

The Hidden Costs of Electoral Law

A report prepared by the
Electoral Commission to inform
the Law Commissions' review
of electoral law

June 2015

We are an independent body set up by the UK Parliament. We regulate party and election finance and set standards for well-run elections. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation, and no undue influence.

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Executive summary

This report seeks to identify some of the existing ‘hidden costs’ of electoral law. We do not use the word ‘costs’ purely in a financial sense; we use it broadly to include monetary and non-monetary costs (the latter, for example, including democratic costs, namely areas where the law does not seem to best serve the interests of voters, candidates or democracy).

The emphasis will be on the unnecessary costs that are generated solely by the problems with the law and so which can be addressed in the Law Commissions’ ongoing review of electoral law¹. These costs are imposed when making electoral legislation, administering elections, the legal processes arising from elections and when standing for elections. The majority of the costs are caused by four factors: the complexity of electoral law; its fragmented nature; the level of unnecessary detail in the law and the presence of outdated drafting (some of which is little changed since the nineteenth century).

Making electoral legislation

Making electoral legislation is a complex process. Governments must first establish the current legal status quo before they can consider whether to change the law and, if so, how. It is sometimes difficult to do this because the current legal position may be based on numerous Acts and statutory instruments many of which are likely to have been subject to a high degree of amendment.

Having established that a change to the law is necessary to achieve a policy objective, officials then have to establish exactly what change is needed and how the proposed reform will fit into the body of extant law. This can often mean amending numerous different items of legislation to achieve a single, seemingly simple policy change.

The costs involved in making legislation are not borne solely by Governments. Significant time is expended by a range of electoral bodies² in responding to consultations on proposed electoral reforms; more resources are required to do this than would be the case if the law was streamlined and codified.

Administering elections

¹ For more information please see: <http://lawcommission.justice.gov.uk/areas/electoral-law.htm> and <http://www.electoralcommission.org.uk/our-work/our-views/law-commission-review-of-electoral-law>

² The term ‘electoral bodies’ is used in this report to mean the Electoral Commission, the Association of Electoral Administrators, the Society of Local Authority Chief Executives, the Society of Local Authority Lawyers and Administrators in Scotland, the Electoral Management Board for Scotland and the Electoral Office for Northern Ireland.

Once legislation has been passed it is for electoral registration officers, returning officers and their staff to put it into practice. Electoral law does not currently make it easy to administer elections. There are currently over 50 Acts and over 170 Statutory Instruments that have a bearing on the delivery of elections. This has been exacerbated by the fact that every time a new type of election or referendum has been created, a new set of legislation has been created. The problem has been further compounded by the approach of making highly detailed legislation, prescribing almost every aspect of electoral procedures. A list of electoral legislation is set out in Appendix C. The body of electoral law has grown even more voluminous in the last five years, especially following the reform of electoral registration.

As well as being voluminous and fragmented much of the law is highly complex. This complexity arises for various reasons, for example because the of the way new and old provisions fit together or because the language has not been updated since the nineteenth century. It also arises because of the inconsistencies between the laws governing each electoral event. The same process may need to be carried out differently for two or more electoral events that are happening on the same day, for no reason other than an accidental or unintended result of how legislation has been replicated and amended for each set of elections.

The election-specific, prescriptive and complex nature of electoral law makes administering elections a time-consuming, complex task which requires a large amount of technical support, including a large amount of detailed training and (internal and external) legal advice. A large proportion of these costs are incurred by electoral registration officers, returning officers and their staff. However, costs also fall to the Commission (which provides detailed guidance, training and advice to assist those who are administering elections) and to the Association of Electoral Administrations, which also provides advice, training and professional support. An important non-monetary cost is that the current state of electoral law puts all those involved in delivering elections at risk of serious error in the electoral process and makes it harder for elections to be delivered in voters best interests.

The standardised rules and consistent drafting that will be provided by the Law Commissions in their review of electoral law would simplify this, though those differences which result from policy choices should be retained.

Legal processes arising from elections

Large burdens are placed on the time of police, prosecutors, electoral administrators, candidates, parties and others (including the Electoral Commission) by their involvement in legal processes arising from elections. A key problem is that those who are regulated by the law (especially candidates) and those who must enforce it (the police) need to have a good understanding of electoral offences. Many of these offences are among the most complex provisions of electoral law; the drafting is often not clear and some of the offences are little changed since the Victorian era. It is essential that there is

certainty in this area and the present lack of certainty is a significant cost in the electoral process.

Standing for election

The right to stand for election is an integral part of democracy. Candidates must also work with a voluminous, fragmented and complex electoral law, so many of the costs described above apply equally to candidates.

There are also some more specific costs related to being a candidate. To stand as a candidate in most elections a candidate must pay a deposit; the amount varies depending on the election. For UK parliamentary elections a deposit of £500 is required. A much larger deposit is required, for example, at London Mayoral elections (£10,000). In our view there is no good justification for imposing a financial barrier on standing for election³.

The law governing the eligibility to stand for election represents another significant obstacle. A candidate must meet at least one qualification for being a candidate at a local election and ensure that they are not disqualified. The disqualifications are spread out over a range of electoral and non-electoral laws and in some places case law must be considered as well as the written law. The interpretation of these qualifications and disqualifications therefore is often not straightforward and a candidate must incur costs in ensuring that they meet at least one.

The cost to democracy is that a candidate may be put off from standing because of the financial costs associated with doing so, depriving the voter of an option on the ballot paper.

³ We made this recommendation in our *Standing for Election in the United Kingdom* report in January 2015 (http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/180458/Standing-for-Election-in-the-UK-report-Jan-2015.pdf).

1 Introduction

1.1 This report, prepared by the Electoral Commission, identifies some examples of the hidden costs, or inefficiencies, created by the current nature of electoral law. The law governing elections is voluminous, fragmented and complex. It is also in many areas out of date as many provisions are almost exact replicas of provisions first enacted in the nineteenth century. In addition, electoral law is highly detailed and therefore often does not allow sufficient flexibility to adapt to circumstances. The law is also inconsistent in many areas, for example the law differs between different types of election or between different parts of the UK, often without any obvious rationale. These numerous problems have arisen over many years and it is widely accepted by those involved in administering and competing in elections that fundamental reform of electoral law is needed⁴.

1.2 The problems with electoral law referred to above led to the Electoral Commission and the AEA requesting that the Law Commission include a project on electoral law reform in their eleventh programme of law reform⁵. The Law Commission agreed to this request and the UK Law Commissions are currently jointly working on how electoral law throughout the UK should be reformed⁶.

1.3 The Law Commissions' will be looking at both the overt and hidden costs of electoral administration⁷. The Law Commission state that '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'⁸. In this report we have only looked at the costs that we think could potentially be reduced or eliminated by the electoral law reform currently being considered by the Law Commissions. These are the costs caused by the voluminous, fragmented, complex, outdated and prescriptive nature of the law, which are all problems that the Law Commissions will address.

⁴ The responses to the Law Commission's consultation paper on the scope of its electoral law reform project agreed of the need for reform, see <http://www.electoralcommission.org.uk/i-am-a/journalist/electoral-commission-media-centre/news-releases-reviews-and-research/unanimous-call-for-electoral-law-to-be-modernised>

⁵ Electoral Commission, *Eleventh Programme of Law Reform consultation response*, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/148424/Law-Commission-consultation-response.pdf

⁶ The scope of the project is set out in the Law Commission's scoping report: http://lawcommission.justice.gov.uk/docs/electoral_law_scoping_report.pdf. The project will not, for example, include consideration of the franchise, electoral boundaries, voting systems; fundamental changes to the institutional framework for the management and oversight of elections or political party regulation and national campaign publicity.

⁷ Law Commission, *Electoral Law in the United Kingdom: A Scoping Report*, p. 7.

⁸ *Ibid*, p. 9.

1.4 We do not discuss costs that it seems to us would not be affected by the Law Commissions' review. A lot of the costs incurred by those running voter registration and delivering electoral events are not mentioned in this report, including those that are actually borne by local authorities. Although Returning Officers receive a fee, this does not compensate the local authority for the loss of time when the Returning Officer and the Returning Officer's staff are discharging electoral responsibilities. This is a considerable cost, especially in elections involving Regional and Local Returning Officers. To this must be added the use of buildings owned by the local authority for which no fee or charge is payable but for which the authority still has to pay all the associated costs, the staff in communications and IT who are supporting the election and all the other activity that is required to be given in support as a result of the statutory duty on local authorities to support Returning Officers. The result is that the apparent cost of running elections as reflects in fees Returning Officers receive are not representative of the actual costs and there is, in effect, a hidden subsidy from local authorities to elections.

1.5 It does not seem to us that these sorts of costs are primarily caused by the problems of electoral law outlined above nor will they be resolved by the Law Commissions' review, so they are not discussed further in this report. However, if the law was simpler and clearer then it would be easier to administer electoral processes and so less local authority hidden subsidy would be required.

1.6 In our initial submission to the Law Commission requesting a review of electoral law, the Electoral Commission identified that there are likely to be both monetary costs incurred as a result of the current state of the law, as well as non-monetary general social detriments.

1.7 Monetary costs incurred as a result of the current complex state of the law may be hidden and difficult to quantify precisely. They may include both:

- Direct costs to those involved in elections; and
- Inefficiencies or missed opportunities for efficiency savings.

1.8 This report seeks to identify some of the existing 'hidden costs' of electoral law. Any legal framework will inevitably impose costs on lawmakers and users of the law; however, the emphasis in this report will be on the unnecessary costs that are generated solely by the problems with the law that are stated above. It is expected that electoral law reform in addressing those problems, will eliminate or reduce such costs.

1.9 It may be that some of the costs exemplified in this report would more accurately be described as overt costs because their costs would be revealed by an analysis of the payment of fees and charges to electoral registration officers and returning officers. However, we use the term 'hidden costs' broadly to mean costs or inefficiencies that are not obvious to anyone other than those who are most closely involved in electoral processes.

1.10 The report is not confined to looking only at monetised costs. It also examines non-monetised costs, which the Law Commission describes as 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'⁹.

1.11 We will consider hidden costs for various participants in elections, including electors, political parties, candidates, electoral registration officers, returning officers, Governments and 'electoral bodies' such as the Electoral Commission, the AEA, the Society of Local Authority Chief Executives (SOLACE), the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR), the Electoral Management Board for Scotland (EMB) and the Electoral Office for Northern Ireland (EONI). We do not seek to quantify these costs, in terms of money or staff time, but only to demonstrate that these costs exist and to give an indication as to their approximate amount and impact where possible.

1.12 It is hoped that this report will be a useful contribution to inform thinking in connection with the Law Commissions' review. The report aims to show both some of the areas in which reform would be useful and also the need for and benefits of that reform, in order to avoid or at least reduce the sorts of costs exemplified by this report.

⁹ Ibid.

2 Hidden costs

2.1 In this main part of the report we set out the areas where the current state of electoral law imposes costs to those involved in elections. It is organised into three sections: costs associated with making legislation, costs incurred in administering electoral processes and the costs of standing for election. The costs and the examples of them that are included below are not intended to be comprehensive but instead are only a selection that demonstrates the sorts of costs that arise from an electoral law that is in need of reform.

