day as part of the substantive review. Many responses focused on the detailed provision applicable to polling day and the lack of guidance given by the law in some areas.

Question 10: Determining and declaring the result

- 1.26 All 53 responses to this question wanted the rules for determining and declaring the result to be considered as part of the substantive review. Most responses cited the variation in rules across elections and the inconsistency in the detail of the rules as key issues for reform.

Question 11: Election timetables

- 1.27 We received 55 responses to this question. All of them agreed that consideration

of election timetables should be within scope. Consultees overwhelmingly supported the harmonisation of timetables across different elections, with many citing the risk of errors during combined polls as a key reason for reform.

Question 12: Combination of polls

- 1.28 There were 55 responses to this question. All agreed with our preliminary view to include the combination of polls within scope. Most responses emphasised the increased scope and tendency for combining election and referendum polls, and their consequential impact upon the administration of polls.

Question 13: The election petition and election courts

- 1.29 Of the 53 consultation responses to this question, 52 agreed with the inclusion of challenge processes within the scope of reform. One consultee disagreed. Many responses emphasised the private nature of the main remedy in the public context of elections, and the importance of striking of a proper balance between two public interests: the effective and accessible legal scrutiny of elections on the one hand, and certainty of political outcomes on the other.

Question 14: Electoral offences

- 1.30 We received 56 responses to this question and all of the consultees agreed with the inclusion of electoral offences within the scope of reform. A number of consultation responses described the current classification of corrupt or illegal practices as confusing and unhelpful and explained that many of the concepts on which the law is based are outdated and need reform.

Question 15: National referendums

- 1.31 Our consultation paper asked whether the scope of the reform project should include consideration of the electoral administration of national referendums. We received 56 answers to this question, all of which supported the inclusion of national referendums within scope.

Question 16: Local referendums

- 1.32 We received 55 responses to the question on whether the scope of the reform project should include consideration of the electoral administration of local referendums. All of the consultees agreed with our preliminary view to include local referendums held under a statutory regime for specific topics, although many suggested that parish polls should also be included within scope, along with generic local polls. We consider these at Chapter 5 of this report.

LAW REFORM AND POLICY

- 1.33 This project will take time and commitment from the Law Commissions, Government and stakeholders. Electoral law has been the subject of significant change since 1983. There is no sign of abatement in the pace of change as the UK Government's legislative programme for the life of the current Parliament is extensive. We therefore expect the scope of the substantive project to be able to adapt to reflect changes in electoral law over the life of the project.

- 1.34 The Law Commission undertakes law reform. The chief focus of the project is on rationalising, modernising and improving the fair and effective administration of elections. Chapters 3 to 5 of this report consider, among the range of topics spanned by electoral law, which should fall within the scope of the reform project. But within these topics, issues may emerge in the life of the project that on balance we will determine are of a constitutional or political nature. Care will need to be taken throughout the project to demarcate such issues of political policy from the technical aspects of electoral administration law reform.
- 1.35 The UK Government, in responding to our consultation, welcomed the review, describing it as important and hoping that it will lead to clear proposals to simplify and improve the existing law. It also welcomed our proposal not to consider wider policy issues.
- 1.36 In parts of this report, we note that a significant component of consultees' responses make particular reform proposals. On occasion we give our present view as to whether a particular suggestion crosses into the "political policy" category. However reform options for those topics that are within scope will be fully considered at the next stage of the project, when we review the substance of the law.

IMPACT ASSESSMENT

- 1.37 In the consultation paper, we called for consultees to provide us with any available figures and estimates of both monetised and non-monetised costs of electoral administration. This was with a view to beginning a process of information gathering that will lead to the production of a formal impact assessment as part of the substantive law reform phase of our project.
- 1.38 We are grateful for the assistance of stakeholders, in particular the Electoral Commission and the Cabinet Office, with this exercise. In beginning this process, the scale of the challenge posed by carrying out an impact assessment of UK-wide reforms covering all elections to public office has been brought into focus. It will require us to establish both overt and hidden costs of electoral administration.
- 1.39 Overt electoral administration costs fall into three categories: electoral registration, the administration of polls, and publicity. Electoral registration is the permanent, year-round form of electoral administration. It is the responsibility of registration officers who, in Great Britain, are local government officials. Its costs are borne by the local authority that employs them.⁸
- 1.40 By contrast, the administration of polls is event-specific, relating to the performance of duties by returning officers on the incidence of an electoral event. Such an event might occur as scheduled (an ordinary or general election) or as a one-off occurrence (a by-election or called referendum).
- 1.41 While local government, whose staff in Great Britain administer polls, will incur expenses in doing so, another institution may ultimately be responsible for meeting those costs. Thus the Cabinet Office meets the fees and charges of

⁸ In Northern Ireland, the costs of electoral administration borne by the Electoral Office for Northern Ireland are met by Parliament.

returning officers at UK Parliamentary elections under section 29 of the Representation of the People Act 1983 (“the 1983 Act”).⁹ By contrast, for example, the fees and charges for an election to the council of a local authority – or to the Greater London Authority – are met by the authority in question.

- 1.42 Another event-specific item of expense is publicity, or the cost at some elections of candidates’ legal entitlement to free mailings to electors. Like the cost of the administration of polls, it is borne by the institution responsible for the election. The Cabinet Office, for example, funds candidates’ mailings at UK Parliamentary elections, in accordance with section 91 of the 1983 Act. Unlike the administration of polls, however, publicity costs are not first incurred by local government.
- 1.43 Institutional responsibility for the cost of electoral administration is, therefore, complex and fragmented. There is no central body gathering and presenting the UK-wide cost of electoral administration, irrespective of institutional responsibility for the cost. Thus a recent Cabinet Office report concentrates on the costs it is responsible for – those of administration of polls and candidates’ mailings for the 2009 European Parliamentary elections (£90.3 million) and the 2010 UK Parliamentary general elections (£99.1 million).¹⁰
- 1.44 By contrast, the Electoral Commission’s reports on the cost of electoral administration in Great Britain are concerned with the costs incurred by local government electoral administrators. They exclude, therefore, the costs of candidates’ mailings. They do not include the cost of electoral administration in Northern Ireland or the cost of local government elections in Scotland – and, we infer, the cost of other devolved elections in Scotland.
- 1.45 Table 1 below sets out the total costs recorded by the Electoral Commission for four financial years covered in two reports on the costs of electoral administration.¹¹ These are based on surveys sent to local authorities, along with guidance on their return. The reliability of the data thus depends on the accuracy of responses. Nevertheless, it illustrates the relatively stable cost of electoral registration compared to the variable cost of administering elections, which depends on the incidence of particular polls in any given year.
- 1.46 The first challenge in assessing the impact of electoral law reform will be to compile figures for the cost of electoral administration – registration, the administration of polls, and candidates’ mailings – for all elections within scope, including devolved elections in Scotland, and elections in Northern Ireland.

⁹ The Cabinet Office also has funding responsibility under European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 15.

¹⁰ Returning Officers’ Expenses England and Wales, Statement of Accounts (2010-11) HC 1683. Strictly speaking, the funds are from HM Treasury’s consolidated fund, but the Cabinet Office is the responsible Government department.

¹¹ Electoral Commission, *The Cost of Electoral Administration in Great Britain* (June 2010). We also use figures, disclosed in advance, that we understand will appear in the Electoral Commission’s second report, not yet published at the time of writing, on the cost of electoral administration in Great Britain for 2009/2010 and 2010/2011. A report on the cost of administering referendums (which the figures at table 1 do not take into account) will also be available.

Table 1: Electoral administration costs (£ millions)

	Electoral registration (A)	Elections (B)	Administration (A+B)
2007/08			
England	67.3	67.9	135.2
Scotland	10.1	16.3	26.4
Wales	3.7	3.6	7.3
GB	81.1	87.7	168.9
2008/09			
England	68.8	48.4	117.1
Scotland	10.1	2.2	12.2
Wales	4.0	4.8	8.8
GB	82.8	55.4	138.2
2009/10			
England	69.8	76.7	146.6
Scotland	8.5	8.6	17.1
Wales	3.9	4.1	8.0
GB	82.3	89.5	171.8
2010/11			
England	72.3	90.6	162.9
Scotland	8.3	11.6	19.9
Wales	4.9	4.5	9.4
GB	85.5	106.7	192.2

- 1.47 The second challenge will be to estimate the hidden costs within electoral governance, such as the cost of managing electoral legislation. As we discuss in Chapter 2 of this report, a central aim of the project will be a more consistent and streamlined legislative framework, thus simplifying and making more predictable the tasks of stakeholders such as Government departments and the Electoral Commission. This is likely to have a costs impact.
- 1.48 The final challenge will be to take into account non-monetised costs within electoral law. These are the intangible and non-pecuniary benefits of a simplified and more modern set of laws, such as accessibility of electoral rules to the general public, or the reduction in the likelihood of administrative errors which might adversely impact upon public confidence in electoral administration and outcomes.
- 1.49 We look forward to continuing to work with stakeholders to establish the true cost of administering and managing the current set of electoral laws, and thereafter to assess the impact of proposed reforms, when they are developed, on that cost.

CHAPTER 2

STRUCTURE OF ELECTORAL LAW

- 2.1 This Chapter is concerned with the way electoral law is currently organised. It is divided into two parts. The first considers the criteria for inclusion of electoral events within the scope of the substantive reform project. The second considers the problems with the underlying legislative framework for electoral law, and the approach to reforming that framework in the substantive law reform project.

ELECTIONS AND REFERENDUMS COVERED

- 2.2 In the consultation paper we identified the criteria for inclusion of an election or referendum within the scope of the substantive reform project. We offered a list of such electoral events, while making clear that future polls that are created during the life of the project will need to be considered for inclusion.
- 2.3 We proposed to include all elections to public office on the basis that these conferred legal or constitutional status on the elected persons. As such, they call for special and careful legal treatment, and most are governed by rules as to their conduct, with which this report is chiefly concerned.
- 2.4 Referendums differ from elections. Nevertheless, we noted that their outcomes carry legal or persuasive weight by virtue of their democratic legitimacy. A further reason for considering both elections and referendums is that they are run, broadly speaking, by the same persons, according to similar statutory conduct rules, and may in fact be run together in combined polls. Accordingly, we proposed that national and local referendums conducted under statute should be included within the scope of the substantive law reform project.
- 2.5 Having defined these criteria, we listed elections and referendums we thought satisfied them, and asked consultees whether the law reform project should include them.

Consultation responses

- 2.6 Of the 58 consultees who responded to this question, 57 agreed that the project should include the elections and referendums listed in the consultation paper.
- 2.7 Our list of elections included elections in Scotland to the Crofting Commission, Health Boards and National Park Authorities.¹ Lord Eassie and Lady Paton, in their joint response as the designated judges who hear election petitions in Scotland, said:

We incline to think that elections of members of each of the National Parks Authorities in Scotland and the Crofting Commission are sufficiently *sui generis* as to make it expedient to leave them out of the project; and the same may possibly be said of Health Board elections.

¹ We noted in our scoping consultation paper that the inclusion of the law of Scotland will depend on decisions by the Scottish Law Commission and Scottish Ministers.

- 2.8 The joint response by the Society of Local Authority Lawyers and Administrators in Scotland (“SOLAR”) and the Electoral Management Board for Scotland agreed with our list of elections, but suggested that if Crofting Commission elections are included, so should be Business Improvement District (“BID”) ballots:

BID ballots should also be included since, under the Business Improvement Districts (Scotland) Regulations 2007, the local authority’s [returning officer] is required to run the ballot, notwithstanding that the register of voters comprises business ratepayers and not local government or parliamentary electors. In this respect, the Crofting Commission elections, where crofters are the voters, are in the same position as BID ballots, [which] are proposed to be included in the review. The same applies to the Health Board elections which have taken place in Scotland using a franchise which included 16 and 17 year olds.

- 2.9 The joint response also suggested that community council elections in Scotland should be considered for inclusion:

Local authorities must provide a scheme for their establishment under the Local Government (Scotland) Act 1973, and such a scheme must include provisions regarding how and when community council elections are to be held. Furthermore, a debate has been started by the Scottish Government in its current consultation paper proposing a Community Empowerment and Renewal Bill. One idea contained in this consultation paper is for community councils to help communities get more involved in deciding about and managing local services.

- 2.10 Consultees in England and Wales agreed with the list of elections and referendums in our consultation paper. However, many suggested that we add parish and community polls, a form of local referendum which can occur at the parish and community levels in England and Wales respectively, and advisory polls, which are polls taken by local government under their general powers. In particular, the Society of Local Authority Chief Executives (“SOLACE”) responded that all elections and referendums should be included within scope, suggesting also that rather than giving a list of elections and referendums covered it may be more practical to emphasise the criteria for their inclusion.

Discussion

- 2.11 Given the response of many consultees seeking their inclusion, we propose to include parish and community polls within the scope of the project. We discuss parish polls, BID ballots, and local advisory polls at Chapter 5 of this report, where we decline to recommend the inclusion of the latter two types of poll.
- 2.12 As for the inclusion of elections to the Crofting Commission, National Parks Authorities, and Health Boards in Scotland, we acknowledge that these elections do not make use of the full range of conduct rules, franchise and registers that govern what may be described as “classical” elections. As Lord Eassie and Lady Paton put it, they are in a sense *sui generis*. However, they remain elections to public office, and so we propose to maintain their inclusion. Similarly, elections to community councils in Scotland are plainly elections to public office, although there are no statutory conduct rules at present.

2.13 The response from consultees suggests that, in selecting the elections to be included in scope, the consultation paper could be seen as over-emphasising the list of elections at the expense of the underlying criterion of election to public office which confers legal or constitutional status on the person elected. The list of elections should be seen as an illustration of the application of that criterion, and not as a definitive and closed list. Subject to that caveat, that list includes:

- (1) UK Parliamentary elections;
- (2) European Parliamentary elections;
- (3) Scottish Parliamentary elections;
- (4) Northern Ireland Assembly elections;
- (5) National Assembly for Wales elections;
- (6) local government elections in England and Wales, including:
 - (a) principal area local authority elections; and
 - (b) parish and town councils and community council elections;
- (7) local government elections in Scotland, including:
 - (a) principal area local authority elections; and
 - (b) community council elections;
- (8) local government elections in Northern Ireland;
- (9) Greater London Authority elections (to the London Assembly and London Mayor);
- (10) mayoral elections in England and Wales;
- (11) Police and Crime Commissioner elections in England and Wales;
- (12) National Park Authority elections in Scotland;
- (13) Crofting Commission elections in Scotland; and
- (14) Health Boards elections in Scotland.

2.14 Our criteria for including referendums conducted under statute are their legal or persuasive weight, democratic legitimacy, their being subject to statutory conduct rules, and the possibility of combination with other polls. We discuss this further at Chapter 5, where we propose to cover all referendums conducted under statute, including:

- (1) national referendums held under the Political Parties, Elections and Referendums Act 2000; and
- (2) local referendums conducted under statute, including:

- (a) local governance referendums in England and Wales;
- (b) local council tax referendums in England;
- (c) local neighbourhood planning referendums in England; and
- (d) parish and community polls in England and Wales.

Recommendation 1: the scope of the reform project should include all elections to public office and national and local referendums conducted under statute, including those listed above.

LEGISLATIVE FRAMEWORK

2.15 The underlying legislative framework governs where citizens, candidates and administrators can access electoral rules, and how legislators change the law governing particular aspects of the electoral process, or introduce new elections.

New elections and election-specific legislation

2.16 In our consultation paper, we considered the development of electoral administration law, starting with its origins in Victorian reforms from 1868 to 1883. We noted that the underlying design of our modern law of electoral administration remained Victorian in origin. We described the conventional model of electoral administration in the UK, under which:

- (1) Parliament enacted detailed prescriptive rules relating to electoral administration and campaign conduct;
- (2) rules were to be strictly applied by local administrators insofar as they related to the conduct of the poll;
- (3) the burden of compliance with regulatory rules fell squarely on candidates and the mandatory office of election agent; and
- (4) rules were enforced by motivated persons – candidates or electors – by instituting private legal proceedings (the election petition) before an election court.

2.17 The detailed prescription in the law ensured consistency of application without the need for central oversight. To guard against outside influence rules were designed so far as possible to exclude discretion or subjective judgements. Candidates and their election agents were encouraged to comply with regulatory rules by the drastic consequences of breaches, including the nullity of their election, disqualification for a period from elective office, and criminal sanction. Questions of judgement were for judges and not local administrators.

2.18 Government's role was thus to lay down, in advance, the detailed rules which a decentralised administration was to follow, and which motivated, interested persons would enforce through a judicial process. The rules were placed in primary legislation and therefore only Parliament could amend or update them.

- 2.19 This approach survived in the Representation of the People Act 1983 (“the 1983 Act”), which then governed all elections in Great Britain save European Parliamentary Elections. At that time all elections used the first-past-the-post voting system, for which classical election law had been designed.
- 2.20 More recently concerns have surfaced about the complexity, volume and fragmentation of electoral laws. In our consultation paper, we set out our analysis as to why these concerns arose.
- (1) Many new elections were created after 1997, none of which used the first-past-the-post system around which classical electoral law evolved.
 - (2) By and large new elections came with their own set of legislative measures. These adopted or modified the classical electoral administration rules set out in the 1983 Act.
 - (3) Each discrete set of legislative measures governing new elections retained the conventional approach to detailed prescription in the law.
- 2.21 The fact that new election types came with bespoke sets of legislative measures, combined with the retention in each of the conventional approach to detailed prescription, inevitably puts the legislative framework under strain. It results in a large volume of laws including a significant amount of repetition, a complicated arrangement of legal sources, and some complex measures.

The place of rules in the legislative hierarchy

- 2.22 A consequence of the piecemeal accretion of electoral legislation is that no consistent principle governs the place of electoral law provisions in the legislative hierarchy of primary Acts and secondary legislation. The 1983 Act divides its core provisions into three principal parts setting out fundamental electoral law concepts (such as franchise and registration), campaign regulation, and legal challenge. More detailed provision governing the administration of the poll at UK Parliamentary elections is made in the Parliamentary Election Rules, which are scheduled to the 1983 Act.
- 2.23 For local government elections, which are also governed by the 1983 Act, the election rules are in secondary legislation. For elections outside the realm of the 1983 Act, the core provisions and election rules might all be contained in secondary legislation. This is the case, for example, in European Parliamentary elections.
- 2.24 Each set of legislative measures governing particular elections generally retains the division in the 1983 Act between core provisions and election rules. Furthermore, the subject matter of election rules is governed by the subject matter of the Parliamentary Election Rules, which was settled in 1872. While these rules have since been refined, entirely new concepts such as rolling registration and absent voting – since 2000 integral parts of administering a poll – are regulated by a separate regime of secondary legislation organised by jurisdiction, not election type.

Consultation responses

- 2.25 We received 68 responses on whether the substantive reform project should review the legislative framework to reduce the problems of volume, complexity and fragmentation, including the proper place of rules within the legislative hierarchy. All agreed that the legislative framework should be within scope, expressing in various ways the problems the current framework causes.
- 2.26 In his response to our consultation paper, Timothy Straker QC (an expert election lawyer who has also heard election petitions) emphasised that the electoral landscape has changed significantly since the foundations of electoral law were laid down.

There is a startling correspondence between the Ballot Act 1872 (which introduced the ballot) and the [1983 Act]. However in 1872 the franchise was enjoyed by a very limited section of the population and the approach to the electorate by candidates was wholly different. If the underlying circumstances in 2012 do not correspond with the underlying circumstances in 1872 there is, at least, a curiosity in using the same legal approach in 2012 as in 1872.

Further, the number of elections has increased and the circumstances are very different today. However, [the 1983 Act] provides the legislative base with variations (typically through secondary legislation) as thought necessary for all such present day elections. This mixture of legislative material is no more than a recipe for confusion.

- 2.27 Other consultees echoed the latter sentiment, emphasising that the basic approach to reforming the law must be to reduce the number of legal sources that users must consult. For example, the national Association of Electoral Administrators (“AEA”) in its response said there was “considerable systemic complexity in the legal and structural framework for electoral administration”. This causes problems for administrators who, although not lawyers, are reasonably expected to have a working knowledge of the legislation. These are compounded by the tendency to combine polls, and the legal ramifications of combination. For example, the UK-wide May 2010 elections were governed by 25 distinct pieces of primary and secondary legislation. The May 2011 polls involved 14 Acts and 26 pieces of secondary legislation. The national AEA added:

We believe that central to this review should be the creation of a single Electoral Administration Act in accessible language setting out the high-level principles and framework for electoral administration; the operational detail should then be contained in secondary legislation. There should be a clear logic and consistency in the way that this is done in respect of electoral registration and across all elections and referendums within scope. We agree that the project should explore the benefits of moving away from the current event-specific approach to electoral law.

- 2.28 The Electoral Commission’s view was that reform should include consideration of “the optimal legislative framework for electoral administration” and a “clear structure using as few legislative vehicles as possible”. The Electoral

Commission makes clear that, as well as causing problems for administrators, the current legislative framework is hard to manage from a policy or governmental point of view. Referring to the problem of dual emblems for joint candidates, which as we note at paragraph 3.136 of this report are only now being fixed, the Electoral Commission noted:

Many of the current difficulties with electoral law result from the current structure – for example, the situation of detailed rules providing for the administration of parliamentary elections in primary legislation has meant that it is difficult to adjust anomalies in the rules, leaving the parliamentary legislation in some cases lagging behind legislation for other elections.

- 2.29 The UK Government agreed that we should consider the legislative framework. It added:

The Government supports the broad scope of this project as set out by the Law Commission looking at reform of electoral law in the terms outlined. Electoral law is complex and simplification of the many different pieces of legislation would be helpful in electoral management terms for many, if not all, of those involved.

The Law Commission will want to ensure that any new legislative framework that it brings forward is sufficiently flexible to align with wider legislative changes, new electoral systems, and Government policy initiatives. Emerging technologies and their possible future application within the electoral landscape is another factor that the Commission will no doubt give thought to.

The Government believes that reform of the extant law could bring greater stability and predictability to the delivery of electoral events and has the potential to increase voter confidence in the system. Officials will continue to work closely with the Law Commission as the review project progresses.

Discussion

- 2.30 Our scoping paper provided a technical analysis of the reasons for the modern concerns of volume, complexity and fragmentation within the legislative framework. The crucial factor was combining an election-specific approach to legislation while retaining the conventional approach to detailed electoral legislation. Timothy Straker QC's analysis emphasises a different problem with the current legislative framework. The reforms of 1872 to 1883 were designed in a different age, and to combat contemporary ills. The 2012 electoral landscape is significantly changed.
- 2.31 Following problems at the combined local government and Scottish Parliamentary elections in May 2007, an independent review by Canadian electoral expert Ron Gould made the following fundamental recommendation:

Our review of the present legislation, as it affects both the Scottish Parliamentary and the local government elections, has led us to conclude that it is so fragmented and antiquated that it fundamentally

interferes with the ability of electoral stakeholders to make timely decisions and to carry out all activities related to planning, organising and implementing an election effectively. The obvious conclusion, and our recommendation, is that a major initiative should be undertaken to rationalise and consolidate the existing legislation as it relates to these elections, ensuring that the respective electoral provisions of the laws are as compatible as possible and that they focus on electoral policy rather than micro-management of the elections.²

- 2.32 Our analysis is that these problems apply with equal force to the legislative framework for all UK elections. The unanimous response from consultees suggests the same. We see the electoral law reform project as the major initiative the Gould report called for, writ large for UK electoral law.
- 2.33 We agree with the analyses of the national AEA and the Electoral Commission that our aim should be to organise the law using a clear, principled and consistent legislative structure, using as few legislative vehicles as possible, and aiming, if possible, for a single Act. As we noted in our scoping consultation paper, careful consideration will need to be given to the place of rules within the legislative hierarchy. That includes the benefit of placing rules in primary legislation: ensuring that changes to the law are given the fullest parliamentary scrutiny.
- 2.34 A consequence of reviewing the legislative framework is that even within those electoral law topics which are outside the scope of law reform, such as the franchise, consideration will be given to restating the law within the reformed legislative framework.
- 2.35 In relation to those topics which are within scope, a key theme in Chapters 3 and 4 of this report, and a consequence of the event-specific way in which the legislation is organised, is the growing difference in rules across elections. These have made species of elections less compatible with one another. This affects voters who are asked to change habits acquired over a lifetime of voting, such as folding a ballot paper. It also affects administrators who are asked to run combined polls, or familiarise themselves with new legislation and rules. Moving away from an election-specific legislative framework will require a joined up, holistic notion of elections and electoral administration, and a by-product of the inclusion of the legislative framework within scope is that electoral administrative rules must be rationalised and streamlined in order to simplify the law.

