

The
Electoral
Commission

Electoral legislation, principles
and practice: a comparative
analysis

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Executive summary

This report sets out to identify the structural approach to electoral law, principles and practice in some sample countries that can be taken into account and compared with the approach in the UK. It puts these approaches in the context of recognised international elections principles and recommendations. These international guidelines form the basis of this report; they set out the key features that the international community recognises to be fundamental to elections.

The report shows that in general the countries under examination appear to achieve greater compliance with international guidelines than the UK. Nevertheless, in some respects the approaches in the selected countries do not mirror the guidelines. This does not mean that achieving compliance with the guidelines in those areas is impossible; a review of the UK's electoral law should aim to achieve compliance wherever possible, regardless of the difficulties other countries may have experienced in doing so. Achieving broad conformity with the guidelines is not to be pursued for its own sake, rather an electoral structure that respects international principles will be in the interests of all those who take part in elections, especially voters.

The guidelines are set by independent, expert and respected international organisations, principally the International Institute for Democracy and Electoral Assistance¹ and the Venice Commission². These guidelines do not seek to impose one particular model or system on all countries; rather they state basic minimum features of good elections and electoral law.

In summary, international guidelines state that:

1. To achieve the benefits of clarity, certainty and accessibility the majority of electoral matters should be rendered in written law.

- All the countries studied in this report render electoral matters in writing rather than leaving them to custom and practice.
- The UK system of managing electoral process does not take such a straightforward approach, with some elements relying on a system based on trust that has evolved over time through custom and practice, rather than being codified in law.
- International observer reporting of UK elections has noted with concern this difference of approach, whilst acknowledging that it has by and large worked in the UK³.

2. An effective electoral law framework should be structured hierarchically: constitution (where applicable), primary legislation, secondary legislation, codes / guidance.

- This structure is followed in all the countries under examination.
- Most of the countries or federal states studied prefer to set out the majority of electoral law, including the rules for conducting elections, in primary rather than secondary legislation. Some exceptions include the Australian states of Victoria and Tasmania.
- Although the UK does not have a constitution or constitutional enactment, the UK's system is hierarchical below that level. However, there are inconsistencies in approach and no obvious rationale why for some elections certain matters are in primary legislation and for other elections the same matters are in secondary legislation or codes/guidance. The Law Commission has noted that, 'a result of the development of the conventional model for electoral administration is that no consistent principle appears to govern the place of electoral law provisions within the legislative hierarchy (primary Acts and secondary legislation)'⁴.
- Deciding where provisions should be placed in the hierarchy is not easy. For example, one argument states that the majority of electoral law should be placed in primary legislation to ensure full parliamentary scrutiny, which will promote public confidence in elections. Another argument states that prescribing too much of the administrative details of elections in primary law creates an inflexible electoral law that cannot respond to emergent issues, which may need to be resolved swiftly before an election to ensure that no voters are disenfranchised. This latter argument requires electoral law to be found in legislation made by the executive (secondary legislation such as regulations and orders) or by instructions / directions (possibly set out in manuals to various elections officials) issued by a central electoral body that is independent of the executive. This report notes that the lack of flexibility in the UK's electoral law may merit further consideration by the Law Commission in its review of the UK's electoral law.
- A thorough review of how best to organise the electoral law balance in the UK, drawing on international principles and practice in other countries, is necessary to ensure that the UK's electoral law is accessible to voters, candidates and election officials; promotes public confidence in elections and allows for sufficient flexibility to respond to emergent issues.

3. A unified, consolidated electoral law is preferable to a fragmented law with separate legislative vehicles for different electoral events⁵ and dealing with different matters.

- The Electoral Commission's research has found that, in most of the selected states, each electoral event is normally provided for by a separate enactment⁶ (Netherlands is a notable exception and appears to have adopted a structure that most accords with the international guidelines).
- The UK's approach is similar to that of the majority of the selected states in that each election is provided for by a separate enactment. However, the UK now has a particularly large number of different electoral events and consequently appears to have more electoral enactments than the sample countries. For this reason, in comparison with the sample countries, the UK's electoral law seems highly fragmented and therefore less accessible to those who take part in elections.
- All of the countries studied have carried out major electoral reform and consolidation since 1984⁷.
- In comparison, the UK's last consolidation exercise took place in 1983. In respect of the UK, the Law Commission has noted that:

Once new elections, voting systems, referendums, and potential combinations are factored in, one can see that the electoral landscape has greatly expanded since 1983. The modern concern is that the law has grown complex and fragmented – that its rules are complicated and spread over many disparate sources. This is a result of the combination of, first, an election-specific approach to legislating for new elections and, second, doing so through detailed prescriptive rules⁸.
- Consolidation of the UK's electoral law is long overdue and urgently needed to achieve a more accessible law, which is essential to allow individuals and organisations to participate in an informed way in elections. Although the law is fragmented in most of the countries examined, albeit to a lesser extent than in the UK, the report suggests some possible case studies where consolidation has taken place in recent years that may merit further consideration in any reform of the UK's electoral law. Further research is required, which may look at other countries as well, to move towards recommending options for a new electoral structure in the UK that addresses both the need for a balance / hierarchy (see the previous international guideline) and the need for a simple, unified structure.

4. Reforms to electoral law should be undertaken with the goals of clarity and simplicity in mind.

- The main reason why the selected countries carried out consolidation and reform exercises appears to have been to reduce the complexity of the electoral law which had been caused by successive amendments to the existing legislation.
- Despite the fact that the sample countries have consolidated their electoral law since 1984, subsequent amendments to the consolidated legislation and new enactments have led to increasing complexity in the electoral law. This has made electoral law less accessible to voters.
- Many substantial changes have been made to the UK's electoral law since 1983 relating to, for example, postal voting, rolling registration, the creation of the Electoral Commission and new electoral events such as devolved elections and a variety of referendums. This has led to extensive amendment to the Representation of the People Act 1983, parts of which are now so complicated that they may challenge even electoral experts. It has also led to a proliferation of different electoral vehicles governing different electoral events and aspects of the electoral process.
- The complexity of the Representation of the People Act 1983, caused in large part by successive and on-going amendments, demonstrates a pressing need for reform. The experience of other countries shows that, as in the UK, the pace of legislative change means that a consolidated principal enactment can quickly become inaccessible to the general reader.

5. Election legislation should avoid conflicting provisions between laws governing national elections, sub-national (provincial or state), local elections and referendums⁹.

- As noted above, the sample countries, with the exception of the Netherlands, set out the rules governing electoral events in separate legislative vehicles, rather than adopting a single set of rules for all or some broad categories of electoral events (for example, elections held under a particular voting system). In some countries, however, general legislation has been passed applying to all referendums.
- Nevertheless, the need to achieve consistency wherever possible is acknowledged and, at least in some countries, rules for different electoral events are amended so far as possible to ensure that they are consistent.

- Central electoral bodies in the sample states (with the exception of Ireland, which does not have a central electoral body) help to secure consistency by issuing instructions / directions, carrying an oversight / monitoring role and reporting to the legislature on the administration of elections.
- The UK's electoral law contains no single set of rules either for all elections or all referendums. The increasing number of elections (including general elections, European parliamentary elections, devolved elections, various types of local elections and police and crime commissioner elections) and referendums (at national, devolved, regional and local levels) are conducted under different sets of rules that contain significant differences. Concern has been expressed by international observers about this feature of the UK's electoral law¹⁰.
- The UK's Electoral Commission does not have powers to issue instructions / directions¹¹. Rather it is enabled to encourage consistency through guidance¹² and monitoring of election officials' performance¹³ and publishing reports on the administration of electoral events¹⁴.
- Consideration should be given during any review of the UK's electoral law of to what extent consistency ought to be sought between the laws governing different electoral events, as well as how best to achieve consistency. This should include an assessment of the benefits and disbenefits of a single set of both election and referendum rules and other options for achieving greater consistency and simplicity.

6. The legal framework should require that central electoral bodies be established and operate in a manner that ensures the independent and impartial administration of elections¹⁵.

- Central electoral bodies in Australia, Canada¹⁶ and New Zealand administer the conduct of elections. As part of this, the Chief Electoral Officer of Canada, for example, issues detailed instructions to federal electoral officials in the form of manuals.
- The UK's central electoral body, the Electoral Commission, does not directly administer the conduct of elections. Instead the UK has a decentralised system of administration; elections are administered by Returning Officers, with some co-ordination and over-sight¹⁷.

Introduction

The Law Commission's review of electoral law

1. Following submissions by the Electoral Commission ('the Commission') and the Association of Electoral Administrators, the Law Commission of England and Wales announced in 2011 that it would be including a project on electoral law in its 11th programme of law reform.
2. This project is currently in its first phase, a scoping study. The Law Commission has published a consultation paper asking for views on the scope of the project¹⁸. The Law Commission will consider responses to the consultation and produce a report setting out the scope of the project by the end of 2012.
3. If the Law Commission decides to take the project forward, the second phase will consist of substantive law reform for which a consultation paper on the substance of the project would be issued in 2014. The third phase would involve drafting legislation, which would be published by February 2017.
4. In our original submission to the Law Commission, we maintained that electoral legislation 'needs modernisation and reform, with an eye to making the law simpler, more consistent, and more coherent'¹⁹.
5. We want the review to result in the development of legislation relating to the delivery and conduct of elections, and how to participate in them, that:
 - Is clearly drafted
 - Is set out in a clear structure using as few legislative vehicles as possible
 - Is consistent for all types of electoral events across the United Kingdom (save where differences are genuinely justified)
 - Contains an appropriate balance between certainty and flexibility in terms of what is prescribed in legislation (both primary and secondary) and what is contained in Codes of Practice
 - Provides for a modern and workable structure for the administration of elections.
6. The purpose of this report is to set out information about the structure and some aspects of the content of electoral law in selected countries other than the UK*. The report does not seek to propose alternative approaches or recommend reforms; rather it focuses on how current systems are structured in

* The Electoral Commission is grateful for the contribution by Dr Caroline Morris, Queen Mary University of London (School of Law) in the preparation of this report.

some comparator countries and makes comparisons with the structure of the UK's electoral law. It is hoped that this will provide information that will be useful when considering options for the reform of electoral law in the UK as part of the Law Commission's review. Particular attention has been paid to legislative systems that contain central electoral bodies²⁰.

7. This report considers, in respect of the chosen countries, the extent to which those countries comply with best practice as recommended by widely respected international principles²¹. The report sets out an outline of the content of the relevant international principle, the approach adopted in the sample countries and a discussion of the extent to which (if at all) those national approaches comply with the principle. The discussion also includes a comparison with the UK position, to place the analysis in the context of the Law Commission's on-going review of the UK's electoral law.

The selected countries

8. The countries examined in this report are: Australia, New Zealand, Canada, Ireland and the Netherlands. All are long-established democracies. These nations share some of the same features as the UK's constitutional and electoral framework and therefore will hopefully be useful comparators. For example, the legislature of the Australian Commonwealth and those of the Australian states and territories²² follow the Westminster model. Each has a legislative assembly (lower house) and a legislative council (upper house). Municipal elections are also held as the lower tier of local government. New Zealand, however, has a unicameral parliament²³. The Netherlands has a similar administrative structure to the UK, with regional governments and legislatures that share some common features with the devolved government and legislatures in the UK.

9. Notwithstanding these similarities, these countries will provide a range of constitutional models for analysis. New Zealand is a unitary state with an uncodified constitution and a common law tradition. Ireland, which is a unitary state with a supreme law constitution and a common law tradition, is closest to New Zealand, while the Netherlands, a unitary state with a supreme law constitution and a common law tradition, offers a different model. Australia and Canada lie somewhere in the middle, as federal states with supreme law constitutions and common law or mixed civil and common law traditions.

10. As outlined in this report, there are differences in electoral administration and law between the sample countries and the UK. For example, elections in Australia, New Zealand and Canada are administered centrally by a central electoral body, whereas in the UK (which is more similar in this respect to Ireland and the Netherlands) elections are delivered locally by Returning Officers appointed by local authorities. An additional difference is there is no central electoral body in Ireland.

11. Appendix A sets out brief introductions to the electoral law and the central electoral body (if any) in each country. Specific information on the powers of central electoral bodies to design forms and notices; issue codes of practices, manuals or instructions; and set performance standards is included below in the section below on the powers of central electoral bodies.

The international law and guidance

12. In compiling this report, account has been taken of international law and guidance. The guidance issued by the International Institute for Democracy and Electoral Assistance ('the IDEA') *International Electoral Standards* and the Venice Commission's *Code of Good Practice in Electoral Matters* and *Report on Electoral Law and Electoral Administration in Europe: Synthesis study on recurrent challenges and problematic issues* were consulted for generally applicable principles of electoral law and practice. Reports by international observers, especially those prepared by the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (referred to in this report as 'the OSCE / ODIHR'), have also been taken into account.

13. The IDEA is an intergovernmental organisation that supports sustainable democracy worldwide. The IDEA's mission is to support sustainable democratic change by providing comparative knowledge, assisting in democratic reform, and influencing policies and politics. The IDEA produces comparative knowledge in its key areas of expertise, which include electoral processes and political participation and representation. The IDEA is an impartial organisation, working worldwide to support democracy and is a permanent observer to the United Nations²⁴.

14. The European Commission for Democracy through Law, more commonly known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including the functioning of democratic institutions and fundamental rights, electoral law and constitutional justice. Its members are independent experts in these areas²⁵.

15. The OSCE / ODIHR is the specialist institution of the OSCE dealing with elections. It is Europe's leading agency in the field of election observation. Observations aim to assess electoral processes in accordance with OSCE election-related commitments²⁶ and to offer recommendations, where necessary, to bring electoral processes into line with those commitments²⁷.

16. Additionally, electoral law should enable each nation to deliver the goal of free and fair elections in accordance with the stipulations of international law²⁸. It should be borne in mind that to some degree, the ability to meet this goal or the way in which it is met depends on the particular social, cultural and historical matrix existing in each state, and the way in which electoral legislation is interpreted and enforced therein. That said, some agreed key elements of 'free and fair' elections include²⁹:

- (i) equality of the vote (direct universal suffrage and a vote of equal value),
- (ii) equality of access to/participation in the electoral process, through voting and/or in other ways, and
- (iii) the overall legitimacy of the electoral process and the result (including the secrecy of the ballot, the reasonable frequency of elections, and the ability to challenge the result).

17. Underpinning the international guidelines and reports is the view that truly democratic elections can only be held if certain basic conditions of a democratic state, based on the rule of law, are met such as fundamental rights, stability of electoral law and effective procedural guarantees³⁰. Whilst this report is concerned principally with the structural aspects of electoral law, a legal framework that is clear, unified and consistent would all help to meet the requirements of international law – for example by promoting equality of access and participation in the process.

The international principles that relate to the structure of electoral law

- 1. To achieve the benefits of clarity, certainty and accessibility, the majority of electoral matters should be rendered in written law.

International guidance

18. It is important to provide for elections through written law rather than through policy or custom: as the IDEA notes: ‘written law provides the benefits of certainty, visibility and transparency. It is more readily subject to judicial interpretation and review, and is more useful to interested parties, including electors’³¹.

National practice and discussion

19. In all the countries examined, electoral matters are largely set out in written law.

20. However, some elements of the UK’s system are based on trust that has evolved over time through custom and practice, rather than being codified in law.

