



Response of the Electoral Commission

To

Law Commission Review of Electoral Law - Consultation Scoping Paper

Introduction

In July 2011 the Law Commission confirmed that it proposed to include electoral law in its 11th programme of law reform.

In November 2011 the Electoral Commission wrote to the Law Commission¹ setting out our preliminary views on the scope of the project on electoral law reform. On 15 June 2012 the Law Commission published its scoping consultation paper seeking views more widely on the scope of the project.

This paper responds to the Law Commission's scoping consultation paper. It should be read in conjunction with our initial submission to the Law Commission², and our preliminary views paper.

We comment below on the questions raised by the Law Commission in its scoping consultation paper. Before doing so, we would like to emphasise that we welcome the scoping consultation paper which we believe represents a significant step forward in the process of modernising electoral law in the United Kingdom. We said in our initial submission, and again in our preliminary views paper, that electoral law is very much in need of reform and the consultation paper sets out the reasons why this review is needed³. We do not propose to rehearse those arguments again in this consultation response, save to re-iterate that there are significant problems with the current legislative framework, including:

¹ Preliminary Views on the Scope of the Law Commission Review of Electoral Law November 2012

www.electoralcommission.org.uk/elections/law-commission-review-of-electoral-law

² In September 2010 the Electoral Commission presented a submission to the Law Commission that electoral law should be included in the Law Commission's 11th Programme of Law Reform

www.electoralcommission.org.uk/elections/law-commission-review-of-electoral-law.

³ Chapter 2 of the consultation paper

- The number of laws in this area and the outdated nature of some of these laws - by our count there are at least 35 Acts (dating back to and including the Act of Settlement Act 1700 and the Sheriff's Act 1887) and well over 100 pieces of secondary legislation to which electoral administrators, candidates and officials must have regard,
- Inconsistencies between different elections and different parts of the UK, and
- Legislation which is at times ambiguous or imposes undue administrative burdens in its implementation.

We recommend bringing together the numerous statutes and secondary legislation into a more coherent statutory framework. A simpler, more modern legislative framework would have considerable benefits for all those involved in administering elections, those standing for election and, most importantly, those wishing to cast their vote. A simpler framework, with clear rules and a more modern process, would also be more cost effective to administer.

We believe that the process of electoral law reform and modernisation must take place across the whole of the United Kingdom. We appreciate that there are significant complexities involved in the task of modernising any legal framework that spans the United Kingdom, involving areas of both devolved and reserved law. However, to proceed without the inclusion of all aspects of the electoral process across the United Kingdom would lead to another set of inconsistencies. Not only would this undermine the effectiveness of the reform project but it would also be failing to serve the interests of anyone participating in the democratic process, most importantly the voter.

We are mindful of the challenge facing the Law Commission in setting the scope of the project against a background of evolution and change in electoral law and administration. Nonetheless we do not believe that the on-going changes to electoral law should compromise the scope of this review and we welcome the Law Commission's pragmatic approach on this point⁴. At certain points in this consultation response we state that, in areas of key constitutional or political significance or areas where reform is already being considered by parliament, substantive reform should be undertaken through the parliamentary process. However, any new legislation should then be considered as part of the reform project with a view to consolidating it into the new legal framework. This approach will enable the evolution of electoral law through parliament, as appropriate, whilst

⁴ Paragraph 1.23 of the consultation paper. Note however principle 11.2 of the Venice Commission Code of Good Practice in Electoral Matters (2003) which states that the fundamental elements of electoral law should not be open to amendment less than one year before an election [www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf)

providing a mechanism to ensure a consistent and holistic approach to electoral law reform.

Electoral law affects many different people, ranging from those wishing to stand for elective office, to those involved in the administration of an electoral event and, most of all, everyone who participates in the democratic process as a voter. We recognise that not everyone will share all of the views that we set out either here or in our preliminary views paper. However, the question of what should be included within the scope of the reform project represents an important part of the project. We hope that everyone who has an interest in electoral law will make their views known by responding to the consultation paper. A healthy and constructive debate about the future of electoral law will inform the Law Commission's reform project and can only benefit the democratic process across the United Kingdom.