Making electoral legislation

2.2 The process of making legislation involves governments, legislatures and their committees and those who are consulted on draft legislation. The process of making and amending law inevitably imposes costs on all of these bodies but we show below that the current state of electoral law imposes unnecessary burdens.

Costs for governments

2.3 The UK, Scottish and Welsh Governments have responsibility for some aspects of electoral law. Most primary electoral legislation is brought forward by the UK Government and passed by the UK Parliament and most secondary electoral legislation is made by the UK Government. The Cabinet Office is the UK Government's lead department for electoral law. However, the Scottish Government and Parliament has legislative powers in respect of Scottish local government elections and further legislative powers are proposed in respect of Scottish Parliamentary elections in the Smith Commission report and the UK Government Command Paper and attached draft Scotland Bill 2015¹⁰. In addition, the Scottish Parliament passed the legislation governing the 2014 Scottish independence referendum. Electoral law has not been devolved to Wales with the exception that the Welsh Government is responsible for the Fees and Charges Order for elections to the National Assembly for Wales¹¹. It

¹⁰ Smith Commission, *Report of the Smith Commission for further devolution of powers to the Scottish Parliament*, November 2014, pp. 13-14, http://www.smith-commission.scot/wp-content/uploads/2014/11/The_Smith_Commission_Report-1.pdf

UK Government, *Scotland in the United Kingdom: An Enduring Settlement*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397079/Scotland_EnduringSettlement_acc.pdf

¹¹ It is possible that there will be further devolution of responsibility for electoral law to the Welsh Government and Assembly resulting from the work of the Silk Commission. The Silk Commission has stated that 'the administration of local government elections, including rules for their conduct, should be devolved' (see Silk Commission, *Empowerment and Responsibility: Legislative Powers to Strengthen Wales*, March 2014, pp. 136-137,

is possible that devolution of some areas of electoral law will take place within the next few years, following on from the Silk Commission reports.

2.4 Making legislation is a complex process, especially in electoral law where the unconsolidated and election-specific nature of the law makes the draftspersons task particularly difficult. We set out below some examples of the sorts of problems faced.

2.5 Before Government can consider whether and, if so, how the law should be changed to deliver a policy position, they must work out what the current law is (to establish whether the policy can be delivered within the current law or whether amendment to the law is necessary and, if so, what amendment). The nature of electoral law is so complex that it can sometimes be difficult to establish the existing legal position because it is distributed across so many different statutes and instruments and has been subject to a high degree of amendment.

2.6 The complexity of UK electoral law causes particular challenges in Northern Ireland, where there is no electronically maintained up to date set of electoral legislation. Some of Northern Ireland's electoral process derives from the Electoral law (Northern Ireland) Act 1962 (the 1962 Act) but the majority is found in legislation that applies to the whole of the UK but which in some cases has been amended for Northern Ireland. The lack of up to date electoral law in Northern Ireland presents complexity for the Government to make changes to the law as it is not easy to identify the existing legal position. As it is not possible to rely on an updated electronic resource, there is a need to trace amendments to the legislation manually, which is a difficult and onerous task.

2.7 Having identified the current legal position and that a change to the law is needed to achieve a policy objective, Government officials must then decide how to change the law. This will require legislation amending pre-existing law. In doing so, there is the complex and time-intensive task of considering how the reform will fit into the rest of electoral law, including whether further changes to the law are needed as a consequence of the reform. The voluminous, fragmented and frequently complex nature of electoral law makes this challenging. The web of electoral law has become so complex that making new electoral policy and law, or even just ensuring the law remains relevant, has become challenging.

2.8 The current state of electoral law increases the time and effort required to change even relatively small or simple parts of the law to deliver a Government policy. This particularly results from the fact that electoral law contains separate, largely similar, legislation setting out the rules for conducting each type of electoral event. We refer to this below as an 'election-specific' approach to law-making. One consequence of this is that every time

<http://commissionondevolutioninwales.independent.gov.uk/files/2014/03/Empowerment-Responsibility-Legislative-Powers-to-strengthen-Wales.pdf>

a new type of election or a referendum is legislated for detailed new legislation must be drafted to set out every aspect of the electoral event.

2.9 The creation of new types of electoral event is not uncommon, since the 1970s many new elections have been introduced, including those for the European Parliament, devolved legislatures, mayoral elections, Greater London Assembly and police and crime commissioners. The Law Commission list 14 different types of election held in the UK¹², reproduced in Appendix B, but this is not intended to be a comprehensive list. In addition, there are an increasing number of new types of referendums, at varying levels from the 2011 UK wide referendum on the parliamentary voting system to the 2011 referendum in Wales on further law-making powers for the Assembly and the 2014 referendum on independence in Scotland, to local referendums on council tax changes, local authority governance, neighbourhood planning and parish and community polls. A fuller list of electoral events in the UK is set out in Appendix B. There is a large burden on Government officials, sometimes in departments which do not have prior experience of making election law, in having to produce new rules for each new electoral event and also a burden on those who are consulted on these draft laws.

2.10 The election-specific nature of electoral law also means that to achieve a policy change that applies across all electoral events, multiple pieces of legislation must be amended, each one by a different statutory instrument. For example, the Government recently changed the law governing which members of police staff are able to attend polling stations. In order to do this the Electoral Registration and Administration Act (2013) (ERA) enacted various changes to the election rules for UK Parliamentary Election Rules¹³. However once these changes were enacted, the Government needed to separately apply these changes to every other relevant electoral event using separate legislative vehicles.

2.11 The Law Commissions propose creating a single, standard set of rules for all elections and another for all referendums, which would make creating a new electoral event and amending the law a much quicker and less costly process. Rather than create new legislation for each new electoral event, the existing standard rules could be applied to the new event and any change to the law would hopefully only need to be made once to the standard rules. There is no need to create new legislation for each event; in most cases this legislation simply replicates existing legislation, so time spent engaged in making such law could be avoided. However, such an approach must be consistent with the UK's devolution framework. The law governing local government elections in Scotland is already devolved and further devolution is

¹² Law Commission, *Scoping Report*, p. 12.

¹³ Rule 32 of Parliamentary Elections Rules was changed to allow PCSO as well as police constables to attend. Rule 31 (in section 61 of the 1983 act) was also changed regarding secrecy of the ballot, as was paragraph 2(5) of Schedule 4 to the Representation of the People Act 2000 regarding allowing PCSOs to vote at any polling stations in the electoral area if they cannot vote in their own due to work.

proposed in Scotland and Wales. Therefore a single Act and supporting set of secondary legislation would not be able to apply to every election in the UK; some election law would need to be made separately in Scotland and Wales and such law may differ from the law in other parts of the UK because of different policy decisions being made.

2.12 Further costs are created by the fact that a large part of electoral law is set out in primary legislation makes amending the law to achieve policy goals more time consuming than if more was contained in secondary legislation. For example, the detailed rules for the conduct of parliamentary elections are currently set out in primary legislation¹⁴ and as a result are difficult to amend. This means that some policy objectives may not be able to be delivered in time for an upcoming election, as there may be a lengthy wait to identify a suitable legislative vehicle and / or parliamentary time.

2.13 Furthermore, a large amount of procedural detail is also contained in both primary and secondary legislation. For example, legislation prescribes the content and format of administrative forms and lists the equipment that should be present in polling stations. If such procedural matters were left to 'tertiary law', for example guidance and codes, the law would be less voluminous and unwieldy and consequently amendments to it could be more efficiently achieved.

Costs for others involved in the law-making process

Legislatures

2.14 Legislatures scrutinise legislation, both on the floor of chambers and in committees. There are costs to legislatures in carrying out this task. Obviously greater parliamentary time is expended on scrutinising primary legislation, which is usually reserved for the most fundamental aspects of the law.

2.15 Secondary legislation, although subject to a lesser degree of parliamentary scrutiny compared with primary legislation, must pass through the Joint Committee on Statutory Instruments with costs entailed each time. Examples include relatively minor changes such as a requirement to notify individuals of a failure to match their postal vote identifiers to local authority records. This change took up a large amount of time to enact largely because they had to be enacted across every individual election.

2.16 In addition, a large number of electoral forms and notices are included in the legislation. It is not clear to us what is gained by providing for parliamentary scrutiny of the exact format and wording of a form that is set out in an appendix to legislation, in addition to scrutiny of the required contents of the form that is set out in the body of the legislation. If legislation contains the required contents and this is subject to parliamentary scrutiny, why does the legislature also need to scrutinise the exact format and wording? We would be

¹⁴ Schedule 1, RPA 1983.

surprised if prescribing the content and format of administrative forms in legislation was the norm in other areas of law.

Electoral bodies

2.17 Electoral bodies respond to Government consultations on proposed changes to electoral law, as well as issuing guidance to administrators and candidates and keeping them up to date.

2.18 It is important that the Government consults with such bodies on draft legislation as this helps to inform the process of making legislation. Whenever we are consulted on draft legislation, our first task (like the Government's when considering a change to the law) is to identify the existing legislative position and then we must consider how the proposed change would interact with the existing law, as well as what the practical implications would be. This is made much more difficult because of the voluminous, complex and fragmented state of electoral law.

2.19 A high volume of legislation is generated, which imposes burdens on those being consulted. For example, during the process of implementing IER the Commission has so far been consulted on at least 15 pieces of primary and secondary legislation (see Appendix A). Some of these were the same instrument but applied to Scotland or for England and Wales.

2.20 Responding to consultation on draft legislation relating to Northern Ireland is particularly challenging due to the previously mentioned lack of access to consolidated, up to date legislation. Northern Ireland's electoral law has been amended on many occasions, each item of amending legislation must be referred to in order to establish an accurate understanding of the correct position, which is a time consuming exercise for the Commission to undertake each time it must respond to such a consultation.

2.21 In addition to the costs relating to election bodies participating in the law-making process by responding to consultations, there is also a cost in having to amend guidance at short notice where the complexity of electoral law has led to a drafting error that necessitates swift legislative change. The European Parliamentary Election Regulations 2004 were amended twice in the run-up to the May 2014 elections on 3 November 2013 and 3 April 2014. Updating the Commission's guidance for these regulations represented a significant and unplanned workload, which had impacts on other areas of the Commission's planned work.

Administering elections

2.22 Once legislation is made it is for electoral registration officers, returning officers and their staff (collectively referred to in this report as 'electoral administrators') to put it into practice by carrying out their legislative functions of registering voters and conducting elections. In Northern Ireland the Chief

Electoral Officer is the electoral registration officer and returning officer for all constituencies in Northern Ireland¹⁵.

2.23 Others also play an important role in the electoral process:

- The Electoral Commission has statutory powers under the Political Parties, Elections and Referendums Act 2000 (PPERA) and elsewhere, for example to issue guidance, prescribe some forms for electoral use, set and monitor performance standards and report on the administration of electoral events.
- Under section 1 to the Local Electoral Administration (Scotland) Act 2011 the EMB has the general function of co-ordinating the administration of local government elections in Scotland¹⁶.
- The AEA is a non-governmental body that represents the interests of electoral administrators in the United Kingdom. Its role includes providing training and resources to administrators¹⁷.
- SOLACE is the representative body for senior strategic managers working in the public sector in the UK. SOLACE work on elections is led by its Elections and Democracy Policy Network. SOLACE provides support to Returning Officers through the Network and delivers electoral training, including through its annual conference.
- SOLAR provides a forum for local authority lawyers and administrators to confer on electoral issues in Scotland to promote sound administrative and legal practice within Scottish local authorities¹⁸.
- Local governments designate and review polling districts and places under sections 18A to 18E of the Representation of the People Act (RPA) 1983.