21. International observer reporting of UK elections has noted with concern this difference of approach, whilst acknowledging that it has by and large

worked in the UK. For example, the OSCE / ODIHR in its report on the 2010 parliamentary election in the UK found that, 'many aspects of the administration of elections are under-regulated in the legislation'³² and that there is a 'need for further regulation and inclusion of additional safeguards to prevent possible malpractices and to preserve the integrity of the elections'³³. The OSCE / ODIHR added that:

As some legal provisions are rather generic and do not contain detailed requirements on the organization and conduct of elections, many aspects of the administration of elections are left to the discretion of ROs. Some OSCE/ODIHR EAM interlocutors expressed concern that this results in significant variations in the administration of elections and an inconsistent application of procedures across the UK³⁴.

22. Giving examples of what is left to the discretion of Returning Officers, the OSCE / ODIHR state that, 'returning officers make decisions *inter alia* concerning the number and size of polling stations, the number of ballot boxes, staff and ballots required without having to follow any standard'³⁵.

2. An effective electoral law framework should be structured hierarchically: constitution (where applicable), primary legislation, secondary legislation, codes / guidance.

International guidance

23. The IDEA envisages that the electoral framework will have as its highest level a constitution or constitution enactment³⁶ dealing with electoral rights. The IDEA considers that this should address matters as general principles rather than in detail³⁷. The Venice Commission recommend enshrining basic electoral principles in a constitution or constitutional enactment as one means to preserve the stability of electoral law³⁸. The Venice Commission state that

One way of avoiding manipulation (of the electoral system) is to define in the Constitution or in a text higher in status than ordinary law the elements that are most exposed (the electoral system itself, the membership of electoral commissions, constituencies or rules on drawing constituency boundaries)³⁹.

24. Below the constitution, the IDEA states that there will be the following hierarchy:

- Electoral law that is passed by parliament (primary legislation), In the UK, this is an Act of the UK Parliament, Act of the Scottish Parliament or Act of the National Assembly for Wales⁴⁰,

- Other non-electoral primary legislation that deals with aspects of elections (an example of this would be broadcasting legislation),
- Electoral law that is made by governments (secondary legislation). In the UK, these are normally regulations and orders, some of which contain rules for the conduct of an election,
- Instructions or directions issued by the central electoral body,
- Codes of conduct for political parties, election officials and election observers.

25. To be effective, the legislative framework for elections requires that all matters pertaining to elections are provided for – this includes not only the conduct of the actual election, but also related matters such as the use of media and broadcasting, party registration and financing, campaigning rules, rules relating to candidature, and electoral offences⁴¹.

26. These need not all be addressed by primary legislation or indeed in the same legislative document; it may be more appropriate for more detailed and technical matters to be the subject of secondary legislation, or for guidance to be given in the form of a flexible and adaptable code rather than through a statute. Similarly, matters which are mostly part of another legal regime, such as nationality law or criminal law, may be better dealt within that field of law.

27. The IDEA has identified a number of electoral matters that should be addressed either by the constitution or primary legislation:

- qualification to register as a voter, together with any restrictions on such right, if any;
- qualification for and restrictions on candidacy;
- rules governing seat allocation;
- qualification on terms of office;
- methods of filling casual vacancies;
- removal of mandates (recall elections);
- the secrecy of the vote; and
- election management⁴².

28. The IDEA adds that administrative and procedural matters such as voting procedures should be in rules and regulations in order to allow for flexibility⁴³. The IDEA also state that some rules should be issued by subsidiary bodies,

including through instructions of central electoral bodies⁴⁴.

29. The next level in the IDEA's hierarchy is instructions or directions. The IDEA state that, 'there are limits to the number of administrative matters that can be included in the enacted law. Most election laws allow for the EMB to issue instructions to further clarify issues related to the election process'⁴⁵.

30. The IDEA note that a central electoral body 'does not act as a substitute legislator, but it must be able to respond to emergent needs and provide practical solutions by way of interpreting and supplementing electoral law and the regulations'⁴⁶. The IDEA recommend a number of safeguards that should be placed on a central electoral body's power to issue instructions; for example, 'electoral legislation should state and define clearly the EMB's residual powers (its "inherent powers") to issue instructions in emergency situations, including on election day, to meet any unforeseen contingency'⁴⁷.

31. This hierarchical approach is also endorsed by the Venice Commission which has said that once the most vital elements of elections have been protected by being placed in a constitution or higher law, then 'electoral law should normally have the rank of statute law. Rules on implementation, in particular those on technical questions and matters of detail, can nevertheless be in the form of regulations'⁴⁸.

32. IDEA has also set forth some general guiding principles to which a code of conduct for election administrators should conform:

- election administration must demonstrate respect for the law;
- election administration must be non-partisan and neutral;
- election administration must be transparent;
- election administration must be accurate, professional and competent;
- election administration must be designed to serve the voters⁴⁹.

National practice

Australia

33. In Australia⁵⁰, the constitution of each jurisdiction prescribes general parts of the electoral process, for example the make-up of the legislature and the timing of elections. Some jurisdictions also entrench various electoral principles in their constitutions, presumably with the intention to make it harder for parliaments to change these principles⁵¹. For instance, the New South Wales Constitution entrenches the method of voting for Legislative Council elections⁵².

34. The majority of electoral law is set out in primary legislation; at a federal level this is the Commonwealth Electoral Act 1918, which has been substantially amended over time, particularly in 1984.

35. The Commonwealth Electoral Act 1918 establishes the Australian Electoral Commission ('the AEC'), which conducts federal elections and referendums. The Act also provides that voting in federal elections is compulsory⁵³ and prescribes qualifications and disqualifications for enrolment and voting.

36. The Act sets out a range of specific requirements for the electoral process, including:

- a process for determining electoral boundaries;
- a process for determining the number of seats for each state and territory in the House of Representatives;
- voting systems and formality rules for the House of Representatives and the Senate;
- compulsory enrolment and the establishment, maintenance and use of electoral rolls;
- the registration of political parties and nomination of candidates for elections;
- the issuing of writs for elections and the close of polls;
- compulsory voting and polling arrangements, including protections for the secret ballot, and arrangements for pre-poll and postal voting;
- scrutiny of votes;
- a process for election results to be disputed in the High Court sitting as the Court of Disputed Returns;
- disclosure requirements for political expenditure and receipts including donations; and
- public funding of political parties and candidates.

37. The Act also includes technical detail such as prescribing the background colour of ballot papers⁵⁴, how to conduct the preliminary scrutiny of declaration votes⁵⁵ and the specification of various forms⁵⁶.

38. This level of prescription in primary legislation was to some extent achieved in 1984 when a large number of procedural details were moved from secondary legislation into primary legislation. The Australian Government's 2009

Electoral Reform Green Paper notes that:

The 1984 amendments consolidated the provisions of a number of other acts into the Electoral Act, and moved a large number of procedural details from subordinate legislation into primary legislation. As a consequence, the Electoral Act became much larger: in 1973 the final section number of the Electoral Act was 219 and the act was 100 pages long (including schedules); 46 in February 2009, the Electoral Act contained 482 sections and had more than 500 pages (including schedules)⁵⁷.

39. The prescriptive nature of federal electoral laws makes them difficult to amend and more susceptible to becoming outdated⁵⁸. For example, the Green Paper states that:

On enrolment processes, the (Commonwealth) Electoral Act (1918) contains a high degree of procedural detail, which means that the mechanisms for enrolment are not readily capable of being modified to reflect new realities or opportunities...

There may be scope for the enrolment provisions of the act to be rewritten so that important principles for enrolment are captured (for example, universal suffrage and roll integrity), but greater discretion is left to the AEC to determine the processes by which enrolment should be undertaken. This could enable technological opportunities to be harnessed without the need for legislative change. Principles-based approaches to electoral law have been taken in Victoria and Tasmania⁵⁹.

40. Australia's Joint Standing Committee on Electoral Matters recommended in 2009 that the Commonwealth Electoral Act 1918 should be amended 'to provide a flexible regime for the authorisation by the Australian Electoral Commission of approved forms, which will allow for a number of versions of an approved form; enable forms to be tailored to the needs of specific target groups; and facilitate online transactions'⁶⁰.

41. Despite the highly prescriptive nature of federal electoral legislation, some highly technical and detailed provisions have been left to secondary legislation. For example, the Electoral and Referendum Regulations 1940 provide for:

- Permitted authorities to receive the electoral roll
- ID evidence to support applications to register
- Prescribed form for nomination
- Prescribed form for ballot papers
- ID evidence required for voting

- E-assisted voting for sight impaired people
- Telephone assisted voting
- Enforcement of law in relation to compulsory voting.

42. The primary electoral legislation in most of the Australian states and territories is also highly prescriptive on a number of operational and procedural matters⁶¹. However, some jurisdictions have recently reviewed their electoral law in order to simplify its drafting and remove unnecessary prescription in primary legislation⁶².

43. Victoria's Electoral Act 2002, along with accompanying regulations, replaced the Constitution Act Amendment Act 1958 as Victoria's principal electoral legislation. Writing soon after the Electoral Act 2002 was passed, the Victorian Electoral Commission (VEC) explained that the Constitution Act Amendment Act 1958:

succeeded other acts of the same name, the first of which was enacted in 1890. In turn, the 1890 Act incorporated electoral provisions dating back to the 1850s. Until now, the Act has never been thoroughly revised, yet has been amended on numerous occasions. As a result, the Act was poorly organised, extremely prescriptive in some areas and lacking detail in others, and frequently obscure. The Act was also often out of step with current electoral practices and community expectations and failed to meet the needs of many users⁶³.

44. Following the 1999 State election, Victoria's Electoral Commissioner recommended that Victoria's electoral legislation should be reformed. The VEC conducted a 'comprehensive review', the results of which were incorporated into the bill that led to the Electoral Act 2002⁶⁴.

45. Victoria's Attorney General, introducing the second reading of the Electoral Bill on 21 March 2002 stated that:

The bill will retain all essential electoral principles, while leaving more detailed administrative procedures to regulations. The bill provides for the VEC to issue an election manual and directions regarding election procedures. The manual including any directions will be published and available to members of Parliament, registered political parties and prospective candidates. This will provide more flexibility and allow the VEC to improve the efficiency of election management, and at the same time ensure transparency and accountability in the election process⁶⁵.

46. Referring to one example of the greater flexibility provided for by the Bill, the Attorney General noted that 'Current detailed provisions on such matters as the packaging and storage of ballot material by the VEC are simplified in the bill,

giving more flexibility to the VEC to determine the necessary arrangements which will be prescribed in regulations or determined by the VEC's directions, as appropriate⁶⁶.

47. Victoria's Constitution Act 1975 sets out who is entitled to enrol as an elector, who is entitled to be elected to Parliament and the size and term of Parliament. This was retained following the passage of the Electoral Act 2002; Victoria's electoral legislation therefore accords to the hierarchy suggested by the IDEA (constitutional document, primary legislation, secondary legislation and directions issued by a central electoral body)⁶⁷.

48. Tasmania's electoral law was reformed in 2004 and has been described as presenting 'electoral principles in a simple and clear way which will assist with the understanding and administration of the Act'⁶⁸. The Tasmanian Electoral Act 2004 replaced the Electoral Act 1985. The Electoral Act 2004 was drafted to:

- utilise contemporary legislative drafting;
- adopt modern electoral practice; and
- remove detailed procedures and forms, to be approved or prescribed as appropriate⁶⁹.

49. The Electoral Act 2004 was therefore 'streamlined by removing many detailed procedures and forms, which will in future be approved by the new (Tasmanian Electoral) Commission' (TEC)⁷⁰. Many of the detailed procedures and forms required for the conduct of elections which are now approved by the TEC were previously included in the Electoral Act 1985 or prescribed in the Electoral Regulations 1985⁷¹.

50. For example, the Electoral Act 2004 only sets out the basic requirements relating to postal voting and provides that postal vote applications and postal vote declaration envelopes are to be approved by the TEC. The TEC also approves procedures for the conduct of the preliminary scrutiny and counting of postal vote declaration envelopes⁷².

51. Some provisions were left in the primary legislation but reorganised and simplified to make the law more accessible. For example, the TEC note that the Electoral Act 2004 combined 'House of Assembly and Legislative Council procedures into the same sections or divisions while preserving the necessary differences, thereby avoiding duplication and allowing easier reference'⁷³.

52. The changes to Tasmania's electoral law brought about by the Electoral Act 2004 are summarised in Appendix A of the Tasmanian Electoral Commission's 1st Annual Report 2005-2006⁷⁴.

53. At a federal level, the AEC in Australia may issue directions to electoral officials. The Election Commissioner (the Chief Executive of the AEC) has a

statutory power to give directions to AEC officers with respect to the performance of their functions, and the exercise of their powers, under the 1918 Act. There are also specific powers in the legislation for directions to be issued to officials. For example, election officials may be directed by the Electoral Commissioner at any time before the declaration of a result of a House of Representatives election to recount all or some of the ballot papers⁷⁵.

54. At a lower level still, the AEC produces guidance on its website to assist stakeholders such as candidates.

55. The conduct of elections in Australia is also influenced by non-electoral laws, guidelines and conventions such as:

- statutes such as the Commonwealth Broadcasting Services Act 1992;
- statutes governing the broader administrative environment in which elections take place (at the Commonwealth level, these include the Public Service Act 1999, the Financial Management and Accountability Act 1997, the Privacy Act 1988, the Administrative Appeals Tribunal Act 1975, and the Administrative Decisions (Judicial Review) Act 1977);
- the common law, both in general areas such as defamation but also in determining the cases associated with electoral law;
- legislation protecting human rights;
- caretaker conventions regarding the administration of government during election period;
- voluntary codes of practice, such as those relating to commercial broadcast advertising; and
- procedures developed by election administration bodies that instruct electoral employees⁷⁶.

New Zealand

56. In New Zealand, Part 3 of the Constitution Act 1986 establishes the House of Representatives, sets the maximum term of parliament and the maximum time before Parliament must meet following an election. Part 3 also establishes New Zealand's constitutional framework of the head of state, the executive, the legislature, and protects High Court judges from political interference⁷⁷.

57. The main electoral enactment in New Zealand is the Electoral Act 1993, which establishes the:

- electoral agencies,

- electoral system,
- election processes (including for disputing results),
- means of replacing MPs between elections,
- registration processes for political parties and logos,
- enrolment and electoral roll requirements, and
- the Māori Electoral Option ⁷⁸.

58. The Electoral Act 1993 is prescriptive; most key aspects of elections are prescribed in detail in primary legislation. Secondary legislation covers matters such as the supply of electoral rolls, the enrolment form and special voting declaration forms. The Act makes provision for special voting but the detail (including overseas voting) is set out in regulations.

59. The secondary legislation governing elections in New Zealand includes:

- Electoral Main Rolls Closing Order 2008⁷⁹,
- Electoral Regulations 1996,
- Electoral (Advertisements of a Specified Kind) Regulations 2005,
- Electoral (Iwi Organisation and Other Māori Organisation) Regulations 2012.

60. The Local Electoral Act 2001 sets out the requirements for local elections and polls, including the Single Transferable Vote system used for District Health Board and some council elections. The rules for the conduct of local government elections are prescribed in the Local Electoral Regulations 2001.

61. New Zealand's Electoral Commission has a statutory power to give advice and information to its Minister⁸⁰ and a further statutory power to give oral or written directions to electoral officials⁸¹. The Electoral Act 1993 states that the Commission is to administer the electoral system impartially and that it must act independently in performing its statutory functions and duties, and exercising its statutory powers⁸².

62. As discussed below in the section on the roles for central electoral bodies, New Zealand's Electoral Commission exercises its power to give directions in the form of issuing manuals to electoral officials. The Commission has produced 'Personal Instruction Manuals' for election day staff. The Commission's website shows that one specific area in which directions have been issued is providing for disabled access to polling stations.