Question One

Should the scope of the reform project include the elections and referendums listed in paragraphs 1.10 and 1.11 of the consultation paper?

Yes. Electoral law should be reformed in a generic way; we want to see, so far as possible and sensible, consistency in approach across all electoral events in the United Kingdom. Therefore, we agree that the scope of the reform project should include all of the elections and referendums listed in paragraphs 1.10 and 1.11 of the consultation paper.

In saying that, we note that the list of elections at paragraph 1.10 of the consultation paper includes elections for which the Scottish Parliament has legislative competence. We understand that it is anticipated that the review should concern all three legal jurisdictions and will lead to reform across the whole of the United Kingdom. We support this approach. This review represents an opportunity for the improvement of electoral law throughout the United Kingdom with recommendations that appropriately take into account all of its component parts.

The Law Commission should also proceed on the basis that any other elections or referendums that are provided for by the relevant Parliaments during the life of the reform project are also included within its scope⁵.

We have published the findings of our work on the costs incurred by Returning Officers and Electoral Registration Officers in delivering electoral administration in Great Britain for the years 2007-2009⁶. We will provide similar figures for 2010-2011

⁵ For example, elections to national park authorities

⁶ <http://www.electoralcommission.org.uk/performance-standards/financial-information>

as well as a more detailed breakdown of the fees and charges incurred by Counting Officers at the referendum on the parliamentary voting system in May 2011. We hope this information will assist the Law Commission in gaining an understanding of the costs currently involved in administering the electoral process and trust this will be of assistance in considering the benefits, and potential cost savings, of proceeding with the reform project.

Question Two

Should the scope of the reform project include, with a view to reducing the volume, complexity and fragmentation of the law, consideration of the current legislative framework for electoral administration including the place of rules within the legislative hierarchy?

Yes. In our preliminary views paper we argued that the reform project should include consideration of the optimal legislative framework for electoral administration and we argued for a clear structure using as few legislative vehicles as possible. We also set out a suggested framework for what should be contained in primary and secondary legislation and argued that some of the very detailed administrative rules would sit better in guidance.

We maintain that view. 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 elections⁷. It is key for this reform project to be given the mandate to reorganise the existing legislative structure. This task is an essential aspect of the project and, if a sensible balance is achieved, it will provide a sound basis for the development of clear and simple rules.

We also argued that the optimal structure for electoral law in the United Kingdom should be considered in the light of international guidelines, in particular those established by the International Institute for Democracy and Electoral Assistance (IDEA)⁸ and the Venice Commission⁹. The international guidelines set out the main features of a good electoral law system and serve as an important basis against which the legal framework of all democracies – whether long established or newly formed – can be assessed. Adherence to the principles set out in the guidelines will

⁷ For example, legislation addressing an oversight in the provision of emblems for joint candidates was corrected in March 2011 for local government elections but provision is only now included, in the Electoral Registration and Administration Bill, in respect of candidates at parliamentary elections

⁸ An intergovernmental organisation that aims to support sustainable democracy worldwide. See IDEA's International Guidelines for Reviewing the Legal Framework of Elections, July 2011, page 11 www.idea.int.

⁹ A Council of Europe independent consultative body on issues of constitutional law

help to ensure a clear legal framework, consistency with other jurisdictions and will promote confidence in the electoral system.

The Electoral Commission has considered the legislative frameworks adopted by certain other comparator countries against these guidelines¹⁰. Our research has found that, in general, the countries under examination appear to achieve greater compliance with the principles set out in the international guidelines than the UK although not all of the countries mirror all of the principles.

One of the principles set out in the guidelines is that an effective electoral law framework should be structured hierarchically using primary legislation, secondary legislation and codes of practice. The countries that we studied have different approaches to structuring their electoral legislation - ranging from those which include most legislative provision in primary legislation to those which have adopted a hierarchical model as envisaged by the international guidelines.

We propose to supplement our above referred to report 'Electoral Legislation, principles and practice: a comparative analysis' (published alongside this response) by conducting further research into these and other jurisdictions and we expect to publish this further research in the first part of 2013. We hope that this research will assist the Law Commission in considering a new legislative framework for the United Kingdom, and will be of benefit to others who may also have views on this aspect of the reform project.