Recommendation 2: the substantive reform project should review the legislative framework to reduce the problems of volume, complexity and fragmentation, including the proper place of rules within the legislative hierarchy.

² R Gould, *Scottish elections 2007: the independent review of the Scottish Parliamentary and local government elections 3 May 2007* (October 2007), p 112, http://www.electoralcommission.org.uk/__data/assets/electoral_commission_pdf_file/0011/13223/Scottish-Election-Report-A-Final-For-Web.pdf (last visited 22 November 2012).

CHAPTER 3

ELECTIONS

- 3.1 In this Chapter we consider key topics within electoral law, and recommend whether they should be included within the scope of the substantive reform project. We begin with the core parameters for any electoral contest, which are of utmost democratic importance. We then consider the management and oversight of elections, the registration of electors, the rules governing candidates and the campaign, political parties and broadcasting, the manner of voting, polling day procedures, determining and declaring the result, election timetables and finally the issue of combining polls.

CORE ELECTORAL PARAMETERS

- 3.2 In our consultation paper we observed that certain matters are so fundamental to the running of an election that we regard them as core electoral parameters. These included the question of who should have the capacity to vote (the franchise), the representative area in and for which people vote (boundaries), and the way in which votes are counted and winners declared (voting systems). Our preliminary view was that substantive reform of these matters was best left to democratic or cross-party consensus rather than a technical law reform project.

Franchise

- 3.3 A person is entitled to vote in a constituency or electoral area if on the date of the poll they: (a) are registered on the relevant register; (b) are not subject to any legal incapacity to vote; (c) hold the requisite citizenship; and (d) have reached voting age. There are three key and slightly different versions of the franchise for UK Parliamentary, local government and European Parliamentary elections. Other elections typically employ one of these forms of the franchise and then make adjustments as necessary.¹ In our consultation paper, we distinguished the requirement to be registered to vote from the administrative operation of electoral registration, which we saw as within scope.

Boundaries

- 3.4 Electoral boundaries define the geographical areas that have separate representation in a legislature or other representative body. These areas are commonly called constituencies for elections to legislatures or electoral areas for local government and other elections.
- 3.5 Two types of boundary commissions keep constituencies and electoral areas under review in each country within the UK. First, Boundary Commissions for England, Scotland, Wales and Northern Ireland conduct five-year periodic reviews of parliamentary constituencies.² Second, the Local Government Boundary Commissions for England, Wales and Scotland and the Local

¹ There are some exceptions. For example, entirely separate provision is made for the franchise in elections to the Crofting Commission in Scotland. See Crofting Commission (Elections) (Scotland) Regulations 2001 SSI 2011 No 456, reg 4.

² The Boundary Commissions are governed by the Parliamentary Constituencies Act 1986.

Government Boundaries Commissioner for Northern Ireland review local government electoral areas.³

- 3.6 In our consultation paper we suggested that procedures for boundary changes are not within the scope of the electoral law reform project. Questions of community representation are fundamental to the democratic process and the mechanics of how boundaries are decided are best left to elected representatives or cross-party consensus. Nevertheless, we thought the existing law on boundaries might have to be restated within the eventual reformed legislative framework.

Voting systems

- 3.7 The majority of electoral events that occur in the UK today do so according to a voting system other than first-past-the-post. This is significant because the legislative scheme we have inherited is one that was crafted with first-past-the-post in mind. The result is that the legislative treatment of different voting systems produces inconsistency and complexity. While the substantive project will consider questions relating to the technical treatment in the law of different voting systems, we consider that changing the voting system of any election is a political choice which is outside the scope of the substantive project. The table below outlines the current voting systems and major elections using them.

Table 2: Voting systems used in UK elections

Voting system	Type of election
First-past-the-post (FPTP)	UK Parliamentary elections Local government elections (England and Wales)
Supplementary Vote (SV)	Mayor of London elections Mayoral elections in England and Wales Police and Crime Commissioner elections
Single Transferable Vote (STV)	European Parliamentary elections (Northern Ireland) Northern Ireland Assembly elections Local government elections (Northern Ireland) Local government elections (Scotland)
Additional Member System (AMS)	Scottish Parliamentary elections National Assembly for Wales elections London Assembly elections ⁴
Closed Party List System (CPLS)	European Parliamentary elections (England, Wales and Scotland)

³ Local Democracy, Economic Development and Construction Act 2009, s 55 (for England); Local Government Act 1972, s 53 (for Wales); Local Government (Scotland) Act, s 12 (for Scotland); Local Government Act (Northern Ireland) 1972, s 50 (for Northern Ireland).

⁴ London Assembly Elections and Mayor of London elections have been split up for the purposes of clarity; however in law they are treated together as one election to the Greater London Authority.

Consultation responses

- 3.8 We received 58 responses to our question whether core electoral parameters should be excluded from scope. Of those, 41 agreed with our proposed exclusion of changes to the franchise, to voting systems used at particular elections, or to the way boundaries are changed (according to what principle, by whom, and using what procedures). Many who agreed that these were political matters best left outside scope nevertheless stressed the need for the project to take account of the consequences on the rest of the law of the franchise, the increased use of different voting systems, and boundary changes. This is in agreement with our view as to scope.
- 3.9 Five consultees disagreed that any of the three core parameters should be excluded. Others disagreed with the exclusion of only one or two of them. The figures in respect of each are set out below.

Franchise

- 3.10 There were 47 consultees who agreed with our preliminary view that substantive reform of the franchise – who can vote at elections – should be outside the scope of a technical law reform project. Another 11 consultees disagreed.
- 3.11 Wyre Forest District Council⁵ argued that the project should consider the introduction of a single franchise for all elections, and a requirement of residence rather than citizenship.
- 3.12 Professor Ron Johnston in his response considered that all three core parameters are fundamental features of the system and should be part of a holistic exercise, to be taken into account even if no recommendations to change the law are made. Professor Johnston said there were a number of inconsistencies with respect to the franchise, including overseas voters.
- 3.13 The Scottish Assessors Association in its response stressed the importance of the franchise to electoral registration. It argued that the scope of reform should include simplifying the voting rights of different nationalities and be able to deal with different voting ages as some polls in Scotland give the vote to 16 year olds. Similarly, having said that the franchise should be included within scope, South Ayrshire Council stressed the need for flexibility, for example, in relation to the minimum voting age.
- 3.14 On balance, we remain of the view that the scope of the electoral law project should exclude reform of the franchise. As we stated in our scoping consultation paper, this issue is best left to democratic or cross-party consensus. What this means is that the UK Law Commissions will not, in their final reports, recommend substantive reform of who can vote at particular elections. The existing franchises will be restated within the reformed legislative framework. That will not prevent our review of electoral administration law topics within scope, like registration, from taking into account the impact of the various franchises on the electoral system, which was many consultees' key concern.

⁵ For the sake of simplicity, responses made by electoral administrators (whether returning officers or deputy returning officers) on behalf of local authorities are presented throughout the present report as responses made by the local authority in question.

Voting systems

- 3.15 We received 52 responses that agreed with our preliminary view that voting systems should be excluded, while six disagreed. Few, among those, gave detailed reasons for their disagreement on voting systems. Some, like Professor Ron Johnston, stressed the importance of voting systems to electoral law. Aberdeen City Council added:

While it would be a controversial and “political” decision, it is worth asking the question whether this proliferation is desirable in the interests of voters and whether any revision of the law should set out a presumptive system.

- 3.16 Many consultees, whether or not they agreed with our proposed exclusion from scope, stressed the importance to UK electoral law of the range of different voting systems in use.
- 3.17 Indeed, our technical analysis of why modern concerns of volume, complexity and fragmentation arose acknowledges the significance of new elections coming with voting systems other than the classical first-past-the-post. As a result the classical law had to be adapted – not always consistently, as we note in Chapter 4. Working out the electoral administrative consequences of different voting systems, and deriving a clear, accessible and consistent set of electoral rules will be a chief concern of the project.
- 3.18 However, we remain of the view that the project should be considering solutions to challenges posed by the many different voting systems, rather than proposing which voting system should govern any one election. As the recourse to a referendum on the Parliamentary voting system in 2011 shows, that is a political policy decision which is not appropriate for the Law Commission to review.

Electoral boundaries

- 3.19 There were 47 consultation responses that agreed with our proposed exclusion of electoral boundaries from the scope of the law reform project, while 11 consultees disagreed.

- 3.20 Some disagreed on principle. Richard Mawrey QC (an expert election lawyer who has also heard election petitions) thus thought that while some matters were politically sensitive, the scope of the project should:

include investigation of the proposition that control of electoral boundaries (including the number of electoral divisions) should be taken wholly out of the hands of the politicians and placed in the hands of an independent non-political body.

- 3.21 Similarly, Professor Ron Johnston, an expert on electoral boundaries, observed that legislation laid down principles of equal electorates and community representation. He thought the project should consider the nature of those principles, their legislative treatment across boundary laws for all elections, and the public consultation processes. Professor Johnston also thought the project should rectify anomalies, giving the example of the loss of the link between the Welsh Assembly’s single-member constituencies and UK Parliamentary constituencies in Wales. The latter are to be reduced by the Parliamentary Voting

System and Constituencies Act 2011 from 40 to 30 without making consequential provision for boundary change to Welsh Assembly constituencies, which remain 40 in number with no mechanism for review.

3.22 The Greater London Returning Officer qualified his agreement with our proposed scope by saying that the process for boundary reviews should be included within scope, querying in particular whether the separation between bodies responsible for undertaking reviews remains suitable. The London Borough of Enfield's response echoed these concerns.

3.23 Some consultees disagreed with our proposed exclusion, highlighting the consequential import of boundary changes on technical matters of electoral administration. Others agreed with our proposed scope but made clear that matters of electoral administration that are linked to, or consequent on, electoral boundaries should be within scope.

3.24 The response of the Local Government Boundary Commission for England sought to distinguish the legal mechanisms for change to electoral boundaries from technical or consequential matters at the intersection with electoral administration. It stated:

Statutory provisions which: (a) assign responsibilities for electoral and boundary reviews, (b) establish the considerations to be made in reviews and (c) set out requirements for consultation and publication are not ones which the electoral law reform project should address. However, there are some implications of order-making for the technical aspects of electoral administration, such as ward/division name changes or related alterations matters, which it might be reasonable to address. The door should be left open for the reform project to cover such technical points.

3.25 Many administrators such as the one responding for Sevenoaks District Council were careful to ensure that the exclusion from scope of electoral boundaries did not extend to the administrative matter of polling district reviews and other administrative areas. These are concerned with the subdivision of a true electoral boundary into administrative areas in connection with the organisation of the poll.

3.26 The national Association of Electoral Administrators ("AEA")'s response agreed that electoral boundaries should be outside the scope of reform, but similarly stressed that consequential and procedural issues should be considered as part of the review. Appended to its response were a number of examples of the impact of electoral boundaries law on electoral administration. In particular, it argued that the reformed legislative framework ought to consider how properly constituted administrative areas for elections and referendums should be in place sufficiently ahead of the election in question to ensure that revisions to registers and logistical planning for the poll take place.

3.27 The national AEA's response also drew attention to the inconsistencies and incompatibility that can arise as a result of parliamentary boundaries being established on the basis of local government ward boundaries that are subsequently redrawn by a local boundary commission.

Discussion on electoral boundaries

- 3.28 The response from consultees is a reflection of the link between electoral boundaries and the administration of elections. One defines the parameters of the electoral contest, the other administers it. While a clear majority agree that the scope of the reform project should not include consideration of how electoral boundaries are changed, many highlight the importance of ensuring that the impact of boundary change is fully taken into account by the law reform project.
- 3.29 We agree that the administrative impact of changes to electoral boundaries must be taken into account in reforming electoral administration law. Special care will be required, however, not to intrude on the law on boundary changes, namely:
- (1) the institutional provisions which assign responsibilities for electoral and boundary reviews to commissions and ministers;
 - (2) the provisions laying out the various principles and considerations under which boundaries are drawn; and
 - (3) the provisions laying down the process, including the requirements of consultation, publication and implementation.
- 3.30 Some of the issues raised by the national AEA may properly be taken into account when reviewing the law on a topic that is within scope. For example, the access by councillors to registers when their wards have changed is a matter for the law on registration. Similarly, the growing problem of lack of correspondence between parliamentary boundaries and local government areas – from whom the office of returning officer for UK Parliamentary elections is derived – will be a key factor when considering reform of the law on management and oversight, as will polling district reviews and administrative areas generally.
- 3.31 However, other problems – even if they may correctly be characterised as technical or consequent on boundaries – may not fall for consideration under general electoral administration law. This is the case, in our view, with the national AEA's example of the lack of consistency between local government and parliamentary ward boundaries. We do not think such a problem could be considered other than as part of a substantive review of electoral boundaries law, including the separate institutions entrusted with conducting boundary reviews.
- 3.32 In relation to whether the scope of reform should include such a review, we note the principled argument made by a range of consultees, from legal practitioners and academics to electoral administrators. Such a review, however, would necessarily entail questions of institutional design as well as issues of political policy concerning the principles on which boundaries are drawn, and, in the local government boundary context, matters relating to local governance structure and policy. It is therefore a task which we believe it is not appropriate for the Law Commission, as a non-political law reform body, to undertake.

Conclusions on the scope of reform

- 3.33 A majority of consultees agreed that the franchise, voting systems and electoral boundaries are matters of significant democratic or constitutional import, which would be best left to democratic or political consensus. However, successful law reform of electoral law must be able to cater for and take into account the challenges presented by the current range of franchises, voting systems and boundary change processes. We agree with the Society of Local Authority Chief Executives (“SOLACE”), which put it this way:

Whilst ... the review should exclude the franchise, local boundaries and voting systems, it is essential that the product of the review is effective to cope with all the systems that might be in operation. This may simply be a matter of flexibility but in any event the legislation and processes must allow “fit” with different systems.

Recommendation 3: the scope of the project should exclude the franchise, electoral boundaries and voting systems.

MANAGEMENT AND OVERSIGHT

- 3.34 Elections require a governance framework. At the most abstract, electoral governance requires someone to make rules, someone to apply them, and someone to adjudicate disputes. As we saw, the conventional model of electoral administration involves laying down detailed prescriptive rules to be strictly applied by electoral administrators, subject to a private right of challenge before the courts. Traditionally, therefore, the UK does not have a central authority that has a final say over administrative matters pertaining to elections. However, recent changes mean that the above statement does not apply in Northern Ireland and must be qualified in Scotland. The administration of national referendums, meanwhile, is centralised.

Institutional framework for electoral governance

- 3.35 Legislative authority lies with the UK Parliament, with Ministers managing the legislative framework by proposing draft legislation and exercising secondary legislative powers. In devolved elections, the Scottish Parliament makes rules, and Scottish Ministers have the power to make secondary legislation.
- 3.36 Legislation lays down rules that are applied by administrators. The subject matter of these rules ranges from maintaining the register of electors to the nomination of candidates, voter interaction, conduct of the poll and determining the result, as well as general logistics and planning of the poll. Traditionally this falls on two officers who are appointed under statute and drawn from local government: the electoral registration officer and the returning officer. In Northern Ireland an Electoral Office run by the Chief Electoral Officer undertakes both roles centrally, while in Scotland electoral registration and returning officers are coordinated by, and subject to, directions of the Electoral Management Board for Scotland.
- 3.37 The Electoral Commission has a range of responsibilities, including party registration and campaign funding at a national level. As regards electoral

administration it monitors the performance of electoral registration and returning officers and issues guidance to electoral participants. Its other roles include voter education, election publicity, and publishing post-election reports. It also acts as a central administrator of national referendums (see Chapter 5).

The decentralised administration of elections in Great Britain

- 3.38 The organisation and administration of elections in Great Britain remains decentralised. Electoral registration and returning officers perform their respective functions before and during an election. While the two roles may in practice be performed by the same person, they are legally separate.⁶ Registration officers have a permanent administrative role, maintaining the register and absent voting records through the “electoral services” departments of local authorities in England and Wales, or the assessors’ offices in Scotland.
- 3.39 The returning officer organises and administers polls. We noted in our consultation paper that a complicating factor in England and Wales is that for UK Parliamentary elections the role for historical reasons is divided between a titular or ceremonial returning officer, whose actual role is only to declare the result, and an acting returning officer, who discharges the office’s functions.
- 3.40 It is easiest to conceive of the returning officer as the administrator tied to the election in question. The function of returning officers starts on the incidence of the election, from which point they discharge their duty to administer the poll. In each type of election, legislation identifies a person as the returning officer, usually senior staff in local government.
- 3.41 For larger constituencies or electoral regions, a single such officer is responsible for the conduct of the election. Since that election spans several local government areas, the law will require the relevant local authorities to place their staff and services at the disposal of these officers. This approach is taken in Greater London Authority elections, European Parliamentary elections, and Police and Crime Commissioners elections. In effect one of the local government returning officers is identified as the lead returning officer, with a power to direct other local returning officers within the same constituency or electoral area.⁷ It follows that for these elections an element of central management and oversight exists within the broad structure of the conventional decentralised returning officer model.
- 3.42 In our consultation paper, we noted that a benefit of decentralised administration was that local factors and circumstances can be considered, particularly where there is a gap in the rules or an element of discretion as to electoral arrangements. A downside is that standards can vary from one authority to another, with recent concerns having been expressed about inconsistencies in

⁶ Representation of the People Act 1983, s 8. The electoral registration officer is appointed by the relevant local authority; in Northern Ireland the Chief Electoral Officer is designated as the electoral registration officer under statute.

⁷ European Parliamentary Elections Regulations 2004, SI 2004 No 293, reg 9.

structural and staffing arrangements, particularly in the context of funding cuts.⁸

Changes to the decentralised system in Northern Ireland and Scotland

- 3.43 For all elections in Northern Ireland and for local elections in Scotland there is now a form of central management. In Northern Ireland, a Chief Electoral Officer acts as the electoral registration and returning officer for all elections in Northern Ireland and as an assessor for the two Boundary Commissions. That Office is a centralised body which provides administrative support for the provision of electoral services throughout the country. For most elections, area electoral officers are appointed to act as deputy registration and returning officers within their constituencies for elections to the UK Parliament, the European Parliament and the Northern Ireland Assembly. For local government elections, clerks of district councils are appointed as deputy returning officers and perform functions as directed by the Chief Electoral Officer.⁹
- 3.44 The Electoral Management Board for Scotland is a committee established under section 1 of the Local Electoral Administration (Scotland) Act 2011 for the purpose of co-ordinating the administration of Scottish local government elections. Its functions include assisting local authorities in carrying out their duties with respect to local elections and promoting best practice by providing information, advice and training. Its Convener has the power to give directions in writing to both electoral registration and returning officers about the exercise of their functions in relation to local elections. Before issuing such directions, the Convener must consult with other members of the Board and the Electoral Commission.¹⁰ A recent example is the direction to begin the count for the 3 May 2012 polls not before 8 am the next day.

The role of the Electoral Commission

- 3.45 The Electoral Commission is generally described as the UK elections and referendums watchdog but our consultation paper noted it has several functions, depending on the context, and that its roles have evolved significantly in a short period of time.
- 3.46 In relation to electoral administration, its Chair is the chief counting officer for national referendums conducted under the Political Parties, Referendums and Elections Act 2000. The Chair thus acts as a central administrator in national referendums, delegating and overseeing administrative duties at regional and local authority levels.¹¹
- 3.47 With respect to elections, the Electoral Commission sets and monitors performance standards for electoral registration officers and returning officers in

⁸ Representation of the People Act 1983, s 54; Committee on Standards in Public Life, Eleventh Report (2007) Cm 7006, paras 2.53, 2.54, 2.60 and 2.61; Association of Electoral Administrators, *Beyond 2010: the Future of Electoral Administration in the UK* (July 2010), p 10.

⁹ Electoral Law (Northern Ireland) Order 1972, art 9; Electoral Law Act (Northern Ireland) 1962, s 15(3).

¹⁰ Local Electoral Administration (Scotland) Act 2011, ss 5 to 7.

¹¹ Political Parties, Elections and Referendums Act 2000, ss 128 to 129.

Great Britain.¹² It also collects information on the costs of electoral services, observes and accredits election observers, publishes reports on certain elections and referendums and reviews issues in electoral law generally. It provides advice and guidance to electoral registration officers, returning officers, and candidates. It plays a significant public information role, with responsibility for providing electoral information for the purpose of increasing voter participation.¹³

Our preliminary views on scope

- 3.48 Having outlined the different institutional arrangements in the three UK jurisdictions, our consultation paper noted that modern expectations of central involvement in elections may no longer be limited to enacting detailed rules for local officials strictly to administer, and private parties to enforce through the courts. In Great Britain, the decentralised returning officer model essentially persists, though the model allows for some regional management for certain elections which take place over large or densely populated geographical areas, and in Scotland the Electoral Management Board introduced some central oversight in relation to local government elections. The administrative infrastructure now caters for a significantly larger electorate than before. In addition to legal rules within the conventional model, breaches of which are enforced through election petitions, there are now performance standards, and expectations of professional project planning about upcoming elections.
- 3.49 We acknowledged in our consultation paper that there is a valid argument for considering centralised electoral administration. However, we considered that this should be decided at a political level, because it would be concerned with large scale institutional design and would have substantial resource implications. Nevertheless, the inclusion of management and oversight within scope is essential to a project whose chief aim is to reduce the complexity, volume and fragmentation of laws. Since detailed prescription might be reduced in places, the question of some adjustment to management powers might arise to ensure consistency from one administrator to another. Our preliminary view was thus that the scope of the project should include reviewing current management arrangements. This would be subject to the qualification that such a review would not involve fundamental change to the current institutional framework for electoral administration, including institutional differences across the UK.

Consultation responses

- 3.50 We received 55 consultation responses to our question on whether the substantive reform project should include consideration of management and oversight of elections, but exclude fundamental change to the current institutional framework for electoral administration.

¹² Electoral Administration Act 2006, ss 9A, 9B and 9C; Local Electoral Administration (Scotland) Act 2011. As we noted in our scoping consultation paper, these have no intrinsic consequence beyond naming under-performing authorities. Clause 17 of the Electoral Registration and Administration Bill 2012 would introduce a new section into the 1983 Act enabling the Secretary of State, upon a recommendation by the Electoral Commission, to withhold or reduce a returning officer's fee for inadequate performance at a UK parliamentary election.