Canada

63. Canada also includes general electoral principles in its constitution. The Constitution Acts 1867 to 1982 (the latter of which includes the Canadian Charter of Rights and Freedoms) each contain basic fundamental provisions regarding voting and elections.

64. Specific electoral legislation in Canada (for example the Canada Elections Act 2000; the Electoral Boundaries Readjustment Act 1985 and the Referendum Act 1992) is prescriptive in nature and provides detailed guidance and direction in terms of voting and electoral practices.

65. The main electoral enactment, the Canada Elections Act 2000, includes provisions dealing with electoral rights, the Chief Electoral Officer ('the CEO'), the register of electors and the conduct of federal elections.

66. As noted above in relation to Australia's electoral law hierarchy (see paragraphs 39 and 40), prescribing the details of election administration in primary legislation⁸³ may mean that amending the law quickly to resolve a defect in the law in time for a pending election is difficult. In Canada, however, some element of flexibility is preserved by a power to adapt the legislation. If necessitated by emergency, unusual and unforeseen circumstance, or error, Section 17 of the Canada Elections Act 2000 gives the CEO the power to adapt provisions of the Act in order to ensure the proper administration of elections. This power only applies during, or within 30 days after, an election period⁸⁴. The CEO can also, if necessary, send back the return of the writ and any or all of the election related documents to the Returning Officer for completion or correction.

67. In contrast to the law for elections, the majority of law providing for referendums is found in secondary legislation: the Canada Elections Act as Adapted for the Purposes of a Referendum is a regulation that deals with all administrative and procedural requirements to run a referendum. This regulation is taken by the CEO after tabling in Parliament. There is also a short statute, the Referendum Act, containing the basic provisions on the management and administration of referendums.

68. Below the level of legislation, the CEO issues highly detailed and prescriptive manuals to electoral officers; a specific manual is produced for almost each type of officer at each federal election, for example, Returning Officers and poll clerks. The manual provides extensive information on both the administrative and the operational requirements of the office. Although the manuals refer to legislative requirements, they also contain many instructions from the CEO, which are necessary to ensure the effective administration of the Canada Elections Act 2000⁸⁵. Failure to comply with any instruction could result in the removal of the Returning Officer from office⁸⁶. More information on the content of these manuals is set out below in the section discussing the powers of central electoral bodies.

Ireland

69. In Ireland, the Constitution sets out the fundamental rights, including general principles regarding elections.

70. Most electoral law is found in the Electoral Act 1992, which contains provision for the conduct of elections and referendums. This Act also extends to the registration of voters and contains the rules for the conduct of Dáil elections⁸⁷. These rules are applied to the running of referendums and European and Presidential elections, with the exception of nominations processes which are specific to the type of election. Other primary legislation includes the Presidential Elections Act 1993, the Referendum Act 1994 and the European Parliament Elections Act 1997.

71. An exception to the rule that election rules are set out in primary legislation is the conduct of local elections, which are provided for in secondary legislation (the Local Elections Regulations 1995). However, amendments have been made to those Regulations to ensure that they have the same status as primary legislation.

72. The Department of the Irish Government responsible for electoral law (currently the Department of the Environment, Community and Local Government) do not use secondary legislation to any great extent. Secondary legislation is largely used for administrative purposes, for example to amend forms for specific elections or to make a polling day order (such as to announce the timetable). The Department informed the Commission that it uses secondary legislation less often than it has in the past and that its current approach is to set out electoral law in primary legislation. This is because the Department views primary legislation as more entrenched than secondary legislation.

73. By comparing appendices 3 and 4, it can be seen that there is significantly less secondary legislation in Ireland than in the UK.

74. Below the level of legislation, the Department's Minister publishes circulars which provide quasi-legal guidance for Returning Officers. The Minister can also issue directions concerning the use of, or changes to, forms and notices for any particular election.

Netherlands

75. In the Netherlands, the Charter for the Kingdom of the Netherlands (Charter) and the Constitution of the Netherlands sits above the main electoral act (the Elections Act 1989). Secondary legislation (Election Decrees) is used for setting out details and making changes.

76. The Netherlands Electoral Council has a rarely-used power to make non-binding rules but no power to issue binding codes of practice.

Discussion

77. Of the countries surveyed, all have adopted a hierarchy of electoral legislation as the IDEA's guidelines⁸⁸ recommend: an article(s) of the Constitution (Australia, Canada, Ireland and the Netherlands) and / or constitutional reference in statute (Canada and the Netherlands), with the main provisions relating to elections being placed in primary legislation (all countries). Some of the more administrative matters are then dealt with in secondary legislation. Examples of the subjects deemed appropriate for secondary legislation include the amendment of forms (Ireland) and voting by fax and overseas voting (New Zealand).

78. New Zealand does not have a supreme constitution but its ordinary status⁸⁹ Bill of Rights Act 1990 contains a section guaranteeing the right to vote and its Constitution Act 1986 (also ordinary status) regulates the term of Parliament, with most electoral law then found in the Electoral Act 1993.

79. All of the sample countries follow the IDEA's recommendation that, 'in order to allow for necessary flexibility, provisions related to the management of elections should be incorporated into parliamentary legislation' rather than set out in a constitutional document⁹⁰.

80. Each country has a principal primary legislative vehicle that makes provision for elections. The preference in most of the countries appears to be to include the majority of electoral law in the primary legislative vehicle, rather than in secondary legislation. This means that even technical details such as the colour of the ballot paper and the specification of forms sometimes appear in primary legislation. The IDEA's recommendation that, 'administrative and procedural matters should be left to administrative rules and regulations, to be issued by subsidiary bodies, including through instructions and directives of the EMBs⁹¹' is not entirely followed in the sample countries. However, despite a preference to make provision in primary legislation, secondary legislation is used in all the countries, to varying degrees, to address some administrative issues.

81. Consistent with the sample countries' general preference to use primary legislation, all the countries studied place the majority of the rules for governing elections in primary legislation. The exceptions to this are some of the more administrative parts of the rules (for example some prescribed forms) and the rules for local government elections are sometimes set out in secondary legislation (for example in New Zealand and Ireland, although the secondary legislation in Ireland has the same status as primary legislation). In many cases we were informed by the contact in the central electoral body or Government Department that it was a generally accepted principle in the country that given the fundamental importance of elections, the majority of electoral law (including election rules) should be provided for in primary legislation which is subject to detailed parliamentary scrutiny.

82. As previously noted, one of the problems caused by prescribing most aspects of electoral legislation in primary legislation is that primary legislation is difficult to amend and therefore if there is an urgent need to amend the legislation to address a new issue, the issue may not be resolved in time for a particular election. The problem of over-prescription has been considered by some of the Australian states. Within the last 10 years Victoria and Tasmania, for example, reached the view that their electoral law was too inflexible due to over-prescription in their primary electoral legislation. The approach of these states (summarised by the VEC as setting out all essential electoral principles in primary legislation, while leaving more detailed administrative procedures to regulations, manuals and directions) allows for flexibility in election administration and is compliant with the IDEA's recommendations.

83. In Australia, New Zealand and Canada the central electoral body is able to issue directions to election officials. In Australia, New Zealand and Canada many administrative matters are set out in manuals or guidance. In Canada, operational manuals contain numerous directions as to how various election officials are to carry out their roles.

84. In contrast, the UK does not have a written constitution or constitutional enactment setting out general principles relating to elections. However, despite there not being a constitutional-level document, the UK's electoral law is hierarchical.

85. The UK follows the approach of the sample countries in placing a large part of its electoral law in one primary legislative vehicle, namely the Representation of the People Act 1983⁹². This Act sets out important aspects of elections, including the registration of electors and who has the right to vote, the declaration of candidate expenses, the challenging of an election result and also creates electoral offences, which relate in particular to conduct during the election campaign. However, unlike for example the Commonwealth Electoral Act 1918 in Australia, which contains the majority of Australian federal electoral law, the UK has a number of other primary enactments that contain electoral law; this makes the law more difficult to access and comprehend for voters in the UK. For example, in the UK many important electoral provisions can be found in the Representation of the People Act 2000 and some significant provisions are found in the Electoral Administration Act 2006⁹³. Appendix G contains a list of all the primary (and secondary) legislation that governs elections in the UK. The lack of consolidation of the UK's electoral law is discussed in more detail in the following section, which deals with the extent to which electoral law is unified or fragmented.

86. As recommended by the IDEA and as found in the studied countries, below the main primary enactment secondary legislation is used to set out more detailed and administrative provisions. However, in the UK there are inconsistencies in approach and it is not always clear why for some elections certain matters are in primary legislation and for other elections the same matters are in secondary legislation or codes/guidance. The Law Commission

has noted that, 'a result of the development of the conventional model for electoral administration is that no consistent principle appears to govern the place of electoral law provisions within the legislative hierarchy (primary Acts and secondary legislation)⁹⁴. For example, many of the substantive provisions⁹⁵ of the Representation of the People Act 1983 are (largely) replicated in secondary legislation that applies to elections to the European Parliament, the Scottish Parliament and the National Assembly for Wales⁹⁶.

87. In the UK the rules governing the conduct of all elections, except for parliamentary elections, are set out in secondary legislation. The decision to place parliamentary election rules in the Representation of the People Act 1983 and all other rules in secondary legislation may appear to be an unnecessary inconsistency. Prescribing the rules for parliamentary elections in primary legislation mirrors the examples from the sample countries. The fact that in the UK all other election rules are prescribed in secondary legislation (including the rules relating to elections to the European Parliament, devolved legislatures and local government) departs from the practice of the sample countries with the exception of local government elections which in some countries are left to secondary legislation (albeit in one case secondary legislation that is accorded the same status as primary legislation).

88. It was noted above in the section discussing the principle that electoral law should be in writing that the UK's system gives considerable discretion to Returning Officers in deciding how to deliver certain aspects of an election⁹⁷. International observers have expressed concern that this results in significant variations in the administration of elections and an inconsistent application of procedures across the UK⁹⁸. Giving examples of what is left to the discretion of Returning Officers, observers state that, 'returning officers make decisions *inter alia* concerning the number and size of polling stations, the number of ballot boxes, staff and ballots required without having to follow any standard'⁹⁹.

89. However, in some cases the UK's law has proved insufficiently flexible to allow for emergent issues to be swiftly and adequately resolved in time for an election. For example, difficulties were experienced following the closure of European airspace caused by the volcanic ash-cloud in April 2010. Electors who had planned to be abroad at that time had applied for a postal vote to be sent to their holiday address. When they were unable to leave the UK, there was no provision in the rules for a postal vote to be sent to their home address. Nor were they, having applied for a postal vote, eligible to vote in person. In the event, the risk of potentially thousands being disenfranchised by the prescriptive nature of the legislation was pragmatically managed through Electoral Commission issued guidance on the application of provisions for ballot papers that have been lost or not received.

90. It is unclear whether the IDEA's guidance that, 'administrative and procedural matters should be left to administrative rules and regulations' to allow for flexibility means that the rules for the conduct of an election should be set out in secondary legislation¹⁰⁰. It is possible to argue that election rules are

substantive and important parts of the electoral process and therefore should be in primary legislation, which is the approach adopted by the sample countries (with the exception, in some countries of local elections)¹⁰¹. On the other hand, it could be argued that the election rules set out the process of elections rather than dealing with substantive electoral rights and so fall within IDEA's 'administrative and procedural matters' and should be dealt with in secondary legislation.

91. The proper place of election rules and other provisions (such as detailed provisions governing postal voting arrangements) within the UK's legislative hierarchy ought to be given careful consideration¹⁰²; there are competing objectives that need to be balanced, including the need to ensure that defects can be quickly remedied (especially if the defect may have the effect of disenfranchising some voters at an upcoming election) and the need to ensure that changes to electoral legislation, which is integral to the democratic system and needs to have full public confidence, are given proper parliamentary scrutiny. It is this latter objective that appears to have led the countries selected for this study to place the majority of their respective electoral laws, including the rules governing the conduct of elections, in primary legislation. This report informs that consideration by setting out some findings on how other countries have dealt with this issue, along with the relevant international guidance.

92. The Australian Government's Green Paper on Electoral Reform captures the difficulty of balancing the competing merits of prescription and flexibility:

It might be argued that the highly prescriptive nature of the current federal electoral laws makes them susceptible to becoming quickly outdated, and requires regular amendments to be made to update particular provisions from time to time. Less prescriptive laws could ensure greater flexibility for processes to be updated to reflect a changing electoral environment, without the need for Parliament to consider amendments to legislation. It could be contended that primary legislation should be prescriptive enough to ensure that electoral administrators uphold the key principles of the Australian electoral system, while more detailed administrative arrangements could be contained in subordinate legislation that would be easier to amend if change becomes necessary.

On the other hand, it could be argued that one advantage of highly prescriptive electoral laws is that they encourage political consensus by requiring the Parliament to agree to more of the details of electoral processes. They may also leave fewer matters open to the interpretation of the courts. In addition, highly prescriptive laws may heighten public trust in the electoral system, and may also serve as a mechanism for deflecting criticism from the electoral administration, which can point to a legislative basis for particular decisions or processes¹⁰³.

93. Below the level of legislation, the UK's Electoral Commission issues detailed guidance and sets performance standards to monitor election officials'

performance, however such guidance and standards are not binding on election officials. There is a rarely used¹⁰⁴ power for the Secretary of State to issue directions to electoral registration officers with respect to the arrangements to be made by the registration officer for carrying out his functions under the 1983 Act. This is exercisable only on, and in accordance with, a recommendation of the Electoral Commission.

94. Although the direction-making power is rarely used by the Secretary of State, directions are starting to emerge as a feature of the UK's electoral landscape. European Parliamentary elections, London Mayor and the London Assembly elections; local government elections in Scotland and Northern Ireland and elections for police and crime commissioners in England and Wales all contain a mechanism for a statutory body or official to direct electoral officers in relation to the discharge of their functions. In addition the legislation providing for the referendum in 2011 on the parliamentary voting system conferred a similar power on the Chair of the Electoral Commission as Chief Counting Officer¹⁰⁵.

95. However, many other elections are still conducted without any central oversight role. This does not follow the IDEA's recommendation that in order to allow for necessary flexibility, instructions and directives should be issued by central electoral bodies. It also deviates from the systems in Australia, Canada and New Zealand; in Canada and New Zealand, particularly, instructions in the form of manuals are an important part of the whole electoral system. Although the UK Electoral Commission's guidance is an important part of elections in the UK, it only sets out and interprets the legislation (with some best practice guidance) and does not contain any instructions. The important departure from the IDEA's guidelines in the UK is that, in the electoral events for which there is currently no power of direction or other intervention, there is limited scope for the central electoral body or anyone else to 'respond to emergent needs and provide practical solutions by way of interpreting and supplementing electoral law and the regulations'¹⁰⁶. Whilst the UK Electoral Commission can issue guidance¹⁰⁷, perhaps the only tool that could be used to address an urgent issue swiftly is for a direction to be issued by the Minister – but this can only be deployed in relation to registration matter and may not follow the IDEA's recommendation that the regulation of elections should not be done by executive decrees¹⁰⁸.

3. A unified, consolidated electoral law is preferable to a fragmented law with separate legislative vehicles for different electoral events and dealing with different matters.

International guidance

96. It is of fundamental importance that electoral law is accessible to citizens¹⁰⁹. An electoral law that is fragmented (by which we mean found in a

large number of different enactments) is not accessible.

97. Ideally, electoral law should not be fragmented and found in a number of disparate legislative sources. In some cases this is unavoidable (e.g. general provisions about the attainment of citizenship that have some impact on the right to vote) but, in general, to attain the goal of equality of access to electoral law or to facilitate people's participation in the electoral process, the rules governing elections should be located in as few places as possible.