2.24 Election processes and activities are not generally administered by lawyers; it is not a requirement for electoral administrators to have any specific legal training or qualifications. Nevertheless, the current complex state of electoral law means that frequently even basic processes are time consuming to achieve and require a degree of technical expertise to

¹⁵ For more information: EONI, *Overview of the EONI*, <http://www.eoni.org.uk/Utility/About-EONI/Overview-of-the-EONI> (accessed on 6 March 2015).

¹⁶ The EMBs' functions include assisting local authorities and other persons in carrying out their functions in relation to local government elections and promoting best practice in local government elections by providing information, advice or training (or otherwise).

¹⁷ For more information: AEA, *Aims and Objectives*, <http://www.aea-elections.co.uk/about/aims-objectives/> (accessed on 6 March 2015).

¹⁸ SOLAR, *Constitution and Rules*, <http://www.solarscotland.org.uk/Page.asp?Title=Organisation+%26+Membership&Section=31&Page=1> (accessed on 6 March 2015).

understand and interpret. Working with a voluminous, fragmented and complex law makes carrying out statutory roles more time-intensive than they need to be. Also, those responsible for administering electoral process must invest in training, in-house legal resources and, on occasions, external legal support. There is also a burden on electoral bodies, which produce guidance, provide training and respond to queries from administrators, many of which are generated because of problems with the law that we anticipate will be remedied by electoral law reform. An important non-monetary cost is that the current state of electoral law puts all those involved in delivering elections at risk of serious error in the electoral process and makes it harder for elections to be delivered in voters best interests.

2.25 We set out below some of the reasons why these costs arise and the nature of those costs.

The volume and fragmentation of electoral law

2.26 Electoral law is contained in a large number of different legislative vehicles. There are currently around 50 pieces of primary legislation and over 170 pieces of secondary legislation that have a bearing on the delivery of elections in the UK. These are set out in Appendix C. By our calculation, the May 2010 elections required electoral administrators to be familiar with up to 25 separate pieces of primary and secondary legislation, with the added complexity of particular legislation applying to Scotland, Wales, and Northern Ireland. Having to work within such a legal framework will clearly impose costs on those administering electoral events, both in terms of additional staff time needed to identify and comply with the law, as well as the need to receive technical advice, support and training.

Election-specific approach to legislation

2.27 Perhaps the main reason why electoral law has grown into such a large and disparate collection of legislative vehicles is the 'election-specific' and also 'jurisdiction-specific' approach to making election law; separate provisions are created for every different electoral event and combination of events, along with different provisions, for example, for local government elections in Scotland than in England and Wales.

2.28 Having separate legislation, which in many places is identical but in a few places is significantly different, for each electoral event makes administering elections a time consuming task and one which requires a large amount of technical support. In many cases there may be no rationale for differences in the rules between two types of elections. Therefore, the same process may need to be carried out differently for two or more electoral events that are happening on the same day, for no reason other than this is an accidental result of how the legislation has been replicated and amended for each set of elections. Standardised rules and consistent drafting would simplify this, although we acknowledge that some differences in the rules are deliberate policy choices by the relevant Government and these should be retained.

2.29 One of our main roles is to produce guidance for elections. We publish a separate set of guidance for many types of election, which is a consequence of the election-specific approach to drafting election rules. So, for example, we may be publishing separate guidance on nine different elections, all of which are due to be held in May 2016¹⁹.

2.30 Each set of guidance contains numerous parts and there is separate guidance for (a) ROs and (b) candidates and agents. Producing guidance requires considerable resources both in our Guidance Team (who prepare the guidance) and the Legal Team (who review it), and others who deal with its publication.

2.31 Producing guidance for combined elections is particularly time intensive. Producing our combined guidance for the May 2015 polls required the guidance to be read against six different sets of rules (UK parliamentary, local (principal area and parish) and mayoral elections and mayoral and neighbourhood planning referendums), some of which must be read against each other (with modifications).

2.32 A further example of the way that the election-specific approach imposes burdens on those providing guidance and support to electoral administrators is the preparation of our detailed timetables for the various steps that happen in the run-up to an election. To do so it is necessary to consult, and cross-refer between, numerous different legislative measures. To produce a timetable for the May 2014 elections it was necessary to consult:

- RPA 1983 (as amended by the EAA 2006)
- RPA 2000
- RPR 2001
- European Parliamentary Elections Regulations 2004 (which unhelpfully has its own separate absent voting provisions)
- Local Elections (Principal Areas) (England and Wales) Rules 2006
- Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007 (regulation 3 and Schedule 2 apply and modify other legislation, adding to the complexity)
- Banking and Financial Dealings Act 1971 (to establish bank holidays)

¹⁹ Northern Ireland Assembly, National Assembly for Wales, Scottish Parliament, London Assembly, Mayor of London, English local government (principal area), English local government (parish), mayoral elections in England and Police and Crime Commissioner (England and Wales).

- There is also separate legislation to consult in respect of Northern Ireland.

2.33 The way in which the law is spread out makes working out how an election must be conducted a costly process. Significant time is expended by the Electoral Commission in producing such timetables, which would be reduced if the law was consolidated.

2.34 If there were a single set of election rules, with limited differences for certain elections, there may be scope for us to only produce a single guidance document (maybe with boxes in the guidance to highlight where there is a difference). This could significantly reduce costs and time, both for those involved in the production of the guidance and for those who rely on it.

2.35 An additional problem with the election-specific approach is that the process of making fresh rules for every new type of electoral event has led to numerous drafting errors in the various sets of rules. New rules tend to be borrowed from a pre-existing set of rules but are also in some places modified for the new electoral event, for example to reflect a new policy decision such as a new voting system. However, this process of both copying and making small amendments the rules has led to drafting errors. There are numerous examples, such as:

- the PCC rules omit any reference to when objections to nominations may be made or by when they must be determined, and
- there does not seem to be any prescribed fee for the supply of election expense returns and declarations at European Parliamentary elections.

2.36 The election-specific process has also led to seemingly accidental differences between election rules. For example the rules for how nomination papers must be delivered (and in what format i.e. on a prescribed form or otherwise) differs between the election rules without any obvious reason. A further apparent example can be found in the timetable in rule 1 of the European Parliamentary election rules, which provide that the nomination paper and list of candidates can only be delivered between 10am and 4pm on any day after the date of the publication of the notice of election but not later than the nineteenth day. However, at local government elections there is no start date specified for the delivery of the nomination papers. The timetable in the principal area rules only states that the nomination paper is to be delivered not later than noon on the nineteenth day before the day of election. However, rule 3(1)(a) of the principal area rules requires the notice of election to state the place and times at which nomination papers are to be delivered, so it seems that nomination papers cannot be delivered before the publication of the notice of election as a result of this provision. We are unsure whether this was a deliberate difference in drafting designed to create a different outcome or whether this inconsistency has arisen by accident. It seems likely that the effect is the same in both rules but it appears to be an example of an unnecessary inconsistency in the drafting.

2.37 As well as costs incurred by electoral bodies in having to produce guidance for each type of electoral event, the election-specific approach requires a large amount of time and money to be spent in training the staff working on each part of the election and on voter registration. We understand that the pressure on Returning Officers and their teams from the extra time needed for such training is exacerbated by the reducing resources available within local authorities due to the current financial climate. This training could be streamlined and the expense reduced if the law was more consistent between different types of election.

Other examples of volume and fragmentation

2.38 The current voluminous and fragmented nature of electoral law is not solely the result of the election-specific approach. It also arises within the law governing a single election, with the relevant provisions being divided between numerous Acts and statutory instruments. This means that a user of the legislation must refer to many places to answer a simple question, such as what is the deadline for someone applying to be registered to vote, in order for them to be able to vote at an upcoming election? In this instance, in order to establish the deadline the user must refer to:

- Section 13B(2) to (6) of the RPA 1983, as amended by the Electoral Administration Act 2006
- Section 13A RPA 1983
- Section 119 RPA 1983
- Regulation 29(4) of the Representation of the People (England and Wales) Regulations 2001 or the equivalent regulations in Northern Ireland or Scotland.

2.39 This is a clear example of the voluminous and fragmented nature of electoral law; instead of setting the deadline out in one place, the provisions that together give rise to the deadline are unnecessarily split between various places. It is also an example of the complexity of electoral law as there are numerous ambiguities and complexities in the drafting of the legislation and the way it fits together (explored below in the section on complexity). The correct interpretation of the law is that the deadline for applying to be registered is 12 working days before polling day. However, up until early 2014 it was incorrectly considered that the deadline was 11 working days before polling day and many elections were conducted on this basis. There can be no doubt that this error, which persisted for seven years since section 13B was amended in January 2007, was the result of the volume, fragmentation and complexity of the law.

2.40 Where the law is spread out across multiple sources, as above, the task for administrators and the Electoral Commission respectively in establishing and advising on statutory functions is a much more time consuming, and therefore expensive, process than it should be. It is also a process that frequently requires specialist support. For example, significant time in the

Electoral Commission was expended identifying the above error and in corresponding with the Cabinet Office and electoral stakeholders to ensure that the correct legal position was communicated. If the law was to take a more straightforward approach, considerable time and money would be saved.

The complexity of electoral law

2.41 Many aspects of electoral law are highly complex, presenting difficulties for administrators who must be able to apply the law quickly under the time constraints that accompany many electoral processes. This complexity means that expense is incurred in training and supporting election staff and also in obtaining in-house and external legal advice. Complexity in electoral law arises in a number of different ways, with varying consequences, some of which are discussed below.

Legislating for new and devolved electoral events and for new policies

2.42 Many of the complexities with electoral law result from the way in which electoral law has evolved over time. The majority of electoral law, which is set out in the RPA 1983, predates the rapid increase in the number of different types of elections and voting systems in recent years; in substance, much of the law is unchanged since the nineteenth century.

2.43 As new electoral events have been created, each of which with its own set of rules, an ever increasing number of inconsistencies have emerged. In any given part of the conduct of an election, there may be a range of different requirements depending on the electoral event and part of the UK in which the election is taking place. For example, the law requires candidates at some elections to pay a deposit and / or obtain signatures of ‘subscribers’ in order to stand, however the amount of the deposit and the required number of subscribers varies considerably. Clearly this system is less efficient to administer than a system where there is a standard set of rules that apply to all elections (although it is inevitable that there will be a small number of differences in the rules governing different elections reflecting deliberate policy choices).

2.44 Another example of inconsistencies occurring in the legislation as new elections are legislated for is what happens when a candidate at an election dies:

- In local government elections the poll is countermanded and another poll must be held.
- In UK Parliamentary elections where an independent candidate has died the poll continues but the RO must notify voters of the death. Where a party candidate dies, the poll is countermanded.
- In GLA elections where a candidate on a party list dies, the poll continues but the deceased candidate is effectively removed from the party list for the purposes of allocating seats and voters are notified.