¹³ Political Parties, Referendums and Elections Act 2000, ss 5 to 6F, 9A to 9C, 10(3) and 13.

- 3.51 The responses of 51 consultees agreed with the inclusion of management and oversight within scope. Four consultees disagreed, one of whom did not answer the question in the negative, but nevertheless submitted a response that we have taken to be a response disagreeing with our proposed scope.
- 3.52 Of the 51 consultees who agreed with the inclusion of management within scope, 34 also agreed with our proposal to qualify the scope so as to exclude fundamental change to the current institutional framework for electoral administration. Seventeen consultees disagreed with that qualification.

Consultees who would exclude management and oversight

- 3.53 Four consultees disagreed with our proposed scope, all four electoral administrators responding on behalf of their authority. Wyre Forest District Council's view was that only the ceremonial position of the returning officer should be within scope. According to Bristol City Council, the distinction our qualification introduced was unclear, a view shared by the London Borough of Southwark, which added that powers of direction vested in the Electoral Commission or a statutory code of practice would alter the institutional framework. Exeter City Council was unconvinced that management should be included in any way because the debate about centralisation was a distraction; the substantive project should concentrate on the law itself and not wider issues.

Consultees who would include management without qualification

- 3.54 There were 17 consultees who agreed with the inclusion of management and oversight within scope but disagreed with our qualification as to scope. Some consultees were very clear that the project should include fundamental institutional reform. For Richard Mawrey QC, this was essential; it made sense at least to consider whether centralisation of electoral administration was needed. This was a view shared by the Electoral Reform Society and the AEA (Scotland and Northern Ireland Branch), who thought that the review should as a minimum rationalise different arrangements across the UK to administer UK-wide elections.
- 3.55 Professor Ron Johnston emphasised that the institutional variations across the UK might not be clear to voters. Dr Toby James noted the fluidity of current institutional arrangements, calling for holistic reform. Similarly, the London Branch of the AEA thought our analysis of the evolution of the electoral system made clear that certain institutional arrangements (such as the creation of the Electoral Commission, the spread of different categories of returning officer) had been bolted onto a heavily legally prescribed but locally delivered system, rather than grown organically alongside it. The London Branch of the AEA wondered if institutional considerations should be quite so quickly discounted.
- 3.56 Dr Caroline Morris commented that fluctuating resource allocation across local authorities would be obviated if elections were "run at a higher level". She thought our proposed qualification meant the opportunity to improve the current system would be lost.
- 3.57 This sentiment was shared by the London Borough of Hackney and Gloucester City Council, who considered that excluding a fundamental review of institutional actors would be a missed opportunity, the latter citing their positive experience in 2011 of centralised direction, making processes easier and more uniform.

SOLACE, which champions local electoral administration, thought our qualification would be a “missed opportunity to consider the matter and ‘put it on a clear footing’ for the future”. The London Borough of Enfield put it thus:

It is essential that the current management and oversight arrangements for the electoral process are considered as they have very much evolved in spite of rather than because of the development of electoral law.

I do believe that the delivery of electoral services must be managed locally, whether through local authorities as at present or through local delivery by an independent national body, but I would contend that excluding the possibility of fundamental change at this early stage will prevent the [Law] Commission from properly reviewing what is ultimately best for the electorate.

- 3.58 Other consultees focused on the need to review the role of the Electoral Commission. The Labour Party thought proper consideration of the Electoral Commission’s role was likely to be impaired by our proposed exclusion. The Scottish Assessors Association stated that this role was very confusing for administrators; multi-faceted roles of auditor, adviser, and facilitator do not sit well together especially when the Commission holds no legal responsibility for the advice given. The Association considered the role of the Electoral Management Board for Scotland more appropriate, since it retained the basic nature of the returning officer model while allowing for coordinated electoral administration.

Consultees who agreed with our proposed scope

- 3.59 Out of 55 responses, 34 consultees agreed with our proposed scope, including the exclusion of fundamental change to the existing institutional framework. In doing so, the London Borough of Newham and four other consultees nevertheless expressed their hope that the reform project would lead to a subsequent review of the role of the Electoral Commission.
- 3.60 A common ground between many consultees, whether or not they agreed with our qualified scope,¹⁴ was concern about the viability of divorcing management and oversight powers from fundamental institutional reform. The Chief Electoral Officer for Northern Ireland emphasised that in considering the management and oversight of elections the current institutional framework for electoral administration would need to be considered and therefore could not totally be excluded. Timothy Straker QC’s response warned that in considering management it may be difficult to exclude fundamental institutional change.
- 3.61 The national AEA agreed with our proposed scope but, concerning the exclusion of fundamental change to the current institutional framework for electoral administration, thought it helpful to clarify what may be included and excluded as a result of this distinction. In a detailed response, it made clear that the legislative

¹⁴ For example SOLACE, the London Borough of Hackney, and Dr Toby James disagreed with the qualification, but were also unclear how the management and oversight of elections could be considered without looking closely at the current institutional framework for electoral administration.

framework for electoral administration in the UK could not be reformed without changes to statutory roles and responsibilities. The key issues identified by the national AEA in its response included:

- (1) the proposal to take into account and rationalise the introduction of “coordinating” roles backed by a power of direction for regional returning officers, and putting them (and subordinate local officers) on a clear statutory footing;
- (2) reviewing the operation of performance standards set by the Electoral Commission, and their interaction with statutory duties or managerial directions;
- (3) considering the hierarchy of elections, electoral areas and responsible officers holistically, given the increasing number of elections, the propensity for the polls at elections and referendums to be combined, and the need for clarity as to the interactions between different officers;
- (4) the consolidation of various event-specific funding provisions, and other measures relating to the use of certain premises, or polling district designation;
- (5) consistency in electoral administration as an undisputed (if loosely defined) aim, although geographical, demographic or devolutionary factors would make uniform delivery of electoral administration challenging.

3.62 The Electoral Commission responded positively to our proposed scope, noting that the key issue was how to reduce detailed prescription while retaining consistency.

The historic solution to the issue of consistency lay in the prescription of detailed rules which minimised the exercise of discretion by individual officials and aimed to ensure a uniform approach. However, the environment of many and varied electoral events in which electors vote and officials are required to operate now is very different to that envisaged in the 19th century...

While we agree that the current institutional framework for the delivery of elections (the roles of those responsible for implementing statutory provisions) is not a matter for this reform project, we support consideration within the project of how new oversight and management structures, or variants of existing structures, could enhance the delivery of elections by minimising the potential for inconsistency of delivery. We also agree with the Law Commission that, if this aspect of electoral law is not included within the scope of the reform project, this could unduly limit the reform options available for consideration in due course.

Discussion

- 3.63 This question received the most varied responses from consultees. Nevertheless, a clear majority agreed with our analysis that the substantive reform project must include a review of management and oversight of elections. We therefore maintain our view that the broad topic of how to organise, manage and run registers and polls should be within scope.
- 3.64 More difficult is the issue whether we should abandon our proposed qualification of that scope to exclude fundamental institutional reform. There were 17 responses that disagreed with the qualification, while 34 were in favour. Many consultees in either category, however, expressed some scepticism or concern that the distinction we proposed to draw would be difficult or unworkable.

Should the project consider fundamental institutional reform?

- 3.65 Many experienced electoral stakeholders, drawn from the third sector, academia, and legal practice to electoral administration, made a principled case that the reform project should consider fundamental institutional reform. Even some who advocate local electoral administration thought excising this dimension from the scope of reform would be a missed opportunity to have the debate and come to definite, lasting conclusions.
- 3.66 The plainest examples of such fundamental reform options would be the centralisation (by whatever means) of electoral administration, the abolition of a particular statutory body or the institution of a new one. In our consultation paper we acknowledged that social attitudes towards central, independent administration of polls may well have changed since the conventional system of local administration was designed in the 19th century. However, we thought these arguments should be considered at a political level, by persons equipped to make decisions relating to large scale institutional design, with inevitably substantial resource implications. Rather than excluding fundamental institutional reform on principle, we were – and remain – of the view that it is inappropriate for the Law Commission, as a non-political law reform body, to make the sort of judgements fundamental institutional reform entails.

Is the exclusion of fundamental institutional reform unworkable?

- 3.67 Many consultees pointed out that any reform of management and oversight would require some adjustment to institutional roles and duties. We agree, and the question is whether the line we have drawn as regards “fundamental” institutional reform is unworkable.
- 3.68 The wealth of responses on this topic has made clear that it is an area of major concern. Management of elections is covered by the “classical law” with basic duties, the breach of which can, after legal challenge, invalidate an election. However, since the classical law was settled, the electorate (and its expectations) have grown and so has the number and types of elections. Thus, “soft” legal norms emerged, in the form of performance standards set by the Electoral Commission,¹⁵ accompanied by “best practice” norms, usually contained in

¹⁵ The power to do so was introduced by s 67 of the Electoral Administration Act 2006.

guidance issued by the latter. It is natural that most involved in elections should wish for some clarity on what electoral administrators are required by law to do, and where they can flexibly take into account local factors.

- 3.69 The scope of reform in this area is wedded to the eventual legislative framework. The complexity of the law may warrant different approaches to legislative detail and placement of rules within the hierarchy of primary and secondary legislation. The less detailed the rules are, the more need there may be for some mechanism to ensure consistency. That includes powers relating to direction and guidance. While it is possible for legislation to prescribe in detail the totality of duties relating to the poll, such an approach is unlikely to help reduce the volume and complexity of laws in the modern context, where elections are more numerous than ever, and set only to increase in number.
- 3.70 Since our proposed reformed legislative framework will only be settled during the substantive reform project, it is difficult to give concrete examples of the range of reform options we consider within scope. We can say however that adjustments to the current institutional roles and duties are within scope. The governing principle is that we should be able to propose changes to the existing institutional framework, so as to make current institutions work effectively in the reformed legislative context. We think our exclusion of “fundamental” change to the institutional framework for electoral administration will enable us to do so, while making clear the limitation of our aims in this context. On balance, we propose to take the pragmatic approach, first, that no coherent reform project can simplify the current set of laws without considering the management and oversight of elections, but, second, that this law reform project cannot consider fundamental change to existing institutional structures.

Recommendation 4: the scope of the reform project should include consideration of management and oversight of elections, but exclude fundamental change to the current institutional framework for electoral administration.

THE REGISTER OF ELECTORS

- 3.71 An elector must be registered in order to vote. Maintaining a complete and accurate register of electors – one that includes every eligible elector and no other – is paramount. The register helps plan the logistics of the election in advance, providing the list of persons resident within an administrative area and thus eligible to vote at a particular polling station. It is conclusive of their entitlement to vote on polling day.¹⁶
- 3.72 Registration is carried out by electoral registration officers who in Great Britain are local government officials. The annual canvass of households, where one person is asked to register all the residents within the household, is supplemented by the facility for individual electors to register outside the canvass period. This hybrid of household registration and “rolling” individual registration by electors will change once the Electoral Registration and Administration Bill 2012

¹⁶ R Rose (ed), *International Encyclopaedia of Elections* (2000), p 9.

introduces a system of individual electoral registration, when the focus will be on electors individually applying to register to vote.

- 3.73 Individual registration has been in use in Northern Ireland since 2002. The Chief Electoral Officer acts as the central registration officer for the country, with deputies appointed for different regions. Persons registering to vote must provide their personal details including a national insurance number.

The register and its administrative framework

- 3.74 To reflect differences in the franchise for different elections, there are in law four registers of electors, though in practice they are combined. Unlike other topics which we cover in this report, the law on registration is not election-specific. A core of legislative provisions in Part 1 of the 1983 Act underpins registration, with newer election-specific measures selecting the franchise (and thus register) to be used for conducting the relevant election. Detailed regulations governing the administration of registration and the duties of registration officers are set out in secondary legislation. There are three sets of regulations, one for each jurisdiction in the UK.¹⁷
- 3.75 In our consultation paper we noted that the administrative framework for registration in Great Britain was decentralised, which allowed for some flexibility in achieving statutory aims while considering local factors.¹⁸ There is no formal central oversight to ensure consistency of standards, although the Electoral Commission sets and monitors performance standards including in the provision of registration services.¹⁹

Legislative complexity

- 3.76 Our consultation paper noted the complexity of the legislative treatment of registration in general, and of interactions between primary and secondary legislation in particular. Developments in electoral policy, and the emergence of a different system in Northern Ireland, have led to major amendments since 1983, with more on the way. The substantive project will provide an opportunity to consider the legislation once all of the UK has moved to individual registration.
- 3.77 An illustration we gave related to how the deadline for registration before an election, commonly stated as 11 working days before polling day, is derived. In fact, a complex exercise in statutory interpretation of the 1983 Act and the relevant Regulations reveals the deadline to be 11 or 12 days at the registration

¹⁷ Representation of the People Act 1983, ss 1 and 2 (franchise), 4 to 18D, and 49 to 59; Representation of the People Act 1985, ss 1 to 3 on European Parliamentary elections ; European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 SI 2001 No 1184; Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, regs 13(2) and 42; Representation of the People (Scotland) Regulations 2001 SI 2001 No 497 (substantially identical to those in SI 2001 No 341); Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741.

¹⁸ Representation of the People Act 1983, s 9A(2)(a) to (e).

¹⁹ Political Parties, Elections and Referendums Act 2000, ss 9A and 9B. As we noted in our scoping consultation paper, these have no intrinsic consequence beyond naming underperforming authorities.

officer's discretion.²⁰ While it is not clear whether any officer ever opts for a 12 day deadline, the mismatch between law and practice is evidently problematic.

- 3.78 Some of the secondary legislation is very detailed. "Special category" electors, for example persons in government service overseas, merchant seamen or patients in mental hospitals, are a case in point. The facility to enable them to register varies, but in general the mechanism is notional residence, backed by certain administrative requirements (such as declarations) overseen by registration officers. The Electoral Commission's guidance on this alone runs to over 40 pages. Nevertheless, the current approach supplies certainty in difficult cases, and provides a rigid structure for decision-making. The substantive reform project will present an opportunity to rationalise and simplify their legislative treatment.

Legislative ambiguity and residence

- 3.79 Elsewhere, we noted that the law might say too little. An illustration of legislative ambiguity is that residence is not positively defined by the 1983 Act, which only sets out factors to be considered when deciding whether a person is resident at a particular address for registration purposes.²¹ The law admits of registration at more than one place, but the line between residence and passing presence has proven problematic. It appears to have been drawn in different places by English and Scottish case law. In *Fox v Stirk*, Lord Denning's starting point was that a person could have two residences, for example a flat in London and a house in the country.²² Scots law seems stricter, holding in one case that renting a cottage for three or four months in the year made it a holiday home whose occupation was incidental to the family home.²³
- 3.80 Having acknowledged that a positive definition might be difficult to derive, our consultation paper noted that the current lack of guidance risked inconsistency across the UK. We thus proposed that the reform project should consider whether residence should be positively defined, and if so what the definition should be.

Consultation responses

- 3.81 Of the 58 responses to this question, 57 agreed that we should include electoral registration and the meaning of "residence" within the scope of the project. Many responses thought a holistic approach was important and that the project should take account of the changes brought about by the introduction of individual electoral registration. The North East and Yorkshire Branch of AEA explained in their response:

The maintenance of the register of electors is at the core of an electoral administrator's work and should be considered. A holistic approach including the effects of individual registration needs to be

²⁰ Representation of the People Act 1983, ss 13B(2), 13B(3) and 13B(5); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 29(4).

²¹ See Representation of the People Act 1983, s 5.

²² *Fox v Stirk, Ricketts v Cambridge* [1970] 2 QB 463, p 475.

²³ *Scott v Phillips* 1974 SLT 32, p 33.

taken and in particular the crucial issue of “residence” is in need of legal definition.

- 3.82 Residence was the subject of a considerable number of responses, most of which explained that the current law is subject to individual interpretation and thus gives rise to a high level of inconsistency. As a result many consultees specifically mentioned legislative ambiguity or agreed that the substantive reform project should consider defining residence. For example, the response from Gloucester City Council stated:

There are so many grey areas in legislation, such as second/holiday homes, which are all down to the way an individual interprets them. This means that no two councils across the country operate in exactly the same way with regard to some aspects of registration. More defined regulations need to be put in place with updates for more modern ways of living.

- 3.83 Paul Gribble CBE said:

There is a need to have a very clear definition of residence to clarify if and when a person can be said to reside in two different places and whether or not they can be registered in both areas and if so what restrictions are to apply at parliamentary and local elections.

- 3.84 By contrast, Professor Bob Watt, agreeing that registration should be within scope, thought residence was a political rather than a technical matter and should be excluded. We therefore took his answer to the consultation to be a qualified “no” to our question.

- 3.85 Some responses emphasised other aspects of registration such as the uses of the register other than for elections (for example the reliance on the accuracy and completeness of registers when carrying out boundary reviews). Some responses also noted the link between registration and the potential for electoral fraud. Timothy Straker QC said of the household system:

Registration still harks back to the time when the electorate was tiny and well known. To a large measure registration depends on straightforward acceptance by registration officers of what is said with any concerns left to be resolved by the chance of someone who lives in the area objecting. The problems of registration combined with the difficulties of postal voting have created a potent source for fraud in an electoral system easily viewed as lacking integrity.

- 3.86 In their joint response, expert election lawyers Richard Price QC and Dominic Spenser Hill noted that the success of the new policy of individual electoral registration will only achieve its object of achieving clean, complete and accurate registers if the personal identifiers (the means by which an elector’s identity is verified), particularly the national insurance number, can be easily and reliably checked.

Discussion

- 3.87 Electoral registration has undergone and will continue to undergo extensive change. The key actors in electoral administration are currently concerned with getting implementation issues right in anticipation of the transition to individual electoral registration. Nevertheless, the response to considering electoral registration was unanimous. A chief concern of reform in this area will be to consider the technical aspects of registration holistically, taking a broad view of the subject matter once the shift from registering households to registering individuals has taken place in Great Britain. Household registration is the last link to the historical ties between registration and property qualifications. The reform project will provide an opportunity to consider how best to present the modern law of electoral registration, with a view to simplifying and rationalising it, reducing legislative complexity and ambiguity and simplifying the administration of the register.
- 3.88 With regard to the meaning of residence, the response to our proposal to consider its definition has been overwhelmingly positive. However here, as elsewhere, the line between law reform and political policy will be particularly important. It is unlikely to be proper for the project to recommend, for example, that an elector should be registered in only one area. Rather the focus is to make sure legislation gives registration officers the guidance they need to make decisions as to residence that are reasonably consistent with those of colleagues in different areas.

Recommendation 5: the scope of the reform project should include electoral registration and consider defining the meaning of residence.

CANDIDATES AND THE CAMPAIGN

- 3.89 Electoral law conventionally places onerous duties on candidates, often requiring strict compliance. Breaking the law invites criminal prosecution and conviction, the nullity of an election, and disqualification from elective office for a period of time. On the administrative side, returning officers must strictly comply with duties relating to the poll, which are designed so as to exclude areas of judgement.

Qualifications and nominations

- 3.90 Qualifications and nominations are areas where administrative and regulatory approaches intertwine. Electoral law must include consideration of what qualifies a person to be elected to office. A candidate must satisfy the basic qualifications as to age, nationality, and in elections to local government, ties to the relevant local authority area, such as the requirement of registration as an elector within the authority in which the election takes place. In addition, they must not suffer from a legal disqualification. These vary across elections, depending on the constitutive rules of the elected office in question.
- 3.91 Candidates must be satisfied that they are in substance qualified for the office sought. Otherwise they risk being unseated by an election court if they win the election, and a criminal conviction in any event. As part of the nominations

process, candidates make a statement that they are not disqualified from office. If they knowingly made a false statement, they have committed a corrupt practice.²⁴

- 3.92 Nomination is an administrative process run by the returning officer. It determines whether there is a contested election, and, if there is, whose names should appear in the ballot paper. The role of returning officers is formal. They check that the nomination papers are in accordance with the rules. If they are, the candidate is validly nominated. If they are not, the nomination is void. With one exception, they are not assessing whether a candidate is in substance disqualified.²⁵ This is in keeping with the general idea of eliminating evaluative tasks from the administrative sphere.
- 3.93 Nomination rules vary significantly across elections, particularly as regards deadlines and the number of subscribers. Formal requirements are in general strict, and defective nomination papers are void once the deadline has passed. A less rigid approach has emerged at Scottish local government elections, where a returning officer may correct minor errors within 24 hours of the deadline. This includes obvious spelling errors and errors as to electoral numbers.²⁶
- 3.94 In our consultation paper, we noted that differences across elections contributed to the problems of volume and complexity across elections. We considered them within the scope of the substantive project, which should rationalise the rules with a view to reducing legislative fragmentation and complexity. It should do so with a focus on the interactions of electoral administrators with candidates' qualifications, and on making the law clearer for candidates to understand.

Campaign conduct

- 3.95 The classical law governing candidates and the campaign was developed for UK Parliamentary elections and is set out in Part II of the 1983 Act, which also governs local government elections in England and Wales and elections to the Greater London Authority. For other elections, discrete legislative measures refer to the 1983 Act and apply some or all of its regulatory provisions, with or without modifications. Some of the main modifications relate to voting systems involving a party list element.
- 3.96 The classical law was developed for first-past-the-post contests in local constituencies. The modern role of political parties as organisers of centralised

²⁴ Representation of the People Act 1983, s 65A (1A)(b); Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 8(3)(b); European Parliamentary Elections Rules, European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 8(3). These are replicated in the election rules for other elections.

²⁵ The exception, colloquially called the "Bobby Sands" rule, is the disqualification from membership of the House of Commons of a prisoner detained for more than a year for any offence: Representation of the People Act 1981, s 1; Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 12(2)(c). There is equivalent provision in the European Parliamentary Elections Rules, but only in respect of individual candidates. See European Parliamentary Elections Regulations 2004 SI 2004 No 293, sch 1 r 13(3) and (4). As to the general position, see *R v Election Court, ex parte Sheppard* [1975] 1 WLR 1319.

²⁶ Scottish Local Government Election Rules, Scottish Local Government Elections Order 2011 SSI 2011 No 339, sch 1 r 10.

national campaigns had yet to emerge. Thus, the legal notion of the campaign is tied to the constituency level.²⁷ A parallel regulatory regime emerged in modern times to fill the regulatory “vacuum” at the national level. We consider the regulation of national campaign in the next section of this Chapter.

3.97 The key features of how the classical law regulates campaign conduct can be stated as follows.

- (1) The mandatory office of election agent was introduced in 1883 to channel responsibility for election expenses into one person. No other person may incur expense to promote or procure the election of a candidate without the agent’s authority. That approach persists today.²⁸
- (2) Expense limits are prescribed by law as fixed ceilings or formulas, and the election agent must complete and deliver to the returning officer a return and declaration as to expenses signed by the candidate.²⁹
- (3) The regulation lasts from the date of candidacy until the date of the poll; the law on when one legally becomes a candidate for different electoral law purposes, however, is quite complex.³⁰
- (4) Breaches by the candidate of campaign regulation, whether they relate to expenses or general conduct, are corrupt or illegal practices, which are criminal offences and grounds for invalidating an election by way of election petition. We consider these in Chapter 4.

3.98 The returning officer and their staff have no role to play in advising candidates on their duties with respect to the campaign, or enforcing those duties. However, there is a formal and limited role to accept, retain and publicise the receipt or otherwise of expenses returns and declarations from candidates. The returning officer must retain and make available for inspection the documents for a period of two years from the date of receipt of the return.³¹ This continuing role has been criticised by electoral administrators.³²

3.99 Our consultation paper noted the historical difference in rates between county and borough constituencies, questioning its relevance to modern circumstances. However, we considered that the substantive reform project would not be concerned with setting expense limits, as opposed to examining how the law regulates campaign conduct. Significant complexities across different elections have built up over time in both long established and new elections.