98. The main issue to consider in this context is the appropriate division (if any) in primary legislation between elections generally and elections relating to specific bodies for example to local authorities. These may be divided between different statutes or be located in different parts of the same election statute. The IDEA's preference is for the latter: it encourages consistency and unity of approach in electoral law, and simplifies drafting and the amendment process¹¹⁰. However, IDEA notes that in federal systems a unified structure may not be possible¹¹¹.

99. Similarly, the Venice Commission recommends that:

In order to reduce the number of redundant provisions and enhance the consistency and the public understanding of the electoral legislation, it may be technically preferable to enact a unified electoral code, containing the general aspects of any election, and – in different parts of the law – the particularities of different elections...

Furthermore, there are sometimes inconsistencies between the electoral law and election-related provisions of other laws on, for example, political parties, mass media, referendums local self-government, or Civil and Penal Codes. Thus, a holistic approach seems to be necessary in order to harmonise election and election-related legislation¹¹².

National practice

100. Despite these endorsements of a unified electoral law, in practice, it has in the main not been followed in the countries under investigation.

Australia

101. In Australia federal elections and federal referendums are conducted under the Commonwealth Electoral Act 1918. State and territory government elections are held under legislation made by the legislature of each state or territory. Local government elections in each state or territory are provided for in a separate enactment passed by the state or territory legislature.

102. For example, a federal election or federal referendum in Queensland will be administered under the Commonwealth Electoral Act 1918, an election to the State legislature will be administered under Queensland's Electoral Act 1992, a State referendum will be administered under Queensland's Referendums Act

1997 and a local government election will take place under Queensland’s Local Government Act 1989 or the City of Brisbane Act 1924.

103. The different legislative vehicles for different electoral events in Australia, including its states and territories, are set out in Appendix B.

104. As each electoral event is governed by its own statute the electoral law in Australia in this respect could be described as fragmented rather than consolidated. The same type of electoral event is governed by a different statute at federal and state or territory level. The result is a large number of electoral law vehicles.

105. However, in other ways the structure of electoral law in Australia could be considered to be highly consolidated. In 1984 the Commonwealth Electoral Act 1918 was substantially amended. The 1984 amendments consolidated the provisions of a number of other acts into the Act and moved a large number of procedural details from subordinate legislation into primary legislation¹¹³.

106. The electoral law of Australia, both at a federal and state level, is mainly set out in primary legislation (the 1918 Act and the Referendum (Machinery Provisions) Act 1984 at the federal level). Although some detailed provisions are set out in secondary legislation, instructions and guidance, the consolidation of provisions from other statutory vehicles into the 1918 Act and the level of prescription in the 1918 Act mean that there are relatively few legislative vehicles for the electoral law of Australia, even though Australia is a federal system¹¹⁴.

107. This level of consolidation in one main electoral law vehicle in Australia is in contrast with the position in the UK, as can be seen from Table 1. Table 1 shows some of the type of provisions set out in the 1918 Act in Australia and compares where the equivalent is found in the law of the UK.

Table 1: Location of electoral provisions in Australian and UK legislation

Australian Commonwealth Electoral Act 1918	Equivalent locations in UK legislation
Establishment, function, powers of the central electoral body	Political Parties, Elections and Referendums Act (PPERA) 2000
Electoral Divisions	Parliamentary Constituencies Act 1986
Electoral Roll	Representation of the People Act (RPA) 1983, RPA 2000 and Representation of the People Regulations (RPR) 2001
Registering to Vote (eligibility)	RPA 1983 and 1985
Objections and Reviews	RPR 2001
Registering Political Parties	PPERA
Postal Voting	RPA 2000 and RPR 2001.
Funding of Political Parties	PPERA

Canada

108. Canada, which is also a federal state, has a similar electoral law structure to Australia. Federal electoral events are conducted under the Canada Elections Act 2000 and the Referendum Act 1992. Electoral legislation is also passed by each of the ten provinces and three territories, respectively, to administer elections to their own legislatures and provincial / territorial referendums or plebiscites. As in Australia, local government (sub-provincial) elections are legislated for in separate legislation in each province or territory; for example, Part 3 of British Columbia's Local Government Act 1996 sets out the rules for the conduct of local government elections in the province. A list of Canada's provinces and their respective electoral legislation is set out in Appendix D.

109. Appendix D shows that within Canada's provinces there are in most cases multiple electoral law vehicles. For example, there appear to be five main primary legislative vehicles relating to elections in British Columbia, in addition to constitutional enactments. This seems typical of most provinces, however, in Quebec there only appears to be one legislative vehicle for elections and one for referendums.

110. Like Australia, therefore, the electoral law of Canada could be characterised as being fragmented rather than unified. Such fragmentation could be argued to be an inevitable consequence of federalism; it appears unavoidable that elections in federal states are provided for in separate legislation to elections at a federal level. Therefore, under a federal system it appears that the preference of both the IDEA and the Venice Commission to avoid a fragmented electoral law is difficult to achieve¹¹⁵.

111. Despite the fragmentation identified above, as in Australia, the federal electoral law of Canada is largely consolidated into one enactment, namely the Canada Elections Act 2000¹¹⁶. Before the passage of the 2000 Act, the majority of the federal electoral law in force at the end of the last century was enacted in 1970. Over the following 30 years, the legislation had 'evolved into an intimidating maze of updates, amendments, revisions and clarifications, to the extent that much of its contents were hard to decipher'¹¹⁷. The overhaul and consolidation exercise in 2000 achieved a more unified and simple electoral law at a federal level. Appendix D shows that there are few important primary legislative vehicles governing federal elections in Canada, although there remains a separate vehicle providing for referendums. Table 2 below shows that the 2000 Act provides for most aspects of the Canadian electoral framework, in contrast to the UK's fragmented electoral law.

Table 2: Location of electoral provisions in Australian and UK legislation

Canada Elections Act 2000	Equivalent locations in UK legislation
Establishment, function, powers of the central electoral body	Political Parties, Elections and Referendums Act (PPERA) 2000
Register of electors	Representation of the People Act (RPA) 1983, RPA 2000 and Representation of the People Regulations (RPR) 2001
Registering to Vote (eligibility)	RPA 1983 and 1985
Objections and Reviews	RPR 2001
Registering Political Parties	PPERA
Postal or Special Voting	RPA 2000 and RPR 2001.
Funding of Political Parties	PPERA

New Zealand

112. The main electoral enactment in New Zealand, the Electoral Act 1993, sets out the rules for general elections. The primary legislation relating to local government elections is the Local Electoral Act 2001; however, local government elections are held under rules that are set out in secondary legislation, namely the Local Electoral Regulations 2001.

113. Referendums are governed by two main Acts:

- the Citizens Initiated Referenda Act 1993, which provides for the administrative and regulatory framework for non-binding citizens-initiated referenda, including the provisions of the Electoral Act 1993 that apply to stand-alone (non-postal) referendums; and
- the Referenda (Postal Voting) Act 2000, which set out mechanisms for conducting a citizens or government initiated referendum by post.

114. The Citizens Initiated Referenda Act 1993 sets out the requirements for the approval of wording for a question to be put to a referendum, the conduct of a petition calling for a non-binding referendum and the mechanisms for holding a referendum where the criteria is met.

115. Government-initiated referendums typically require separate legislation because consideration needs to be given to the statutory framework for the question(s) to be asked on the referendum ballot paper. Examples include the Electoral Referendum Act 1993, which set out the requirements of the binding referendum on whether the Mixed Member Proportional voting system should be adopted as the electoral system. In addition, the Electoral Referendum Act 2010 made provision for an indicative referendum to be held in conjunction with the 2011 General Election on the preferred system of voting.

116. Government-initiated referenda may also need to regulate the next steps

following the referendum; this was the case in the Electoral Referendum Act 1993 and Electoral Referendum Act 2010. Further, if separate legislation is enacted to enable the holding of a government-initiated referendum, the legislation will provide that the provisions of the Electoral Act 1993 apply, as far as is practicable¹¹⁸.

Ireland

117. In Ireland, the Electoral Act 1992 contains the rules for the conduct of Dáil elections. The rules for local government elections are found in the Local Elections Regulations 1995. Although these rules are contained in secondary legislation, the Regulations have been amended to make it clear that they have the same status as primary legislation.

118. Ireland has relatively recently carried out a major consolidation of its electoral law. This started with the consolidation of the law relating to Dáil elections into the Electoral Act 1992. The Irish Minister of State explained the aim of the Act:

The sheer number of statutes relating to Dáil elections and the extensive amendment of the principal enactments have left the law in a very fragmented state. This is particularly inappropriate in the case of the electoral code which is of direct and immediate relevance to all citizens. It will be of benefit to everybody to have the basic law relating to the election of our national Parliament set out in a single comprehensive piece of legislation which is accessible and meaningful.¹¹⁹

119. Further separate legislation consolidated the law relating to elections to the European Parliament and the Irish presidency. Rather than consolidate existing provisions into one statute, the choice was made to consolidate provisions into a separate enactment for each type of election. Therefore, Ireland's statute book includes (in addition to the Electoral Act 1992) the Presidential Elections Act 1993, the Referendum Act 1994 and the European Parliament Elections Act 1997. The law governing elections to Ireland's second chamber (the *Seanad Éireann*) has not yet been consolidated.

120. There are two types of referendum in Ireland: a referendum to amend the Constitution and a referendum on an 'ordinary referendum'¹²⁰. The law relating to referendums is found partly in the Electoral Act 1992 but also in Articles 27, 46 and 47 of the Constitution of Ireland, the Referendum Act 1994, the Electoral (Amendment) Act 1996, the Electoral Act 1997, the Referendum Act 1998, the Referendum Act 2001, the Electoral (Amendment) Act 2001, the Electoral (Amendment) Act 2004, the Electoral (Amendment) Act 2006 and the Ministers and Secretaries (Amendment) Act 2011¹²¹.

121. Appendix E sets out a list of some of the main electoral legislation in Ireland. It can be seen from this list that although Irish electoral law was consolidated in the 1990s into a series of comprehensive principal acts for each

type of election (apart from Seanad elections), the Irish statute book now contains a large number of electoral law vehicles.

Netherlands

122. Of the countries studied in this report, the Netherlands appears to have the least fragmented electoral law structure. In the Netherlands the Elections Act 1989 covers elections to both houses of the legislature, provincial and municipal councils and to the European Parliament (elections to Water Management Boards are the sole exception to the reach of the Act). The Act does not cover all aspects of the electoral process; elections are also regulated by the Elections Decree (secondary legislation) and/or by ministerial regulations.

Non-electoral law

123. In addition to the main electoral legislation cited above, the chosen countries have a multiplicity of statutes which touch on aspects of electoral law. As well as separate statutes dealing with electoral boundaries and redistricting in Canada and Ireland, and party financing in Ireland, the matters covered range from general provisions relating to the public service to broadcasting/media law, privacy law and criminal law.

Discussion

124. The above information about the approaches adopted in the selected countries demonstrates how difficult it can be in practice to give effect to the principle that electoral law should be unified rather than fragmented. The federal systems of Australia and Canada are fragmented in the sense that a separate enactment has been passed for each type of election in each state as well as at a federal level¹²². As recognised by the IDEA, this fragmentation appears to be an unavoidable consequence of federalism. However, federal and other countries could opt to place provisions concerning federal referendums in the electoral statute that governs general elections. This would reduce fragmentation, however, in both of the federal nations examined in this report (Australia and Canada¹²³) the provisions governing elections and referendums are found in separate statutes. This is also the case in New Zealand and Ireland. In Ireland, for example, the law relating to referendums is located in more than ten different vehicles, including the Constitution¹²⁴.

125. Nevertheless, the countries selected for this study appear to have avoided the amount of fragmentation that is present in the UK's electoral law. Appendix G shows that the UK's electoral law is found in a large number of enactments. The Appendix only shows electoral legislation and omits other legislation that is of relevance to elections such as legislation concerning defamation or public order. It can be seen by comparing the list of UK electoral law to the electoral law of the other countries set out in other appendices that the electoral part of UK's statute book is exceptionally large and cluttered¹²⁵. To illustrate this with one example, there are five different Representation of the People Acts. Some have been almost entirely repealed but still contain important provision, whereas

others run to hundreds of provisions. The number of legislative vehicles governing elections in the UK does not achieve a unified and accessible electoral law as recommended by the IDEA.

126. Observing the parliamentary elections held in the UK in 2005, international observers recommended that:

Election-related legislation could usefully be integrated into a single text to reflect accumulated amendments and established practice, and consequently make election legislation more accessible for election officials and the general public alike¹²⁶.

127. Since 2005, new electoral legislation has been passed creating new provisions or amending existing provisions. Therefore, there is even more need now for consolidation than in 2005. In 2010, international observers noted of the UK system:

The legal framework for elections comprises a wide range of laws and secondary legislation. The need for its review and consolidation is widely recognized¹²⁷.

The fragmented and complex legal framework is based on legislation dating back to 1695, with most key principles having first been established in 19th century legislation. Although there have been relatively frequent changes to the legislation, especially over the past ten years, no concerted effort has been made in recent years to review the entire legal framework for elections. Most OSCE/ODIHR EAM interlocutors stressed the need to conduct such a review in order to consolidate and simplify the legal framework¹²⁸.

128. In the elections taking place in May 2010 electoral administrators were required to be familiar with around 25 separate pieces of primary and secondary legislation, with the added complexity of particular legislation applying to Scotland, Wales, and Northern Ireland. This range of laws and the fact that they are spread across so many different instruments not only makes finding the relevant law difficult but also increases the potential for confusion in interpreting and applying the law once found. This problem is exacerbated when an election is combined with another electoral event, as happened in May 2010¹²⁹; in such an event extremely complicated combination rules must be consulted to identify how each aspect of the elections should be administered.

129. It appears therefore that the UK could look to some or all of the chosen countries for some good practice in how to achieve a more unified, consolidated electoral law.

130. There are examples of major consolidation exercises being carried out in other countries that led to a much more unified law. The most consolidated system studied appears to be the Netherlands. Australia carried out a major

consolidation exercise in 1984 and now has a much less fragmented structure than previously, notwithstanding the fact that Australia is a federal state and has adopted the approach of providing for different electoral events in separate enactments. However, any consolidation exercise in the UK would need to consider whether some more detailed and technical provisions would be better placed in secondary legislation, which can be more easily amended and therefore would offer greater flexibility (this was discussed in more detail in the preceding section on the electoral law hierarchy).

131. Similar consolidation exercises have been carried out by Canada in 2000 and in Ireland in the 1990s. It is clear from Appendix G that consolidation in the UK is long overdue, where the last consolidation took place in 1983.

4. Reforms to electoral law should be undertaken with the goals of clarity and simplicity in mind.

International guidance

132. The preference expressed by the IDEA and the Venice Commission for the consolidation of electoral law serves the certainty and accessibility aspects of the rule of law principle. The Venice Commission notes that:

Electoral reforms should be careful not to add increasingly detailed provisions to the electoral law. While it may be necessary to fill loopholes in the law, a review of the election legislation should be undertaken with the aim to clarify and simplify complex provisions as well as to remove inconsistencies and unnecessary repetitions. Furthermore, serious effort should be made to harmonise electoral and election-related legislation¹³⁰.

133. It also reminds us that:

Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters¹³¹.