Question Three

Do you agree the scope of the project should exclude the franchise, electoral boundaries and voting systems?

Yes. We endorse the view set out at paragraph 3.2 of the scoping paper that key constitutional matters such as the extent of the franchise, the procedures for boundary changes and provisions relating to voting systems for different electoral events are matters that should properly be left to parliament and the democratic process. For that reason we agree that they should not be included within the scope of the reform project.

Having said that, we agree that there may need to be consideration of where the provisions relating to each of these areas - and others of a similar constitutional significance (such as party funding – see question seven) - best sit within a new framework for electoral law.

¹⁰ Electoral Legislation, principles and practice: a comparative analysis
www.electoralcommission.org.uk/elections/law-commission-review-of-electoral-law

As a point of accuracy, the Local Electoral Administration (Scotland) Act 2011 conferred on the Electoral Commission the power to set and monitor performance standards for local government elections in Scotland¹¹.

Question Four

Should the scope of the reform project include consideration of management and oversight of elections, but exclude fundamental change to the current institutional framework for electoral administration?

Yes. The consultation paper sets out the basic structure for the administration and delivery of electoral events across the United Kingdom¹². The current arrangements are based on a decentralised model involving officials with responsibility for the registration process (Registration Officers) and for the administration of the election (Returning Officers) or referendum (Counting Officers). The model can be traced back to the 19th century.

As the consultation paper notes, a potential downside of the decentralised model is inconsistency both in the interpretation of rules and the running of the electoral process¹³.

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.

As we explained in our preliminary views paper, the level of detailed prescription can lead to practical difficulties where officials have no discretion to respond flexibly where circumstances may require¹⁴.

Conversely, our work on setting and monitoring standards of performance for electoral administrators shows that significantly different approaches persist on some key issues relating to the delivery of electoral administration, and this has the potential to lead to inconsistent services for voters and candidates which could undermine confidence in the electoral process.

For example, our report on performance of Electoral Registration Officers in 2011¹⁵ identified differences in the approach taken by Registration Officers to carrying out

¹¹ Paragraph 3.25 of the consultation paper

¹² Paragraphs 3-7-3.26 of the consultation paper

¹³ Paragraph 3.14 of the consultation paper

¹⁴ Paragraph 6.2 of the preliminary views paper

¹⁵ <http://www.electoralcommission.org.uk/performance-standards>

house to house enquiries as part of their duty to conduct an annual canvass. Following our assessment we revised the assessments of 51 Registration Officers to 'below' performance standard 3: house-to-house enquiries, due to those officers not carrying out house-to-house enquiries at all properties where the entries could not otherwise be confirmed.

In our report on the administration of the May 2011 UK-wide referendum¹⁶, we asked whether it is still appropriate for important polls, including those such as the election of MPs to the House of Commons, to continue to be administered without any coordination or accountability for delivery above the very local level, and with the risk of significant variations in practice. We recommended then that the UK Government should review existing mechanisms for providing assurance about the quality of electoral administration, including consideration of powers which the Electoral Commission might need in future, to achieve an appropriate level of consistency and performance for all types of elections in the UK. The Government has not yet responded to our report and recommendations.

We subsequently argued in our preliminary scoping paper that the review should consider the best mechanism for ensuring consistency of approach and delivery of elections across the United Kingdom. We suggested that this might include provision for the direction of election officials with regard to the discharge of their functions to ensure that the rules are followed in a uniform manner. This would build on the current approach to the delivery of elections to the European Parliament, the Mayor of London and London Assembly, for local government elections in Scotland and Northern Ireland, for referendums held under PPERA and, most recently, in rules providing for the conduct of elections for police and crime commissioners in England and Wales. However, this may not be the only solution to address the issue of consistent delivery and accountability: and the Commission is working with the 12 Regional Returning Officers across the United Kingdom to explore other possible approaches.

One aspect of this work will be to identify models of delivery that would reduce the need for so much of the detail of the electoral process to be prescribed in law and would allow for a far more streamlined legal framework, with flexibility conferred on the appropriate management structure to ensure a consistent approach across electoral events. 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

¹⁶ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0019/141328/Final-PVS-report.pdf

inconsistency of delivery. We also agree with the Law Commission¹⁷ 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.