²⁷ *R v Tronoh Mines Ltd* [1951] Cr App R 196; *Grieve v Douglas-Home* 1965 SC 315.

²⁸ Representation of the People Act 1983, ss 70, 70A, 71, 75. Parish and community council elections do not require an agent.

²⁹ Representation of the People Act 1983, ss 81 and 82.

³⁰ Representation of the People Act 1983, s 118A. See also Fixed Term Parliaments Act 2011, s 76ZA for regulation of pre-candidacy expenses at Parliamentary elections.

³¹ Representation of the People Act 1983, ss 87A and 88.

³² Association of Electoral Administrators, *Beyond 2010: the Future of Electoral Administration in the UK* (July 2010), pp 61 and 62.

Consultation responses

- 3.100 There were 55 consultation responses to the question whether the scope of the reform project should include consideration of the rules on candidates and the campaign. All agreed that it should, although consultees emphasised different aspects of the law.
- 3.101 Many administrators agreed with the emphasis in our paper on eliminating inconsistencies across elections. The AEA (Scotland and Northern Ireland Branch) said that the nominations process needs to be streamlined, standardised and modernised, for example to make use of modern telecommunications. It and Aberdeen City Council added that the purely formal role of returning officers can lead to absurdities, giving the recent example of a person seeking to nominate an inanimate object – a mannequin – for election to local government.
- 3.102 The national AEA responded that the reformed legislative framework should address how party candidates and independents are treated, “particularly with a view to ensuring fairness and to support independent candidates in understanding their responsibilities and rights” (for example, the start of candidacy and access to the register in order to conduct the campaign). It added that the qualifications relating to local elections would benefit from clarification, giving the example of standing at local government elections to principal area councils and the definition of “occupier as owner or tenant of [specified] land or premises”.
- 3.103 Other consultees also mentioned difficulties with “local” qualifications for local government elections. The election law expert Gerald Shamash said at a consultation interview that these were often difficult to interpret in practice. The joint response of the Society of Local Authority Lawyers and Administrators in Scotland (“SOLAR”) and the Electoral Management Board for Scotland also emphasised the need for clarification of what constitutes residency and place of work for the purpose of qualifying to stand for election to local authorities.
- 3.104 The complexity and fragmentation of rules governing qualifications and campaign conduct can hamper access. Diverse Cymru in its response said:

Many disabled people and people whose first language is not English face significant barriers understanding what is required of them to stand as a candidate in elections. This is further compounded not only by the use of complex legislative language, which is unfamiliar to most people, but also by the variety of procedures and deadlines used for different elections.

Additionally extremely tight and strict deadlines for nominations are unrealistic for some disabled people who require more time to undertake tasks such as filling in forms or who require assistance to do so.

- 3.105 The Electoral Commission responded that entitlement to candidacy should be within scope. In relation to eligibility of candidates, and the need for clarity on disqualifications, the Commission gave the example of two candidates elected to the Welsh Assembly in the regional list elections in May 2011. They were suspended from the Assembly when it transpired that, after a recent change in the law, their membership of certain bodies automatically disqualified them both.
- 3.106 In the context of the campaign, the Electoral Commission thought inclusion of the regulation of campaign spending within scope was likely to be affected by ongoing cross-party talks, which quite apart from setting new expense limits (which we proposed to exclude from scope), might affect the way the regulation of expenses at the campaign level is carried out.
- 3.107 Consultees generally agreed that the law on campaign regulation required reform. Paul Gribble CBE and the Chief Electoral Officer for Northern Ireland, along with many others, mentioned the difficulty of the legal concept of “candidacy”. The view of Paul Gribble CBE was that the 1983 Act had a clear definition when a person became a candidate but that this is “less clear following changes to section 118A of that Act.” He added that “the introduction of pre-campaign expenses has benefitted the larger parties to the detriment of small parties and independents.”
- 3.108 Many electoral administrators also mentioned that their passive role in campaign regulation was not understood by the public. Indeed some candidates raise matters to local administrators, expecting them to give advice or take matters further. These administrators would welcome simplification and clarification of their duties and roles in relation to campaign conduct, in particular expenses. In that context, the national AEA in its response mentioned that there should be a more modern and streamlined mechanism for the return of election expenses.
- 3.109 Dr Caroline Morris thought the review should focus on clarification and simplification of existing law, identifying (and eliminating) inconsistencies in administration and process rather than delving into substantive matters like expenses limits or the manner of their calculation.
- 3.110 Similarly, the UK Government observed in its response:
- It is appropriate for the project to consider the rules on candidates insofar as this relates to qualification and nomination but ... issues relating to the regulation of donations and election expenditure should be excluded in light of the Government’s commitment to seek agreement on the reform of party funding.

Discussion

- 3.111 Our preliminary view was that the scope of the substantive project should include the rules governing candidates and the campaign, in order to consider whether inconsistencies in the rules across all elections and fragmentation of the legislative provisions can be reduced or eliminated. However, we did not expect this to include a major overhaul of either the expenses or general conduct regulation of candidates. We thought, in particular, that it was not for the project to set or change expense limits, or to revisit the separate legal treatment of national campaigns.

3.112 The response on the inclusion of the rules on candidates and the campaign has been positive. While consultees highlighted different aspects of the law, we consider that the standard of review in this topic will be guided by the need for reform and, as we mention in Chapter 2, the proper delineation between law reform and political policy. It will thus vary depending on the context.

(1) In the context of nominations, there is a need to review the law to rationalise and streamline rules across all elections, and to simplify, update and modernise the law, some of which has been in place since the 19th century. This includes the strict formality of the nominations process, and the use of outdated telecommunication methods within it.

(2) In the context of qualifications, there is a need to consider clarifying and consolidating the event-specific rules which govern who can stand for elections. Clarity for candidates, in particular, is required because the electoral administrative system is underpinned by their taking responsibility for their own qualification. However, we do not presently envisage a substantive review of disqualifications.

(3) In the context of campaign regulation, there is a need to review the law to clarify the existing regulatory framework, which was designed long ago and has developed by accretion in the case of established elections, where some of the legislative language and concepts have become very complicated.

3.113 The definition and substantive content of rules on campaign expenditure and donations are political parameters which are not appropriate for the Law Commission, as a non-political body, to review. Their implementation and enforcement through the law, however, and the clarity and simplicity of the legislation which sets them out, are matters which we propose to consider at the substantive stage. Furthermore, if and when there is announced a cross-party settlement on campaign funding which affects the current regulatory treatment of these parameters at the local level, we will adapt the project scope accordingly.

3.114 The legal framework for regulating campaign conduct generally, and that of candidates in particular – what is sometimes described as the local campaign – is part and parcel of the conventional model of electoral administration, under a scheme which was designed in 1883 and persists today. We therefore propose to include the rules governing candidates and the campaign within scope.

Recommendation 6: the scope of the reform project should include consideration of the rules on candidates and the campaign.

POLITICAL PARTIES AND NATIONAL CAMPAIGN PUBLICITY

- 3.115 As we noted in the previous section, campaign regulation in electoral law historically relates to the campaign at the constituency or electoral area level. Over time political parties organised election campaigns at a national level. The law's regulation of the (local) campaign did not extend to this "national" campaign.³³ This "vacuum" was comprehensively filled by the Political Parties, Elections and Referendums Act 2000 ("the 2000 Act"), which set up a national regulatory system overseen by the newly-created Electoral Commission.
- 3.116 In our consultation paper, we stated that political party registration and finance regulation, together with the rules on political broadcasts, are politically sensitive areas where reform would require broad cross-party consensus. Accordingly, we proposed that reform of these areas should be outside the scope of the electoral law reform project, although they may nevertheless need to be restated within the eventual legislative framework.

Political parties

- 3.117 The 2000 Act provides for the registration of political parties and the regulation of their expenses and donations by the Electoral Commission. It makes party registration compulsory by prohibiting a person's nomination in the name of an unregistered political party. The Electoral Commission maintains two registers of political parties, one in Great Britain and one in Northern Ireland. The party name, office holders, headquarters and constitution must be entered in the register along with an outline of its financial arrangements.³⁴
- 3.118 Donations to political parties are restricted and must come from permissible donors. All donations that are above a prescribed figure must be reported on a quarterly basis as a general rule but on a weekly basis during election periods. Impermissible donations must be returned and if the donor cannot be identified, then they must be sent to the Electoral Commission.³⁵
- 3.119 Loans are regulated in a similar way to donations. Registered political parties are restricted from dealing with unauthorised participants regarding "regulated transactions", which includes loans. The reporting requirements are similar to those for donations.³⁶
- 3.120 Controls over campaign expenditure apply and the party's registered treasurer performs a role that is analogous to the candidate's agent. All campaign expenditure must be authorised by the treasurer and some must be evidenced by an invoice or receipt. The financial limits on campaign expenditure differ based

³³ *R v Tronoh Mines Ltd* (1951) Cr App R 196; *Grieve v Douglas-Home* 1965 SC 315. For a pre-2000 analysis, see HF Rawlings, *Law and the Electoral Process* (1988), in particular pp 133 to 135, 151 and 240.

³⁴ Political Parties, Elections and Referendums Act 2000, ss 22 to 29.

³⁵ Political Parties, Elections and Referendums Act 2000, ss 54, 62, 63 and 57.

³⁶ Political Parties, Elections and Referendums Act 2000, ss 71F (defining regulated transactions), 71H, 71I, 71M, 71Q and 71U.

on the type of election.³⁷

Broadcasts

- 3.121 Rules on campaign publicity frame how candidates and political parties can use the media when reaching out to potential voters. Publicity covers a wide range of communication methods, including the use of canvassers, and local election publications. These are subject to the ordinary regulation of the local campaign which we mentioned above, and are within the scope of the reform project.
- 3.122 Public broadcasts chiefly lie outside the regulatory sphere of the 1983 Act. Programmes by broadcasters as part of their normal services are exempted from the restrictions on election expenditure by unauthorised persons.³⁸ Meanwhile, party political broadcasts by registered parties are regulated by the Office of Communications.³⁹ Each broadcasting authority is also required to adopt a code of practice to regulate matters pertaining to the participation of candidates in UK Parliamentary elections.⁴⁰ All broadcasters are required to uphold due impartiality in matters of political controversy.⁴¹

Consultation responses

- 3.123 There were 44 responses to the question whether the regulation of political parties and national campaign publicity should be excluded from the scope. Some 38 consultees agreed with our proposed exclusion, while six disagreed, arguing that at least some of these matters should be included within scope.
- 3.124 SOLACE, for example, questioned whether these were politically sensitive topics, stating that “elections are by definition sensitive” and that the review was “looking at areas which it could be argued are as sensitive, if not more, than these areas.”
- 3.125 The Scotland and Northern Ireland Branch of the AEA thought that the balance between the activities of candidates and party should be addressed, and the regulatory role of the Office of Communications considered. Professor Ron Johnston also thought the regulation of political parties should be included in order to address some issues in the current regulatory framework, in particular the regulation of sub-national “branches” of national political parties and other organisations.
- 3.126 Some consultees, including electoral administrators, reluctantly agreed with our proposed exclusion from scope. Richard Mawrey QC thought it prudent to avoid political issues but added that ideally this area of the law should be independent from politicians.
- 3.127 Other consultees, such as Timothy Straker QC, agreed with our proposed exclusion from scope but warned that the distinction between the national and

³⁷ Political Parties, Elections and Referendums Act 2000, ss 76 and 79, and sch 9.

³⁸ Representation of the People Act 1983, s 75(1)(c).

³⁹ Communications Act 2003, s 333.

⁴⁰ Representation of the People Act 1983, s 93(1).

⁴¹ Broadcasting Act 1990, s 6(1).

local campaign might not be as precise or clear as supposed. In their joint response, SOLAR and the Electoral Management Board for Scotland thought there should be a clear distinction in legislation between local and national campaigns.

- 3.128 The Electoral Commission stressed that political party regulation and national campaign publicity should be left to cross-party agreement, but that consideration must be given to where the existing or reformed rules shall sit following party discussions. This was also the view of Paul Gribble CBE, who stressed the need to consolidate the legal treatment of political parties and national publicity within the legislative framework. He stated that a downside of registration of parties has been their considerable centralisation, which he thought had been detrimental to local democracy.

Discussion

- 3.129 Our preliminary view was that any reform of the regulation of political parties and national publicity requires broad political consensus, so that such reform falls outside of the scope of the substantive reform project. We stressed, however, that there may be a need to restate the current law of these topics within the reformed legislative framework.
- 3.130 The consultation response has led us to maintain our preliminary view. As we explained above, the national election campaign has evolved along a different regulatory path from the classical – or “local” – election campaign. We will take into account any developments on cross-party talks in order to ensure that the eventual reform project presents the contemporary distinction clearly and coherently in the reformed law. But we do not propose to make any substantive law reform proposals in this area.

Recommendation 7: the scope of the reform project should exclude political party regulation and national campaign publicity.

MANNER OF VOTING

- 3.131 Voters at UK elections can vote in person, by post, or through a proxy. The default method of voting is by marking a ballot paper in person at a polling station. The alternative is to make arrangements to cast an absent vote. Postal voting is available on demand in Great Britain while good cause is required for postal voting in Northern Ireland, and for proxy voting generally.
- 3.132 Our consultation paper outlined the law on manner of voting, highlighting issues relating to the detail and place of prescription in the legislative hierarchy, and considering the balance between security and access to the poll, including that for postal and proxy voting. We focused on the law governing the current voting mechanisms in the UK, as opposed to considering alternative methods of voting, such as early or electronic voting.

Ballot paper design and in-person voting

- 3.133 Detailed provision governing ballot paper design and the voting process at polling stations, including security measures, is made in discrete election rules whose place in the legislative hierarchy varies depending on the election. This reflects the election-specific legislative approach which we noted in Chapter 2.

Detailed prescription in election rules

- 3.134 Ballot papers must, by law, accord to directions and a template form appended to election-specific rules. These prescribe in detail the exact nature of the ballot paper, including instructions for voters, layout, and the font and size of the text. Some have questioned whether more flexibility is required so as better to serve the interest of the voter. We also remarked in our consultation paper that the tactile voting device to assist blind voters at polling stations is described down to the smallest detail in secondary legislation.⁴²

Place of rules within legislative hierarchy

- 3.135 Discrete election rules govern ballot paper design and in-person voting. The UK Parliamentary Election Rules are placed in primary legislation, although the Secretary of State has a power to amend provisions on ballot paper design, directions and instructions to voters. As we noted previously, a key part of reform of the legislative framework for electoral law will be the consistent and proper place of such rules in the legislative hierarchy.
- 3.136 Such questions have practical import, as evidenced by recent problems on the use of joint description and party emblems by candidates in the ballot paper. Changes to the law of joint description in 2006 were not accompanied by changes to the rules on joint emblems. Once detected, the problem was remedied in local government and other elections by amending secondary legislation. However, the relevant rule for UK Parliamentary elections is in primary legislation, so an amendment remains pending until the Electoral Registration and Administration Bill becomes law.⁴³

Balance between security of the poll and access to vote

- 3.137 Classical electoral law developed a particular balance between access to the poll and safeguarding security at the poll. On polling day, no identification requirement is required in Great Britain beyond answering prescribed questions. This is balanced by a vote-tracing procedure (the corresponding number list) which, in order to safeguard the secrecy of the poll, can only be unlocked by the courts. A list is maintained containing the numbers and unique identifying marks of all ballot papers.⁴⁴ When a ballot paper is issued, the voter's electoral number is written besides the ballot paper number on the corresponding list. A power to require voters to sign the list beside the corresponding numbers has not been

⁴² Representation of the People Act 1983, sch 1 Appendix of forms (ballot paper); Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 12 (tactile voting device).

⁴³ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 rr 6A and 19; Electoral Registration and Administration Bill, cl 18(2).

⁴⁴ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 rr 19A and 20.

brought into effect.

- 3.138 In our consultation paper we noted arguments that a vote-tracing procedure might be perceived as undermining the secrecy of the ballot, without sufficiently deterring impersonation.⁴⁵ Others have raised the practical concern that the corresponding number list is imperfectly described in legislation and does not properly take account of combined polls, where there are multiple ballot papers and entitlements to the franchise.⁴⁶ We stressed the need to take into account, when proposing reforms, the balance between security and access to the vote.

Postal voting

- 3.139 Postal voting has grown in popularity in Great Britain. Since it developed well after the classical law was settled in the 19th century, it is governed within the registration framework, in regulations organised by jurisdiction rather than election type. There is, thus, an inherent link between postal voting and registration.
- 3.140 Electors in Great Britain are entitled to a postal vote on demand if they are on the relevant register and their application, which is managed by registration officers, must furnish their name, address, date of birth and signature.⁴⁷ In Northern Ireland, applicants for a postal vote must satisfy the registration officer that they cannot reasonably be expected to vote in person.⁴⁸
- 3.141 Having outlined the law on postal voting, which is highly detailed, our consultation paper noted that the verification procedure for postal votes requires returning officers to be satisfied that the date of birth and signature of at least 20% of postal voting statements match records of those electors' personal identifiers.⁴⁹ Concerns have been expressed about rejection rates due to voter error or confusion, particularly among vulnerable voters.⁵⁰ Consequently the Electoral Registration and Administration Bill 2012 would enable regulations to stipulate when registration officers must notify persons whose postal ballot papers were rejected at UK Parliamentary and local government elections.⁵¹

⁴⁵ Electoral Law and Administration, Report of the Select Committee on Home Affairs (1998) HC 768-I, para 107.

⁴⁶ Association of Electoral Administrators, *Beyond 2010: the Future of Electoral Administration in the UK* (July 2010), p 55.

⁴⁷ Representation of the People Act 2000, sch 4 paras 2 to 4.

⁴⁸ Representation of the People Act 1985, ss 5 to 7 as amended by Electoral Fraud (Northern Ireland) Act 2002; Representation of the People (Northern Ireland) Regulations 2008 SI 2008 No 1741, reg 55.

⁴⁹ Representation of the People (England and Wales) Regulations 2001 SI 2001 No 0341, reg 85A.

⁵⁰ Office for Democratic Institutions and Human Rights, *Report on the May 2010 UK General Election* (July 2010), p 13. Association of Electoral Administrators, *Beyond 2010: the Future of Electoral Administration in the UK* (July 2010), pp 42 to 43.

⁵¹ Electoral Registration and Administration Bill 2012, cl 20.

Proxy voting

- 3.142 Proxy voting enables electors who are unable to vote in person on polling day to appoint another person to cast a ballot (by hand or post) on their behalf. Electors must justify their application to appoint a proxy, satisfying the registration officer that they cannot reasonably be expected to vote on polling day due to absence for work, study, holiday, distance or illness. We noted in our scoping consultation paper that some commentators consider that postal voting may have rendered the proxy voting option somewhat redundant. Nevertheless, those suffering a medical emergency may request a proxy vote up to six working days before the poll, well after the deadline for new postal voting applications has passed. Furthermore, the Electoral Commission encourages consideration of proxy voting for armed forces members deployed overseas.⁵²

Consultation responses

- 3.143 Our preliminary view in our scoping consultation was to include the rules on manner of voting within the scope of electoral law reform. All 62 consultees who responded to our question agreed that the rules on manner of voting should be included within scope.
- 3.144 An important distinction was drawn by some consultees between considering alternatives to the existing methods of voting in the UK, and reviewing the law governing the existing mechanisms for voting. The UK Government put it this way:

The Government agrees that this area should be within scope of the review. However we consider that the Law Commission should focus on the current framework of in-person, postal and proxy voting and the legislation which exists for those and that that scope of the review should not be widened to consider new methods of voting eg electronic voting.

- 3.145 Similarly, in their joint response, SOLAR and the Electoral Management Board for Scotland supported the general inclusion of the rules on the manner of voting. However, their position was that this should not include “alternative voting systems or special voting procedures which are matters of policy for Ministers to formulate and Parliaments to legislate on”. Professor Bob Watt advised that it would be better to leave the debate on choices as to voting methods to one side and “reform the administration of voting alone”.
- 3.146 In relation to the law governing existing voting methods, SOLACE said in its response:

Without doubt, the current system of laws that surrounds the election process is inflexible and has been problem solved by bolt-ons to fix specific problems as they arise but in turn can often create problems in themselves. Assimilating the rules into a single set of measures

⁵² Office for Democratic Institutions and Human Rights, *Report on the May 2010 UK General Election* (July 2010) p 12; Electoral Commission, *About My Vote*, http://www.aboutmyvote.co.uk/register_to_vote/armed_forces.aspx (last visited 22 November 2012).

has to be the way to approach this.

[In order to promote participation in democracy,] the process to enable citizens to vote should be made as straightforward as possible. Proxy voting in particular can be questioned as to how effective this is for overseas voters and emergency proxy votes and there may be a need to look at this again in order to ensure that there is a reasonable balance between the needs of the voter and the electoral management system.

Detailed legislative prescription

- 3.147 A number of consultation responses were concerned with the highly detailed prescription in the law. The Electoral Commission reiterated its call for greater flexibility in form design and stated that “the current approach of prescribing the design of the forms in the legislation is not necessarily in voters’ best interests”. It argued that, while legislation should prescribe key information to be included, the standard design should be specified by a single body or officer such as the Greater London Returning Officer, the Electoral Management Board for Scotland or, as was the case in the May 2011 referendum, the Electoral Commission.
- 3.148 Expressing similar concerns, Diverse Cymru said the law was overly restrictive and did not meet voters’ needs. Requirements regarding a specific font and size and format of instructions to voters contributed significantly to the issues that many disabled electors experienced in understanding how to vote and reading ballot papers without assistance. The review, it concluded, should consider promoting the accessible design of ballot papers.
- 3.149 A number of electoral administrators stressed that the detailed prescription in the law was an issue. Thus, the London Borough of Hackney described the current requirements as “overly restrictive” and suggested that the review consider “what benefits the current arrangements have and what necessary improvements are required”. South Ayrshire Council also explained that “ballot paper design consistency is fundamental to the voting process, but equally should be sufficiently flexible to amend detail and to make it, in principle, future proof”.
- 3.150 Others stressed in their responses that a degree of certainty in ballot paper templates is desirable. For example, Tonbridge and Malling Borough Council said:
- We consider that it is preferable to have a defined and prescriptive template for ballot papers that will not be changed regularly rather than a situation where the Electoral Commission could make changes to it. We would support a review of the existing ballot paper requirements, but would wish the final standard to be set in legislation and not subject to change without proper legislative consideration.
- 3.151 Ballot paper design was not the only area where consultees thought detailed prescription was an issue. For example, the Greater London Returning Officer cited “the fact that one company holds a patent for both types of tactile voting device ... that comply with the statutory provisions” as an issue of concern. In particular, his response explained that it would be “preferable for the law to specify the objective (of enabling visually impaired electors to vote independently)

rather than the means”. This view was also shared by Diverse Cymru who thought detailed prescription in the legislation prevented the adoption of secure new technology as it developed. A more flexible approach would, in its view, allow for improvements through which as many disabled people as possible are enabled to vote.

Absent voting mechanisms

3.152 A number of electoral administrators focused on the practical difficulties in the existing law on postal voting. Thus the London Borough of Enfield emphasised the “added timetable pressures caused by the deadline for the receipt of applications and the requirements around despatch and receipt of postal ballot papers”.