National practice

134. In Ireland, the Electoral Act 1992 has been frequently amended. This led the Geary Institute, University College Dublin to conclude in its November 2008 report on the establishment of an Electoral Commission that, ‘At present the electoral code in Ireland is distributed over several Principal Acts, some of which have become encrusted with a series of amending measures in the course of the last fifteen years’¹³². The report also stated that:

In the course of our consultations, it was emphasised to us that “legislative hygiene” (to use a term coined in the course of one consultation session) would be of great assistance to those given the task of administering elections, as well as to candidates, their agents, the political parties and voters. By this was meant the desirability of having legislation that is

comprehensive, clear and up-to-date, without constant cross-reference to several layers of later amendments being required¹³³.

135. The report notes that 'whilst the same level of fragmentation has not been recreated by the amendments passed to that legislation since 1992, the accessibility and usefulness of the legislation has been significantly reduced over that period'¹³⁴. Examples include Part 3 of the Electoral (Amendment) Act 2001 which 'employed a method of adaptation of the existing law for the purposes of electronic voting that was particularly opaque and confusing'¹³⁵.

136. In most of the other sample countries, it has been noted that the complexity of the existing law before their respective electoral reform and consolidation exercises was, to a large extent, caused by successive amendments that did not have simplicity and clarity in mind. Complexity caused by successive amendments to legislation led to the need for comprehensive electoral reform to be identified in many of the selected countries. For example, in Canada:

The majority of the federal electoral legislation in force at the end of the last century was enacted in 1970. In the 30 years following, the Canada Elections Act evolved into an intimidating maze of updates, amendments, revisions and clarifications, to the extent that much of its contents were hard to decipher¹³⁶.

Discussion

137. The example of Ireland shows that, given the pace of legislative change, a unified, simple and consolidated law can soon become a complex maze of amendments. The complexity of Canada's electoral law before the coming into force of the Canada Elections Act 2000, caused largely by a series of amendments to the 1970 electoral legislation, also demonstrates how amendments that are imposed on existing law can lead to an inaccessible electoral law.

138. In the UK, as well as the number of different legislative vehicles, the number of amendments made to the principal enactment (the Representation of the People Act 1983) is a key factor that makes the UK's electoral law complex and inaccessible. This problem is likely to be exacerbated as significant amendments to the Representation of the People Act 1983 to provide for individual electoral registration are proposed¹³⁷. The provisions relating to electoral registration in the Act are already complex due to a number of previous amendments (for example to allow for rolling registration and elections during the canvass period)¹³⁸; the provisions as amended by the upcoming legislation introducing individual electoral registration will be even more inaccessible to those who take part in the electoral process.

5. Election legislation should avoid conflicting provisions between laws governing national elections, sub-national (provincial or state), local elections and referendums.

International guidance

139. The IDEA considers that consistency in the laws governing different elections within a country is a principle that is fundamental to election legislation. The IDEA state that:

Election legislation should avoid conflicting provisions between laws governing national elections and laws governing sub-national (provincial or state) and local elections; provisions governing the administration of national elections should be in harmony with the provisions governing such other elections because court decisions at one level could affect legislation in other jurisdictions¹³⁹.

140. As already noted, both the IDEA and the Venice Commission state that consistency can be achieved by enacting one electoral law regulating all elections¹⁴⁰ or at least enacting a unified electoral code, containing the general aspects of any election, and – in different parts of the law – the particularities of different elections¹⁴¹.

141. Australia's House of Representatives Standing Committee on Legal and Constitutional Affairs' report on the harmonisation of legal systems notes that consistency can:

- create efficiencies, by reducing duplication across different levels of government;
- ensure greater certainty, if consistent rules apply across all jurisdictions;
- reduce compliance costs for those who must comply with multiple regulatory regimes across jurisdictions; and
- improve the effectiveness and integrity of laws by removing regulatory inconsistencies¹⁴².

National practice

Consistency between the laws governing elections

142. As discussed earlier in this report, with the notable exception of the Netherlands¹⁴³, each different election in the sample countries is provided for under a separate enactment. This may make achieving consistency between the laws relating to each election difficult; any amendment to one enactment would

need to be made to all the various enactments. In Australia, for example, amendments drafted for one Act have consequential amendments to other relevant statutes; this system of amendments and consequential amendments may go some way to achieving consistency between the rules but it makes legislative drafting more difficult and also makes the final legislation more complex for the reader. It also seems inevitable that there will be oversights when drafting consequential amendments and that over time numerous discrepancies between various sets of election rules will appear.

143. Inconsistency is particularly liable to arise where elections take place in different parts of a country under legislation passed by state or devolved legislatures. Whilst some differences may be appropriate for some states and not others, some arbitrary inconsistencies between different electoral events within a country can arise unintentionally and do not serve any useful purpose. Such inconsistencies make electoral law unnecessarily complex. For example, the Tasmanian Constitution Act 1934 previously required that to enrol in Tasmania a person must have lived in the state for six months continuously at any one time. There is no similar requirement in any other state of the Australian Commonwealth. The Tasmanian Electoral Commission states that:

This difference created confusion for electors and operational difficulties. New Tasmanians were enrolled initially as 'Commonwealth only' electors and then, after the 6 month period, were requested to lodge a further enrolment form for state enrolment. A consequential amendment to the Constitution Act 1934¹⁴⁴ deleted this 6 months requirement¹⁴⁵.

144. The Australian Government's Green Paper on Electoral Reform notes that:

Harmonisation between federal, state and territory electoral arrangements may be particularly desirable where there are clearly identifiable differences between jurisdictions which affect an elector's ability to participate in the electoral process or cause significant elector confusion.

It may be argued that differences between voting systems used for federal elections and those used in state and territory elections can have such effects. For example, at the 2007 federal election, over 75,000 voters in New South Wales marked their House of Representatives ballot paper with a '1' only: this would have been deemed formal and counted in a state election in New South Wales, but was deemed informal and not counted in the federal election¹⁴⁶.

145. However, the Green Paper goes on to state that, 'It might also be argued that harmonisation should not be pursued merely for its own sake. One advantage of a federal system is that there are opportunities for innovation and experimentation, because various jurisdictions are able to act independently of the others'.

Consistency between the laws governing referendums

146. Two different approaches have been taken on achieving consistency in the law governing referendums held within a country. As with the rules relating to elections, one set of rules relating to all referendums would achieve consistency. Australia, Canada and Ireland have each enacted general legislation dealing with the holding of referendums. In contrast, New Zealand and the Netherlands do not have one legislative vehicle providing generally for all referendums. In those states, specific legislation has been enacted for any referendum held.

147. New Zealand, in particular, has a number of different legislative vehicles relating to different referendums (for example it has legislated for the holding of advisory referendums initiated following citizen petitions (Citizens Initiated Referenda Act 1993). Government-initiated referendums in New Zealand require special legislation. If they are to be held at the same time as a general election, careful consideration is given to ensuring consistency between the electoral and referendum legislation. This would not be the responsibility of the New Zealand Electoral Commission, but of the Ministry of Justice and Parliamentary Counsel. Non-binding citizens initiated referendums are conducted under the principal legislation. They are conducted under rules that are in some respects may not be consistent those that apply to parliamentary elections. Certain aspects of the Citizens Initiated Referenda Act 1993 (namely, advertising and expenditure) have not been updated in some time. However, Sections 24 and 24A of the Citizens Initiated Referenda Act 1993 provide that most provisions of the Electoral Act 1993 apply to citizens-initiated referendums.

148. In the Netherlands, where a referendum is held, consistency is sought through internal advice from the Electoral Council or Ministry of the Interior and through the interpretation of the relevant legislation.

149. As is the case in New Zealand, in Ireland consistency is achieved through the application of rules in the Electoral Act 1992 (which deals with legislative elections) to referendums. At a practical level, the guidance provided by the Franchise Office of the Department of the Environment, Community and Local Government is reviewed and refreshed for each electoral contest, including referendums.

Consistency between the laws governing elections and referendums

150. An additional issue to consider is to what extent and how best to achieve consistency between the law governing elections and the law governing referendums. Although some differences will be inevitable given the differences between an election and a referendum, achieving consistency wherever possible will reduce the complexity of electoral law and promote access to elections. This is an issue which has recently been considered at a federal level in Australia. Australia has separate legislation governing federal elections (the Commonwealth Electoral Act 1918) and federal referendums (the Referendum (Machinery Provisions) Act 1984). A Green Paper prepared by the Australian

Government on the topic of electoral reform in September 2009 stated:

An additional option for reforming federal electoral laws could include consolidating the Electoral Act and the RMP Act into one act. The RMP Act duplicates many provisions of the Electoral Act, which has led to a risk of inconsistencies developing between the two acts if one is amended separately from the other¹⁴⁷.

151. Australia's Joint Standing Committee on Electoral Matters recognised this risk and recommended that 'any recommendations in this report that propose amending the Commonwealth Electoral Act 1918 should, where also appropriate, be incorporated into the Referendum (Machinery Provisions) Act 1984, to ensure consistency between the provisions applying to elections and referenda'¹⁴⁸.

Achieving consistency by other means

152. Although the general approach to provide for each electoral event in a separate enactment may make achieving consistency difficult, the sample countries have regard to the aim of ensuring, where possible, consistency between the requirements governing different electoral events in other ways.

153. Means to ensure consistency are usually the responsibility of the central electoral body and take three forms:

- (i) oversight of the administration and conduct of the election;
- (ii) various enforcement and compliance activities (including referrals for the investigation and prosecution of electoral offences to the police, and issuing civil penalties); and
- (iii) pre- and/or post-election reporting to a legislative body or a general public report¹⁴⁹.

154. The oversight and administration function is not only carried out on the day of the election, but also in advance: central electoral bodies are involved in training electoral officials and providing them with guidance and IT support.

155. In Australia, Canada and New Zealand, where the central electoral body employs election officials, the central electoral body helps to ensure consistency between elections and referendums¹⁵⁰. For example, the AEC has developed IT systems that contain training materials, policy guidance and practice to ensure that there are consistent practices throughout Australia. The materials include detailed guidance on such matters as the choice of polling places and the layout for polling places¹⁵¹.

156. The exception to this model is the Netherlands, where responsibility for overseeing elections is split between national and local bodies; parliament

oversees national elections and councils oversee local elections. In the Netherlands the central electoral body (the Electoral Council) only has an information and knowledge-sharing role. The Electoral Council does conduct a review after each election and a report is made to the Minister of the Interior and Kingdom Relations, and from him to the Dutch legislature. The OSCE / ODIHR in their 2006 report on the Dutch elections, stated:

In seeking possible further improvement to the system of election administration in the Netherlands, consideration could be given to enhancing the role of the EC, and its utility as a clearing house for best practices, with a view to further enhancing independence, transparency and accountability in the delivery of elections¹⁵².

157. The OSCE / ODIHR's report on the Dutch elections of 2010 noted that:

One important question under consideration is whether a central authority should have a role in overseeing certain aspects of the organization of the elections. In view of the decentralized nature of the election administration, with responsibility shared among governmental entities at national and local level and the electoral committees, a potential issue in this respect is whether one body would be given clear responsibility in law for ensuring the integrity of elections¹⁵³.

158. In Ireland, in the absence of a central electoral body, consistency is to some extent secured by the Minister meeting with Returning Officers before the conduct of the polls. In addition, Returning Officers are subject to ministerial direction in the form of guidance and circulars.

Discussion

159. In general, the sample countries set out the provisions governing each electoral event in a separate enactment for each event. This may make delivering the consistency that IDEA states is a fundamental principle to election legislation and is also endorsed by the Venice Commission between the laws relating to each election, difficult. For example, the process of amending legislation will become complex as any amendment to one enactment would need to be made to all the various enactments. This may be difficult in federal nations or unitary states which have devolved legislative competence on electoral law to devolved legislatures; the different jurisdictions may have different views as to what the law should be.

160. However, as noted earlier in this report, the electoral law in the sample countries appears to be more consolidated than in the UK; this may make achieving consistency easier for the sample countries. For example, the Netherlands' Elections Act covers elections for the Senate and the House, for the provincial and municipal councils, and for the European Parliament¹⁵⁴. Only Water Management Boards elections are governed by a special law. In New Zealand, there is one main enactment (the Electoral Act 1993) for national

elections and one main enactment (the Local Electoral Act 2001) for local (for example council and mayoral) elections.

161. The approach in the UK is not consistent with the recommendations of the IDEA and the Venice Commission. In the UK, as in the sample countries, there are separate legislative vehicles containing the rules for each election. However this is a particular problem in the UK because of the large number of different electoral events.

162. There are many differences between the different election rules in the UK. For example, the election timetable, which sets out when various documents need to be submitted or published by candidates and election officials varies significantly between elections. The rules on disqualification for candidates vary based on the election, as do the voting system and the provisions allowing for challenges to election results¹⁵⁵. Many other examples could be provided of how the law governing a particular election in the UK differs from various other elections. Sometimes multiple elections are held on the same day, in which case various combined rules apply. This fragmentation and resulting lack of consistency means that the UK's electoral law is not sufficiently accessible to candidates and voters. The question of which rule applies to which election is likely to be beyond the comprehension of many candidates and voters, and even challenges those working in elections.

163. As noted above Australia's Green Paper on Electoral Reform states that different electoral systems may cause confusion to electors. It could be argued that this has also been the case in the UK. There are now a number of different electoral systems in place for different elections in the UK, sometimes taking place at the same time.

164. International observers recommended in a report on the UK's general election in 2005 that:

An in depth review of the election legislation could be conducted, to identify possible inconsistencies, with a view to consolidation in a single, integrated text. This would enhance the accessibility of election-related legislation for voters, candidates, and the general public, and simplify implementation for election administrators¹⁵⁶.

165. The same report notes that

Public and election officials may face challenges implementing the complex legal framework. Election officials acknowledged that, in some instances, complying with one provision could result in a possible violation of another one that was not brought into conformity with the most recent amendments¹⁵⁷.

166. An additional factor that leads to inconsistencies in the administration of elections in the UK is that some discretion is afforded to election officials. The

OSCE / ODIHR's 2010 report states that

As some legal provisions are rather generic and do not contain detailed requirements on the organization and conduct of elections, many aspects of the administration of elections are left to the discretion of ROs. Some OSCE/ODIHR EAM interlocutors expressed concern that this results in significant variations in the administration of elections and an inconsistent application of procedures across the UK¹⁵⁸.

167. In some cases there may be good reasons for some differences between the rules relating to different elections. As also noted in the Green Paper, it is arguable that consistency should not be pursued merely for its own sake. Like Australia, the UK has different jurisdictions with competence to make their own electoral legislation; the legislation for different electoral events in different parts of the UK might sometimes need to be different to address specific factors and might also lead to more electoral innovation and consequently improvements to law and practice. However, it is important that the principle referred to by the IDEA that electoral law ought to be consistent across all elections in a country is, as far as possible, observed as this will help to promote access to and confidence in the electoral system.

168. The UK has general legislation relating to all referendums (Part VII of the Political Parties, Elections and Referendums Act 2000), mainly dealing with controlling the finances of the referendum. Specific legislation is passed providing for a referendum to be held and establishing the legal framework, including the rules for the conduct of the referendum. For example, the Parliamentary Voting System and Constituencies Act 2011 provided for a national referendum to be held in 2011 on whether the UK's first past the post voting system should be replaced with the alternative vote system. The Parliamentary Voting System and Constituencies Act 2011 provided for:

- The entitlement to vote in the referendum,
- The referendum period,
- The counting / regional counting officers,
- The role of the Electoral Commission
- The restrictions on referendum advertisements.
- The rules for the conduct of the referendum,
- The procedures for absent voting,
- What happens following the result of the referendum being declared.

169. The referendum was conducted under the financial controls set out in the

Political Parties, Elections and Referendums Act 2000, with modifications made by the Parliamentary Voting System and Constituencies Act 2011.