The successful application and delivery of any new electoral law framework will depend on sufficient resources being made available on a consistent basis to electoral officials. The provision of funding is of critical importance as it impacts on all other areas, and we believe that the Law Commission should include consideration of the law providing for the funding of electoral events in its reform programme.

Question Five

Should the scope of the reform project include electoral registration, and if so, the meaning of residence?

Yes. It is essential that the reform project includes the law relating to electoral registration. The electoral register serves a number of functions that are integral to the democratic process. In addition to constituting the list of all those who are entitled to vote at a particular electoral event it is also used as a tool for campaigning by political parties at an election and by organisations campaigning at a referendum as well as for the selection of individuals for jury service and drawing constituency boundaries, amongst other uses.

It is essential for the healthy functioning of the electoral system that the electoral register is accurate and complete. As we noted in our preliminary scoping paper, this area of electoral law is currently one of the most fragmented and complex of all.

The current proposals contained in the Electoral Registration and Administration Bill will compound the difficulties already inherent in this part of the legislation. The current Bill introduces an entirely different process of registration to the existing one which is based on individual (rather than household) registration. We fully support the intention behind the move to individual electoral registration and believe that the new process should be reflected in new, clear and simple rules. Instead, it is currently proposed to insert the new provisions into the current, already heavily amended and complex, legislation. The new system of individual electoral registration, once the Bill is enacted, may lead to criticism that its operation is inaccessible and unduly complex due to the legal framework on which it is based.

Substantive decisions as to the process that should be followed for the introduction of individual electoral registration should be decided through the parliamentary process. However, once those decisions are made, there will be substantial benefit

¹⁷ Paragraph 3.29 of the consultation paper

in considering the newly amended legislation providing for electoral registration with a view to expressing it in a simpler and clearer way that better serves the interests and needs of the voter.

We are therefore of the view that registration should be included in the reform project with a view to simplifying and rationalising the law, reducing legislative complexity and simplifying the administration of the register. An integral component of this will be suitable over-sight mechanisms to ensure consistent high standards in the administration of registration (see our comments on question four above).

As we argued in our preliminary scoping paper, we also believe that the review should consider the meaning of the term 'residence' with a view to ensuring that inconsistencies in the interpretation of this term are eliminated so far as can be achieved.

Question Six

Should the scope of the reform project include consideration of the rules on candidates and the campaign?

The rules providing for the participation of candidates and their campaign spending all need to be reviewed. Of these, rules determining entitlement to candidacy (nomination and dis/qualification etc.) fall within the reform project. The rules around campaign spending are of a more political nature and it is appropriate to leave this area to the parliamentary process in the first instance. However, both aspects will need to be brought within the new electoral law framework once any substantive decisions are finalised.

In our comments on this section of the consultation paper, we consider separately the rules on (i) entitlement to candidacy (qualification, disqualification and nomination), and (ii) the regulation of candidates' campaign spending and donations. This section of the paper also refers to the regulation of non-financial aspects of campaigning, and our more general comments on the regulation of conduct through electoral offences are set out in response to Question 14 below.

(i) In our initial submission to the Law Commission we highlighted that the rules relating to candidate qualification are not consistent across different election types and legislative jurisdictions. Disqualification provisions often include complex inter-related provisions, as the consultation paper acknowledges, and it can be difficult for candidates, election agents, political parties, Returning Officers and the Electoral Commission to establish clearly which disqualifications apply in particular circumstances.

The complexity is illustrated by a recent example: two Liberal Democrat candidates were returned as Assembly Members in the regional list elections at the May 2011

National Assembly for Wales (NAW) elections. On 17 May, both individuals were suspended from membership of the NAW when it transpired that each were members of bodies of which membership constituted automatic disqualification. Our report on the May 2011 elections in Wales¹⁸ sets out in more detail the circumstances which led to the disqualifications becoming apparent.