3.153 A key theme that emerged from responses was concern about the potential for electoral fraud as a result of the current law on absent voting.⁵³ Richard Mawrey QC said:

The main driver for the reform of electoral law is that the current system is open to abuse and fraud and that the politicians are unwilling to take any active steps to counter this. The [Law] Commission is, in my view, the only body that can take this problem by the scruff of the neck and deal with it.

3.154 Some, such as Wycombe District Council went so far as to express that the very availability of postal votes on demand should be considered. Similarly, Aberdeen City Council said:

Postal voting (even with the relatively recent introduction of personal identifiers) is widely regarded as open to the possibility of fraud and the lack of any check on the identity of voters at polling stations is increasingly being pointed to as less than secure. The opportunity should be taken to consider the security of the current arrangements and possible alternatives (for example early voting at polling stations).

3.155 In their joint response, Richard Price OBE QC and Dominic Spenser Underhill stressed the importance of the current mechanism for uncovering election fraud, namely the vote-tracing procedure. Other consultees thought that existing absent voting methods needed to be more resilient to electoral fraud, while at the same time maintaining access to the vote. Dr Caroline Morris explained that:

This is a difficult question because the manner of voting is, in the end, a political question about the extent to which people have the freedom to exercise the franchise. On balance, I support the inclusion of this question in the review, not least for the reason that there is inconsistency and complexity in the myriad of rules that accompany the different methods of voting which needs to be addressed. I am also of the view that as this area of electoral law has proven vulnerable to fraud in the past, it would be useful to examine this area of law with a view to making it less so.

⁵³ Electoral malpractice is also discussed at paras 4.53, 4.54 and 4.59 below.

3.156 The national AEA in its response stated:

There are two key overarching themes or principles that need to be balanced in any consideration of the manner of voting at electoral events. These are access to the process and integrity or security. In order to support confidence in the electoral process, the reformed framework for electoral administration must ensure access to the process so that all those who wish to vote and participate are not prevented from doing so by unnecessary barriers. However, at the same time the framework will need to contain measures with the aim of preventing anyone who is not entitled to vote or participate from doing so, and that a person is not deprived of their vote by fraudulent means. This will not be an easy balance to achieve.

Discussion

- 3.157 We agree with consultees such as SOLAR that our review of the law on manner of voting should be concerned with the operation of existing voting mechanisms, rather than proposing new methods of voting. This is consistent with the general principle that this project should not consider matters of political policy.
- 3.158 A central aspect of the law on manner of voting involves striking a balance between access to, and the security of, the poll. That is a political decision. The original balance was set in 1872, and refined over time. It will be adjusted with the advent of individual electoral registration. The Law Commission will work within the broad confines of the balance set by Parliament, rather than fundamentally alter it. This would rule out, in our present view, abolishing postal voting on demand.
- 3.159 The current law on manner of voting is in some parts election-specific. In general, its prescription is highly detailed and inflexible. There is now a complex mixture of primary and secondary legislation that governs the mechanisms for voting in the UK, which makes the law less accessible. The substantive reform project should address the underlying causes of these problems, which involve questions of legislative approach, including the proper and consistent place of rules and forms within the hierarchy of legislative measures. The focus of law reform in this context will therefore be on the legislative framework for manner of voting, and on giving adequate expression in the law to the current balance between preventing electoral fraud and providing access to the vote. Given the unanimous views of consultees, we recommend that manner of voting should be included within the scope of the law reform project.

Recommendation 8: the scope of the reform project should include consideration of the rules on manner of voting.

POLLING DAY

- 3.160 At an election, every ward, division or constituency is divided into smaller geographical administrative areas, known as polling districts. In each polling district there is a designated polling place containing a sufficient number of polling stations. Local authorities review polling places every four years and returning officers assign polling stations. The Electoral Commission publishes guidance on both polling place reviews and polling station provision.⁵⁴
- 3.161 Electors are allocated to a polling station where they may cast their vote, having received notice by polling card. Ballot boxes and papers, polling booths and an extract of the register of electors are assigned to the station which is staffed by a presiding officer and clerks.

Identification requirements

- 3.162 There are minimal identification requirements to vote at elections in Great Britain. The balance struck when the classical rules were designed was to take substantive decisions away from polling day. Like other established democracies, such as Australia and Canada, English and Scottish law both require voters to identify themselves by name and address alone. There is instead a vote-tracing procedure which can be unlocked by court order after the poll. Similarly, tendered votes will not be counted except in a scrutiny by an election court.
- 3.163 The law is different in Northern Ireland, where electors are required to produce some form of photographic identification, like a driver's licence or passport. The Electoral Office for Northern Ireland also issues specially designed electoral identity cards for the purpose of protecting against fraud.

Detailed, election-specific legal prescription

- 3.164 Presiding officers have a number of statutory duties that are designed to ensure the integrity and secrecy of the poll. These duties seek to strike a balance between facilitating the exercise of the franchise and safeguarding the system from abuse. Our consultation paper outlined these duties, which include showing and sealing the ballot boxes, asking the prescribed questions as to voters' identity, issuing ballot papers, marking the register and lists, and closing the poll.
- 3.165 These statutory duties are set out in the relevant election rules, meaning that each election has its own set of duties. This can lead to differences such as electors at UK Parliamentary elections being instructed to fold their marked ballot paper before casting their vote, whereas at elections to the Greater London Authority, there is no requirement to fold the paper before casting it.⁵⁵ Indeed, voters are asked not to do so to ensure the efficacy of the electronic count. Nevertheless, some, out of habit, insist on folding their ballot paper.
- 3.166 In general, we noted that the law describes polling day duties in some detail. We

⁵⁴ Representation of the People Act 1983, ss 18A to 18C, sch A1, and sch 1 r 25; Electoral Commission, *Guidance on the Essentials of Effective Election Management: Planning for a UK Parliamentary General Election* (September 2009), paras 15.12 to 15.17 and 15.36.

⁵⁵ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 37; cf Greater London Authority Elections Rules 2007 SI 2007 No 3541, r 38.

gave the example of how the law regulates the way a disabled elector may vote. A tactile voting device is available and electors who have physical impairments or reading difficulties can apply to the presiding officer in the presence of polling agents to assist them to cast their vote. Alternatively, they can apply to vote with the assistance of an accompanying person. If the application is granted, the presiding officer must record the name and electoral number of the voter and the name and address of the companion on a list of voters with disabilities assisted by companions.⁵⁶

Under-determination in the law

- 3.167 In other respects, the law might give insufficient guidance. For example, rule 1 of each set of election rules states that polls close at 10 pm. Any further guidance is given by case law, which provides that anyone who has been issued with a ballot paper by 10 pm must be allowed to vote, and conversely that ballot papers cannot be issued after 10 pm even if an elector was in the queue before this time.⁵⁷
- 3.168 After the May 2010 General election, media attention focused on voters who were turned away at the close of poll. Our consultation paper noted that one presiding officer closed the poll strictly at 10 pm, when some electors remained in the queue. Another brought those still in the queue inside the polling station and issued ballot papers before 10 pm. The Electoral Commission later reported that 27 polling places in 16 constituencies experienced problems with queues, which affected over 1,200 people.⁵⁸ While poor planning and weaknesses in the administrative structure were contributing factors, it also called for the law to be changed to allow for participation of those still queuing before close of poll.⁵⁹
- 3.169 Both the UK Government and the Political and Constitutional Reform Committee of the House of Commons thought that administrative failings should be addressed before seeking a legislative solution to this issue.⁶⁰ By contrast, the Scottish Parliament has legislated an amendment to the Scottish local government election rules which states:

For the avoidance of doubt, in the event that a voter is held in a queue at the polling station at the close of the poll and has not been able to cast their vote, the presiding officer shall permit them to cast their vote as soon as practicable immediately following the time

⁵⁶ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 rr 38 and 39.

⁵⁷ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 1; *The West Division of the Borough of Islington* [1901] 5 O'M & H 120, p 129; *Fermanagh and South Tyrone* [2001] NIQB 36; Electoral Commission, *Handbook for Polling Station Staff* (2010).

⁵⁸ Electoral Commission, *Report on the Administration of the 2010 UK General Election* (July 2010), pp 3 and 47 to 48.

⁵⁹ Electoral Commission, *Interim Report on the 2010 UK Parliamentary General Election: Review of Problems at Polling Stations at Close of Poll on 6 May 2010* (May 2010), pp 29, 30 and 32.

⁶⁰ Cabinet Office, *Response to Reports on the Administration of the 2010 UK Parliamentary General Election* (September 2011), p 17; Individual Electoral Registration and Electoral Administration, Report of the Select Committee on Political and Constitutional Reform (2010-12) HC 1463, para 98.

specified as the close of the poll.⁶¹

- 3.170 Our conclusion in the scoping paper was that the classical law arguably does not offer a clear answer to the issue of queues at the polling station. In the example given above of the two presiding officers, one strict and the other inviting queuing electors into the station and issuing ballot papers before 10 pm, neither officer broke the law. Our view was that the substantive project should offer an opportunity to consider whether the law should give definitive guidance on the sort of issues that emerged from the events at some polling stations in May 2010.
- 3.171 We emphasised that when some aspects of the polling process go wrong, or are seen to have gone wrong, public confidence in the electoral system suffers. The law makes significant demands of administrators, making highly detailed and election-specific provision on some topics, while in other areas too little or uncertain guidance is given, paving the way for different or inconsistent practices. We proposed that the substantive project should review the laws regulating polling day with a view to simplifying and rationalising them.

Consultation responses

- 3.172 There were 56 responses to our consultation question on whether the scope of reform should include consideration of the rules on polling day. All agreed that it should.
- 3.173 Several electoral administrators' responses focused on the relevance of some of the detailed provision applicable to polling day. Even more emphasised the lack of guidance given by the law in some areas, in particular concerning the close of polls. The London Borough of Hackney's response stressed the particular complexity of administering combined polls, suggesting that, in reality, the vast majority of authorities running combined polls in the May 2010 polls found them extremely challenging. The concern was not restricted to administrators, with Professor Ron Johnston and the Electoral Reform Society both suggesting that a solution to the problems encountered at some polling stations at the 2010 General election should be considered.
- 3.174 The Greater London Returning Officer noted that the amended Scottish local election rules allowed voters held in queues at the close of poll to cast their vote.
- 3.175 The national AEA maintained that a legislative response should be clear and unambiguous in terms of the requirements and their practical application. The law must also be easily communicated to and understood by voters, and consistently applied by electoral administrators whether in an urban or rural setting without compromising their neutrality and safety. It may be that clarification of the existing provisions would address the concerns raised and enable a clearer understanding of the arrangements on the part of polling station staff, campaigners and voters.
- 3.176 Whatever the rules say, the Electoral Commission stated in its response that the law on polling day could be simplified and rationalised, with "much of what is currently contained in legislation [being] moved to statutory guidance".

⁶¹ Scottish Local Government Elections Order SSI 2011/391, sch 1 r 33(6).

- 3.177 Some administrators mentioned the rules governing disabled voters, with the North West Branch of AEA regretting that the tactile voting device is used too rarely. Diverse Cymru also thought that the rules applicable to polling stations could be made more suitable for disabled voters. The rules regarding access to the polling stations, signage and assistance by polling agents and personal assistants, carers or companions should, it stated, form part of the review.
- 3.178 Other consultees mentioned the law's identification requirements. Richard Price QC and Dominic Spenser Underhill noted in their response that:

there is a strong case that, when voters attend to cast their vote at a polling station, they should be required to provide visual ID, such as a driving licence, or an electoral identification card, as applies in Northern Ireland. Such requirements are seen across almost every walk of modern life. They are self-evidently effective and are thought to be so. We consider that this safeguard would strengthen the integrity of the voting process.

Discussion

- 3.179 Different approaches are taken in Great Britain and Northern Ireland to the balance between voter access and security of the poll. Our present view is that a proposal for visual identification at polling stations in Great Britain would likely stray into areas of political policy rather than law reform. The forthcoming introduction of individual electoral registration, and with it personal identifiers, should reduce opportunities for fraud.
- 3.180 In light of the overwhelmingly positive response, we agree that the scope of the reform project should include the rules on polling day. We will consider rationalising diverse, election-specific rules and a consistent place for rules within the legislative hierarchy. The key issue on polling day is that the rules should be clear and consistent, provide authoritative guidance where needed, and should demonstrably promote the competent administration of the poll.

Recommendation 9: the scope of the reform project should include consideration of the rules on polling day.

DETERMINING AND DECLARING THE RESULT

- 3.181 After the close of polls, the outcome of the election must be determined. This involves three processes: verifying votes, counting them and ultimately declaring the result. These are governed by discrete election rules, which administrators must consult in case they make different provision for a particular election. In general, the Parliamentary Election Rules are taken as a template for other elections, with appropriate modifications being made.

Legal rules and best practice

- 3.182 The rules governing this area generally retain the conventional approach to detailed prescription, but are open to interpretation in some areas. Gaps in the law are filled by best practice and common sense. It is implicit, for example, that transparency requires a measure of engagement and confidence-building with

candidates and their agents. Formal requirements in the rules, like noting candidates' objections to a ballot paper marked as rejected, are thus supplemented by practices which see returning officers explaining their decision and methods. The Electoral Commission's guidance in this area brings together law and best practice.⁶² In our consultation paper, we described some governing principles like accuracy and timeliness of the counts, transparency of processes and maintaining the secrecy of the vote.

Timing of the count

- 3.183 Timeliness and accuracy can sometimes compete. Returning officers are required to make arrangements for counting the votes "as soon as practicable after the close of the poll", although at UK Parliamentary general elections returning officers have a duty to begin the count within four hours of polls having closed. If they do not, they must send their reasons for the delay to the Electoral Commission. Concerns have been expressed about the tension between continuous counting after the poll and maintaining high standards of accuracy.⁶³

Verification

- 3.184 After the close of polls, presiding officers prepare a "ballot paper account" which matches the total ballot papers issued, spoilt, unused and tendered against the initial number allocated to the station. Verification is effectively that exercise writ large for the entire area whose votes are being counted. The idea is to account for any discrepancy between ballot papers allocated and those accounted for after the poll, including spoilt and tendered ballot papers.⁶⁴
- 3.185 We explained in the consultation paper how the election rules are silent on the issue of how to resolve any discrepancies on verification. However, we noted that in practice small and explicable discrepancies do not prevent administrators from proceeding to count the votes. We also noted the significant amount of planning that the verification of postal voting statements involves. This is particularly so if large amounts of postal ballot papers are handed in on election day at polling stations.

The count

- 3.186 Votes are counted after verification is completed and ballot papers from different polling stations are mixed. There is more than one way to organise the count, as the classical rules' only reference to a particular counting method states that counting agents may satisfy themselves that ballot papers are correctly sorted if votes are counted by sorting ballot papers according to votes for each candidate.⁶⁵

⁶² Electoral Commission, *Managing a UK Parliamentary General Election: Guidance for (Acting) Returning Officers* (2009), Part E.

⁶³ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 rr 2(1), 44(1), 45(3A) and 53ZA; Association of Electoral Administrators, *Beyond 2010 Report on the Future of Electoral Administration in the UK* (July 2010) at pp 56 to 58.

⁶⁴ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 45(5).

⁶⁵ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 44(5).

- 3.187 Election rules require certain ballot papers to be rejected, such as those that do not bear the official mark, vote for more than one candidate, identify the voter or are unmarked or uncertain. We explained in our consultation paper that any doubt over a vote cast is resolved by the returning officer who gives a definitive ruling in a process known as “adjudication”.
- 3.188 The returning officer must be satisfied with the initial results of the count and, should there be any doubt, may decide to conduct a recount. While candidates and election agents can request a recount, we noted in our consultation paper that a request may be refused if the returning officer thinks the request is unreasonable.

Declaring the result

- 3.189 The result of an election is publicly declared and, at UK Parliamentary elections, the returning officer returns the name of the elected member by endorsing the writ, the form of which is certified, and sending it – by personal delivery to “the postmaster of the principal post office of the place of the election” – to the clerk of the Crown.⁶⁶
- 3.190 The result cannot be revisited once it has been declared, even if an obvious mistake is discovered. The returning officer has a number of post-declaration duties, such as the return of the candidates’ deposits, the receipt and notice of returns and declarations as to the candidates’ expenses, as well as the secure disposal of election documents.

Technology

- 3.191 While we have focused on the conventional process for verifying and counting votes, which is a manual exercise, technology has been introduced to enable electronic counts. At a Greater London Authority election, for example, the Greater London Returning Officer is empowered to provide an electronic counting system for the verification and counting of votes, which must be used unless written consent is given by the Officer to count manually.⁶⁷

Consultation responses

- 3.192 All 53 responses to this question agreed that the rules for determining and declaring the result should be considered as part of the substantive review. Most responses cited the variation in rules across elections and the inconsistency in detailed guidance given by rules as key issues for reform. For example, Gloucester City Council’s response called for greater clarity regarding rejected papers and, having observed that there are different rules for different elections, added that reform should aim for consistency across the board.

⁶⁶ Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 51.

⁶⁷ Greater London Authority Elections Rules SI 2007 No 3541 sch 1 r 48, sch 2 r 49 and sch 3 r 48.

- 3.193 The Electoral Commission also supported the inclusion of these rules within scope. Its response stated:

We agree that the rules for determining and declaring the result of an electoral event, as they currently stand, are not helpful – as the Law Commission note, in some cases there are no rules on matters where one would expect to see some. In others, the rules do not correspond to modern day requirements. For example, despite the increase in the number of different voting systems and, therefore, different ways in which voters can mistakenly mark their ballot papers, the rules providing for the grounds for rejection of ballot papers have not changed.

The rules for determining and declaring the result of an electoral event represent a crucial aspect of the electoral process and it is vital that there is absolute trust in this part of the process. However, the current law is not clear and can in its application result in unnecessary and costly litigation. We agree that this area should be included within the scope of the reform project.

This area of the process should also be reviewed with a view to providing, in the future, for further possible developments in, or modernisation of, the electoral process such as the availability of electronic verification and counting across different electoral events (should it be determined, after due consideration, that such developments would be appropriate).

- 3.194 The national AEA said:

A great deal is made of the timing of election counts and the length of time taken to declare results. However, the AEA believes that the primary objective of the administration of the verification and count at any election must be to ensure the quality of decision-making in order to achieve an accurate result. As we have previously noted, timeliness of the result is one of a number of key principles that should underpin good practice in the conduct of the count, along with transparency, security, professionalism, accuracy, secrecy, accountability and equity.

- 3.195 The joint response by SOLAR and the Electoral Management Board for Scotland identified similar principles, which they considered should underpin a review aiming to modernise and rationalise the rules on determining and declaring the result. Their response, like others, suggested that there needs to be more flexibility to correct known counting errors after the result has been declared. The Scotland and Northern Ireland Branch of the AEA gave the recent example of the local government election in 2012 at Glasgow City Council. The returning officer identified an error in the count some days after the result was declared, but could do nothing to redress it. He could not even go to court as only candidates or directly affected parties could bring an election petition.

3.196 Concerning electronic counting, the Greater London Returning Officer said:

Where e-counting is used (currently only for the Greater London Authority's three contests and Scottish local elections), the guiding principles are the same as for a manual count but the process itself is different (eg not mixing the ballot papers from more than one ballot box), and it is hoped that the Law Commission will understand and remember the reasons for those variations.

3.197 He noted that e-counting technology offered opportunities that are absent from manual counting – such as the availability of ward level data within larger constituencies, or recording reasons for accepting (at verification) variances between actual and ballot paper account numbers.

Discussion

3.198 Determining the result is a crucial part of electoral law, one which involves key principles, some of which compete and must be balanced. These include timeliness, transparency, security, professionalism, accuracy, secrecy, and accountability. Given the unanimous response from consultees, our view remains that the rules for determining and declaring the result should be part of the substantive reform project. The underlying principles that evolved over a century must be kept in mind and, where they are not part of the law, may need some expression. In general, election-specific rules across all elections should be modernised and rationalised.

Recommendation 10: the scope of the reform project should include consideration of the rules for determining and declaring the result.

ELECTION TIMETABLES

3.199 Every election is administered according to a timetable which runs to the day of the poll. Timetables are important because they determine the length of a campaign and the key deadlines leading up to the poll. In our consultation paper, we explained that a statutory timetable is set out in rule 1 of each set of election rules. Time is generally calculated by reference to polling day, and deadlines are generally expressed as a period of working days.

Variation in timetable length

3.200 While most election timetables are 25 working days in length, there are considerable differences in overall length and the steps to be taken in that time between different elections. We provided two examples in our consultation paper, including the existing 17 day timetable for UK Parliamentary general elections and the 35 day timetable for Scottish local government elections. We explained how variations in timetable length can complicate matters for administrators and participants, particularly when polls are combined.

Construction of the timetable

- 3.201 Elections may arise as scheduled at the expiry of an elected term or on a date stipulated by law. Alternatively, they may occur on occasion of a vacancy caused by a supervening event, like the resignation of an elected official. Whatever triggers an election, its timetable must be calculated by reference to a particular event. In our consultation paper, we observed how the timetable for UK Parliamentary elections, with the exception of the deadline for publishing notice of the poll, runs by reference to the event that triggers the occasion of the election – the proclamation summoning a new Parliament. In contrast, timetables for other elections are calculated by reference to polling day.

Steps in the timetable

- 3.202 Some crucial steps in the administration of polls are not in the statutory timetable. Deadlines for late registration or new postal voting applications (11 days before the poll in Great Britain) are instead derived from regulations governing registration. In our consultation paper, we noted that the explanation for their omission from statutory timetables was likely to be historical. The advent of rolling registration and absent voting post-dates the settling of what was classically contained in election rule timetables.
- 3.203 Some of the differences between election timetables may be due to the different demands at particular elections. However, the variations in length of timetables are difficult to explain other than through contemporary legislative choices when particular elections were introduced into the statute book.⁶⁸

Consultation responses

- 3.204 There were 55 consultation responses to this question, all of which agreed that consideration of election timetables should be within scope. A common theme was the harmonisation of timetables across different elections, with many citing the risk of errors during combined polls as a key reason for reform. Cherwell District and South Northamptonshire Councils stated in their joint response that “there is a clear need for a standardised timetable for all elections” noting that differing timetables create an area of risk and complicate effective project planning. The London Borough of Hackney agreed that differing timetables increased the risk of failures when running combined polls.
- 3.205 The Electoral Commission put the issue this way:

We see no good reason for the differences in electoral timetables and believe that there is considerable merit and efficiency in uniformity in this regard. We agree that the reform project should examine the reasons for the inconsistencies in timetables across UK elections and aim to reduce or eliminate them. The project should also consider whether it is helpful to include other required electoral deadlines in the timetable.

⁶⁸ Electoral Commission, *Election timetables in the United Kingdom: Report and recommendations* (2003), p 11.

3.206 SOLAR and the Electoral Management Board for Scotland similarly called for:

a complete overhaul of the timetables for all elections to determine who should do what, when and why at each stage of the process from notice of election to polling day and beyond including return of candidates' election expenses to [returning officers] and the retention and inspection of election documents.

3.207 Professor Ron Johnston's response noted that "the associated timetables for the regulation of candidate expenditures" should be included within scope.

3.208 Consultees were thus overwhelmingly in favour of considering the variations in the length and deadlines present in election timetables, with a view to reducing or eliminating them. The national AEA thought the law reform project should consider the various election timetables so as to make them more compatible, work for voters, and capable of being effectively administered. It also thought that deadlines not currently within the statutory timetable should be considered for inclusion:

The registration and absent voting deadlines are contained in both primary and secondary legislation and currently need to be imported into the election timetable for it to make sense as a whole. Similarly, the deadline for the appointment of polling and counting agents [is] contained within election rules but do[es] not appear in the election timetable.