170. Separate primary legislation deals with local referendums relating to whether a council ought to have an elected mayor or a council leader, with the rules set out in secondary legislation. Separate legislation also makes provision for local referendums relating to matters such as council tax increases and neighbourhood planning.

171. Therefore, the UK's approach to referendums is a mixture of general and specific legislation. However, the majority of the legal requirements for any referendum will be set out in separate legislation relating to that referendum or that category of referendum (for example a mayoral election). The general legislation goes some way to complying with the IDEA's and the Venice Commission's preference for a unified electoral law. However, the fact that the majority of provisions, especially the conduct rules, are set out in separate legislation means that the UK's referendum law can be accurately described as fragmented. This fragmentation means that consistency between the law and administration of different referendums is difficult to achieve.

172. All of the selected countries deploy other means to achieve consistency and oversight across different electoral events in the country, mainly through the central electoral body carrying out a role overseeing the election, preparing guidance or instructions to election officials, training election officials and reporting to parliament after the election. These methods are likely to be more successful in systems where the central electoral body administers electoral events, such as in Australia, New Zealand and Canada. Although there may be different legislation applying to different electoral events in such countries, the administration of the election is likely to be more consistent where all election officials are employed by a single body and receive the same instructions guidance, training and support. Where the central electoral body has an information and knowledge-sharing role, as in the Netherlands, consistency is likely to be more difficult to achieve.

173. The UK's Electoral Commission helps to promote consistency by issuing guidance on how to administer electoral events, and reporting on the administration of electoral events. The Commission also produces its own templates of prescribed forms to achieve a consistent high standard of forms (especially in respect of accessibility to disabled persons) across the UK.

174. In addition, the Commission also carries out oversight of the electoral process. This is mainly achieved by setting performance standards for election officials, monitoring the standards and publishing assessments of the level of performance by relevant officers against the standards¹⁵⁹.

175. However, the guidance issued by the UK's Commission is advisory only; it does not impose any requirements on or employ election officials. This is also the case in respect of performance standards as there is no power of sanction

in the event that an election official does not comply with a standard.

176. International guidelines identify consistency as a fundamental principle of electoral legislation. The IDEA state that it is a fundamental principle that, 'election legislation should avoid conflicting provisions between laws governing national elections and laws governing sub-national (provincial or state) and local elections'; although this is not the case in many of the sample countries, it is difficult to reconcile the UK approach with the principle. International observer reports have criticized the UK's law in this respect. A highly fragmented electoral law, with significant differences in the laws relating to different electoral events, and current electoral administration oversight arrangements, not surprisingly present difficulties in terms of achieving consistency for UK voter experience of electoral events.

6. The legal framework should require that central electoral bodies be established and operate in a manner that ensures the independent and impartial administration of elections.

International guidance

177. Central electoral bodies are playing an increasing role in the administration and conduct of elections. It should be noted that Ireland at present has no central electoral body; responsibility for the conduct of elections is split between the relevant government Minister, constituency Returning Officers, and a National Returning Officer (a senior civil servant), depending on the election being held¹⁶⁰.

178. In newly-emerging democracies, but also in long-established ones, the existence of an effectively-functioning central electoral body goes some way towards ensuring the independence and legitimacy of the overall election result¹⁶¹. This is a critical aspect of a 'free and fair' election.

179. The IDEA state that the legal framework should require that central electoral bodies 'be established and operate in a manner that ensures the independent and impartial administration of elections'¹⁶².

180. While the IDEA recognises that the levels of central electoral body established in any one state will depend on the particular make-up of a state (for example federal or unitary) and the number of levels of government it has (national, provincial or state, local, and district), it stipulates that central electoral bodies must operate in an independent and transparent way and be adequately funded and staffed if they are to be regarded as effective¹⁶³.

181. The IDEA states that the legal framework should clearly define the duties and functions of the central electoral body. These duties must particularly include the following:

- Ensuring that election officials and staff responsible for the administration of the election are well trained and act impartially and independently of any political interest;
- Ensuring that clear voting procedures are established and made known to the voting public;
- Ensuring that voters are informed and educated concerning the election processes, contesting political parties and candidates;
- Ensuring the registration of voters and updating voter registers;
- Ensuring the secrecy of the vote;
- Ensuring the integrity of the ballot through appropriate measures to prevent unlawful and fraudulent voting; and
- Ensuring the integrity of the process for the transparent counting, tabulating and aggregating of votes.

182. IDEA also states that in some cases the duties and functions of an central electoral body may also include the following:

- Certification of the final election results;
- Delimitation of electoral boundaries;
- Monitoring and overseeing electoral campaign finance and expenditure; and
- Research, advice to government and/or parliament, and international liaison¹⁶⁴.

National practice

183. The functions of the central electoral body in the states under consideration fall largely into these categories (Elections Canada, in particular, carries out almost all of these functions at the federal level). Where they do not, the function is carried out by a government department or public entity. For example, voter registration is carried out by local authorities in the Netherlands. In New Zealand, enrolment functions were previously the statutory responsibility of the Chief Registrar of Electors. The Chief Executive Officer of NZ Post Ltd was designated to carry out this role but from 1 July 2012 statutory responsibility for these functions passed to New Zealand's Electoral Commission. However, the Commission has engaged NZ Post Ltd to deliver its enrolment functions under statutory delegation and direction from the Commission.

184. The main exception in practice to this list is the drawing up of electoral boundaries which is typically entrusted to a distinct independent body which does not play a role in the conduct or administration of elections.

185. Whereas in the UK election officials are appointed at a local level in local authorities and not by the UK's Electoral Commission, in many other countries (such as Australia, Canada¹⁶⁵ and New Zealand) electoral officials are appointed directly by the central electoral body.

186. In Australia, Divisional Returning Officers, who are AEC officers, are responsible for maintaining the electoral roll and delivering elections in each division.

187. In New Zealand, the Electoral Act 1993 provides that for every election to be held in a district, the Electoral Commission must, by notice in writing, designate an electoral official as the Returning Officer for the district. The Returning Officer conducts the election in the district. The Electoral Commission's powers do not extend to local elections.

188. In Canada, Returning Officers are appointed by the Chief Electoral Officer (CEO) for ten years. A federal electoral event is held under the administrative control of the CEO who is directly responsible to Parliament. The Returning Officer receives instructions from the CEO, reports directly to the CEO and is responsible for managing electoral events for the electoral district to which they are appointed¹⁶⁶.

189. This has an impact on the role and functions of the central electoral body, some of which are set out in more detail below. Where a central electoral body employs¹⁶⁷ election officials, the way in which it advises, instructs, trains and monitors officials will be different to where a central electoral body does not employ such officials. For example, in Canada the CEO issues a prescriptive operations manual for each type of electoral official containing numerous binding instructions that are not set out in legislation. In the UK, however, the Electoral Commission issues non-binding guidance that sets out the law and some additional 'best-practice' guidance; it does not have a power to issue binding instructions. The UK's Commission supplements the above with setting non-binding performance standards on electoral officials, such as Returning Officers.

190. Consideration has been given to the powers of central electoral bodies to design forms and notices, issue instructions or directions and set performance standards. The powers of the central electoral bodies in the sample countries in these respects are set out below.

[The design of forms and notices used during the electoral process](#)

191. We have chosen to look particularly at how forms and notices are designed because of their importance in elections. The design of forms and

notices provides an opportunity to promote access to elections; clearly worded and presented forms can increase informed participation in elections, however forms that are unclear or poorly presented can either deter participation in elections or cause voters to make errors.

192. There is no single approach to the responsibility of a central electoral body for the design of electoral forms and notices in all the countries surveyed.

193. In Australia, Canada and New Zealand, the central electoral body is responsible for designing some forms and notices. In Australia, the AEC designs most forms with the exception of enrolment forms. In New Zealand some forms (for example, enrolment forms and ballot papers) are prescribed in regulations¹⁶⁸. New Zealand's Electoral Commission does promulgate certain 'administrative' forms (for example, candidate and party donations and expenses returns forms).

194. The central electoral bodies in at least some Australian states also carry out a role in designing or approving forms and notices; for example, as stated elsewhere in this report, the Tasmanian Electoral Commission has taken on the role of approving forms.

195. In the Netherlands the design of forms and notices is split between the Electoral Council and the other government departments. The Electoral Council designs the form for the registration of political party names but all other forms are designed by the Ministry of Interior and Kingdom Relations.

196. In Ireland, forms and notices are prescribed in legislation but the Minister issues directions regarding the use of and any changes to forms and notices for any particular elections.

Instructions / directions

197. According to the IDEA, central electoral bodies should be able to issue instructions and directions to further clarify issues related to the electoral process¹⁶⁹. Central electoral bodies ought to be able to use instructions or directions 'to respond to emergent needs and provide practical solutions'¹⁷⁰.

198. Certain principles should be respected when authority is given to central electoral bodies to issue instructions. In particular, electoral legislation should adhere to basic election principles, such as the secrecy of the ballot¹⁷¹. Electoral legislation should provide for the authority of the central electoral body and should clearly state and define the scope and extent of the central electoral body's authority to issue instructions¹⁷².

199. As well as the requirement for any authority to issue directions to be set out in statute, the IDEA states that:

- Electoral legislation should provide for a process whereby electoral

participants and voters can lodge complaints and appeals arising from the adoption and implementation of central electoral body instructions. This process should also allow for such complaints and appeals to be resolved in a timely and effective way.

- Electoral legislation should state clearly the legal hierarchy, including the precedence of constitutional and legislative provisions over central electoral body instructions.
- Electoral legislation should state and define clearly the central electoral body's residual powers (its 'inherent powers') to issue instructions in emergency situations, including on election day, to meet any unforeseen contingency¹⁷³.

200. In Australia, Canada and New Zealand, the main electoral statute provides for the respective central electoral body to have the power to issue instructions or directions to electoral officials. In the case of New Zealand, this is further specified as a power to give directions orally or in written form¹⁷⁴, while in Australia, the central electoral body is limited to written instructions¹⁷⁵.

201. In Australia, the power is vested with the Electoral Commissioner who is the Chief Executive of the AEC. The Commissioner has a statutory power to give directions to AEC officers with respect to the performance of their functions and the exercise of their powers under the 1918 Act¹⁷⁶.

202. There is an additional power under the Public Service Act 1999 for the Electoral Commissioner to issue lawful instructions to any public sector employee.

203. Due to the sensitivities of electoral matters, the practice has developed in Australia that the primary legislation itself should contain all of the relevant details and obligations that are placed on electors, candidates, political parties, scrutineers (polling agents) and the conduct of polling.

204. However, the AEC does issue guidance and educational materials to all those involved in elections in a range of publications that appear on the AEC's website. For example, the AEC publishes a handbook for candidates and scrutineers which sets out the relevant electoral law and gives general AEC guidance¹⁷⁷.

205. In New Zealand, Section 20A(2) of the Electoral Act 1993 requires all electoral officials¹⁷⁸ to perform powers, duties and functions in accordance with any directions given by the Electoral Commission. The primary vehicles used by the Commission to issue instructions to Returning Officers are the operations and instructions manuals.

206. Electoral officials are provided with personal instructions manuals containing detailed instructions about how to conduct their duties. For example,

the 2005 operations manual for field staff includes specific sections on how to meet the special needs of some voters. This information was also included in the personal instructions manuals given to all election day staff. In 2008 the personal instruction manuals for election day staff were revised to include clear instruction about the ways in which polling place staff can support people with disabilities. This included easy-to-use checklists about ways of supporting or communicating with people with different needs. At the same election, the operations and instruction manuals also contained information and guidance about options for postal voting, advance voting and takeaway voting.

207. Operations manuals were also issued for the 2011 general election. The 2011 manuals contained, for example, additional instructions on the counting of the referendum ballot papers.

208. The operations and instructions manuals in New Zealand are supplemented by training provided to electoral officials by the Commission.

209. A similar arrangement exists in Canada. The CEO oversees and administers all aspects of federal elections and referendums, including manuals and instructions to election officers. Under Section 16(a) of the Canada Elections Act 2000 the CEO has a duty to exercise general direction and supervision over the conduct of elections. Under Section 16(c) the CEO has a duty to issue to election officers the instructions that the CEO considers necessary for the administration of the Act.

210. As in New Zealand, the CEO issues detailed manuals to election officers for federal election events¹⁷⁹. A separate manual is provided to almost each type of electoral officer, including:

- Central Poll Supervisor,
- Deputy Returning Officer,
- Poll Clerk,
- Registration Officer, and
- Returning Officer.

211. For example, the purpose of the Returning Officer's Manual is to assist Returning Officers and assistant Returning Officers in the performance of their duties under the Canada Elections Act. The Manual provides detailed information on both the administrative and the operational requirements imposed on the Returning Officer by legislation. The Manual also contains instructions from the CEO, which are necessary to ensure the effective administration of the Act¹⁸⁰. Failure to comply with any instruction could result in the removal of the Returning Officer from office¹⁸¹.

212. The Returning Officer's Manual is divided into the following three parts:

- Part I, Pre-Writ – Provides Returning Officers with an overview of their responsibilities and duties, and outlines the required activities before an electoral event.
- Part II, The Electoral Event – Presents details of the activities and duties required during the election period.
- Part III, Reference Materials – Lists the forms, lists, checklists and other materials provided by Elections Canada to assist Returning Officers and staff members to carry out their duties.

213. The Manual is highly prescriptive and detailed¹⁸², setting out both the legislative requirements and the CEO instructions for the whole electoral process. However, much of the document consists of detailed instructions from the CEO to Returning Officers derived from legislative requirements. The manual adds substantially to the duties on Returning Officers as set out in legislation, providing detail as to how the Returning Officers must carry out their duties. For example, the Manual requires Returning Officers to thoroughly verify each nomination paper received within 48 hours after its receipt and refers to a detailed verification checklist. The Manual instructs Returning Officers to use a new checklist for each nomination paper submitted by a candidate and to follow each step in the process, noting any problems on the checklist. The Returning Officer must also attach the checklist to the nomination documents.

214. There is no further provision in Australia, Canada or New Zealand relating to the instructions providing for a process whereby complaints and appeals arising from the adoption and implementation of central electoral body instructions can be lodged¹⁸³, stating the legal hierarchy (including the precedence of constitutional and legislative provisions over central electoral body instructions) and defining the central electoral body's residual powers to use instructions to meet any unforeseen contingency.

215. In contrast to the above, the Netherlands Electoral Council can make only non-binding rules.

Performance standards

216. There is a need for the performance of electoral officials and electoral processes to be regularly reviewed, especially after an election, to ensure that improvements can be made. Monitoring and evaluation of electoral officials' performance is essential in order to ensure that those responsible for the administration of the election are well trained and act impartially and independently of any political interest¹⁸⁴.

217. Elections Canada established the Field Liaison Officer Programme to support Returning Officers and their staff in 2003. Thirty-one experienced

election practitioners are appointed as field liaison officers (FLOs) and report to Elections Canada. FLOs are 'quality enhancers', providing leadership, guidance and advice to Returning Officers to improve service delivery and the management of the electoral process. FLOs also participate in the evaluation of Returning Officers following an electoral event.

218. In Canada, the CEO may, after consultation with the leader of every recognised political party in the House of Commons, reappoint for a new term any Returning Officer who has performed the functions of a Returning Officer in a satisfactory manner, whether or not other persons are considered for the appointment, if the office of Returning Officer is vacant by reason of the expiry of the Returning Officer's term of office. The CEO may remove any Returning Officer who fails to discharge competently a duty of a Returning Officer under the 2000 Act or to comply with an instruction of the Chief Electoral Officer described in Section 16(c) of the 2000 Act.