- In European Parliamentary elections, the election will go ahead and the RO is required to display notices informing voters that a candidate has died. The rules appear to allow a deceased candidate to be elected.
- In PCC elections the poll is countermanded but the RO must still display notices in polling stations informing voters a candidate has died (even though there will not be any polling).
- In Scottish Parliamentary elections the rules refer back to the d'Hondt formula, which in such a case cannot apply because it refers to a regional poll, which will not have been held.

2.45 The above shows the variety of different legislative approaches to a single issue; the position at each election is different. In addition, some of the rules clearly contain drafting errors where pre-existing rules have been incorrectly copied and amended for new elections. This clearly introduces complexity for those administering elections, some of which may be taking place on the same day.

2.46 Inconsistency sometimes appears to arise accidentally, leading to surprising differences between elections. For example, section 173(1)(a)(iii) and (b) RPA 1983 provides that a person convicted of an illegal practice is incapable of holding 'elective office' and must vacate such an office. 'Elective office' is defined in section 185 as any office to which a local government election is held in England or Wales. However, when reading this in light of section 204(1) (general application to Scotland) the definition of 'elective office' may extend to Scotland. However, we understand that a local authority, having obtained advice from senior counsel, took a different view and decided that the incapacity did not apply to a councillor in Scotland where there has been a conviction for an illegal practice. On this view a councillor would be required to vacate their office in England and Wales if they committed a certain offence but would not have to do so on exactly the same facts in Scotland. There will also be a difference depending on whether someone is found to have committed an illegal practice by an election court in Scotland as opposed to being convicted of such a practice by a criminal court in Scotland. We are unaware of any deliberate reason for such inconsistencies.

2.47 These sorts of inconsistencies in electoral law, sometimes resulting by accident as a result of drafting errors, generate complex legal queries. Such queries on occasions lead to authorities incurring costs in obtaining legal advice from senior external counsel, as well as costs for the Electoral Commission in providing guidance and assistance. More generally, an inconsistent law generates additional costs as it gives rise to a need for greater training and internal legal support.

2.48 In addition to complexity caused by the increasing number of electoral events, there have been significant amendments to the RPA 1983 and the creation of separate enactments such as the RPA 2000 to achieve policy

changes. These amendments have made parts of the RPA extremely difficult to use for those involved either directly or indirectly in the delivery of elections, adding significant costs in terms of staff time, training, support and legal advice. Numerous examples could be given but perhaps the most obvious is Part 1 of the RPA 1983 and Part 3 of the RPR 2001 (both deal with electoral registration), which have now been heavily amended by the Electoral Registration and Administration Act 2013 and various statutory instruments including the Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013. These amendments deliver the policy objective of creating a system for IER and other related reforms. The way in which existing provisions, many of which have already been amended, were amended in order to achieve IER has produced a highly complex area of law.

Ambiguous legislative drafting

2.49 Many complexities arise from ambiguity in the drafting of electoral legislation, which will be addressed by the Law Commissions' review. Greater clarity in the law would clearly make the administrative process simpler and more efficient. There are examples of ambiguity throughout electoral law, two of which are given here to illustrate the nature of the problem and the costs for administrators that this generates (firstly, election deadlines and periods and, secondly, submitting documents to returning offices).

2.50 The way that the law expresses a deadline or period of time in which something must or may be done is often ambiguous. There are also many different formulations of wording used, so it is not possible to adopt a general approach. For example, during what period must a returning officer forward a copy of the statement of the number of postal ballot papers issued? The law provides that this statement 'shall be provided by the returning officer to the Secretary of State and the Electoral Commission in the period which starts 10 days after the day of the poll and ends 15 days after that day'. The question is whether '15 days after that day' refers to 15 days after the day of the poll or 15 days after the 10th day after the poll. This wording was inserted by the Representation of the People (Amendment) Regulations 2006. The Explanatory Notes to those Regulations explain that: 'As amended the regulation requires the returning officer at both parliamentary and local government elections to send a copy of the completed statement to the Secretary of State and the Electoral Commission ten to fifteen working days following the date of the poll'. It seems, therefore, that the intended meaning was that the statement must be provided within 15 days from the day of the poll (rather than 15 days from the start of the period) – i.e. giving a window of 5 days to return it. However, the form itself contains a reference to 25 days suggesting the alternative interpretation.

2.51 Wherever electoral law makes provision for a deadline or period to carry out a task there is normally a degree of ambiguity as to what is intended. For example:

- When is a candidate able to consent to their nomination? The rule states that it must be 'given in writing on or within one month before the day fixed as the last day for the delivery of nomination papers'²⁰.
- When must a polling place review be carried out? The law states that 'a relevant authority must during each compulsory review period carry out and complete a review...' This is the period of 16 months beginning with 1st October 2013 and the period of 16 months beginning with 1st October of every fifth year after that²¹.
- On what date does someone cease to be entitled to a postal or proxy vote if they do not provide a fresh signature? The law says that this is 'six weeks from the date of sending the notice'²².
- What is the period for submitting a spending return at the Scottish independence referendum? The law states that 'the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period'²³. The referendum period is defined in Schedule 8 as the period of 16 weeks ending on the date of the referendum. By virtue of section 1(4), the date of the referendum is 18 September 2014.
- What is the period for making a request for an election to fill a casual vacancy in the office of a parish or community councillor? The law says that this is 'within 14 days (computed in accordance with rule 2 of the elections rules in Schedule 2 to these Rules) after public notice of the vacancy has been given in accordance with section 87(2) of the Local Government Act 1972'²⁴.
- Contrast the previous period with the period for the election being held (which is in the same rule): 'Where a casual vacancy in any such office is required to be filled by election, the election must be held on a day appointed by the returning officer, being a day falling within the period of 60 days (so computed) beginning with the day on which public notice of the vacancy was given'²⁵.

2.52 In order to properly interpret how these legislative provisions operate it is necessary to consult non-electoral case law and various canons of statutory interpretation and even then it is difficult to be confident that you have got it right. For example, there appear to be at least two rules of interpretation: inclusive and general. As we understand it, the inclusive rule means that the

²⁰ Paragraph 8 of Schedule 1 RPA 1983.

²¹ Section 18C RPA 1983.

²² Regulation 60A(1)(b) RPR 2001.

²³ Paragraph 23(3) of Schedule 4 to the Scottish Independence Referendum Act 2013.

²⁴ Rule 5(2) of the Local Elections (Parishes and Communities) (England and Wales) Rules 2006.

²⁵ Rule 5(4).

whole of the first day on which a period starts to run is included in the period. This applies where, for example, the period is expressed as 'beginning with...' (*Zoan v Rouamba* [2000] 1 W.L.R. 1509). This seems to be the case in the period for carrying out polling place reviews, for example. The legislation refers to 'the period of 16 months beginning with 1st October 2013', so that day is included in the calculation of the period and the period ends on 31 January 2015.

2.53 The exclusive rule appears to mean that the whole of the first day is excluded. This applies in the case of a period before the end of which some act (e.g. serving a notice) may be done. For example, if an application is required to be made within six weeks from the date on which a notice is published and the notice is published on a Monday, the six weeks start running on the beginning of Tuesday so the six weeks end by midnight of Monday in six weeks' time (*Okolo v Secretary of State for the Environment* [1997] 4 All E.R. 242).

2.54 However, there will be many cases where it is not clear which rule should apply and where the correct period or deadline is in doubt. Also, there are provisions that exclude non-working days in some instances from calculating periods in and which also disregard non-working days if a day to do something falls on them. These provisions are easy to overlook, especially as sometimes they are applied to a provision by cross-references to two other provisions for example section 119 RPA 1983 is applied by section 13AB(9) and section 13B(6) to section 13B.

2.55 The drafting of provisions that disregard non-working days sometimes raises separate problems. For example, section 119 RPA 1983 provides that where the day or last day on which anything is required or permitted to be done by or in pursuance of this Part of this Act is any of the days mentioned in subsection (2) below (i.e. non-working days):

- a) the requirement or permission shall be deemed to relate to the first day thereafter which is not one of those days; and
- b) in computing any period of not more than 7 days for the purposes of this Part any of the days so mentioned shall be disregarded²⁶.

²⁶ There are other identical or similar provisions, for example regulation 33 of the European Parliamentary Elections (Northern Ireland) Regulations 2004.

2.56 On a literal interpretation, the structure of section 119(1) means that section 119(1)(b) only comes into play in the circumstances set out at the start of section 119(1), i.e. where the last day of a deadline falls on a non-working day. So, if you had a 7 day period ending on a Wednesday, it would be counted as 7 calendar days, but if day 1 was a Monday, making the period due to end on a Sunday, section 119(1)(b) would apply and it would be counted as 7 working days, and so end the following Tuesday (giving 9 calendar days). This does not seem to be logical, and we assume that the intent behind section 119(1)(b) was that any period of 7 days or less should mean 'working days'. Similar wording but a different structure is used in section 129 of the Electoral Law Act (Northern Ireland) 1962, in a way that does give effect to what we think was the real intention behind section 119.

2.57 The above demonstrates the complexity of one part of the existing electoral law, namely the part which deals with the setting of periods and deadlines. The result is that considerable time is spent by staff in local authorities and electoral bodies working out what the law means. This makes the process of administering elections more time consuming and expensive than it should be. The time spent trying to resolve legislative ambiguity is time that could be better spent on improving services for candidates and voters.

2.58 A further example of ambiguity and the resulting unnecessary costs is how the law deals with the submission of documents by candidates to returning officers. There are various differences between the election rules in this area (referred to above in the section on volume and fragmentation) but in general the requirement is for documents to be 'delivered' to the returning officer. When read in context in the legislation, there has been uncertainty for a long period as to whether this allowed postal, email or fax delivery in addition to delivery in person. For example, there is a requirement in some rules for the document to be delivered within certain hours of the day and for the returning officer to be present throughout to deal with objections, which seems to only envisage hand delivery. We have obtained advice from Jason Coppel QC to resolve this question²⁷. The cost to the Commission of obtaining this advice is an obvious cost resulting from ambiguous drafting. However, a large volume of Commission staff time was also expended on resolving this issue and there were a number of meetings held with administrators to communicate the position and provide training.

Northern Ireland legislation

2.59 The above problems are compounded when attempting to ascertain the legal position in Northern Ireland. Some of the electoral law in Northern Ireland is found in Electoral Law Act (Northern Ireland) 1962 which has been amended. To our knowledge there is no up to date version of this Act available. However, much of the law is now found in other legislative vehicles; often in legislation that applies to the whole of the UK but which has been

²⁷ We published this advice on our website:
http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/166379/Delivery-of-Nomination-Papers-Counsel-Advice-FINAL.pdf

amended specifically for Northern Ireland. Sometimes there is a completely different version of a legislative provision that applies in Northern Ireland. We are not aware of any reliable way to access up to date Northern Ireland electoral law.

2.60 An additional problem is that at least some parts of electoral law in Northern Ireland do not seem to have been properly maintained. Some legislation contains provisions that should have been repealed many years ago. For example, some parts of the Electoral Law (Northern Ireland) Act 1962 refer to 'parliamentary elections' but we understand that this refers to elections to a legislature that was abolished in the 1970s. The failure to ensure that obsolete provisions in the 1962 Act have been repealed has caused confusion and resulting costs.