The impact on the election timetable of the implementation of individual electoral registration will need to be considered, including the relationship between the deadlines (both dates and times) for registration and postal vote applications. This will need to take account of any objections period which currently results in some postal votes being required to be despatched just five working days before polling day.

Discussion

3.209 While the Electoral Registration and Administration Bill 2012 will extend the UK Parliamentary election timetable to 25 days, electoral timetables will continue to differ as to their length and the deadlines within them. There has also been a growing tendency to combine polls in recent years and the complexity associated with combination is exacerbated by the fact that different timetables make elections less compatible with one another.

3.210 Given consultation responses, we remain of the view that the substantive project should consider the reason for inconsistencies in timetables with the aim of reducing or eliminating them. The objectives when considering election timetables must be to make the law simpler, elections easier to combine, and to reduce the risks of administrative error and voter confusion.

Recommendation 11: the scope of the reform project should include consideration of the timetables for elections.

COMBINATION OF POLLS

- 3.211 The combination of polls occurs where multiple elections or referendums fall due on the same day and are taken together. Electoral law makes extensive provision for when combination is possible, who is in overall charge and which rules govern combined polls.
- 3.212 The issue of combination cuts across many areas that we have already discussed in this report. There is a significant link between the difficulties of an election-specific approach to elections and the problems associated with combined polls. Similarly, differences in election timetables play out in the practical difficulty for administrators to coordinate the delivery of combined polls. There is a significant overlap with management and oversight issues as the combination of elections with variously sized constituencies entails a degree of regional or centralised management of combined polls. Accordingly, most of the problems with the existing framework for elections in the UK coalesce when polls are combined.

Mandatory, prohibited and discretionary combination

- 3.213 Polls for certain elections must be combined, while combined polls for other elections are prohibited. For example, UK Parliamentary and European Parliamentary general elections, local government and UK Parliamentary general elections, and local government and European Parliamentary general elections must be combined if they occur on the same day.⁶⁹ Contrastingly, elections to the UK or European Parliaments are prohibited from being combined with elections to the Scottish Parliament or the National Assembly for Wales. As detailed in our consultation paper, similar mandatory requirements and prohibitions apply across various combinations of elections and referendums.
- 3.214 Where combination is neither mandatory nor prohibited, polls may be combined at the discretion of the returning officers concerned if provision is made for it in legislation. For example, polls for a UK Parliamentary by-election and an ordinary local government election in “related areas” may be due to be taken on the same date but not required by law to be combined. Two areas are related if one is coterminous with or situated wholly or partly within the other. The decision to combine polls is for the returning officer for each election and both officers must agree on having them combined.⁷⁰

The effect of combination

- 3.215 When polls are combined, responsibility for discharging various functions at the election will fall primarily on one returning officer. The process of identifying the primary returning officer involves consulting a hierarchy of returning officers, who are listed in regulations.⁷¹
- 3.216 Not every aspect of administering an election is combined. In summary the

⁶⁹ Representation of the People Act 1985, s 15(1).

⁷⁰ Representation of the People Act 1985, s 15(2) to (3).

⁷¹ Representation of the People (Combination of Polls) (England and Wales) Regulations 2004 SI 2004 No 294.

transferred functions include those relating to the notice of situation of polling stations, the provision and equipping of polling stations, the appointment of staff, and the separation and counting of ballot papers. However, some of the other functions can also be transferred to the primary returning officer by agreement. For example, the issue and receipt of postal ballot papers in respect of each election may be combined by agreement, bringing into play some modifications of the rules relating to the postal voting statement, covering envelopes, and the differentiation of postal ballot papers by colour.⁷²

- 3.217 In our consultation paper, we noted the complexity of combining polls, describing the task administrators perform as akin to that of a draftsman. The relevant legislation must be consulted carefully by the primary returning officer to establish how the primary election rules are modified to cater for combination. The officer must, for example, issue a notice of the poll for each election that states that the poll is being combined, and specify details of the other election. In Scotland, where a UK Parliamentary election is combined with another election, the same ballot box must be used for every election; in England and Wales that is a decision for the returning officer.
- 3.218 Our consultation paper identified the combination of polls as a complex area of law, in need of major reform given the increased scope and tendency for combined polls in the modern electoral context.

Consultation responses

- 3.219 We received 55 consultation responses to our question whether to include the combination of polls within scope. All agreed to do so. Most responses emphasised the increasing incidence of combined elections and referendums and their consequential impact upon the administration of polls. SOLACE explained that combined elections are “becoming more likely than ‘single’ elections, and again, simplifying the process for the voter must be at the heart of this review”. Similarly, the London Borough of Hounslow said:

The potential for combined elections/referendums appears to be increasing especially for those local authorities who elect in thirds. The conduct of combined elections is far more complex and resource intensive not only within the core electoral services team but also with the increased number of poll clerks and count staff required.

- 3.220 The complexity of combination rules was also highlighted by consultees. The UK Government stressed that particular consideration should be given to the impact that combination of polls can have on timetables and polling day. In their joint response, SOLAR and the Electoral Management Board for Scotland described combination as “one of the most difficult areas of electoral law to understand and comply with”.

⁷² Representation of the People (England and Wales) Regulations 2001 SI 2001 No 341, reg 65; European Parliamentary Elections Regulations 2004 SI 2004 No 293, reg 10 and sch 2 para 41; Representation of the People (Postal Voting for Local Government Elections) (Scotland) Regulations 2007 SSI 2007 No 263, reg 4.

3.221 The Electoral Commission agreed, adding:

This increase in events that are subject to combination, or that are held on the same day, has compounded the existing complexity of the law around the combination of elections. Each time legislation provides for a new type of electoral event there needs to be provision addressing the place of the new event within the current structure for combination. Complex cross referencing is then required to establish the particular rules for each type of combination and to understand the process involved. The rules become even more complicated in combined electoral events where the returning or counting officer for one of the events is subject to a power of direction, as the scope of any such power will depend on whether the relevant officer discharges the combined functions.

In our preliminary views paper we suggested that the law providing for the combination of elections should, where possible, be written out in full rather than on a piecemeal basis, so as to avoid the complex and cumbersome cross referencing that is currently required.

The Law Commission should aim to ensure that this critical area of the law is written clearly and simply, so that responsibility for the combined functions can clearly be ascertained and the process easily followed.

3.222 The Electoral Commission's suggestion that all of the combination rules should be written out in full was supported by the London Borough of Newham. Gloucester City Council stated:

With elections running on different timetables, boundaries, franchises and voting types, it is important that all possible combinations are considered in this reform to eliminate confusion and potential for administrative error. This is particularly important given the potential for an increased number of referenda as a result of the Localism Act.

3.223 Many consultees, like the AEA's Southern Branch, called for the project to consider which polls are suitable to be combined with others as well as considering the potential consequences of combination. The joint response from Scope and Mencap also observed how the complexity of the rules and the number of combined polls particularly affects disabled voters:

The potential for confusion that the combination of elections, frequently with separate voting systems, brings for all voters but particularly for voters with learning difficulties has been a concern for us. We would expect the streamlining of rules around the combination of elections to have a positive effect in terms of disabled voters' experience of the electoral process.

- 3.224 The national AEA response summarised the issues confronting administrators and participants as follows:

Combination is a key area in terms of generating legislative and practical complexity and is increasingly a critical factor in the administration of elections and referendums. In turn, this impacts on the experience of all those participating in the events. The legal framework should attempt to establish and recognise that there is a limit to how many electoral events can be delivered on the same day without overloading administrators, voters and campaigners. ...

We believe that, in its examination of combination, the project should take a wide view including the implications of holding multiple polls on the same day, as well as the specific rules governing the combination of polls.

Discussion

- 3.225 There are more species of elections and referendums in the UK than ever before. Organising an election is a major task. Combining polls adds to the burden on electoral administrators and may cause voter confusion. Furthermore, the law governing combination of polls stands out as a particularly complex part of electoral administration law. Writing out combination rules in full, as the law currently stands, would add volumes of material were the current level of election-specific legislation to be retained.
- 3.226 Our view remains that combination requires major reform as part of a holistic review of electoral administration law. In particular, the substantive project should address the election-specific approach to election rules and seek to simplify, rationalise, and so far as possible harmonise these rules and election timetables. The more consistent these are, the easier it will be to solve the problem of how to present the rules on combining polls.

Recommendation 12: the scope of the reform project should include the combination of polls.

CHAPTER 4

LEGAL CHALLENGE AND ELECTORAL OFFENCES

- 4.1 The conventional model of electoral administration is underpinned by a process of challenge. Both administrative and regulatory rules can be enforced by a private legal process, the election petition. The regulatory rules are also criminal offences that can be enforced through public prosecution.

THE ELECTION PETITION AND ELECTION COURTS

- 4.2 In our consultation paper, we considered the law on challenging the outcome of an election by filing an election petition. We noted that the process had its origins in the House of Commons' own procedures for adjudicating "controverted" UK Parliamentary elections. In 1868 the election petition jurisdiction was transferred to election courts staffed by judges. It retains many unique features.

The unique nature of the election petition

- 4.3 The election petition is essentially a civil process, brought by persons directly concerned by the election in question. The elected candidate and, if the petition questions the administration of the election, the returning officer are respondents to the petition. Petitions are tried by an election court made up in parliamentary election petitions of two senior judges. The default position is that trial takes place in the constituency concerned.
- 4.4 The parliamentary election court produces, at the end of the trial, a certified determination to the Speaker of the House of Commons as to the correctness of the outcome and the validity of the election. The court additionally makes a report to the Speaker if corrupt or illegal practices were perpetrated or widely prevailed at the election. Having done so, the election court is dissolved.¹ There is no appeal on issues of fact though a special case may be stated on any question of law to the High Court in England and Wales, Court of Session in Scotland, and Court of Appeal in Northern Ireland.² In *R (Woolas) v The Parliamentary Election Court* an election court was held to be subject to judicial review for error of law.³
- 4.5 The unique features of the parliamentary election court go beyond interactions with the House of Commons, and its nature as a temporary court with no permanent standing. In our consultation paper we noted that election courts had an inquisitorial character, evidenced for example by a power unilaterally to examine any person in court, or the prohibition on witnesses invoking the privilege against self-incrimination.⁴ We also noted some quasi-criminal characteristics, a vestige of the election court's historical dual civil and criminal

¹ In legal jargon it is *functus officio*: *R v Cripps ex parte Muldoon* [1984] QB 686.

² Representation of the People Act 1983, ss 144 and 146(4). That the procedure amounts to an appeal on a point of law was confirmed in *R (Woolas) v The Parliamentary Election Court* [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362 at [25], [29] and [41].

³ [2010] EWHC 3169 (Admin), [2011] 2 WLR 1362.

⁴ Representation of the People Act 1983, s 141.

jurisdiction.⁵ That includes a residual role for the prosecuting authorities in all three jurisdictions of the UK, even in a civil process.⁶

4.6 Our consultation paper identified four issues with election petitions.

- (1) The classical grounds of challenge for election petitions under the Representation of the People Act 1983 (“the 1983 Act”) are not clearly and positively set out.
- (2) The strict formal procedure is at odds with other civil processes, and has become the subject of increasing judicial criticism.
- (3) Election petitions are not primarily concerned with breaches of electoral administrative rules that did not affect the outcome of an election. There is no effective and proportionate legal outlet for complaints about electoral administration which fall short of a challenge to the outcome.
- (4) The classical grounds of challenge have been applied in an inconsistent way across new elections which used a voting system other than first-past-the-post.

Lack of clarity in grounds of appeal

4.7 The 1983 Act does not positively set out the grounds upon which an election can be challenged. It grants disparate powers to the election court, which must be read with case law and practitioners’ works which digest the case law of the election courts, busiest between 1868 and 1911, and the petitions decided in the House of Commons’ committees before 1868.⁷ In our consultation paper we summarised the jurisdiction of the parliamentary election court as:

- (1) reviewing the votes in a scrutiny, potentially declaring another candidate elected as the person having the most lawful votes; or
- (2) examining the validity of the election, potentially resulting in an MP being unseated and a new election being called. Here, we distinguished between:
 - (a) invalidity for breaches of the rules by electoral administrators;
 - (b) a successful candidate’s corrupt or illegal practice; and
 - (c) a successful candidate’s disqualification from office.

⁵ The court retained a criminal jurisdiction under s 171 of the Representation of the People Act 1983 until it was repealed in 1985.

⁶ Representation of the People Act 1983, s 181 read with ss 204(5) and 205(1(b)). The Director of Public Prosecution and Lord Advocate’s powers do not match exactly: see for example s 140(6) and (7).

⁷ R Price (ed), *Parker’s Law and Conduct of Elections*, loose-leaf, issue 37; P Gribble (ed), *Schofield’s Election Law*, loose-leaf 6th reissue.

Scrutiny of votes

- 4.8 The court can correct the outcome of the election by deciding for itself, after a detailed and adversarial court process, which votes should lawfully be counted, and consequently who ought to have been returned as the winning candidate. As we noted in our consultation paper, the court is not restricted to a simple recount. Unlike the returning officer, it can decide for example whether a particular ballot paper casts a valid vote based on the eligibility or identity of the voter. This process is called a “scrutiny”. When conducting it, the court is bound by section 157(2) of the 1983 Act to observe the “principles, practice and rules” of the House of Commons committees before 1868.
- 4.9 At first sight the invocation of pre-1868 House of Commons practices is troubling. In reality much of the law of scrutiny is established by judicial case law after 1868 and, as Richard Price QC and Dominic Spenser Underhill noted in their response, “scrutiny” is a term of art to describe the process of a court-supervised inspection and counting of ballot papers. It remains the case, however, that the nature of the process is not clear from a reading of the statute.

Administrative breaches

- 4.10 How a breach of a rule pertaining to administration of the poll should affect its validity involves a balancing act between giving teeth to the rules and achieving a certainty in electoral outcomes. The law has therefore placed some restraints on the consequences of breach. As our consultation paper explained, a challenge based on ground 2(a) above is essentially founded on the breach causally affecting the outcome of the election. In contrast, a candidate’s corrupt or illegal practice or disqualification vitiates the validity of the election irrespective of the effect on the result.
- 4.11 The law’s restraint is judicial in origin. Section 23(3) of the 1983 Act states that no UK Parliamentary election shall be declared invalid if it appears that: (a) the election was so conducted as to be substantially in accordance with the law as to elections; and (b) the act or omission did not affect the result.
- 4.12 Considering identical provision in the Representation of the People Act 1949, Lord Denning MR in *Morgan v Simpson* re-stated its wording in positive form; a breach of the rules must affect the outcome of the election in order to result in its nullity.⁸ An election will be held not to have been conducted substantially in accordance with the law as to elections if there was a “substantial departure” such as to make “the ordinary man condemn the election as a sham or a travesty of an election by ballot”.⁹ The bar was thus set very high for an administrative breach to invalidate an election irrespective of its impact on the result.
- 4.13 The 1983 Act continues to express the test in its negative form, even though judicial authority pre-dating the Act turned that wording on its head. That is symptomatic of accessibility issues with election petition law, which is particularly problematic given election law experts are very few, particularly on the bench.

⁸ [1975] QB 151.

⁹ [1975] QB 151 at p 168 by Lord Justice Stephenson.

Corrupt and illegal practices

- 4.14 As we previously noted, a report that the returned candidate was personally or by his agent guilty of a corrupt or illegal practice will invalidate the election, triggering a new election. In this context, corrupt and illegal practices, although criminal offences, are “vitiating factors” that serve to invalidate an election. The criminal standard of proof is used to establish illegal or corrupt practice, guilt of which results in disqualification from elective office for three or five years respectively. Where corrupt or illegal practices have “so extensively prevailed that they may reasonably be supposed to have affected the result of the election”, the election is void irrespective of whether the winning candidate was responsible for them.¹⁰
- 4.15 Otherwise, in order to invalidate an election a corrupt or illegal practice must be committed by a candidate or an agent. To avoid nullity for the acts of an agent, candidates must show that the offences were committed against orders and without sanction, that they took all reasonable steps to prevent them, that the offences were of trivial character and that the election was otherwise free from corrupt or illegal practices.¹¹ Candidates who inadvertently committed illegal practices may also proactively apply for judicial relief under the 1983 Act.¹²

Disqualification of candidates

- 4.16 Election courts have a general jurisdiction to invalidate the election of a candidate who is not qualified to take up the seat. As we noted in Chapter 3, certain persons are disqualified from elected office. A returning officer generally has no power to refuse the nomination of a disqualified person and the election of such a person can only be annulled by an election court. The House of Commons itself can grant relief and an application can be made to the Privy Council for a declaration as to an MP’s disqualification. Equivalent remedies exist in elections to the Scottish Parliament and Northern Ireland and Welsh Assemblies.¹³

Strict formality

- 4.17 A major characteristic of the election petition is its strict formality. The procedure for parliamentary and local election petitions is governed by the 1983 Act and procedural rules.¹⁴ In England and Wales and Northern Ireland the Election Petition Rules 1960 and Election Petitions Rules 1964 are respectively supplemented, where there are gaps, by the Civil Procedure Rules and Rules of the Court of Judicature. By contrast, in Scotland, the ordinary civil procedural rules make provision governing election petitions.

¹⁰ Representation of the People Act 1983, s 164(1). *Akhtar v Jahan*; *Iqbal v Islam* [2005] All ER (D) 15 and *R (Afzal) v Election Court* [2005] EWCA Civ 647.

¹¹ Representation of the People Act 1983, ss 157(2) and 158(3); this defence is unavailable in cases of bribery or personation.

¹² Representation of the People Act 1983, s 167.

¹³ House of Commons Disqualifications Act 1975, s 7; Scotland Act 1998, s 18; Northern Ireland Act 1998, s 38; Government of Wales Act 2006, s 19.

¹⁴ In England and Wales, the Election Petition Rules 1960; in Scotland, the Act of Sederunt (Rules of the Court of Session) 1994, Ch 69 and Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999, Pt XI; in Northern Ireland, the Election Petitions Rules 1964 SR 1964 No 347.

- 4.18 These rules make provision as to the form and content of the petition. The statutory deadline, which can be extended only in prescribed circumstances, is 21 days from the date of the return.¹⁵ However, a petition is not properly issued, and a trial date cannot be fixed, until it is “at issue” (meaning that there has been timely provision of security for costs without objection, and compliance with service provisions).¹⁶
- 4.19 In our consultation paper, we described the development of case law treating compliance with formal requirements, security for costs and certain time limits as “mandatory”, so that non-compliance was fatal to the petition. Traditionally courts had no power, even exceptionally, to extend time or dispense with formality stipulated in statute or procedural rules.¹⁷
- 4.20 This strict orthodoxy was judicially justified by reference to the need for clarity as to who has been elected. However, some decisions emphasised that this had to be balanced against the need to provide an effective means of questioning elections.¹⁸
- 4.21 This culminated in the decision of *Miller v Bull*, where the returning officer brought an application to strike out a petition for late service of notice of the amount and nature of security for costs. Security had been paid on time. The court confirmed that the time limit was mandatory under rule 19 of the Election Petition Rules 1960. That, however, contravened Article 6 of the European Convention on Human Rights and Article 3 of the First Protocol to that Convention. While there was a public interest in the certain and swift resolution of electoral disputes, the mandatory nature of the time limit was disproportionate to that aim. The court disregarded the relevant part of rule 19, and granted an extension of time to the petitioner.¹⁹ The returning officer did not appeal the decision, which broke new ground. At least in relation to formal requirements that derive from the Election Petition Rules 1960 as opposed to the 1983 Act, therefore, there appears now to be scope for extending time.
- 4.22 In our consultation paper, we noted that judges had suggested that the rigidity of election petition procedure led to injustice, culminating in the decision in *Miller v Bull*. The strict formality and general complexity of election petitions constitute a high bar to access to the courts. Modern procedural law has developed more refined and proportionate means of filtering unmeritorious or frivolous applications. By comparison, the Election Petition Rules 1960 in particular appear

¹⁵ Representation of the People Act 1983, s 122(3).

¹⁶ Election Petition Rules 1960, rr 4 to 6. Representation of the People Act 1983, s 136. The amounts of security, £5,000 for parliamentary elections, £2,500, though expressed as maximums, are in practice always required.

¹⁷ *Williams v The Mayor of Tenby and Others* (1879-80) LR 5 CPD 135; *Absalom v Gillett* [1995] 1 WLR 128, p 128; *Ahmed v Kennedy* [2002] EWCA Civ 1793, [2003] 1 WLR 1820 at [23].

¹⁸ *Scarth v Amin* [2008] EWHC 2886 (QB), [2009] PTSR 827 at [15] to [17], citing art 3 of the First Protocol of the European Convention of Human Rights 1950 and art 8 of the Bill of Rights Act 1688; cf *Fitch v Stephenson* [2008] EWHC 501 (QB); *Ali v Hacques* (Unreported) 10 October 2006.

¹⁹ [2009] EWHC 2640 (QB), [2010] 1 WLR 1861 at [43], [68] to [82], and [92] to [94].

out of date. Indeed, rule 19 has not been amended since *Miller v Bull*, while consultees' responses noted that the Election Petition Rules 1960 continue to refer to substitution of parties even though the enabling legislation, section 150 of the 1983 Act, was repealed in 2001.²⁰

Complaints that do not seek to change outcomes and proportional redress

- 4.23 Our consultation paper mentioned that a less costly means of testing whether errors were material to an election's outcome emerged in *Gough v Sunday Local Newspapers (North) Limited*. The Court of Appeal held that a returning officer could apply to the county court under rule 53(1)(b) of the Local Elections (Principal Areas) Rules 2006 for inspection and counting of all the ballot papers. The purpose would be to resolve a real doubt as to the correctness of the declared result where there was a real likelihood of a petition being presented if the inspection showed an incorrect result. It was desirable, following an admitted error in the counting process, to have a quick and cost-effective way of establishing whether it was worthwhile to present a petition questioning the legitimacy of the election.²¹
- 4.24 In the converse case, an elector might complain about the electoral administration process without seeking to affect the outcome of the election. That elector would be ill-advised to use the petitions process in such a case, as he or she would face almost certain defeat and likely adverse costs orders.²²

Inconsistencies across elections

- 4.25 The classical law of election petitions was developed for UK Parliamentary elections, and was later applied to local government elections. As such it suited the first-past-the-post system best, and required adaptation for the new elections which emerged after 1997, all of which used a different voting system. Our consultation paper mentioned some of the complex adaptations these required, including those, for example, concerning the effect on constituency members (elected by first-past-the-post) of the nullity of the regional contest (conducted under a party list).
- 4.26 Other adaptations, however, related to the grounds of challenge in election petitions. Here, we noted that classical grounds had been adapted for new voting systems in inconsistent ways, giving particular examples of grounds for challenging elections conducted under a party list.

- (1) The grounds for challenging returns of London members of the London Assembly appear to be identical to the classical grounds, by virtue of

²⁰ Electoral Commission, *Challenging Elections in the UK* (September 2012), http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/150499/Challenging-elections-in-the-UK.pdf (last visited 22 November 2012). Timothy Straker QC's response recalled encountering this issue while sitting as a Commissioner in an election petition.

²¹ [2003] EWCA Civ 297, [2003] 1 WLR 1836 at [41] to [50], by Lord Brown; SI 2006 No 3304. Equivalent provision is made in Parliamentary Election Rules, Representation of the People Act 1983, sch 1 r 56.