219. Performance standards for electoral officials are set by the central electoral body in Australia. After a federal election the AEC evaluates all aspects of the election including staff and training. The AEC reports to the Joint Standing Committee on Electoral Matters which conducts an inquiry following each federal election.

220. The Netherlands' Electoral Council does not take on a role in relation to performance standards.

221. Performance standards are also not in effect for Returning Officers in Ireland and, consequently, neither are there reviews or sanctions for performance shortcomings.

Discussion

222. All of the sample countries, except for Ireland, comply with the IDEA's recommendation that there should be a central electoral body that is autonomous and impartial. The UK has, since the creation of the Electoral Commission in 2000, also complied with this recommendation

223. Most of the central electoral bodies carry out all of the functions recommended by the IDEA.

224. In respect of designing forms and notices, the majority of the sample countries delegate this task to the central electoral body. This approach appears consistent with the IDEA's guidelines which state that a central electoral body must have the functions of 'ensuring that election officials and staff responsible for the administration of the election are well trained and act impartially and independently of any political interest' and 'ensuring that clear voting procedures are established and made known to the voting public'.

225. This is not the case in the UK where forms and notices are prescribed in

legislation and then reproduced by Returning Officers across the UK¹⁸⁵. The legislation normally allows some limited flexibility in the design and wording of the form, so long as the form used is of the same or like effect as the prescribed form. This has caused two different problems. Firstly, if a prescribed form is not clear or contains an error, there may be uncertainty as to the extent to which it can be amended by the Returning Officer to clarify the issue or remove the error. Secondly, the ability to produce forms and notices to the same or like effect has meant that there is variation in the forms used in each electoral area of the UK and therefore hundreds of versions of the same form being used. The quality of these forms is variable and the Commission understands that some do not meet voters', especially disabled voters', needs. The Commission has suggested forms to be used by all Returning Officers; the Commission has no power to mandate that a particular form is used. However, the Commission was given and exercised a specific power in relation to the referendum in 2011 on the UK's voting system to direct that certain forms must be used.

226. In compliance with the IDEA's recommendation, most of the sample countries allow for their respective central electoral body to issue instructions or directions. As noted elsewhere in this report the UK does not follow the IDEA's guidance or the approach of most of the sample countries in this respect.

227. Formal performance standards, like those in the UK, are not widely used, although the sample countries do have means to monitor performance. This may be explained by the fact that many of the central electoral bodies looked at in this report directly employ and issue instructions and directions to election officials. Given this, a statutory power to set standards may be seen to be unnecessary. However, in the UK, where the Electoral Commission neither employs nor directs election officials, performance standards may be seen to be necessary to help promote consistency in approach and good practice in all electoral areas of the UK.

Conclusion

228. This report sets out international guidelines and some national practices in a selection of topics relating to the structure of electoral law, including:

- The electoral law balance,
- The unity or fragmentation of electoral law,
- The consistency of electoral law, and
- The roles of central electoral bodies.

229. There are many other potential aspects of electoral law that this report could have looked at but, given the early stage of the Law Commission's review

of electoral law, it was decided that these structural issues ought to be examined first with other substantive issues (such as the nomination of candidates, electoral offences) being considered in the future.

230. By presenting best practice, as set out in the principles taken from the guidance and reports produced by the IDEA, the Venice Commission and the OSCE / ODIHR and comparing it to the practice of other countries as well as the UK, it is hoped that this report will inform thinking on the Law Commission's review.

231. The six principles set out in this report should underpin a review of the UK's electoral law. These are:

- The majority of electoral matters should be rendered in written law, which should be accessible to citizens¹⁸⁶.
- The electoral law framework should be structured hierarchically: constitution /constitutional enactment (for the very basics of electoral rights), primary legislation (for the main provisions relating to the management of elections) and then lower levels to allow for flexibility in administrative and procedural matters including secondary legislation, instructions / directions, guidance¹⁸⁷.
- A unified, consolidated electoral law is preferable to a fragmented law with separate legislative vehicles for different electoral events and dealing with different matters. One coherent statute – providing for the particularities of different elections in different parts of the same statute - is better than a number of statutes¹⁸⁸.
- Election legislation should avoid conflicting provisions between laws governing national elections, sub-national (provincial or state), local elections and referendums¹⁸⁹.
- Reforms to electoral law should be undertaken with the goals of clarity and simplicity in mind¹⁹⁰.
- The legal framework should require that central electoral bodies be established and operate in a manner that ensures the independent and impartial administration of elections¹⁹¹. The IDEA states that central electoral bodies must have a number of functions including ensuring that:
 - election officials and well trained,
 - clear voting procedures are established and communicated to the electorate,
 - voters are informed about the election process, and

- the secrecy of the ballot and integrity of the vote is preserved¹⁹².

232. The practice in the selected countries considered by this report does not always mirror international guidance. For example, in all the countries, with the exception of the Netherlands, the law could be more accurately described as fragmented rather than unified. However, even in federal nations where it is inevitable that there will be numerous electoral enactments passed by each state and at a federal level, the law appears more unified and consequently more accessible than the UK.

233. This report shows the urgent need for reform of the structure of the UK's law. The fragmentation and complexity of electoral law is a result of there not being any consolidation exercise in the UK since 1983; all of the selected countries have carried out consolidation exercises more recently. Since 1983, successive governments in the UK have brought forward electoral legislation that has led to a cluttered and complex electoral statute book, with numerous inconsistencies between different electoral events; there can be no doubt that this impedes access to the electoral system. The UK's electoral law structure has been criticised in successive OSCE / ODIHR international observer reports and the Law Commission's review of electoral law presents an opportunity to devise a consolidated, unified structure that would serve the interests of all those involved in elections, especially voters.

234. The approach of all the sample countries, and the UK, is to set electoral matters out in written law. It is accepted in most of the countries studied that, given the importance of electoral law and the need for it to be seen to be beyond political motivations, primary law is often the most appropriate place for electoral provisions.

235. However, the approach in all countries reflects that, as IDEA recommend, secondary legislation is essential in order to allow for flexibility to deal with defects in the law that may become apparent close to an election. The question as to the balance between what provisions should go into primary as opposed to secondary law, along with what should be left to instructions issued by a central electoral body, is not easy to answer. Although the countries under examination prefer to be prescriptive in primary law, it is not clear whether this fully complies with international guidance or whether it is the best practice. The recent efforts of some of the states of Australia to remove unnecessary prescription in the primary law may present useful case study examples as to how the UK's electoral law could be structured.

236. There is concern in all the countries that secondary legislation, which is made by the executive with limited legislative scrutiny, may not always be appropriate for electoral law; this is a concern shared by IDEA¹⁹³. However, prescription of procedural matters, such as forms and notices, should not be contained in primary law which is difficult to amend. The solution offered by IDEA and used in many of the nations examined (and also the useful case studies of Victoria and Tasmania) is for an independent and impartial central

electoral body to prescribe such matters by instructions / directions. The UK's Electoral Commission was given a power to prescribe these matters in the 2011 alternative vote referendum but it does not have these powers in respect of any other electoral event.

237. This report only provides a limited review of the laws of a small number of selected countries and how they comply with international guidance. More work is required to look at these countries systems in more depth and / or consider other countries in order to produce options for the structure of the UK's electoral law. The structure of electoral law is of fundamental importance to elections. One of the first and most important tasks in reforming electoral law is to consider how the law can be organised in a way that is clear and accessible for electoral administrators, candidates, political parties and, most importantly, voters.

Appendices

We have prepared the information in Appendices B-F based on information provided to us by the relevant countries. We have included it to give an overview of the legislative structure for each country. However, it is possible that the lists of legislation may not be comprehensive including, in particular, secondary legislation.

Appendix A: Introductions to the selected countries

Australia

Australia is a federal state with a supreme law constitution and a common law tradition.

The rules for federal elections are contained in the Commonwealth Electoral Act 1918 (which has been substantially amended on a number of occasions, for example in 1973 and 1984). Rules for referendums are contained in the Referendum (Machinery Provisions) Act 1984.

The central electoral body in Australia, the Australian Electoral Commission (AEC), dates back to 1902 when it was first established as a branch of the Department of Home Affairs. From 1902 to 1983, electoral administration was undertaken by the Commonwealth Electoral Office, which was part of a department of state¹⁹⁴. In 1973 the Australian Electoral Office was created and in 1984, following significant amendments to the Commonwealth Electoral Act 1918, this became the AEC, an independent statutory authority.

An important aim of establishing the AEC was to increase the independence of federal electoral administration, to 'ensure...an electoral process which is modern and free from any allegations or even possibilities of corruption or political pressure'¹⁹⁵.

The AEC has the following statutory functions:

- to manage the Commonwealth electoral roll¹⁹⁶ which is used by all levels of government;
- to support electoral redistributions;
- to register political parties;

- to conduct elections and referendums, including fee for service and industrial elections;
- to administer election funding and financial disclosure requirements;
- to educate and inform the community about participating in the electoral process;
- to undertake research, provide information, publish material, and provide reports on electoral matters; and
- where approved by the Minister for Foreign Affairs, to provide assistance in overseas elections and referendums¹⁹⁷.

Each state and territory in Australia has its own electoral commission with responsibility for electoral management in the state or territory. In many respects, the state and territory electoral management bodies are similar to the AEC and the various electoral commissions generally perform similar functions¹⁹⁸.

The Commonwealth Electoral Act 1918 provides for the appointment of a Deputy Electoral Commissioner, an Australian Electoral Officer (AEO) for each state and the Northern Territory and a Divisional Returning Officer (DRO) for each division. AEOs are responsible for managing the federal electoral activities within each state or territory. Within each division, DROs undertake roll management and public awareness activities and deliver election services¹⁹⁹.

Under the Commonwealth Electoral Act 1918, the Electoral Commissioner may appoint: Assistant Returning Officers (Section 33); Assistant Divisional Returning Officers (Section 34); and such other temporary staff as are necessary to perform its functions (Section 35)²⁰⁰.

None of the Australian states or territories have permanent DROs; instead, DROs are appointed on a temporary basis for each election or the roles are carried out by central office staff as required²⁰¹.

Electoral arrangements for local councils can vary to a large degree within a particular state or territory: for example, some states provide for councils to appoint their own Returning Officers and run their local elections²⁰².

New Zealand

New Zealand is a close constitutional comparator to the UK, being a unitary state²⁰³ with an uncodified constitution and a common law tradition. The primary electoral enactment in New Zealand is the Electoral Act 1993.

Amongst other things, this Act established New Zealand's electoral agencies²⁰⁴, the election processes (including for disputing results), a means for replacing

MPs between elections, registration processes for political parties and logos and enrolment and electoral roll requirements.

This Act is supplemented by secondary legislation including, in particular, the Electoral Regulations 1996.

New Zealand's Electoral Commission is an independent Crown entity, not part of any larger department or Ministry, and was established under the Electoral Act 1993. It is responsible for:

- the administration of parliamentary elections and referendums;
- the allocation of time and money for the broadcast of election programmes;
- the promotion of public awareness of electoral matters, for example by conducting of education and information programmes;
- considering and reporting to the Minister or to the House of Representatives on electoral matters referred to it by the Minister or the House of Representatives; and
- making information available to assist parties, candidates and others to meet their statutory obligations in respect of electoral matters administered by the Commission²⁰⁵.

The Commission also has the power, if it considers that it is necessary for the proper discharge of its functions, to:

- initiate, sponsor, and carry out any studies or research;
- make any inquiries;
- consult with any persons or classes of persons;
- publicise, in any manner that it thinks fit, any parts of its work;
- provide information and advice on any matter—
 - to the Minister for the Minister's consideration,
 - to the Minister for presentation to the House of Representatives;
- request advice, assistance, and information from any government department or any State enterprise²⁰⁶.

The Electoral Act 1993 states that the Commission is to administer the electoral system impartially and that it must act independently in performing its statutory functions and duties, and exercising its statutory powers²⁰⁷.

On 1 July 2012 the statutory responsibility of the Chief Registrar of Electors (delegated to the Electoral Enrolment Centre of NZ Post Ltd) was transferred to the Commission in accordance with the Electoral (Administration) Amendment Act 2011. After the transfer NZ Post Ltd will continue to provide enrolment services under contract to the Commission.

The Electoral Act 1993 provides that for every election to be held in a district, the Commission must, by notice in writing, designate an electoral official as the Returning Officer for the district²⁰⁸. The Returning Officer conducts the election in the district. The Electoral Commission's powers do not extend to local elections.

Canada

Like Australia, Canada is a federal state with a supreme law constitution and a mixed civil and common law tradition.

Canada's electoral events are administered primarily under the Canada Elections Act 2000²⁰⁹ and the Referendum Act 1992. As Canada is a federation, electoral legislation is also passed by each of the ten provinces and three territories to administer provincial / territorial elections to their own legislatures and provincial / territorial referenda.

Canada's central electoral body is the Office of the Chief Electoral Officer of Canada, also called Elections Canada. Each of Canada's ten provinces also has an electoral body. The post of Chief Electoral Officer of Canada was created by the Dominion Elections Act 1920. Initially responsible only for the administration of federal general elections and by-elections, the mandate has broadened to include:

- administering electoral legislation (including administering federal elections and referendums);
- registering political parties and third parties engaged in election advertising as well as electoral district associations, leadership contestants and nomination contestants of registered parties;
- maintaining the National Register of Electors;
- appointing and providing instructions to Returning Officers (one in each of the 308 electoral districts);
- disclosing contributions to candidates, political parties and third parties, and to electoral district associations, leadership contestants and nomination contestants of registered parties; examining and disclosing their financial returns; and reimbursing expenses to candidates and parties according to formulas laid down in the Canada Elections Act 2000;

- ensuring access to the system for all eligible citizens, through both physical facilities and public education and information programs; and
- providing legal, technical, financial and administrative support to the independent commissions responsible for the periodic process of readjusting federal electoral boundaries, to ensure that representation conforms to the Electoral Boundaries Readjustment Act 1985²¹⁰.

The Chief Electoral Officer appoints a federal Returning Officer for 10 years for each federal electoral district to prepare for and conduct an election of a member of parliament to represent that district²¹¹.

Separate provision for Returning Officers is made in each province and territory in respect of provincial / territorial and local elections.

Ireland

Ireland is a unitary state with a supreme law constitution and a common law tradition, similar to New Zealand.

The majority of electoral law in Ireland is set out in the Electoral Act 1992, which makes provision for the registration of voters and contains the rules for the conduct of Dáil Éireann²¹² elections. These rules are applied, with some exceptions, to the running of referendums and European and presidential elections. Other important electoral legislation includes the Presidential Elections Act 1993, the Referendum Act 1994, the European Parliament Elections Act 1997 and the Referendum Act 1998.

Unlike the other countries selected for this study, Ireland does not have a central electoral body. Instead the role is to a large extent filled by the Department of the Environment, Community Local Government, which is responsible for the various legislative codes dealing with the registration of electors and the conduct of elections and referendums. In addition the Department is responsible for:

- conducting an on-going review of electoral law, constituencies and local electoral areas;
- providing information and advice to registration authorities, Returning Officers and the general public; and
- publishing election results.

Returning Officers are responsible for the conduct of elections in their constituency and the National Returning Officer is responsible for the conduct of presidential elections and referendums. The post of Returning Officer in Dublin and Cork is held by the City Sheriff and in the other areas by the County Registrar of the area (a senior court official). For local elections the position is

held by the administrative head of the local council. The National Returning Officer for presidential elections and referendums is the senior official in the Franchise Section of the Department²¹³.