Individuals who are members of certain public bodies are disqualified from standing for election to the NAW. The relevant bodies are listed in a Disqualification Order. A new Disqualification Order was made in 2010 and came into effect on 11 January 2011. This replaced the existing Disqualification Order, made in 2006. When the new Disqualification Order was made, no steps were taken by the Welsh Assembly Government (as it then was) to publicise the 2010 Order or the fact that it had come into force. There was no consultation with the newly-listed bodies about their inclusion in the Order; and no formal notification to those bodies that they had been listed.

Nevertheless, members of the newly-added bodies were disqualified from standing for election. At the time of nomination, however, the two candidates in question had both signed 'Consent to nomination' forms, indicating that to the best of their knowledge and belief they were not disqualified from membership of the Assembly. As it is an offence for a candidate to knowingly make a false statement about their eligibility to stand for election the matter was subject to a police investigation and referred to the CPS but no further action was taken.

We set out in our preliminary views paper other examples of where the law determining entitlement to candidacy is inconsistent and confusing¹⁹.

We support the proposal that the Law Commission's review should include rationalisation of the rules for nomination with a view to reducing legislative fragmentation and complexity.

(ii) In our preliminary scoping paper we considered the rules on the regulation of candidates' campaign spending and donations as a strand of the wider law on party and election finance. Most of this law is contained in the Political Parties, Elections and Referendums Act 2000 (PPERA), but the rules on candidates are contained in Part II of the Representation of the People Act 1983 (the 1983 Act).

The consultation paper considers the rules on candidates' campaigning and on political party regulation separately. It proposes that the PERA rules on political parties and national campaigning should be excluded from the scope of the reform project because they are politically sensitive and would require broad cross-party consensus for reform. However, it proposes that the rules relating to candidate campaign spending and donations should be included in the scope of the project.

¹⁸ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0012/141330/Final-NAW-report-web.pdf

¹⁹ Paragraph 7.1.3 of the preliminary views paper

As discussed under question seven below, we agree that the rules on political parties and national campaigning should be excluded from the scope of the reform project, for the reasons set out in the consultation paper. The three largest Westminster parties are currently holding talks on potentially significant reforms to the rules on political party funding and campaigning.

In our view the rules on candidate campaign spending and donations will inevitably be affected by the development of the rules on political parties and national campaigning, and will be subject to the same issues of political sensitivity. For instance, the review of political funding by the Committee on Standards in Public Life published in November 2011²⁰, which is forming the basis of the current talks between the three largest Westminster political parties on possible reforms to party funding, recommended changes to candidate spending regulation alongside potential changes to the party spending rules. The Committee has recommended a cap on the value of donations to political parties, and has said that such a cap would need to apply to party candidates as well as to party organisations and other regulated individuals under PPERA. That would require potentially significant changes to the current candidate donation rules and the way in which the rules on candidates interact with the PPERA rules.

The current talks between the three largest Westminster parties may result in significant structural changes to the rules on candidate funding and spending, potentially including closer links with the PPERA rules. For the reasons that the consultation paper sets out in relation to the PPERA rules, we suggest that it would only be appropriate to include candidate funding and spending rules in the scope of the reform project (if timing permits) once any legislative changes have been completed.

If, however, it becomes clear that the current talks will not result in the UK Government proposing structural changes to the rules on candidate funding and spending in the foreseeable future, there is a case for including those rules in the scope of the reform project from the outset.

We are currently conducting a review of the legal framework that we regulate, including the PPERA rules and the candidate funding and spending rules, to consider in the light of our experience whether there is scope to achieve the aims of the framework more effectively than at present, and to reduce administrative burdens. We expect to conclude this work and to publish our recommendations in early 2013, so they will be available for consideration as part of the reform project.

²⁰ [http://www.public-standards.gov.uk/Library/13th Report Political party finance FINAL PDF VERSION 18 11 11.pdf](http://www.public-standards.gov.uk/Library/13th%20Report%20Political%20party%20finance%20FINAL%20PDF%20VERSION%2018%2011%2011.pdf)

We also see merit in ensuring that the reform project considers the scope for applying common definitions to the various rules relating to candidates where applicable, potentially including the rules on campaign spending and donations, as well as considering where the existing provisions are to sit within a new framework for electoral law.

Question Seven

Do you agree the scope of the project should exclude political party regulation and national campaign publicity?