2.61 The result of the above is that administering elections in Northern Ireland is more difficult and costly than ought to be the case. For example, the Electoral Commission recently produced guidance for the UK parliamentary general election in 2015 in Northern Ireland. This proved to be a complex and time-consuming task, largely because of difficulties identifying and accessing up to date Northern Ireland legislation. We hope that one of the achievements of the Law Commissions' review will be to rectify the above problems by consolidating and updating electoral law in Northern Ireland.

The prescriptive nature of electoral law

2.62 Electoral law sets out how administrators must act in great detail. Both primary and secondary election law is often detailed and prescriptive. For example, the legislation prescribes in great detail the equipment necessary to furnish a polling station, the procedure for administering postal voting and specifies the exact wording of the prescribed questions that must be put to certain voters. A further example of what is in our view undesirable prescription is the prescription of forms and notices that must be used during electoral administration; the exact format and wording of these forms is set out in primary or secondary legislation²⁸.

2.63 One consequences of detailed legislative prescription is that where, after the law is made, there is desire to do things differently, the law is often too inflexible to allow it to be achieved without new amending legislation being created, sometimes primary legislation (which is a costly process). For example, the law in many cases does not allow electronic counting. Therefore, the Returning Officer is unable to count electronically even where it may be advantageous to do so. Also, a form must be amended by legislation where it

²⁸ We set out our views on this issue in more detail in Electoral Commission, *Where should electoral forms and notices be set out in the law? An Electoral Commission paper submitted to the Law Commission*, July 2014, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0020/184151/The-position-of-election-forms-and-notices-in-the-hierarchy-of-electoral-laws.pdf

has been discovered that it contains an error or where it becomes clear that the format or language could be improved.

2.64 Rather than prescribe in detail the processes that must be followed, we would hope that the reformed electoral law would provide a framework to allow defined outcomes to be achieved in more than one way. The law should not in our view be so prescriptive that it prevents things being done in a more efficient or better way. The law should allow space for choice and innovation and also for technological change. It does not need to say exactly how something must be done; only what the outcome must be.

The outdated nature of electoral law

2.65 One of the consequences of a prescriptive law is that it has a tendency to become outdated. Highly specific rules leave little room for flexibility to accommodate changes to the wider context in which elections take place, such as social and technological changes. Therefore, electoral legislation can only remain relevant and adapt to changes if it is amended, which has not always been the case. The outdated nature of the law adds to its complexity.

2.66 One example is that the overwhelming majority of electoral law dates back to a time before the internet, email and social media. Very little has been changed in the law to reflect these technological changes even though election campaigns are increasingly being carried out using this technology. This produces costs in trying to apply legislation to scenarios that it could not have been intended to extend to, for example

- How does the requirement to place an 'imprint' on campaign material relate to electronic material?
- Is it possible for spending returns (and other documents) to be published online, in addition to or instead of making them available for inspection at a physical place?
- Can documents be delivered to returning officers other than by in person delivery?

2.67 A large part of our work focuses on trying to make sense of the law in the modern day context in examples such as those set out above. Often a strict interpretation of outdated law would produce an outcome that is perverse or unduly onerous for either elector or administrator. A large amount of time at the Electoral Commission, and no doubt also amongst electoral administrators and in other electoral bodies, goes into trying to make sure the legislation is used in a way that is both practical, good for the voter (and so for democracy) yet at the same time lawful. The current state of electoral law makes this a time-consuming, expensive and difficult task.

Combined elections

2.68 In the event of a combined election, the law becomes particularly complicated and difficult to administer. Each set of electoral event rules contain a separate version for combinations, except those that list modifications to other rules. Sometimes several elections must be combined and working out what rules apply can be challenging. The complexity in the law resulting from the way it had legislated for combinations imposes additional costs on those running the election, especially costs incurred in training and seeking advice. This is particularly significant at by-elections where Returning Officers and their teams have less support than at ordinary or general elections when central training is usually available. Also at by-elections, Returning Officers and their staff need to prepare their own detailed timetables for the specific forthcoming poll, an area of electoral law which (as mentioned above) is especially complex with a significant risk of error in calculating the key deadlines, whether for registration purposes or for conducting the poll.

2.69 The funding arrangements themselves produce additional costs. The combination of polls means that some parts of the election may be funded by central Government while others are funded by the local authority. Scrutiny and accounting for election spending at combined poll are complicated by this mixed responsibility. There is an increased cost in terms of staff time and effort for all bodies involved, in establishing who is responsible for funding and scrutinising what.

Legal processes arising from elections

2.70 Large burdens are placed on the time of police, prosecutors, electoral administrators, candidates, parties and others (including the Electoral Commission) by their involvement in legal processes arising from elections. These legal processes largely fall under two categories: the investigation of electoral offences by the police and challenges to election results ('election petitions').

Investigation of electoral offences

2.71 Electoral offences are located throughout the law governing elections, both in primary and secondary legislation. Most are contained in the RPA 1983 but these offences are also recreated for other elections in secondary legislation²⁹ and some separate offences are set out, for example, in the RPR 2001. Some offences are not even found in the written law but are instead contained in the common law³⁰. The purpose of the offences is largely to regulate the electoral process; they serve to deter and punish certain behaviour, for example providing false information on a nomination paper

²⁹ For example, see the European Parliamentary Elections Regulations 2004.

³⁰ We understand that there was a case in 2012 in Derby in which a poll clerk was convicted of the common law offence of misconduct (or misfeasance) in public office (<http://www.bbc.co.uk/news/uk-england-derbyshire-23461729>).

about a candidate's eligibility to stand for election³¹ or bribing someone to vote³².

2.72 Where an allegation has been made that an electoral offence may have been committed, it is the responsibility of the police (through the election single point of contact (SPOC) in the relevant police force) to investigate. Although the investigation of potential electoral offences is for the police, not electoral administrators, there is a considerable burden placed on electoral administrators as they are frequently the first to be contacted by someone who wants to make an allegation and are also often in the best position to identify a potential offence and pass the matter to the police. In addition, police officers will often closely liaise with administrators during an investigation. Electoral bodies are also involved in providing guidance and support to administrators and the police to assist them interpret electoral law. Costs will also be incurred by the relevant prosecuting body in deciding whether to bring a prosecution and in bringing any prosecution³³. Costs will also be borne by the person(s) making the allegations and those responding to them.

2.73 It is inevitable that there are costs for the above persons and bodies during investigations into alleged electoral offences. However, in many cases the drafting of the offences imposes unnecessary burdens on those involved in the investigation. Many of the problems stem from the fact that many electoral offences were created in the nineteenth century and in some cases they have not kept pace with changes to elections and the wider context. Interpreting offences not designed for the modern world is challenging and is compounded by a lack of recent case law on some offences, which makes interpreting how they apply today even harder. This is made even worse by the highly complex nature of the drafting of some offences.

2.74 An example of an offence that dates back to Victorian times is the offence of treating³⁴. Presumably, wealthy candidates attempting to influence voters through largess was a problem in the nineteenth century but the offence may not be as relevant today, especially when such behaviour may be caught by the offence of bribery. To our understanding treating is hardly ever prosecuted. Nonetheless, many allegations are received at every election that treating has occurred simply because refreshments have been provided at a meeting or event. In 2015 a candidate for the United Kingdom Independence Party was accused of treating partly because they provided food at a community meeting. On investigation by the police this case was resolved as 'No Further Action – No offence'. In 2013 a candidate was accused of treating because members of their staff were seen handing out cakes while

³¹ Section 65A RPA 1983.

³² Section 113 RPA 1983.

³³ Further detail on the above roles in policing election is set out in more detail on the College of Policing's website: <http://www.app.college.police.uk/app-content/policing-elections/key-roles-and-planning/>

³⁴ Section 114 RPA 1983.

campaigning, once again this case was resolved no further action. We understand that in these cases the police concluded that there was no indication that the food was intended to sway voters' decision as to who to vote for.

2.75 The drafting of the offence of undue influence demonstrates the complex nature of some offences³⁵. One scenario when undue influence will have taken place is where someone, by abduction, duress or any fraudulent device or contrivance, impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of an elector or proxy for an electors, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, an elector or proxy for any elector either to vote or to refrain from voting. This offence combines old drafting with some twenty first century additions and is a highly complex provision that proves difficult to interpret and apply to elections today.

2.76 Sometimes old and new drafting conflict with each other. This means that, for example, it is not obvious when it is possible to commit some offences, even though it would be thought that this, as a minimum, would be clear. Some offences may be committed 'before, during or after an election'³⁶. Others can only be committed 'before or during an election'³⁷. Others can only be committed 'at an election'³⁸. What constitutes 'before', 'during' or 'at' an election is unclear.

2.77 Another problem arises because of the more recent definition of a 'candidate' in section 118A RPA 1983. These offences refer to a 'candidate', for example it is an offence to make certain false statements about a candidate. At UK parliamentary elections a person only becomes a candidate at a parliamentary general election:

- a) on the date of the dissolution of Parliament in consequence of which the writ for the election is issued if on or before that date he is declared by himself or by others to be a candidate at the election, and
- b) otherwise, on the day on which he is so declared by himself or by others or on which he is nominated as a candidate at the election (whichever is the earlier).

2.78 So there are no 'candidates' until the dissolution of Parliament, at the earliest. A similar definition applies to local elections, except that the earliest someone can become a candidate is on the last day for publication of notice of the election. This causes problems because some offences provide that they can be committed 'before' or 'after' an election. An election is more than polling day; it comprises the whole electoral process from dissolution or notice of election until the declaration of the result. How can an offence involving a

³⁵ Section 115 RPA 1983.

³⁶ For example, section 111 RPA 1983. Does this mean at any time?

³⁷ For example, section 106 RPA 1983.

³⁸ For example, section 110 RPA 1983.

'candidate' be committed 'before' or 'after' an election where there will not be any candidates before or after the election? Our view is that the definition of 'candidate' in section 118A does not apply to offences that can be committed 'before' or 'after' an election but that raises the question as to what 'candidate' does mean in that context.

2.79 Conflicts between old and new electoral law can also be seen in the two separate offences for not including an 'imprint' on candidates' campaign material³⁹. The differences between the two offences are not obvious but one difference seems to be that the RPA 1983 offence only applies to material promoting a single candidate, whereas the PPERA offence (which can be enforced by the Electoral Commission through its powers of civil sanctions) applies to material promoting one or more parties or multiple candidates.

2.80 Having two offences covering essentially the same behaviour but with subtle differences and different bodies tasked with enforcing them creates complexity and costs. The complexities include:

- Would material often fall within both offences (as most material will promote both a candidate and the candidate's party) and if so under which offence should action be taken?
- Could material promoting multiple candidates be prosecuted under both provisions or just under PPERA?
- What happens where someone campaigns for or against individual candidates across a number of electoral areas i.e. 1 candidate per constituency, but over multiple constituencies. This potentially falls both within the RPA 1983 and PPERA.

2.81 This is significant as the failure to include an imprint on election material is a common allegation and therefore places demands on resources. We understand that imprint offences, like many other electoral offences, are rarely prosecuted and that in practice the only action that the police are likely to take is to advise the person who may have breached the law of the legal requirements for future reference.