²² See Association of Electoral Administrators, *Beyond 2010: the future of electoral administration in the UK* (July 2010), pp 19 to 22.

their treatment as elections “under the local government Act”.²³

- (2) The grounds for challenging the return of regional members of the Scottish Parliament:
 - (a) do not include the commission of corrupt or illegal practices, so that the only way for a regional MSP to be unseated for the commission of these offences is on prosecution and conviction of a crime; and
 - (b) include the scrutiny jurisdiction only “so far as appropriate having regard to the different system of election”.²⁴
- (3) By contrast, the grounds to challenge the return of members of the European Parliament – all of whom are elected under a party list:
 - (a) include only the commission of personation and other voting offences as grounds of challenge, although prosecution and conviction remains a possibility as regards other corrupt and illegal practices; and
 - (b) appear to exclude the scrutiny jurisdiction altogether, by not invoking the rules of the Commons committees under section 157(2) of the 1983 Act. The editors of *Parker’s Law and Conduct of Elections* concluded that the scrutiny jurisdiction was excluded because of the difference between the regional party list and first-past-the-post systems.²⁵

4.27 Neither the scrutiny jurisdiction nor the operation of corrupt and illegal practices as vitiating factors is ideally suited to proportional voting systems. However, the substantive reform project will afford an opportunity for a principled and consistent adaptation of the classical grounds to different voting systems.

Consultation responses

4.28 Having identified the issues we outlined above, our consultation paper asked whether the scope of the reform project should include the process of challenging elections. There were 53 responses to this question, 52 of whom agreed that challenge processes should be within scope. One consultee disagreed without giving reasons.

4.29 Many responses emphasised the private nature of the main remedy in the public context of elections, and the striking of a proper balance between two public interests: the effective and accessible legal scrutiny of elections on the one hand, and certainty of political outcomes on the other.

²³ Representation of the People Act 1983, ss 127, 135A and 203(1A).

²⁴ Scottish Parliament (Elections etc) Order 2010 SI 2010 No 2999, sch 6 pt 2.

²⁵ European Parliamentary Elections Regulations 2004 SI 2004 No 293, regs 23, 24, 88(3), 100(1), and 107; R Price (ed), *Parker’s Law and Conduct of Elections*, looseleaf, issue 23, para 19.30.

4.30 In his response, Timothy Straker QC commented that:

There is an inherent tension in the mechanism (derived from nineteenth century parliamentary practices) designed to police elections. An election petition is both a private action and a public control mechanism but the public benefit (ie maintain the integrity of elections) can only occur if a private action is brought. It is apparent that there is intended to be a public benefit (eg petitions have to be tried locally, public announcements, the DPP can attend, leave required to withdraw etc) yet the chance of a petition being brought cannot be relied upon to police (for example) widespread abuse of absent voting.

4.31 Professor Bob Watt made a similar point, while the editor of *Schofield's Election Law*, Paul Gribble CBE said:

Too many breaches have occurred without recourse to the law. In many cases, the costs of bringing an election petition are seen to be prohibitive or the actual result of an election would have been unaffected. ...

There ought to be a means of dealing with simple administrative errors, perhaps by way of judicial review.

4.32 The national AEA response was that the law has not kept up with the times and would benefit from a robust examination. The Electoral Commission in its response described the petitions process as outdated, complex and inaccessible, concluding that fundamental reform was needed. Summarising a thorough report that accompanied its response,²⁶ the Electoral Commission described the issues as twofold. The first was the tension between public interest and private remedy. Election results are more than just private disputes, they are of significant public importance. The second questioned the aptitude of the current system to deliver a swift verdict on the validity of an election, thus providing certainty of outcome for those concerned.

4.33 Many consultees emphasised the importance of the correct balance between a simple, accessible legal remedy and the swift and certain determination of outcomes. Electoral administrators in particular warned of the dangers of encouraging vexatious or frivolous claims, while the London Branch of the AEA emphasised the strengths of the current framework and principles that evolved through the courts. The bar should be sufficiently high so as to prevent frivolous challenges bringing a fundamentally sound system into disrepute through adverse media coverage.

4.34 As to the adaptability of the law to newer elections, Aberdeen City Council noted that election petitions were designed in a different age, and were not suited to dealing with, for example, polls using the single transferrable vote.

²⁶ Electoral Commission, *Challenging Elections in the UK* (September 2012), http://www.electoralcommission.org.uk/__data/assets/pdf_file/0010/150499/Challenging-elections-in-the-UK.pdf (last visited 22 November 2012).

- 4.35 The Scotland and Northern Ireland Branch of the AEA emphasised that public administration had moved on since the law's inception, with most areas of public service having a complaints procedure for maladministration, so that the establishment of an "ombudsman" for elections could be considered. In a joint response, Scope and Mencap similarly noted:

The current process for redress is limited in that petitions can only [be] brought insofar as administrative breaches are alleged to have had an impact on the outcome of an election.

At present, disabled voters who may have been unable to vote due to the process being inaccessible or reasonable adjustments not being made are left with no option for complaining or seeking redress. We believe that it is highly desirable to introduce a legal recourse for voters who have experienced a poor service but where the outcome of an election may not have been affected as a result.

- 4.36 The UK Government's response similarly stressed the need for a method of questioning management of the poll without challenging the outcome of the poll.

- 4.37 In a joint response, election law experts Richard Price QC and Dominic Spenser Underhill noted:

The election petition process requires serious and detailed scrutiny. The procedure is unique in English law, and is most unsatisfactory in many ways. Rigid and inflexible time limits, and antiquated and arcane procedures abound. ... From a practical point of view, the procedures and language of election petitions, as well as inexplicable rules and regulations, render the bringing and defending of petitions unnecessarily difficult, and, in particular, expensive. There is a clear case for the process being brought into the 21st century.

Discussion

- 4.38 The overwhelmingly positive response to the inclusion of challenge processes within scope is not surprising given the legislative and judicial material. Many consultees made suggestions that will be considered at the substantive reform stage, but the need for reform is clearly established by their response. Our view, therefore, remains that the current means of challenging the result of elections should be included within the scope of the project.

- 4.39 We see the key issues for the substantive reform as including the proper balance between access to the process of challenging elections and safeguarding the certainty of elected office. That includes consideration of how to ensure proper representation of the public interest in elections in a private process of challenge. It also involves reviewing the rigid formality of the petitions process in light of more modern civil court practices, and considering more proportionate means of redress where complaints do not challenge the validity or outcome of elections.

- 4.40 On a more technical note, it is necessary to modernise and clarify the law of election petitions generally, and the current grounds of challenge in particular. A principled and consistent approach to voting systems that differ from first-past-the-post is required, while the law generally should be expressed so as to be reasonably accessible from a reading of the legislation.

Recommendation 13: the scope of electoral law reform should include the processes of challenging elections.

ELECTORAL OFFENCES

- 4.41 The regulation of campaign conduct – that of candidates, their agents and staff, as well as that of the general campaign – is achieved through the criminal law through bespoke offences that relate to the electoral process.

Relief and prosecution

- 4.42 We have already seen that corrupt and illegal practices are grounds for invalidating the result of an election by way of election petition. They are also criminal offences for which candidates and agents can be prosecuted and convicted. Given the onerous nature of some of the duties the law places on candidates, there is a mechanism by which they can be exonerated from innocent or accidental breaches.
- 4.43 A person may proactively apply for relief under the 1983 Act from any of the consequences of their offending conduct, effectively making them immune from criminal prosecution (and unseating through a petition). The application is to the High Court or Court of Session, an election court, or if the offence relates to the time for the sending in and payment of election expenses, a county court or sheriff. The court has discretion to exempt an innocent act from being an illegal practice, payment or employment if it is shown that it arose from inadvertence, accidental miscalculation or some similar reasonable cause. The court can also excuse breaches of duty in respect of the return, declaration and statements as to election expenses, where some additional excuses can be invoked, and where the relief is mandatory if the application is made out.²⁷

Electoral offences

- 4.44 The Lord Advocate in Scotland and the Directors of Public Prosecutions in England and Wales and Northern Ireland have a duty to consider making inquiries and instituting prosecutions when informed that an electoral offence has been committed. They must consider whether the evidence provides a realistic prospect of conviction and a prosecution is in the public interest. Criminal

²⁷ Representation of the People Act 1983, ss 86 (authorised excuse) and 167 (general relief). See also *McCorry v Hendron* [1993] NI 177 (QBD of Northern Ireland) and *Finch v Richardson* [2008] EWHC 3067 (QB), [2009] 1 WLR 1338.

proceedings must be commenced within one year of the commission of the offence, which in exceptional circumstances can be extended to 24 months.²⁸

The classification of electoral offences

- 4.45 Electoral offences are usually classified into three categories: corrupt practices, illegal practices, and other miscellaneous offences.²⁹
- 4.46 Historically, corrupt practices (such as bribery, treating, and personation) involved an element of intentional wrongdoing, whereas illegal practices criminalised acts the law sought to regulate. That distinction is not so clear in the modern law. Thus, the corrupt practice of incurring expenses without the election agent's authority is a strict liability offence, whereas "corruptly" inducing or procuring a withdrawal from candidacy is an illegal practice. The consequence of the label "corrupt" or "illegal" lies in the severity of the criminal sentence, the duration of disqualification from the elected office, and the availability of a relief application.
- 4.47 As we previously noted, taken together corrupt and illegal practices, if committed by a winning candidate, also operate as vitiating factors, or grounds for annulling an election at petition proceedings. In our consultation paper we illustrated this by reference to the offence of illegal employment of canvassers, which is covered by two provisions in the 1983 Act, one an illegal practice if committed by an election agent or a candidate, the other a general offence if committed by anyone else. The sentence is the same, but labelling the offence as an illegal practice makes it both a ground for annulling the election at petition proceedings, and brings into play the disqualification from the electoral process for three years for its commission.
- 4.48 Our consultation paper noted that the current classification of electoral offences focuses less upon severity of conduct and impact on elections than upon the labelling of criminal offences as vitiating and disqualifying factors. There was a conflation of the public law issue of what conduct vitiates the validity of an election and what conduct is criminal. Our view was that the electoral law project should consider rationalising the classification of criminal offences.

Modernising language and concepts in electoral offences

- 4.49 The 1983 Act contains offences ranging from bribery, an ancient common law crime, to postal and proxy ballot offences added by the Electoral Administration Act 2006. Different drafting styles are thus used to describe offences in different parts of the statute. In our consultation paper, we noted that there was no consistent way to describe the mental state required in order to find the accused guilty of an offence. Older provisions used the word "corruptly", which was judicially interpreted to mean a specific intent to break the law. Modern offences

²⁸ Representation of the People Act 1983, ss 181, 176(1), (2A) (2B) and 205. See also Crown Prosecution Service Legal Guidance *Code for Crown Prosecutors – Considerations* http://www.cps.gov.uk/legal/d_to_g/election_offences (last visited 22 November 2012).

²⁹ The table at Appendix B of our consultation paper sets out the offences under each category: see *Electoral Law in the United Kingdom* (15 June 2012) Law Commission Scoping Consultation Paper, Appendix B, <http://lawcommission.justice.gov.uk/areas/electoral-law.htm> (last visited 22 November 2012).

designed to combat malpractice use specific intent to commit the offence to describe the mental element more plainly.³⁰

- 4.50 We identified the use of outdated language and concepts as an issue, giving the example of undue influence by threatening to inflict “any temporal or spiritual injury”.³¹ The undue influence offence is so widely drafted that some of the conduct caught by the offence is criminal in any event. Its catch-all nature originates in an era when armed mobs were not uncommon at elections. Irrespective of the general law, electoral law targeted the organisers who “directly or indirectly” and by themselves or others committed such acts. The offence was aimed at candidates and their agents, its status as a corrupt practice invoking the vitiating and disqualifying functions of that label.
- 4.51 Criticism of language such as “inflicting temporal or spiritual injury”, or in treating the prohibition of giving “meat, drink, entertainment or provision” is not aesthetics. There are practical consequences, for example in communities where hospitality may be expected, in the form of a meal at a community centre or tea and biscuits at a meeting. There is a question whether the law should now be more nuanced in its attempt at criminalising electoral largesse or in how it describes abuse of religious or spiritual authority. A wider point is that the language used to define offences must be reasonably accessible to non-experts, like the general public or the police officers who are the first point of contact for complaints.
- 4.52 Apart from archaic language, some of the legal concepts used by the classical electoral offences are outdated. The greater part of the case law that governs the interpretation of bribery, treating, and undue influence dates back to the “golden age” of election petition litigation, between 1868 and 1911. A subsequent decline in the frequency of election petitions means that old statutory language has rarely been the subject of modern judicial interpretation. In our consultation paper, we gave the example in bribery of an apparent – and we concluded unlikely – shift in the legal burden of proof to the accused, if the inducement is given ahead of the election, to prove they did not have the requisite intent.³²

Combating electoral malpractice

- 4.53 Modern legislators have turned their attention to combating electoral malpractice, in particular that emerging in Great Britain after the introduction of postal voting on demand.³³ Analyses of allegations of electoral malpractice were carried out by the Electoral Commission and the Association of Chief Police Officers. These

³⁰ Representation of the People Act 1983, s 62A(1)(b).

³¹ Representation of the People Act 1983, s115. A Bishop’s pastoral letter amounted to undue influence in the Meath Southern Division Case, *Dalton v Fulham* (1892) 4 O’M & H 130. A recent example of undue influence was the contrivance of distributing leaflets attributed to a rival party in *R v Rowe, ex parte Mainwaring* [1992] 1 WLR 1059.

³² Electoral Law in the United Kingdom (15 June 2012) Law Commission Scoping Consultation Paper, pp 77 to 78, paras 4.69 to 4.72, <http://lawcommission.justice.gov.uk/areas/electoral-law.htm> (last visited 22 November 2012).

³³ S Wilks-Heeg, *Purity of elections in the UK: causes for concern* (April 2008); *Re Bordesley Green and Aston Ward of Birmingham City Council petition*, 4 April 2005 (unreported); Library of the House of Commons Briefing Paper, *Postal Voting & Electoral Fraud*.

found no evidence of widespread or systematic malpractice, noting that there had been a legislative and institutional response to prevent and deter electoral malpractice.³⁴ The Electoral Administration Act 2006 introduced new offences carrying a maximum sentence of two years' custody.

- 4.54 Nevertheless, there have been instances where sentences for electoral offences have been thought insufficient to address the degree of criminality involved. Prosecutors have turned to the common law offence of conspiracy to defraud, which attracts a maximum sentence of ten years, in order to deter wrongdoing.³⁵ In our consultation paper, we stated that the need for recourse to the common law offence of conspiracy to defraud in order to deal adequately with serious attacks on the electoral process might indicate that consideration of the current range of sentences for electoral offences should form part of the reform project.

Consultation responses

- 4.55 Having identified the issues we outlined above, our consultation paper asked whether the scope of the reform project should include consideration of electoral offences. There were 56 responses that answered this question. All agreed with the inclusion of electoral offences within the scope of reform.
- 4.56 The Electoral Commission in its response described the current classification of corrupt or illegal practices as confusing and unhelpful. Many of the concepts on which the law relating to electoral offences is based are outdated and need reform. Richard Mawrey QC described this area as incoherent and difficult to administer.
- 4.57 The UK Government thought the law could usefully be simplified and modernised, while the Crown Prosecution Service agreed that there was a pressing need to modernise and rationalise the criminal offences in the 1983 Act. Such a review would present an opportunity to improve the response to electoral fraud both in terms of prosecution and prevention; to review the classification of offences on a logical basis; and to alleviate the very real problems of accessibility of the language of the law and some of the historic legal concepts currently involved.
- 4.58 Several electoral administrators submitted responses that emphasised their perception of a lack of enthusiasm for prosecuting "minor" electoral offences. such as the failure, contrary to section 110 of the 1983 Act, to include the printer's name and address ("imprint") on election literature. These administrators question the value in retaining them as offences.
- 4.59 Many responses were concerned to stress that combating electoral fraud should be an important aspect of the review. Paul Gribble CBE noted, however, that surprisingly the postal voting system remains fairly free of fraud despite the opportunities having considerably increased, especially within tightly knit

³⁴ Electoral Commission and ACPO, *Analysis of allegations of electoral malpractice at the June 2009 elections* (January 2010); Electoral Commission and ACPO, *Analysis of allegations of electoral malpractice in 2010* (February 2011); Electoral Commission and ACPO, *Analysis of allegations of electoral malpractice in 2011* (March 2012).

³⁵ *R v Hussein* [2005] EWCA Crim 1866, [2006] 1 Cr App R at [20].

communities. He considered that individual electoral registration would help overcome some of the present problems.

- 4.60 The London Borough of Hackney stated that the lessons learnt from some high profile cases should be used to modernise the system for managing electoral offences. The London Borough of Newham pointed out in its response that candidates and electors often wrongly assume that returning officers have sweeping powers concerning electoral conduct.

Discussion

- 4.61 The response has been unanimous that this topic should be included within scope. We therefore recommend that the scope of the reform project should include modernising and rationalising electoral offences including their classification, the language and legal concepts they use, and the range of sentences that can be imposed.

Recommendation 14: the scope of the reform project should include consideration of electoral offences.

CHAPTER 5

REFERENDUMS

NATIONAL REFERENDUMS

- 5.1 Since 1973, national referendums have been used on 11 occasions to decide issues of constitutional importance. In recent years, there has been an increase in the number of national referendums and some standardised procedures were adopted for national referendums in the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”).
- 5.2 Every national referendum is introduced by a legislative measure. While some preparations can be made in the knowledge that a referendum is going to be legislated for, the question for electoral administrators and participants in the referendum campaign is what the detailed rules on the administration of the referendum will be. The chief issue when reforming the electoral administration of referendums is therefore whether standard conduct rules can and should be part of the permanent legislative provisions governing referendums, thus supplying an element of predictability to their administration. In our consultation paper, we also stated that we expected the scope of reform in this context to mirror, so far as applicable, the scope of reform in the law of elections.

Core referendum parameters: franchise, referendum question, thresholds and supermajorities

- 5.3 There is no requirement under the 2000 Act for a particular franchise to be used for national referendums; this is left entirely to the proposing legislation. While we do not propose to look at whether a particular franchise should be prescribed, the project will have to consider electoral administrative rules that can adapt to a range of franchises.
- 5.4 The question to be put to referendum must necessarily be provided for in the proposing legislation. The 2000 Act requires the Electoral Commission to consider the wording of the question and publish its views as to its intelligibility.¹ The Commission has developed its own guidelines for assessing referendum questions.
- 5.5 Similarly, the 2000 Act does not impose any threshold or supermajority requirement for national referendums. The issue is left entirely to proposing legislation.
- 5.6 We regard the type of franchise, the wording of the referendum question and whether there is a threshold or supermajority requirement as core referendum parameters. By that we mean that they are matters of significant constitutional importance, and should not be substantively reviewed as part of a technical project on the electoral administration of referendums.

¹ Political Parties, Elections and Referendums Act 2000, s 104.

Referendum conduct rules

- 5.7 The 2000 Act provides that the chief counting officer for a national referendum is the chairman of the Electoral Commission or his or her appointed delegate. If a referendum is held purely in Northern Ireland, the Chief Electoral Officer for Northern Ireland is chief counting officer. The 2000 Act provides for the appointment of counting officers for each relevant area in Great Britain and the placing of local authority services at the disposal of those counting officers.
- 5.8 Referendum conduct rules include matters such as whether the chief counting officer is to have a power of direction, the duties of administrators, the role of referendum agents, manner of voting, pre-polling and polling day requirements, and procedures for the count and the declaration of the result. There are no standard conduct rules for referendums; each legislative measure calling a referendum provides for its own set of rules, based on the conduct rules for other polls. This was the case, for example, in the proposing legislation for the alternative vote referendum in 2011.²
- 5.9 Furthermore, there are no generic rules for challenging the result of a national referendum. From 2004 onwards, proposing legislation has included a provision that prevents challenge of a result unless a claim for judicial review is made within six weeks from the date of the certified result. Before 2004, the bringing of proceedings challenging the result was not permitted.
- 5.10 Overall, we think the substantive phase of the project should consider whether a statutory framework for referendums should include referendum conduct rules, which have so far been re-legislated for every new election. The key aim of the project will be to consider whether such a framework would benefit administrators and participants by providing a reliable set of rules in advance of the holding of a referendum.

Rules regulating the referendum campaign

- 5.11 There is a regulatory aspect to the Electoral Commission's role that pertains specifically to national referendums. This role concerns the regulation of permitted participants and expenditure limits, controls on donations and loans, campaign designation and finance, as well as publications and broadcasts with respect to a national referendum. These are similar to the issues in elections that recommendation 7 proposes to exclude from the scope of the project.³
- 5.12 In this context, there is a ten week statutory referendum period which governs the designation of campaigns including a minimum campaign period of 28 days before the poll.⁴ In our consultation paper our view was that the referendum period has important consequences for the planning and conduct of referendums. It is in a sense a statutory timetable and thus has an administrative character as well as a regulatory one.

² Parliamentary Voting System and Constituencies Act 2011, sch 1 (general provisions about the referendum), sch 2 (conduct rules), sch 3 (absent voting), and sch 4 (application of electoral law provisions to the referendum).

³ See paras 3.115 to 3.130 above.

⁴ Political Parties, Elections and Referendums Act 2000, ss 103 and 109.

- 5.13 Our scoping consultation paper therefore proposed that the substantive project should include a review of the electoral administration of national referendums, including consideration of rationalising the administrative and regulatory rules for national referendums, subject to limitations similar to those that applied to our review of the law applying to elections.

Consultation responses

- 5.14 Our consultation paper asked whether the scope of the reform project should include consideration of the electoral administration of national referendums. We received 56 answers to this question, all of which supported the inclusion of national referendums within scope.
- 5.15 Most responses observed that national referendums should be considered because they share many similarities with elections and are becoming an increasingly frequent feature of the UK democratic system. For the Scotland and Northern Ireland Branch of the AEA, national referendums are sufficiently similar to elections to be a proper subject of the review, and if they are to be combined, must be included. Many consultees, like Suffolk Coastal District Council, emphasised the capacity and tendency to combine referendums with other polls as the most significant reason for their inclusion within scope.
- 5.16 There was overwhelming support for reforming the existing framework for national referendums with a view to bolstering the predictability of conduct rules. The Electoral Reform Society, noting the increasing use of referendums, emphasised the need to have clear and consistent rules, as ambiguity can disadvantage both campaigners and administrators. It therefore supported consideration of a generic set of rules governing the administration of referendums as part of the present review.
- 5.17 Having commented on the importance of combining referendums with other polls, the Electoral Commission also said:

Referendums share many, but not all, of the features that appear in the process for delivery of elections. By their nature, the specific issues they consider are of significant importance, whether at a local or national level.

We have previously called for the development of generic rules governing the conduct of future referendums held under the 2000 Act. We want to see a set of generic rules in place well before the timescale for legislation arising from the reform project but agree that, given the holistic nature of the reform project, there will need to be consolidation of any such rules – both for national and local referendums – within the new electoral law framework.

The content of the 2000 Act rules on the regulation of campaign spending and donations at referendums should be outside the scope of the reform project. This is because the current rules in this area are very closely linked to the equivalent 2000 Act rules on campaign spending by political parties and by third party campaigners at elections, which are politically sensitive and highly likely to be affected by the current debate on reforms to party funding.

- 5.18 No responses disagreed with our proposal to exclude from substantive reform core referendum parameters. For example, in their joint response, the Society of Local Authority Lawyers and Administrators in Scotland (“SOLAR”) and the Electoral Management Board for Scotland said:

There should be a generic set of rules enshrined in legislation for running [national] referendums, with individual issues such as the question or questions to be asked, the franchise to be used, the use of thresholds and supermajorities, the date of the poll and combination of polls left to the relevant executive to determine as a matter of policy and Parliament to legislate.