Yes. In our preliminary scoping paper we noted that the UK government intends to seek a detailed agreement on reforming party funding, which would result in changes to the regulatory framework, during the same timeframe as the reform project. Talks are currently under way between the three largest Westminster political parties on possible reforms, following the publication of a review of political funding by the Committee on Standards in Public Life in November 2011. We welcome consideration of the rules relating to this area.

We do however agree that there will need to be consideration of where the existing provisions, or any that are reformed as a consequence of current political party discussions, are to sit within a new framework for electoral law.

Question Eight

Should the scope of the reform project include consideration of the rules on manner of voting?

Yes. We understand the reference to 'the rules on the manner of voting' in this question to include the rules providing for the design of the ballot paper, and provision for absent voting.

We agree that both aspects should be incorporated into the reform project. As we noted in our preliminary views paper, the approach to prescribing forms and notices generally should be reviewed as part of the reform project. Whilst we appreciate the vital importance of ensuring consistency in key electoral documents, the current approach of prescribing the design of the forms in the legislation is not necessarily in voters' best interests. We have previously called for greater flexibility in form design overall, with the key information that must be included prescribed in legislation but with the ability for standard design aspects to be specified for specific elections by a single body or officer such as the Greater London Returning Officer, the Convener of the Electoral Management Board for relevant elections in Scotland, or the Electoral Commission as was the case for the referendum on the parliamentary voting system

in May 2011²¹. This approach would allow for flexibility but would also act as a safeguard to ensure consistency in approach across particular polls or electoral events.

The Electoral Commission has developed a set of UK-wide standards for the design of forms²². These standards have been designed with the aim of ensuring that voter materials for use at elections and referendums are easy to use and effective. The Electoral Registration and Administration Bill also provides for secondary legislation that confers new functions on the Electoral Commission which we understand will include designing electoral registration application forms.

The reform project should consider whether statutory guidance / codes of practice would provide a more suitable mechanism for many aspects relating to the design of forms and notices.

We also agree with the Law Commission that the provisions on absent voting should be included, with a view to bringing them together into a more coherent statutory framework. The current legislation on absent voting is unduly complex and inaccessible and operates differently in Northern Ireland.

Question Nine

Should the scope of the reform project include consideration of the rules on polling day?

Yes. We agree that the scope of the reform project should include consideration of the rules on polling day, including consideration of the rules for the allocation and review of polling places, the issue of ballot papers, identification requirements and, if the law has not already been amended by parliament, the rules around close of poll.

We agree that the law could be simplified and rationalised and we remain of the view that much of what is currently contained in legislation could be moved to statutory guidance.

²¹ Referendum on the Voting System for UK Parliamentary Elections, Electoral Commission, October 2011

²² 'Making your mark designing for democracy' Electoral Commission guidance first issued 2009 - on the format, accessibility and usability of voter materials, to help ensure that the needs of the voter are put first when designing voter materials within current legislation, and when considering changes to designs in the future.

Question Ten

Should the scope of the reform project include consideration of the rules for determining and declaring the result?

Yes. 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).

Question Eleven

Should the scope of the reform project include consideration of the timetables for elections?

Yes. The consultation paper has noted the inconsistencies in the current statutory timetables for the administration of elections. We welcome the fact that the Electoral Registration and Administration Bill, currently before Parliament, will extend the timetable for the administration of parliamentary elections to 25 days, in line with local government elections and elections to the devolved institutions.

However, as noted in the consultation paper, other inconsistencies still remain (such as the timetables for the GLA elections, local government elections in Scotland and the role of bank holidays in calculating time across the United Kingdom). 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.

Question Twelve

Should the scope of the reform project include the combination of elections?

Yes. Recent years have seen a significant increase in the different types of election and referendums that can be held within the United Kingdom. This has led, inevitably, to an increase in the number of different types of combined event and to increased complexity in the law providing for combined events.

At a 'combined' electoral event one Returning/Counting Officer will discharge functions that are common to both events. This has practical and logistical benefits in ensuring that personnel can administer both events at the same time as well as saving costs. For some types of event that are held on the same day, formal 'combination' is mandatory. In other cases, events may be held on the same day but do not need to be formally 'combined'.