2.82 The sorts of problems with the drafting of many electoral offences that are outlined above result in the following:

- The behaviour that constitutes an electoral offence is not always clear. This is of great concern as it is a fundamental principle of law that behaviour that amounts to a criminal offence should be clear, so that people can avoid inadvertently breaching the law.
- The lack of clarity in the law is likely to contribute to the large number of allegations of offences that are made each year, some of which are

³⁹ Section 110 RPA 1983 and section 143 PPERA.

based on a misunderstanding of the offence. Many allegations of electoral offences are recorded by the police are described as not requiring any further action, either because no offence had been committed or there was insufficient evidence⁴⁰. A large amount of the police's (and others') time is therefore taken up recording and investigating allegations that prove to be baseless; in our experience this is partly because many allegations are misguided because they are based on an incorrect understanding of a law that is not well-understood.

- The costs of those involved in policing elections are greater because time must be spent on interpreting a law that is in some places unnecessarily complex and in need of modernisation. The drafting of some offences means that police officers often have to seek guidance from others.

Election petitions

2.83 A legal challenge to the result of an election ('election petition') can only be made by a voter or candidate. International guidelines on good practice for systems of challenging elections state that:

...the complaints procedure should be free of unnecessary obstacles, especially as regards the cost of bringing an action to court. Wherever possible the complaints procedure should be accessible without charge to the complainant. Where costs are unavoidable, they should be kept to a minimum so as not to deter citizens from bringing a complaint⁴¹.

2.84 A candidate who wishes to present a petition in the UK must incur considerable upfront costs, as well as the ongoing costs of the petition (such as preparing for and attending hearings, complying with court orders etc.) which can take up to a couple of years to be resolved. The fee payable on the presentation of an election petition in England and Wales is £480⁴². Other fees are also payable on the making of certain applications, for example there is a fee of £50 for making the mandatory application to fix the amount of security for costs⁴³.

2.85 Within three days of presenting a petition, the petitioner must give security for all costs⁴⁴. In the case of a UK Parliamentary election petition, the security for costs will not exceed £5,000. At a parish or community election in

⁴⁰ For example, see pages 3 and 4 of Electoral Commission *Analysis of cases of alleged electoral fraud 2013, 2014*,

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0004/166459/Analysis-of-cases-of-alleged-electoral-fraud-2013.pdf

⁴¹ Petit, *Resolving Election Disputes in the OSCE Area; Towards a Standard Election Dispute Monitoring System*, Office for Democratic Institutions and Human Rights, Warsaw, 2000, p. 11, <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019060.pdf>

⁴² Fee 1.5 (starting proceedings in the High Court for 'any other remedy'), Schedule 1 to the Civil Proceedings Fees Order 2008.

⁴³ Fee 2.5.

⁴⁴ Section 136 RPA 1983.

England or Wales, will not exceed £1,500 and at any other local government election, the security will not exceed £2,500. If no security is given or if the respondent objects to the security and that objection is allowed and not removed, the petition will not proceed⁴⁵. An official at the Administrative Court Office of the High Court, which administers election petitions in England and Wales, informed the Commission that, in his experience, judges normally decide to order the maximum amount of security.

2.86 Therefore a candidate seeking to challenge the result of a UK parliamentary election must pay around £5,500 up-front⁴⁶. These up-front are not entirely 'hidden' as they are set out in legislation. However, they are included here because the election petition process and the expense of bringing a petition are not well known outside those closely involved in elections. Also, a reader of the legislation would only know the maximum amount of the security of costs and would not appreciate that the maximum is normally ordered. By the time the petition is finally determined by the court, this figure will be much higher, especially if the petitioner has legal representation. Non-monetary costs to the petitioner must be added to this, for example the time and stress of engaging in lengthy litigation.

2.87 It seems difficult to argue that these costs to the person seeking a review of an election result are justifiable. There can be no doubt that they serve to deter the bringing of petitions and it is likely that that is their intention. Although there should be controls on bringing a petition, we do not consider that financial controls are appropriate. The ability to challenge and overturn an election result should not be affected by a person's financial resources but by the merits of their grounds of challenge. There is a strong public interest in an election result that is flawed, whether because of an administrative error by the Returning Officer or by illegality on the part of candidates and their supporters, being subjected to scrutiny and being overturned, with a fresh election ordered if necessary. As discussed in our 2012 report, there is evidence that petitions are not brought simply because of the costs of doing so, not because of the merits of the case⁴⁷.

2.88 Returning officers are normally respondents to election petitions. As we discussed in our 2012 report on *Challenging Elections in the UK*⁴⁸, although election petitions are rare⁴⁹, when a petition is presented there can be a

⁴⁵ Section 136(8) RPA 1983.

⁴⁶ Our research in 2012 showed that this figure is much greater than in comparable jurisdictions such as in Australian, New Zealand and Canada (Electoral Commission, *Challenging Elections in the UK*, September 2012, p. 29, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/150499/Challenging-elections-in-the-UK.pdf).

⁴⁷ Electoral Commission, *Challenging Elections in the UK*, pp. 28-33.

⁴⁸ Electoral Commission, *Challenging Elections in the UK*, pp. 28-34.

⁴⁹ Only six UK parliamentary petitions were determined between 1945 and 2006 (Rallings and Thrasher, *British Electoral Facts*, Total Politics, London, 2006, p. 245). However, petitions are more common at local elections. Our research showed that in the five years between 2007 and 2012 a total of 23 petitions questioning local elections were presented (Electoral Commission, *Challenging Elections in the UK*, Appendix C).

significant cost to the returning officer and election staff. This can place pressures on a local authority's election team, in addition to the other, more routine pressures on the team's time.

2.89 This burden on election officials is described by Morris and Monks in their book *Running Elections*:

...if a petition results in action in the High Court it is very serious with considerable ramifications – hence the need for insurance. High Court litigation can easily run bills up to six figures and it is simply essential to take advice at an early stage on such matters⁵⁰.

2.90 In *Challenging Elections in the UK* we reported that in one case the Returning Officer incurred total costs of £122,000 in responding to the petition. An election petition in Fermanagh and South Tyrone in 2010 resulted in costs to the returning officer of £92,000. Even if the court determines in the returning officer's favour, the returning officer is unlikely to be able to recover such costs. In Bradford in 2008, despite the failure of the election petition, less than one fifth of the returning officer's total costs were recovered, leaving £38,000 outstanding. Although, costs may be recoverable under an insurance policy, we understand that having to respond to a petition may lead to a significant increase in future insurance premiums and it seems likely that the cost of all insurance policies reflects the possibility of having to respond to a petition.

2.91 As with other areas discussed in this report, it is inevitable that there will be some costs in this area. Providing for a mechanism to allow election results to be challenged and, if necessary, overturned is an essential feature of a democratic electoral system and it is unavoidable that those involved (including the returning officer and election staff, the relevant candidates and parties and the election court) will be required to spend considerable time to ensure that the challenge is properly determined. However, the current electoral law does not keep those costs to a minimum; instead it generates unnecessary or disproportionate costs. For example:

- In 2012 we concluded that the cost to those who want to challenge elections in the UK is an expensive process which deters those who have a genuine complaint about the election⁵¹. It is far more expensive than it is in similar countries such as Australia and New Zealand⁵². It is not in the public interest that well-founded complaints about the conduct of elections are not investigated and that flawed elections are not overturned simply because the process for bringing a challenge is too costly.

⁵⁰ Morris and Monks, *Running Elections 2011*, SOLACE Enterprises, London 2011, p. 169.

⁵¹ Electoral Commission, *Challenging Elections in the UK*, p. 34.

⁵² Electoral Commission, *Challenging Elections in the UK*, p. 29.

- In 2012 we also questioned whether it was right to only allow petitions for be brought by voters and candidates. It is clear that a dispute about an election result is much more than a private dispute between the winning and losing candidates as there is a public interest in a flawed election result being overturned⁵³. Is it fair that the burden of bringing challenges solely falls on voters and candidates, especially given the costs involved?
- There is no way to filter out petitions that have no merit at an early stage. Instead a flawed petition will proceed to a hearing at the High Court, which is unlikely to reach a conclusion for at least four to six months. Expense will be incurred in preparing for the hearing (and any preliminary or subsequent hearings), complying with any procedural court directions and in instructing counsel. Therefore, considerable costs will be incurred even where a petition has no merit, for example because the petitioner's case is based on a misunderstanding of the law.
- There is no mechanism to correct an obviously incorrect election result without a voter or candidate presenting a petition and engaging in many months litigation. A returning officer may know that they have made a mistake and that another candidate should have been elected, and it may be that some or all of the candidates accept this as well, but once the result of the election has been declared and made public nothing can be done except for a voter or candidate to bring a petition.
- Election petitions take a long time to be resolved. A petition in 2008 took 21 months to be resolved, even though the matter at issue was which candidate had received the most votes, which on the face of it seems capable of a swifter resolution. Complex petitions involving allegations of electoral offences may take around a year to be resolved. Even petitions where there has been a seemingly obvious error, admitted by the Returning Officer, and where the rightful winner appears to be easy to establish, in our experience take at least three months to determine and up to eight months⁵⁴. The length of the proceedings generates costs in terms of the absence of certainty in the holding of elected office and also greater financial costs resulting from the number of hearings and court directions.
- Like much of electoral law, the election petition process is complex and onerous for all parties. The Elections Petitions Rules 1960 are clearly in need of simplification and modernisation as they have been left largely

⁵³ Electoral Commission, *Challenging Elections in the UK*, pp. 14-17.

⁵⁴ These issues are discussed in more detail, with examples, in our *Challenging Elections in the UK* report on pages 42 to 47. For a good discussion of the Prestatyn petition, see Game, *Prestatyn's election farce and the busted petition process*, Posted in the Official Blog of the Institute of Local Government Studies, University of Birmingham, 13 February 2013, <http://inlogov.wordpress.com/2013/02/13/prestatyn/>

unchanged since the 1960s, despite the reform to the Civil Procedure Rules that apply to many other legal actions.

Standing for election

2.92 The right to stand for election is an integral part of democracy⁵⁵. It is an essential feature of a democratic system that persons who want to contend elections should be able to do so, subject to the fewest controls necessary⁵⁶. Furthermore, voters are best-served by being offered a wide range of candidates and a good supply of candidates is essential for the functioning of elected office.

2.93 The rules governing standing for election impose burdens on candidates and the parties, if any, that they represent. Some of these burdens are justifiable but others are not. Anything that has the potential to prevent or deter those who may want to stand for election should be both justifiable and proportionate.

2.94 Many of the costs outlined earlier in this report apply equally to candidates. The problems of volume, fragmentation and complexity also impose costs on candidates who must refer to the law to understand whether they can stand for election and their rights and duties as a candidate. In particular, candidates are affected by the problems identified earlier with the law on offences, given that any failure to follow the law may constitute an offence. Some additional, specific costs for candidates and parties are discussed below.

2.95 There are a range of costs relating to fighting a campaign as a candidate, for example renting a campaign office, hiring staff and equipment. We do not consider these costs here as they are not caused by problems with the complexity of the current law; they are an inevitable part of standing for election. Instead we set out below some of the arguably unnecessary procedural costs imposed on candidates by electoral law. The issues below are discussed further in our *Standing for Election* report⁵⁷.

Deposits and subscribers

2.96 To stand as a candidate in most elections, a candidate must pay a deposit. The amount varies depending on the election. For UK parliamentary elections a deposit of £500 is required⁵⁸. A much larger deposit is required, for

⁵⁵ For example, see article 25 of the 1966 International Covenant on Civil and Political Rights.