- 5.19 The national AEA response did, however, raise the issue of whether the Electoral Commission's guidelines for assessing referendum questions ought to be included within the legislative framework. It emphasised the need for any review to bolster predictability for administrators in order to organise polls:

[Legislation proposing referendum conduct rules] must be in place in good time before the referendum to which it relates, and we would expect this to adhere to the Gould principle of six months. Many of the issues and difficulties that we reported in relation to the referendums and elections in 2011 were as a result of uncertainty created by late legislation, including late confirmation of the date of the UK-wide referendum or even that it would take place at all.

- 5.20 The national AEA expressed concerns about the propriety of the Electoral Commission reporting on the administration of referendums for which it is operationally responsible. Some responses also observed that the scope should include a review of the appointment and role of the chief counting officer, with concern about the Electoral Commission's interaction with returning officers at the 2011 alternative vote referendum.

Discussion

- 5.21 Consultees were unanimous that the electoral administration of national referendums should be included within the scope of the reform project. National referendums are conducted under statute, use existing electoral law concepts and their outcomes carry great democratic legitimacy. Crucially, the administration of referendums and elections can be combined with other polls.
- 5.22 The main task is therefore to explain what is included in the “electoral administration” of national referendums. We agree with the view of the Electoral Commission that the project should focus on conduct rules for referendums, in particular the possibility of devising standard or model rules concerning the administration of referendums. This would supply an element of certainty that is absent from the current framework, an absence which the AEA noted leaves administrators and other participants uncertain as to the correct process.
- 5.23 As part of our consultation exercise, we attended in Cardiff a meeting of the Welsh Assembly political parties' panel. A strong message we received was that uncertainty about timetables and conduct rules was problematic. This was a particular problem in Wales as the country had seen two referendums in quick succession in 2011; the first on increased powers of the Assembly and the

second on the voting system for UK Parliamentary elections.

- 5.24 Substantive provisions on campaign spending and donations are analogous to provisions for elections that we would exclude from scope, like party regulation and national publicity. We do, however, consider that the referendum period, and in particular its interaction with conduct rules, should be considered as part of a review that seeks to provide certainty and predictability to administrators and other participants. That is consistent with the technical scope of electoral administration law reform outlined in Chapter 3 of this report.
- 5.25 Referendums, however, touch on sensitive, often constitutional, issues. In line with the exclusions we make with respect to elections, reform of the electoral administration of referendums excludes:
- (1) the core referendum parameters of franchise, the referendum question and thresholds or supermajorities;
 - (2) the regulation of referendum campaign spending and donations, along with the rules governing broadcasts; and
 - (3) fundamental change to the institutional framework for the administration of referendums.
- 5.26 The focus of reform of the electoral administration for referendums is to supply greater clarity and predictability to the law. This will ultimately benefit voters by ensuring rules are understood and polls properly planned. Considering a set of generic conduct rules is an obvious means of achieving this objective. Given consultees' unanimous support, we confirm our initial proposal to include national referendums within the scope of reform.

Recommendation 15: the scope of the reform project should include consideration of the electoral administration of national referendums.

LOCAL REFERENDUMS

5.27 Local referendums are an increasingly common feature of the UK's democratic system of government. In our consultation paper, we proposed to include within scope local referendums conducted under statute:

- (1) local governance referendums in England and Wales;
- (2) local council tax referendums in England; and
- (3) local neighbourhood planning referendums in England.

Local referendums prescribed by statute

5.28 Local governance, council tax and neighbourhood planning referendums make use of classical electoral law concepts and can combine with other polls. They use the full electoral register. In our consultation paper we proposed that the administration of local referendums prescribed by statute should be within the scope of the reform project.

Local governance referendums

5.29 Permitted forms of local governance in England are set out in legislation and the process for changing such arrangements can occur through local referendums.⁵ Separate provision is made for the adoption of executive arrangements in Wales and the Welsh Ministers have the power to make regulations in this regard.⁶

5.30 Secondary legislation governs the conduct of the referendums and combination with other polls.⁷ Functions are conferred on counting officers, who are defined as the relevant returning officers at elections for councillors of that area. The Election Petition Rules 1960 are applied with some modifications under the English or Welsh conduct rules and so challenging the result of a local governance referendum invokes the election petition process.⁸

Council tax referendums

5.31 Local referendums are also the means by which local communities can approve or veto increases in council tax. The Localism Act 2011 inserts a new chapter 4ZA into the Local Government Finance Act 1992, which provides for council tax referendums. In particular, authorities have a duty to determine whether their relevant basic amount of council tax for a financial year is excessive.⁹ Where it is excessive, the authorities have a duty to make a substitute calculation and hold a

⁵ Local Government Act 2000, ss 9M to 9ME.

⁶ Local Government Act 2000, ss 25 to 27, 34 to 35 and 36; Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001 SI 2001 No 2292.

⁷ Local Government Act 2000, s 9MG; Local Authorities (Conduct of Referendums) (England) Regulations 2012 SI 2012 No 323. Local Government Act 2000, s 45; Local Authorities (Conduct of Referendums) (Wales) Regulations 2008 SI 2008 No 1848.

⁸ Local Authorities (Conduct of Referendums) (Wales) Regulations 2008 SI 2008 No 1848, sch 6.

⁹ Local Government Finance Act 1992, s 52ZB.

referendum on the issue.¹⁰

- 5.32 Regulations govern the conduct of council tax referendums and their combination with other polls.¹¹ These conduct rules broadly reflect those dealing with local governance referendums, for example on counting officers. Where there are two or more referendums held in respect of a precepting authority's council tax, that authority must appoint a person to be the chief counting officer in relation to those referendums who may exercise a power of direction over counting officers at the referendum.¹² As with local governance referendums, the outcome can be challenged by election petition.¹³

Neighbourhood planning referendums

- 5.33 Local referendums have also been adopted as the means by which communities approve neighbourhood planning orders. The Localism Act 2011 amends the Town and Country Planning Act 1990 to make provision in England for neighbourhood planning orders to be put to referendum by parish councils or neighbourhood forums.¹⁴ An area within a local planning authority's jurisdiction can be designated a "neighbourhood area". In the event that a neighbourhood planning order is proposed then a referendum will be required before it is approved by the local planning authority. If the area is designated as a "business area" then two referendums will be required, the first will involve residents and the second non-domestic ratepayers.¹⁵
- 5.34 Regulations govern the conduct of neighbourhood planning referendums and their combination with other polls.¹⁶ The conduct rules broadly reflect those for other local referendums prescribed by statute. One difference is that proceedings for challenging a neighbourhood planning referendum are limited to claims for judicial review where the claim form is filed within six weeks of the day on which the result is declared.¹⁷

Parish or community polls

- 5.35 In response to our consultation paper, we were urged by many respondents to include parish or community polls within scope. These are local citizen-initiated polls that occur at the parish level in England and community level in Wales. The provision for polls is made in the context of rules for parish or community council

¹⁰ Local Government Finance Act 1992, ss 52ZF to 52ZP.

¹¹ Local Government Finance Act 1992, s 52ZQ.

¹² Local Authority (Referendums Relating to Council Tax Increases) Regulations 2012 SI 2012 No 460, regs 15 and 16.

¹³ Local Authorities (Conduct of Referendums)(Council Tax Increases) (England) Regulations 2012 SI 2012 No 444, sch 6.

¹⁴ Localism Act 2011, ss 116 to 121 and schs 9 to 12. The Act also amends the Planning and Compulsory Purchase Act 2004 to make provision for neighbourhood planning referendums under that Act, ss 38A(3) and 38C(5).

¹⁵ Town and Country Planning Act 1990, s 61G to H.

¹⁶ Town and Country Planning Act 1990, sch 4B para 16; Neighbourhood Planning (Referendums) Regulations 2012 SI 2012 No 2031.

¹⁷ Town and Country Planning Act 1990, s 61N(3).

meetings in Schedule 12 of the Local Government Act 1972. There is no equivalent in Scotland or Northern Ireland.

- 5.36 A poll can be sought before the conclusion of a parish or community meeting on any question arising at a meeting.¹⁸ A poll must be called if, in England, it is demanded by not less than ten, or one-third, of the local government electors present at the meeting, whichever is less.¹⁹ In Wales the requirement is that the poll is demanded by a majority of local government electors present so long as they do not constitute less than 10% of the electorate for the community or less than 150 of the electors (if 10% exceeds 150 electors).²⁰
- 5.37 Parish or community polls might concern questions of appointment to any office, or questions on any other issue. However, a reasonable interpretation of the law is that the scope of a question at such a poll is limited to parish or community affairs, though this is not expressly provided for in the legislation.²¹
- 5.38 The conduct of parish and community polls is governed by the Parish and Community Meetings (Polls) Rules 1987, and these polls use the full local government register. A returning officer is appointed by the district council in which the parish or community council is located.²² The rules are modelled on the election rules for parish and community council elections.²³ There are significant departures from these, however, for example in relation to notice of the poll (being not later than the fifth day before the day of the poll) and hours of the poll (being between 4 pm and 9 pm).²⁴ Both elements would make these polls hard to combine with other elections.

Business Improvement District polls

- 5.39 Another set of polls which our consultation paper did not mention was Business Improvement District (“BID”) polls. These determine whether a BID levy is to be raised to pay for improvements to a defined area. In England and Wales these are governed by Part 4 of the Local Government Act 2003. The Secretary of State is empowered under section 55 to make regulations as to the timing, entitlement, the question, form of ballots, responsible officers to hold ballots and other conduct rules.²⁵ The conduct rules are noteworthy for using a special franchise of occupying rate payers, with the “ballot holder” (a returning officer) compiling a list of those entitled to vote. Voting is by post only, and the outcome can be vetoed by a billing authority (a local government council) while the

¹⁸ The poll can only be had on the specific question that arises for a vote at the parish council meeting. See *Bennett v Chappell* [1965] 3 WLR 829.

¹⁹ Local Government Act 1972, sch 12 para 18(4) to (6).

²⁰ Local Government Act 1972, sch 12 para 34(4) to (6).

²¹ See National Association of Local Councils, Legal Briefing L18-07 (13 November 2007).

²² Parish and Community Meetings (Polls) Rules, 1987 SI 1987/1, r 4.

²³ Parish and Community Meetings (Polls) Rules 1987 SI 1987/1, r 5.

²⁴ Parish and Community Meetings (Polls) Rules 1987 SI 1981/1, r 1.

²⁵ Local Government Act 2003 ss 49 and 50; Business Improvement Districts (England) Regulations 2004 SI 2004/2443; Business Improvement Districts (Wales) Regulations 2005 SI 2005/1312.

Secretary of State can hear an appeal against such a veto, or strike down a ballot for material irregularity.

- 5.40 In Scotland, BID polls are governed by the Planning etc (Scotland) Act 2006 and regulations made under it.²⁶ There are differences as to who can vote in a BID poll (for example, owners of business premises). In general the conduct rules, like those for BIDs in England and Wales, are significant departures from the classical electoral rules.

Local advisory polls

- 5.41 There is an express mechanism in England and Wales for local authorities to call and conduct ad hoc advisory polls on issues of local policy and expenditure. Unlike parish or community polls, these do not take place according to a statutory scheme and conduct rules. The local authority has discretion as to who to poll and how to conduct the poll. Local authorities have in the past conducted polls under their general powers. In either case they can just as easily engage a commercial polling agency as they can entrust the poll to the local returning officer.²⁷ Local authorities can only use the edited register, which is available to the public, for these polls.²⁸

Consultation responses

- 5.42 Our consultation paper asked whether the scope of the reform project should include consideration of electoral administration of local referendums. We received 55 answers to this question, all of which agreed with our preliminary view to include local referendums held under statute.
- 5.43 Consultees in their responses highlighted that local referendums conducted under statute – known generally as the “Localism Act” referendums – are part of a growing feature of the democratic system in the UK, and crucially can combine with other polls.
- 5.44 A significant number of responses called for the inclusion of parish or community polls in England and Wales, which as we describe above we had not considered in our consultation paper. South Staffordshire Council explained that parish or community polls are “totally out of touch with modern elections – no poll cards, no absent voting and must use stamping instruments to name but a few issues”. Similarly, the Eastern Branch of the AEA said:

We believe a review of parish poll legislation is vital, even if the amendments do nothing more than update the rules to reflect the changes from the Electoral Administration Act 2006 regarding

²⁶ Business Improvement Districts (Scotland) Regulations 2007 SSI 2007/202.

²⁷ Local Government Act 2003, s 116; we understand polls have been carried out in the past under other powers of local authorities, such as s 141 of the Local Government Act 1972 and general expenditure powers in Local Government Act 1972, s 137 (for England and Wales); Local Government Act (Northern Ireland) 1972, s 115 (for Northern Ireland); and Local Government in Scotland Act 2003 (for Scotland).

²⁸ *R (on the application of Robertson) v Wakefield MDC* [2001] EWHC Admin 915; [2002] QB 1052, holding that the use of the full register was limited to statutory electoral purposes.

stamping instruments and counterfoils.

5.45 The national AEA response stated:

Parish and community polls should be included within scope. ... The statutory framework for these polls bears little resemblance to the current provisions for local elections or referendums. If they are to remain, this position needs to be corrected. However, there is a wider question as to whether they are necessary at all given the present local referendums regime.

5.46 The inclusion of local referendums, including parish and community polls, within scope was also supported by SOLACE, which underlined that local referendums are increasingly likely to be combined with other polls, and that the rules governing parish polls are out of step with the conventional electoral rules.

5.47 The UK Government agreed with the inclusion within scope of local referendums under statute. However, it argued that ad hoc advisory polls, for example those held under section 116 of the Local Government Act 2003, should be excluded from scope, given the absence of defined rules. The UK Government seemed to suggest parish polls should be excluded on the same basis.

5.48 Consultees noted that BID polls were run by the returning officer but were in other respects governed by a franchise and conduct rules that were unique.

5.49 In our consultation paper, we did not think that ad hoc advisory polls conducted by local authorities should be included within scope, noting their advisory nature and the possibility of their being run by commercial polling agencies. Some responses offered a different perspective. The national AEA's response stated:

This is not always the case and some of these referendums have a significant profile involving questions on substantive and often contentious issues within local authority areas, and potentially across wider areas.

The voter in such areas who is being asked to participate in such events will not recognise the distinction between these referendums and those provided for within electoral legislation nor should they be expected to. Confidence in the administration of such polls should be underpinned by the inclusion within the electoral law framework of a model for their conduct.

5.50 Similarly, SOLAR and the Electoral Management Board for Scotland said:

A basic framework for running ad hoc referendums on local issues should also be put in place to add legitimacy to such advisory polls, especially since their number is increasing. This framework should apply irrespective of whether a commercial polling agency runs the referendum, provided it is carried out on behalf of the local authority and its returning officer. Whether the returning officer carries out the referendum in-house or outsources the task to a commercial contractor should make no difference to whether the regulatory framework applies.

Discussion

- 5.51 The basis on which we included local referendums within the scope of reform is that they are conducted according to statutory conduct rules which make use of established concepts within electoral law (such as the full electoral register, and the manner of voting). Their outcomes have defined legal consequences as well as carrying great weight on account of their democratic legitimacy. From a practical point of view, it is important to note that these referendums can combine with a range of other polls.
- 5.52 Parish or community polls are conducted under statute. Although the conduct rules for these polls are outdated, they use the full electoral register and other key electoral law concepts.²⁹ Given the significant response from consultees that they should be included, we agree that the law reform project should also substantively review the law on parish or community polls.
- 5.53 BID polls did not feature heavily in responses. They are unique polls which, apart from the oblique reference to returning officers under the 1983 Act being the “ballot holders”, make no other use of classical electoral law concepts, like the register, manner of voting, challenge and so on. These polls are akin to a statutory form of consultation on a local business levy. We therefore do not think that they should form part of the substantive reform project.
- 5.54 With respect to ad hoc advisory polls conducted by local government, we maintain our view that they should be excluded from scope. We understand the concerns of some electoral administrators about the presentation of some of these polls as referendums. However, no legal prescription governs their conduct, and they can be referred to commercial polling agencies. After considering the issue thoroughly, we do not think that exercises of wide local government powers can be within scope.
- 5.55 This is an area of the law where Government policy is likely to be ongoing during the life of the project. We maintain our initial view that we should consider, under the current law, reform of local referendums under statute. We are persuaded that parish or community polls in England and Wales should be considered a species of local referendum under statute. We are not persuaded, however, that BID polls or ad hoc advisory polls should also be substantively reviewed.

Recommendation 16: the scope of the reform project should include consideration of the electoral administration of local referendums conducted under statute, including parish and community polls.

²⁹ The Parish and Community Meetings (Polls) Rules 1987 SI 1987 No 1.

APPENDIX A

INDEX OF WRITTEN RESPONSES

No.	Organisation/ individual	Category
01	Gareth Randall	Councillor
02	Robin Potter	Councillor
03	Richard Mawrey QC	Election lawyer
04	Borough of Poole (Paul Morris)	Electoral administration
05	Association of Electoral Administrators ("AEA") Southern Branch (Frances Cleland)	Association
06	West Dorset District Council (Mike Hickman)	Electoral administration
07	Weymouth and Portland Borough Council (Mike Hickman)	Electoral administration
08	Cherwell District and South Northamptonshire Councils (Sue Smith)	Electoral administration
09	Boundary Commission for Wales (Ben Whitestone, Secretary)	Electoral body
10	Aberdeen City Council (Crawford Langley)	Electoral administration
11	Greater London Returning Officer (John Bennett)	Electoral body
12	West Berkshire Council (Nick Carter)	Electoral administration
13	Wycombe District Council (Karen Satterford)	Electoral administration
14	Gloucester City Council (Julian Wain)	Electoral administration
15	Elections, Referendums and Registration Working Group (Bob Posner)	Electoral committee
16	Sevenoaks District Council (Ian Bigwood)	Electoral administration
17	Elections Policy and Coordination Group (Peter Wardle)	Electoral committee
18	Bryn Roberts	Individual
19	Alan Furness	Individual
20	Trafford Council (Theresa Grant)	Electoral administration
21	Tonbridge and Malling Borough Council (Richard Beesley)	Electoral administration
22	Bristol City Council (Stephen McNamara)	Electoral administration
23	Local Government Boundary Commission for Wales (Steve Halsall)	Electoral body

24	London Borough of Hounslow (Angela Holden)	Electoral administration
25	Suffolk Coastal District Council (Ingrid Askew)	Electoral administration
26	East Sussex Electoral Officers' Group (David Robinson)	Electoral administration
27	South Lanarkshire Council (Lindsay Freeland)	Electoral administration
28	London Borough of Bexley (Will Tuckley)	Electoral administration
29	Somerset Association of Local Councils (Peter Lacey)	Association
30	Wales Assembly Political Parties Panel	Electoral committee / Political parties
31	Stephen Lowrey	Individual
32	Crown Prosecution Service (Simon Orme)	Government
33	Local Government Boundary Commission for England (Alan Cogbill)	Electoral body
34	Paul Gribble, CBE	Election lawyer
35	Electoral Commission (Bob Posner)	Electoral body
36	Professor Ron Johnston, University of Bristol	Academic
37	The Labour Party (Ian McNicol)	Political party
38	Dartford Borough Council (Alan Twyman)	Electoral administration
39	Elmbridge Borough Council (Robert Moran)	Electoral administration
40	Hastings Borough Council (Katrina Silverson)	Electoral administration
41	Dr Toby James, University of East Anglia	Academic
42	Canterbury City Council (Lynda McDaid)	Electoral administration
43	South East Branch of AEA (Steven Andrews)	Association
44	Bournemouth Borough Council (Matt Pitcher)	Electoral administration
45	Exeter City Council (Jeff Chalk)	Electoral administration
46	Wyre Forest District Council (Ian Miller)	Electoral administration
47	London Branch of AEA (George Cooper)	Association
48	Hackney Borough of London (Gifty Edila)	Electoral administration
49	South Staffordshire Council (Philip Hardy)	Electoral administration
50	New Forest District Council (Rosemary Rutins)	Electoral administration
51	North West Branch of AEA (Karen Randles)	Association
52	Electoral Reform Society (Darren Hughes)	Third sector

53	London Borough of Enfield (Peter Stanyon)	Electoral administration
54	Gravesham Borough Council (David Hughes)	Electoral administration
55	Guildford Borough Council (David Hill)	Electoral administration
56	Reigate and Banstead Borough Council (Sally Crawford)	Electoral administration
57	Scotland and Northern Ireland Branch of AEA (William Pollock)	Association
58	Electoral Office Northern Ireland	Electoral body
59	Scottish Assessors Association	Association
60	Timothy Straker QC	Election lawyer
61	Richard Price OBE QC and Dominic Spenser Underhill	Election lawyers
62	Loughton Residents Association (David Linnell)	Association
63	Stockport Council (Steve Callender)	Electoral administration
64	Waverley Borough Council (Tracey Stanbridge)	Electoral administration
65	Association of Electoral Administrators ("AEA") (Karen Quaintmere)	Association
66	London Borough of Newham (Paul Libreri)	Electoral administration
67	Swale Borough Council (Katherine Bescoby)	Electoral administration
68	Copeland Borough Council (Stephanie Shaw)	Electoral administration
69	Society of Local Authority Chief Executives ("SOLACE") (Dave Smith)	Association
70	London Borough of Southwark (Deborah Collins)	Electoral administration
71	Lesley Walton	Individual
72	Diverse Cymru (Ele Hicks)	Third sector
73	East Lindsey District Council (John Medler)	Electoral administration
74	Eastern Branch of AEA (James Stevens)	Association
75	North East and Yorkshire Branch of AEA (Mags Evers)	Association
76	Professor Bob Watt, University of Buckingham	Academic
77	Scope and Mencap (Cristina Sarb)	Third sector
78	South Ayrshire Council (David Anderson)	Electoral administration
79	Dr Caroline Morris, Queen Mary University of London	Academic

80	Society of Local Authority Lawyers and Administrators in Scotland ("SOLAR") and Electoral Management Board for Scotland (Gordon Blair)	Association / Electoral body
81	Designated election judges in Scotland (Eassie and Paton LL)	Judiciary
82	Cabinet Office	Government

APPENDIX B

INDEX OF CONSULTATION EVENTS

No.	Event	Date
01	Electoral Commission meeting	25 June 2012
02	Association of Electoral Administrators (“AEA”) meeting	4 July 2012
03	Elections Policy and Coordination Group meeting	9 July 2012
04	Gerald Shamash (election law expert) meetings	10 July and 11 September 2012
05	Elections Referendums and Registration Working Group meeting	26 July 2012
06	Society of Local Authority Chief Executives meeting	2 August 2012
07	Electoral Commission meeting	15 August 2012
08	Elections Policy and Coordination Group meeting	28 August 2012
09	Wales Assembly Members Political Parties Panel meeting	4 September 2012
10	Consultation event for academics and practitioners hosted by the Electoral Commission	5 September 2012
11	AEA London Branch meeting	7 September 2012
12	Consultation event for electoral administrators hosted by the AEA	10 September 2012
13	Westminster Political Parties Panel meeting	11 September 2012
14	Consultation event for disability groups hosted by Scope	12 September 2012
15	Electoral Commission meeting	14 September 2012
16	Scottish Political Parties Panel meeting	25 September 2012
17	Northern Ireland Political Parties Panel meeting	2 October 2012