In 2009, European Parliament elections were combined with scheduled local government elections in England; in 2010 a UK Parliamentary general election was combined with scheduled local government elections in England; in 2011 a UK-wide referendum on the voting system for UK Parliamentary elections was combined with Northern Ireland Assembly and local government elections in Northern Ireland, Scottish Parliament and National Assembly for Wales elections and local government elections in England.

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.

Question Thirteen

Should the scope of the reform project include the process of challenging elections?

Yes. Election challenges are a fundamental part of free and fair elections. They play an important role in ensuring the legitimacy of elections and securing public confidence in the electoral process.

The Law Commission lists²³ the key issues for consideration in the process for challenging elections as: striking a better and more nuanced balance between access to the process and safeguarding the certainty of elected office, modernising and clarifying the law of election petitions generally and the current grounds of challenge. We agree that these are all areas that should be considered.

In addition, the Electoral Commission has published a report that highlights the perceived problems with the UK's process of challenging elections i.e. the election petition system²⁴. It has been prepared in order to encourage debate in the context of the Law Commission's review of electoral law and more generally.

The report categorises the problems with the current system as largely falling within two main categories:

First, the election petition system is not designed to ensure that departures from electoral law are properly considered and action or sanction follows including, if appropriate, the election being overturned. Election results are more than just private disputes; they are of significant public importance.

Secondly, the petition process does not often deliver a swift determination of the validity of an election and therefore does not provide certainty of outcome for candidates, parties, election officials and, most importantly, the electorate. The petition process can be characterised as outdated, complex and inaccessible. Fundamental reform is required to ensure that it complies with standards set out by international bodies and promotes public trust and confidence in election results.

²³ Paragraph 4.56 of the consultation paper

²⁴ Challenging Elections in the UK, Electoral Commission, www.electoralcommission.org.uk/elections/law-commission-review-of-electoral-law

It is therefore our firm view that the reform project should include consideration of the process of challenging elections.

Question Fourteen

Should the scope of the reform project include the consideration of electoral offences?

Yes. The current classification of offences as corrupt or illegal practices is confusing and unhelpful. Many of the concepts on which the law relating to electoral offences is based are outdated and need reform. Trust and confidence in the integrity of electoral process and those who stand in elections requires modern accessible electoral law offences. A review of the current offences, in the context of experience in practice of cases brought or not brought in recent years, and the complex web of campaigning at elections or referendums, should bring tangible benefits.

We agree that the range of electoral offences would benefit from rationalisation and modernisation including the classification, the language and legal concepts used, and the range of available sanctions as part of the reform project.

Questions Fifteen and Sixteen

Should the scope of the reform project include consideration of the electoral administration of local and national referendums?

Yes. As the consultation paper notes, referendums look set to become a growing feature of the UK system of government. The last UK-wide referendum was combined with elections to the devolved institutions as well as local government elections and the differing number of local referendums now available²⁵ also envisage combination with other electoral events.

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 Political Parties Elections and Referendums Act 2000²⁶. 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

²⁵ E.g. Mayoral governance, council tax and neighbourhood planning related referendums

²⁶ Referendum on the Voting System for UK Parliamentary Elections, Electoral Commission, October 2011, page 38, Recommendation 3

rules - both for national and local referendums - within the new electoral law framework.

The content of the PPERA 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 PPERA 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, as discussed under question seven above.

The Law Commission also refers to the current trend towards tools such as the citizen's recall and citizen initiated referendums²⁷. We agree that any such instruments that become part of the democratic process in the UK should be included within the scope of the reform project.

Conclusion

We strongly support the Law Commission's project for the reform of electoral law across the United Kingdom and we welcome the comprehensive consultation paper. It is important that decisions on the scope of the reform project are taken so as to enable holistic reform of electoral law without excluding any areas prematurely. Similarly it is important that, even in areas where reform may be undertaken through the democratic process, the Law Commission has the opportunity to consider how best to bring any new legislation into the new electoral law framework. We therefore recommend a broad approach to the task of defining the scope of the reform project.

Electoral Commission
10 September 2012

²⁷ Paragraph 5.3 of the consultation paper