⁵⁶ For example the law prevents a candidate using a commonly used name that is likely to mislead or confuse electors or is obscene or offensive (rule 14(2B) of the UK Parliamentary Elections Rules).

⁵⁷ Electoral Commission, *Standing for Election in the United Kingdom*, January 2015, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/180458/Standing-for-Election-in-the-UK-report-Jan-2015.pdf

⁵⁸ Rule 9(1), UK Parliamentary Elections Rules.

example, at London Mayoral elections (£10,000)⁵⁹ and at European Parliamentary and PCC elections (£5,000)⁶⁰. Although deposits will be returned if the candidate receives a certain percentage of the votes (normally 5%), not all prospective candidates will be able to find such a sum in the first place or will be able to take the risk of it not being returned. In our view it does not seem reasonable to have a barrier to standing for election that depends on someone's financial means. We do not think that the ability to pay a specified fee is a relevant or appropriate criterion for determining access to the ballot paper⁶¹.

2.97 As with the costs required to bring a challenge to an election, these are not entirely 'hidden' as they are set out in the legislation. However, we mention them here as we consider that they are unnecessary and inappropriate costs that are imposed by an outdated law. We also draw attention to the costs borne by candidates and parties in having to work out what level of deposit is required as this differs for almost every type of election.

2.98 The requirement to collect the signatures of 'subscribers' to a candidate's nomination can also place a heavy burden on someone who wishes to stand for election. Someone who wants to stand for election to the office of Mayor of London must have their nomination paper subscribed by 330 electors, at least 10 from each London Borough and at least 10 from City of London⁶². At a PCC election 100 signatures must be gathered⁶³. Requirements for large numbers of subscribers make standing for election a difficult and costly process and we have recommended that the number of subscribers should be reviewed for each election to ensure it is proportionate to the post for which the candidate is standing⁶⁴. Although the requirement to obtain subscribers is included in legislation, many outside the electoral community may not appreciate the variety of different requirements, which adds cost and complexity to the process.

Determining eligibility to stand for election

2.99 Someone intending to stand for election must first ensure that they are not disqualified from doing so and, in the case of local elections, are qualified to do so. The law governing eligibility to become a candidate is particularly complex and is in need of both simplification and modernisation.

⁵⁹ Rule 9(1), London Mayoral Elections Rules (Schedule 3, Greater London Authority Elections Rules 2007).

⁶⁰ Rule 10(1), European Parliamentary Elections Rules in Great Britain (Schedule 1, European Parliamentary Elections Regulations 2004) and rule 8(1), European Parliamentary Elections Rules in Northern Ireland (Schedule 1, European Parliamentary Elections (Northern Ireland) Regulations 2004). Rule 9(1), Police and Crime Commissioner (PCC) Elections Rules (Schedule 3, Police and Crime Commissioner Elections Order 2012).

⁶¹ We made this recommendation in our *Standing for Election in the United Kingdom* report.

⁶² Rule 7(1), London Mayoral Elections Rules.

⁶³ Rule 7(1), PCC Elections Rules.

⁶⁴ This is recommended in our *Standing for Election* report.

2.100 For example, a candidate must meet at least one qualification for being a candidate at a local election⁶⁵. The interpretation of these qualifications is sometimes not straightforward and in some cases a candidate may need to incur costs in ensuring that they meet at least one, for example by seeking legal advice. Also, there are a range of disqualifications that a candidate must ensure do not apply to them. For example, someone is disqualified from election as a local councillor if they hold paid office or employment at the council⁶⁶. There are now a variety of different types of employment relationship with differing degrees of connection to the council and it is sometimes challenging to establish with confidence whether the person is disqualified. A candidate that encounters such difficulties may need to obtain their own legal advice to make sure that they are eligible to stand for election. It is not only the prospective candidate that must incur costs in trying to establish their eligibility; the Returning Officer and the Electoral Commission are frequently asked to assist. Simplifying and modernising the law in this area would reduce such costs and make standing for election a more accessible and transparent process⁶⁷.

2.101 At all elections, it is a difficult and time-consuming process for a potential candidate to ascertain whether they are disqualified partly because the law is fragmented. For example, at UK parliamentary elections the disqualifications are found in multiple places including:

- Representation of the People Act 1981
- Representation of the People Act 1983
- Electoral Administration Act 2006
- House of Common Disqualification Act 1975
- House of Lords Act 1999⁶⁸
- Insolvency Act 1986
- British Nationality Act 1981
- Interpretation Act 1978
- Act of Settlement (1700)⁶⁹

⁶⁵ Section 79, Local Government Act 1972.

⁶⁶ Section 80(1)(a), Local Government Act 1972.

⁶⁷ This is recommended in our *Standing for Election* report.

⁶⁸ In addition *Re Parliamentary Election for Bristol South East* [1964] 2QB 257 should be considered.

⁶⁹ Section 3 states that no person born out of the Kingdoms of England, Scotland or Ireland or the Dominions thereunto belonging shall be capable of being a Member of either House of Parliament.

- European law⁷⁰.

2.102 If possible, we would support bringing all ‘core’ disqualifications, which are those that could apply to all elections in common, together in one place to make it easier for candidates to work out whether they are eligible to stand⁷¹.

2.103 Another cost to those wishing to take part in elections as candidates is that they must resign any disqualifying office or employment before they are nominated as a candidate; this is the case even though they may have no guarantee that they will be able to regain that position if they are not elected. This could be a considerable sacrifice and for many is likely to deter them from standing for election. Although there may be some positions that are incompatible with standing for election, there will be some positions where the purpose behind the disqualification would still be served if a person was allowed to be able to stand for election and was only required to resign their position if they were elected, as is the case in respect of the disqualification relating to holding a paid office or employment at the council in Scotland⁷². We have recommended that the law is changed to make this distinction⁷³.

Conclusion

2.104 This report has highlighted some of the ‘hidden costs’ of electoral law. These are costs that are not well-known outside the electoral community and which seem capable of either being reduced or completely avoided following the electoral law reform currently being considered by the three UK Law Commissions.

2.105 We have concentrated on four areas of costs: costs involved in making electoral legislation, administering elections, being involved in legal processes arising from elections and standing for elections as a candidate. In all of these areas the report shows that there are significant financial and non-financial costs caused by the current state of the UK’s electoral law. The Law Commissions’ ongoing work to reform electoral law will help to reduce these costs and the resulting risk of serious error in the electoral process, and will also help to improve the enforcement of electoral malpractice.

⁷⁰ The Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom (3), as amended by Article 1 of Council Decision 2002/772/EC, Euratom.

⁷¹ This is recommended in our *Standing for Election* report.

⁷² Section 31A, Local Government (Scotland) Act 1973.

⁷³ *Standing for Election* report.

Appendix A: IER legislation

IER-related Primary legislation

Electoral Registration and Administration Act 2013

IER-related Secondary legislation

1. The Electoral Registration Data Schemes Order 2012
2. The Electoral Registration Data Schemes (No. 2) Order 2012
3. The Representation of the People (England and Wales) (Description of Electoral Registers and Amendment) Regulations 2013
4. The Representation of the People (Scotland) (Description of Electoral Registers and Amendment) Regulations 2013
5. The Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2013
6. The Electoral Registration (Postponement of 2013 Annual Canvass) Order 2013
7. The Representation of the People (Appointment of Proxies) Regulations 2013
8. The Electoral Registration (Disclosure of Electoral Registers) Regulations 2013
9. The Electoral Registration and Administration Act 2013 (Transitional Provisions) (Amendment) Order 2014
10. The Representation of the People (Supply of Information) Regulations 2014
11. The Representation of the People (England and Wales) (Amendment) Regulations 2014
12. The Representation of the People (Scotland) (Amendment) Regulations 2014

Appendix B: UK electoral events

Elections

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.

Referendums

1. National referendums held under the Political Parties, Elections and Referendums Act 2000 or alternative primary legislation such as the Scottish Independence Referendum Act 2014.
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.

Appendix C: List of UK electoral legislation⁷⁴

Primary legislation

1. Act of Settlement 1700
2. Acts of Union 1707
3. Sheriffs Act 1887
4. The Electoral Law Act (Northern Ireland) 1962
5. Local Government Act 1972
6. Local Government (Scotland) Act 1973
7. House of Commons Disqualification Act 1975
8. Recess Elections Act 1975
9. Act concerning the election of members of the European Parliament by direct universal suffrage annexed to Decision 76/787/ECSC of the Council of the European Communities 20/09/1976
10. European Parliamentary Elections Act 1978
11. Representation of the People Act 1981
12. Representation of the People Act 1983
13. Representation of the People Act 1985
14. Parliamentary Constituencies Act 1986
15. Local Government and Housing Act 1989
16. Representation of the People Act 1989
17. Broadcasting Act 1990
18. Crofters (Scotland) Act 1993

⁷⁴ This is not a comprehensive list of every Act and Statutory Instrument with relevance to elections and referendums. It is meant only to illustrate the large volume of law that must be consulted by those involved in elections. A comprehensive list would be much longer.

19. Scotland Act 1998
20. House of Lords Act 1999
21. Greater London Authority Act 1999
22. National Parks (Scotland) Act 2000
23. Representation of the People Act 2000
24. Political Parties, Elections and Referendums Act 2000
25. Election Publications Act 2001
26. House of Commons (Removal of Clergy Disqualification) Act 2001
27. Decision of the Council of the European Communities of 2 June and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 2002/772/EC, Euratom
28. European Parliamentary Elections Act 2002
29. Scottish Local Government (Elections) Act 2002
30. European Parliament (Representation) Act 2003
31. European Parliamentary and Local Elections (Pilots) Act 2004
32. Local Governance (Scotland) Act 2004
33. Scottish Parliament (Constituencies) Act 2004
34. Electoral Administration Act 2006
35. Government of Wales Act 2006
36. Local Electoral Administration and Registration Services (Scotland) Act 2006
37. The Northern Ireland (Miscellaneous Provisions) Act 2006
38. Health Boards (Membership and Elections) (Scotland) Act 2009
39. Local Democracy, Economic Development and Construction Act 2009
40. Political Parties and Elections Act 2009
41. Scottish Local Government (Elections) Act 2009

42. Constitutional Reform and Governance Act 2010
43. Crofting Reform (Scotland) Act 2010
44. Localism Act 2011
45. European Union Act 2011
46. Fixed-term Parliaments Act 2011
47. Local Electoral Administration (Scotland) Act 2011
48. Parliamentary Voting System and Constituencies Act 2011
49. Scottish Parliamentary Commissions and Commissioners etc. Act 2010
50. The Police Reform and Social Responsibility Act 2011
51. Electoral Registration and Administration Act 2013
52. Scottish Independence Referendum Act 2013
53. Scottish Independence Referendum (Franchise) Act 2013
54. House of Lords Reform Act 2014
55. Recall of MPs Act 2015

Secondary legislation

56. Election Petition Rules 1960
57. European Parliamentary Election Petition Rules 1979
58. Parliamentary Writs Order 1983
59. Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984
60. Representation of the People (Scotland) Regulations 1986
61. Servants of the Crown (Parliamentary, European Parliamentary and Northern Ireland Assembly Candidature) Order 1987
62. Local Government Officers (Political Restrictions) Regulations 1990
63. Returning Officers' Accounts (Parliamentary Elections) (England and Wales) Regulations 1991

64. European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994
65. Parliamentary Constituencies (Wales) Order 1995
66. Returning Officers (Parliamentary Constituencies) (England) Order 1995
67. Returning Officers (Parliamentary Constituencies) (Wales) Order 1995
68. Civil Procedure Rules 1998
69. Returning Officers' and Local Returning Officers' Accounts (European Parliamentary Elections) (England and Wales) Regulations 1999
70. Servants of the Crown (Parliamentary, European Parliamentary, National Assembly for Wales, New Northern Ireland Assembly and Scottish Parliament Candidature) Order 1999
71. Registration of Political Parties (Prohibited Words and Expressions) Order 2001
72. Registration of Political Parties (Fees) Order 2001
73. Holders of Hereditary Peerages (Overseas Electors) (Transitional Provisions) Order 2001
74. European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001
75. Representation of the People (England and Wales) Regulations 2001
76. Representation of the People (England and Wales) (Amendment) Regulations 2002 and 2006
77. Representation of the People (England and Wales) (Amendment) (No 2) 2006
78. Representation of the People (Scotland) Regulations 2001
79. Representation of the People (Scotland) (Amendment) Regulations 2002, 2006, 2007 and 2008
80. Loch Lomond and The Trossachs National Park Elections (Scotland) Order 2002
81. Cairngorms National Park Elections (Scotland) Order 2003
82. European Parliamentary Elections (Registration of Citizens of Accession States) Regulations 2003

83. Greater London Authority Elections (Election Addresses) Order 2003
84. European Parliamentary Elections Regulations 2004
85. Police (Scotland) Regulations 2004
86. European Parliamentary Elections (Amendment) Regulations 2009
87. European Parliamentary Elections (Local Returning Officers' Charges) (Great Britain and Gibraltar) Order 2004
88. Representation of the People (Combination of Polls) (England and Wales) 2004
89. Parliamentary Constituencies (Scotland) Order 2005
90. Registration of Political Parties (Prohibited Words and Expressions) (Amendment) Order 2005
91. Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 2005
92. Parliamentary Elections (Returning Officers' Charges) Order 2005
93. Representation of the People (Form of Canvass) (England and Wales) Regulations 2006
94. Electoral Administration Act 2006 (Commencement No 1 and Transitional Provision) Order 2006
95. Absent Voting (Transitional Provisions) (England and Wales) Regulations 2006
96. Local Elections (Principal Areas) Rules 2006
97. Local Elections (Parishes and Communities) (England and Wales) Rules 2006
98. Local Elections (Principal Areas and Parishes and Communities) (Amendment) Rules 2006
99. Electoral Administration Act 2006 (Commencement No 2, Transitional and Savings Provision) Order 2006
100. Electoral Administration Act 2006 (Commencement No 3) Order 2007
101. Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006

102. Representation of the People (Form of Canvass) (Scotland) Regulations 2006
103. Review of Polling Districts and Polling Places (Parliamentary Elections) Regulations 2006
104. Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2006 and 2007
105. Town and Country Planning (Control of Advertisements) (England) Regulations 2007
106. Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007
107. Parliamentary Constituencies (England) Order 2007
108. Electoral Administration Act 2006 (Commencement No 4 and Transitional Provision) Order 2007
109. National Assembly for Wales (Representation of the People) Order 2007
110. Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007
111. The Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007
112. Returning Officers (Parliamentary Constituencies) (England) Order 2007
113. Electoral Administration Act 2006 (Commencement No 5) Order 2007
114. Greater London Authority Elections Rules 2007
115. Electoral Administration Act 2006 (Commencement No 6) Order 2008
116. Electoral Administration Act 2006 (Commencement No 7) Order 2008
117. European Parliamentary Elections (Returning Officers) Order 2008
118. The European Parliament (Number of MEPs and Distribution between Electoral Regions (United Kingdom and Gibraltar) Order 2008

119. The Local Elections (Ordinary day of Elections in 2009) Order 2008
120. European Parliamentary Elections (Appointed Day of Poll) Regulations 2008
121. Local Authorities (Elected Mayors) (England) Regulations 2008
122. Absent Voting at Scottish Local Government Elections (Provision of Personal Identifiers) Regulations 2009
123. Electoral Administration Act 2006 (Commencement No 8 and Transitional Provision) Order 2009
124. Electoral Administration Act 2006 (Commencement No.8 and Transitional Provision) Order 2009
125. Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2009
126. European Parliament (Disqualification)(United Kingdom and Gibraltar) Order 2009
127. European Parliamentary Elections (Amendment) Regulations 2009
128. European Parliamentary Elections (Amendment) (No.2) Regulations 2009
129. European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009
130. European Parliamentary Elections (Local Returning Officers' Charges) (Scotland) Order 2009
131. European Parliamentary Elections (Local Returning Officers' Charges) (England, Wales and Gibraltar) Order 2009
132. European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2009
133. European Parliamentary Elections (Returning Officers' Charges) (Great Britain and Gibraltar) Order 2009
134. European Parliamentary Elections (Returning Officer's Charges) (Northern Ireland) Order 2009
135. European Parliamentary Elections (Welsh Forms) Order 2009

136. European Parliamentary Election Petition (Amendment) Rules 2009
137. Health Board Elections (Scotland) Regulations 2009
138. Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 5 and Transitional Provision) Order 2009
139. Northern Ireland Assembly (Elections) (Amendment) Order 2009
140. Parliamentary Constituencies (England) (Amendment) Order 2009
141. Political Parties and Elections Act 2009 (Commencement No.1 and Transitional Provisions) Order 2009
142. Political Parties and Elections Act 2009 (Commencement No.2 and Transitional Provisions) Order 2009
143. Postponement of Local Elections (Northern Ireland) Order 2009
144. Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Order 2009
145. Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009
146. Representation of the People (Amendment) Regulations 2009
147. Scottish Local Government Elections Amendment Order 2009
148. Cairngorms National Park Elections (Scotland) Amendment Order 2010
149. Electoral Administration Act 2006 (Commencement No. 1 and Saving Provision) (Scotland) Order 2010
150. Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010
151. Electoral Law (Polling Station Scheme) (Northern Ireland) Regulations 2010
152. European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2010
153. Health Board Elections (Scotland) Amendment Regulations 2010

154. Local Elections (Northern Ireland) Order 2010
155. National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010
156. National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses Etc.) Order 2010
157. National Assembly for Wales (Legislative Competence) (Local Government) Order 2010
158. National Assembly for Wales (Representation of the People) (Amendment) Order 2010
159. Northern Ireland Assembly (Elections) (Amendment) Order 2010
160. Northern Ireland Assembly (Minimum Period) Order 2010
161. Parliamentary Elections (Returning Officer's Charges) (Northern Ireland) Order 2010
162. Parliamentary Elections (Returning Officers' Charges) Order 2010
163. Parliamentary Elections (Welsh Forms) (Amendment) Order 2010
164. Political Parties and Elections Act 2009 (Commencement No. 3 and Saving Provision) Order 2010
165. Political Parties and Elections Act 2009 (Commencement No. 4) Order 2010
166. Political Parties and Elections Act 2009 (Commencement No. 5 and Saving Provisions) Order 2010
167. Political Parties, Elections and Referendums (Civil Sanctions) Order 2010
168. Representation of the People (Northern Ireland) (Amendment) Regulations 2010
169. Representation of the People (Scotland) (Amendment) Regulations 2010
170. Scottish Local Government (Elections) Act 2009 (Commencement) Order 2010

171. Scottish Parliament (Constituencies and Regions) Order 2010
172. Scottish Parliament (Disqualification) Order 2010
173. Scottish Parliament (Elections etc.) Order 2010
174. Service Voters' Registration Period Order 2010
175. Crofting Commission (Elections) (Scotland) Regulations 2011
176. Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2011
177. Local Elections (Parishes and Communities) (England and Wales) (Amendment) Rules 2011
178. Local Elections (Principal Areas) (England and Wales) (Amendment) Rules 2011
179. Local Electoral Administration (Scotland) Act 2011 (Commencement) Order 2011
180. National Assembly for Wales (Returning Officers' Accounts) Regulations 2011
181. National Assembly for Wales (Returning Officers' Charges) Order 2011
182. Northern Ireland Assembly Elections (Returning Officer's Charges) Order 2011
183. Parliamentary Voting System and Constituencies Act 2011 (Repeal of Alternative Vote Provisions) Order 2011
184. Referendum on the Voting System (Counting Officers' and Regional Counting Officers' Charges) Order 2011
185. Referendum on the Voting System (Welsh Forms) Order 2011
186. Representation of the People (Electoral Registration Data Schemes) Regulations 2011
187. Scottish Local Government Elections Order 2011
188. Scottish Parliament (Regional Returning Officers) Order 2011
189. Scottish Parliament (Returning Officers' Charges) Order 2011

190. Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012
191. Representation of the People (Variation of Limits of Candidates' Local Government Election Expenses) (Scotland) Order 2012
192. Scottish Local Government Elections (Amendment) Order 2012
193. Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012
194. Local Authorities (Conduct of Referendums) (England) Regulations 2012
195. Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2012
196. Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012
197. Local Elections (Declaration of Acceptance of Office) Order 2012
198. Greater London Authority Elections (Amendment) Rules 2012
199. Local Authorities (Conduct of Referendums) (England) Regulations 2012
200. Neighbourhood Planning (Referendums) Regulations 2012
201. Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012
202. Local Authorities (Referendums Relating to Council Tax Increases) (England) Regulations 2012
203. Police and Crime Commissioner Elections Order 2012
204. Police and Crime Commissioner Elections (Designation of Local Authorities) Order 2012
205. Police and Crime Commissioner Elections (Designation of Local Authorities) (No 2) Order 2012
206. Police and Crime Commissioner Elections (Designation of Police Area returning Officers) Order 2012
207. Police and Crime Commissioner Elections (Designation of Police Area Returning Officers) (No 2) Order 2012

208. Police and Crime Commissioner Elections (Returning Officer Accounts) Regulations 2012
209. Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012
210. Electoral Registration and Administration Act 2013 (Transitional Provisions) Order 2013
211. Representation of the People (Appointment of Proxies) Regulations 2013
212. Representation of the People (England and Wales) (Amendment and Description of Electoral Registers) Regulations 2013
213. Representation of the People (England and Wales) (Amendment and Description of Electoral Registers) Regulations 2013
214. Representation of the People (Scotland) (Amendment and Description of Electoral Registers) Regulations 2013
215. Representation of the People (Scotland) (Amendment and Description of Electoral Registers) Regulations 2013
216. European Parliamentary Elections (Welsh Forms) Order 2014
217. Representation of the People (England and Wales) (Amendment) Regulations 2014
218. Representation of the People (Scotland) (Amendment) Regulations 2014
219. Local Elections (Principal Areas) (England and Wales) (Amendments) Rules 2014
220. Local Elections (Parishes and Communities) (England and Wales) (Amendment) Rules 2014
221. Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2014
222. Local Elections (Principal Areas) (Welsh Forms) (Amendment) Order 2014
223. Local Elections (Communities) (Welsh Forms) (Amendment) Order 2014
224. Electoral Registration Pilot Scheme Order 2014

225. Representation of the People (Scotland) (Amendment No. 2) Regulations 2014
226. Representation of the People (England and Wales) (Amendment No. 2) Regulations 2014
227. Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 2014