The Netherlands

The Netherlands is a unitary state with regional government²¹⁴. It has a supreme law constitution and a common law tradition.

Electoral law in the Netherlands is primarily set out in the Elections Act 1989. This covers elections for the Senate and the House, for the provincial and municipal councils, and for the European Parliament. General principles are set out in the Charter for the Kingdom of the Netherlands and the Constitution of the Netherlands.

The central electoral body in the Netherlands, the Electoral Council ('the *Kiesraad*'), dates back to 1917 when its forerunner, the Central Electoral Committee was formed²¹⁵. Previously a part of the Ministry of the Interior, the Electoral Council has since 2006 been independent of government.

The Elections Act 1989 provides that the Electoral Council has the function of advising the government and both Houses of the States General on technical matters concerning the franchise or the conduct of elections²¹⁶.

The Electoral Council also acts as the central electoral committee for prescribed elections, namely elections to the House of Representatives, the Senate and the European Parliament²¹⁷. In this capacity the Council's functions include:

- registration of names (appellations) of political parties;
- evaluation of the validity of combined lists;
- numbering the lists of candidates;
- assigning seats and appointing Members of Parliament;
- establishing the results.

In addition, the Council advises on legal actions concerning the Act and engages in public awareness activities aimed at informing citizens, political parties, municipalities, media and other parties about the electoral process²¹⁸.

Elections in the Netherlands are administered by each municipality, overseen by the Ministry of Interior and Kingdom Relations. The municipality decides the number, location and type of polling stations, and appoints and trains the some 10,000 polling station electoral committees (PSEC), which conduct the voting and counting process²¹⁹.

Appendix B: The electoral legislation of Australia

Federal electoral legislation

Constitution Act 1900

Commonwealth Electoral Act 1918

Referendum (Machinery Provisions) Act 1984

Electoral and Referendum Regulations 1940

State / territory electoral legislation

New South Wales

Constitution Act 1902

Parliamentary Electorates and Elections Act 1912

Constitution Further Amendment (Referendum) Act 1930

Local Government Act 1993

Victoria

The Constitution Act Amendment Act 1958

Constitution Act 1975

Electoral Act 2002

Local Government Act 1989

Queensland

Constitution Act 1867

Constitution of Queensland Act 2001

Parliament of Queensland Act 2001

Electoral Act 1992

Referendums Act 1997

Local Government Act 1989

City of Brisbane Act 1924

Western Australia

Constitution Act 1889

Electoral Act 1907

Referendums Act 1983

Local Government Act 1995

South Australia

Constitution Act 1934

Electoral Act 1985

Local Government Act 1999

Local Government (Elections) Act 1999 & Regulations

Local Government (Implementations) Act 1999

City of Adelaide Act 1998

Tasmania

Constitution Act 1934

Constitution Act 1985

Electoral Act 1985

Electoral Act 2004

Referendum Procedures Act 2004

Local Government Act 1993

Northern Territory

Northern Territory Self Government Act 1978

Northern Territory Electoral Act 1995

Electoral Act 2004

Referendums Act 1998

Local Government Act

Local Government (Electoral) Regulations 1996

Australian Capital Territory

Australian Capital Territory (Self-Government) Act 1988

Electoral Act 1992

Referendum (Machinery Provisions) Act 1994

Appendix C: The electoral legislation of New Zealand

Primary legislation

Bill of Rights Act 1990

Constitution Act 1986 (Part 3)

Electoral Act 1993

Electoral Referendum Act 1993 (superseded)

Citizens Initiated Referenda Act 1993

Referenda (Postal Voting) Act 2000

Electoral Referendum Act 2010

Referenda (Postal Voting) Act 2000

Local Electoral Act 2001

New Zealand Public Health and Disability Act 2000 (this relates to elections to District Health Boards)

Education Act 1989 (this relates to elections of School Boards of Trustees)

Broadcasting Act 1989 (Part 6)

Secondary legislation

Electoral Main Rolls Closing Order 2008 (SR 2008/151) (this will be replaced by the 2012 Order on or after 26 October 2012)

Electoral Regulations 1996 (SR 1996/93)

Electoral (Advertisements of a Specified Kind) Regulations 2005 (SR 2005/147)

Electoral (Iwi Organisation and Other Māori Organisation) Regulations 2012 (SR 2012/3)

Local Electoral Regulations 2001 (SR 2001/145)

Education (School Trustee Elections) Regulations 2000 (SR 2000/195)

Appendix D: The electoral legislation of Canada

Federal electoral legislation

Canada Elections Act 2000

Canada Elections Act as Adapted for the Purposes of a Referendum 2002 (regulation)

Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Constitution Act, 1867 (U.K.), 30 & 31 Victoria, c. 3, ss. 51-51A, reprinted in R.S.C. 1985, App. II, No. 5

Electoral Boundaries Readjustment Act 1985

Federal Elections Fees Tariff

Northwest Territories Act 1985

Referendum Act 1992

Special voting rules as adapted for the purposes of a by-election (regulation)

Provincial electoral legislation²²⁰

Newfoundland and Labrador

Elections Act 1991

Electoral Boundaries Act 1990

House of Assembly Act 1990

Prince Edward Island

Controverted Elections (Provincial) Act 1988

Election Act 1988

Election Expenses Act 1996

Electoral Boundaries Act 1994

Electoral Commission

Legislative Assembly Act 1988

Plebiscites Act 1988

Nova Scotia

Controverted Elections Act 1989

Elections Act 1989

House of Assembly Act 1989

Members and Public Employees Disclosure Act 1991

Political Contributions Disclosure Regulations, N.S. Reg. 5/2003

New Brunswick

Elections Act 1973

Electoral Boundaries and Representation Act 2005

Political Process Financing Act 1978

Provincial Offences Procedure Act 1987

Referendum Act 2011

Quebec

Election Act

Quebec Referendum Act

Ontario

Election Act 1990

Election Finances Act 1990

Representation Act 1996

Representation Act 2005

Manitoba

Elections Finances Act 1987

Electoral Commission

The Elections Act 2006

The Electoral Divisions Act 1987

Saskatchewan

The Constituency Boundaries Act 1993

The Controverted Elections Act 1978

The Election Act 1996

The Legislative Assembly and Executive Council Act 2007

The Political Contributions Tax Credit Act 2001

The Referendum and Plebiscite Act 1990-91

The Senate Nominee Election Act 2009

The Time Act 1978

Alberta

Constitutional Referendum Act 2000

Election Act 2000

Election Finances and Contributions Disclosure Act 2000

Electoral Boundaries Commission Act 2000

British Columbia

Constitution Act 1996

Constitutional Amendment Approval Act 1996

Election Act 1996

Electoral Boundaries Commission Act 1996

Electoral Districts Act 2008

Recall and Initiative Act 1996

Referendum Act 1996

Electoral Commission

Yukon

Elections Act 2002

Electoral District Boundaries Act

Electoral District Boundaries Act 2008

Plebiscite Act 2002

Taxpayer Protection Act 2002

Northwest Territories

Elections and Plebiscites Act 2010

Electoral Boundaries Commission Act 2006

Income Tax Act 1988

Legislative Assembly and Executive Council Act 1999

Nunavut

Access to Information and Protection of Privacy Act (Nunavut) 1994

Electoral Boundaries Commission Act 2003

Income Tax Act (Nunavut) 1988

Legislative Assembly and Executive Council Act 2002

Nunavut Elections Act 2008

Plebiscite Act (Nunavut) 1988

Residential Tenancies Act (Nunavut) 1988

Appendix E: The electoral legislation of Ireland

Primary legislation

Seanad Electoral (University Members) Act 1937

Seanad Electoral (Panel Members) Act 1947

Seanad Electoral (Panel Members) Act 1954

Electoral (Amendment) Act 1972 ss 2 and 6

Electoral (Amendment) Act 1973 s 3

Postal and Telecommunications Services Act 1983 s 74

Electoral Act 1992

Presidential Elections Act 1993

Referendum Act 1994

Electoral (Amendment) Act 1996

European Parliament Elections Act 1997

Electoral Act 1997

Referendum Act, 1998

Electoral (Amendment) Act 1998

Local Government Act 1998 s 12(12)

Local Elections (Disclosure of Donations and Expenditure) Act 1999

Local Government Act 2001

Part 4 Electoral (Amendment) Act 2001

Referendum Act 2001

Electoral (Amendment) Act 2002

Electoral (Amendment) (No. 2) Act 2002

Electoral Commission

Local Government (No. 2) Act 2003 s 6

European Parliament Elections (Amendment) Act 2004

Electoral (Amendment) Act 2004

Electoral (Amendment) Act 2005

Electoral (Amendment) Act 2006

Electoral (Amendment) Act 2007

Secondary legislation

Údarás na Gaeltachta Elections Regulations 1979

Údarás na Gaeltachta Elections (Amendment) Regulations 1994

Údarás na Gaeltachta Elections (Amendment) Regulations 1999

Údarás na Gaeltachta Elections (Amendment) Regulations 2005

Local Elections Regulations 1995

European Parliament Elections (Forms) Regulations 2004

European Parliament Ballot Paper (Photographs and Emblems) Regulations
2004

European Parliament Election (Reimbursement of Expenses) Regulations 1999

Presidential Election (Reimbursement of Expenses) Regulations 2004

Presidential Elections (Forms) Regulations 2004

Electoral (Amendment) Act, 2001 (Section 48) Order 2002

Appendix F: The electoral legislation of the Netherlands

The Charter for the Kingdom of the Netherlands

The Constitution of the Netherlands

The Elections Act

General Administrative Law Act

Local Communities Act

The Provincial Act

The Criminal Code

Appendix G: The electoral legislation of the United Kingdom

Primary legislation

Act of Settlement 1700

Acts of Union 1707

Sheriffs Act 1887

The Electoral Law Act (Northern Ireland) 1962

Local Government Act 1972

Local Government (Scotland) Act 1973

House of Commons Disqualification Act 1975

Recess Elections Act 1975

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

European Parliamentary Elections Act 1978

Representation of the People Act 1981

Representation of the People Act 1983

Representation of the People Act 1985

Parliamentary Constituencies Act 1986

Local Government and Housing Act 1989

Representation of the People Act 1989

Broadcasting Act 1990

Crofters (Scotland) Act 1993

Scotland Act 1998

House of Lords Act 1999

Electoral Commission

Greater London Authority Act 1999

National Parks (Scotland) Act 2000

Representation of the People Act 2000

Political Parties, Elections and Referendums Act 2000

Election Publications Act 2001

House of Commons (Removal of Clergy Disqualification) Act 2001

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

European Parliamentary Elections Act 2002

Scottish Local Government (Elections) Act 2002

European Parliament (Representation) Act 2003

European Parliamentary and Local Elections (Pilots) Act 2004

Local Governance (Scotland) Act 2004

Scottish Parliament (Constituencies) Act 2004

Electoral Administration Act 2006

Government of Wales Act 2006

Local Electoral Administration and Registration Services (Scotland) Act 2006

The Northern Ireland (Miscellaneous Provisions) Act 2006

Health Boards (Membership and Elections) (Scotland) Act 2009

Local Democracy, Economic Development and Construction Act 2009

Political Parties and Elections Act 2009

Scottish Local Government (Elections) Act 2009

Constitutional Reform and Governance Act 2010

Crofting Reform (Scotland) Act 2010

Electoral Commission

European Union Act 2011

Fixed-term Parliaments Act 2011

Local Electoral Administration (Scotland) Act 2011

Parliamentary Voting System and Constituencies Act 2011

Scottish Parliamentary Commissions and Commissioners etc. Act 2010

The Police Reform and Social Responsibility Act 2011

Secondary legislation

Election Petition Rules 1960

European Parliamentary Election Petition Rules 1979

Parliamentary Writs Order 1983

Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984

Representation of the People (Scotland) Regulations 1986

Servants of the Crown (Parliamentary, European Parliamentary and Northern Ireland Assembly Candidature) Order 1987

Local Government Officers (Political Restrictions) Regulations 1990

Returning Officers' Accounts (Parliamentary Elections) (England and Wales) Regulations 1991

European Parliamentary Elections (Changes to the Franchise and Qualification of Representatives) Regulations 1994

Parliamentary Constituencies (Wales) Order 1995

Returning Officers (Parliamentary Constituencies) (England) Order 1995

Returning Officers (Parliamentary Constituencies) (Wales) Order 1995

Civil Procedure Rules 1998

Returning Officers' and Local Returning Officers' Accounts (European Parliamentary Elections) (England and Wales) Regulations 1999

Servants of the Crown (Parliamentary, European Parliamentary, National Assembly for Wales, New Northern Ireland Assembly and Scottish Parliament Candidature) Order 1999

Registration of Political Parties (Prohibited Words and Expressions) Order 2001

Registration of Political Parties (Fees) Order 2001

Holder of Hereditary Peerages (Overseas Electors) (Transitional Provisions) Order 2001

European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001

Representation of the People (England and Wales) Regulations 2001

Representation of the People (England and Wales) (Amendment) Regulations 2002 and 2006

Representation of the People (England and Wales) (Amendment) (No 2) 2006

Representation of the People (Scotland) Regulations 2001

Representation of the People (Scotland) (Amendment) Regulations 2002, 2006, 2007 and 2008

Loch Lomond and The Trossachs National Park Elections (Scotland) Order 2002

Cairngorms National Park Elections (Scotland) Order 2003

European Parliamentary Elections (Registration of Citizens of Accession States) Regulations 2003

Greater London Authority Elections (Election Addresses) Order 2003

European Parliamentary Elections Regulations 2004

Police (Scotland) Regulations 2004

European Parliamentary Elections (Amendment) Regulations 2009

European Parliamentary Elections (Local Returning Officers' Charges) (Great Britain and Gibraltar) Order 2004

Representation of the People (Combination of Polls) (England and Wales) 2004

Parliamentary Constituencies (Scotland) Order 2005

Registration of Political Parties (Prohibited Words and Expressions) (Amendment) Order 2005

Representation of the People (Variation of Limits of Candidates' Election Expenses) Order 2005

Parliamentary Elections (Returning Officers' Charges) Order 2005

Representation of the People (Form of Canvass) (England and Wales) Regulations 2006

Electoral Administration Act 2006 (Commencement No 1 and Transitional Provision) Order 2006

Absent Voting (Transitional Provisions) (England and Wales) Regulations 2006

Local Elections (Principal Areas) Rules 2006

Local Elections (Parishes and Communities) (England and Wales) Rules 2006

Local Elections (Principal Areas and Parishes and Communities) (Amendment) Rules 2006

Electoral Administration Act 2006 (Commencement No 2, Transitional and Savings Provision) Order 2006

Electoral Administration Act 2006 (Commencement No 3) Order 2007

Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006

Representation of the People (Form of Canvass) (Scotland) Regulations 2006

Review of Polling Districts and Polling Places (Parliamentary Elections) Regulations 2006

Representation of the People (Combination of Polls) (England and Wales) (Amendment) Regulations 2006 and 2007

Town and Country Planning (Control of Advertisements) (England) Regulations 2007

Local Authorities (Mayoral Elections) (England and Wales) Regulations 2007

Parliamentary Constituencies (England) Order 2007

Electoral Administration Act 2006 (Commencement No 4 and Transitional Provision) Order 2007

National Assembly for Wales (Representation of the People) Order 2007

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007

The Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Regulations 2007

Returning Officers (Parliamentary Constituencies) (England) Order 2007

Electoral Administration Act 2006 (Commencement No 5) Order 2007

Greater London Authority Elections Rules 2007

Electoral Administration Act 2006 (Commencement No 6) Order 2008

Electoral Administration Act 2006 (Commencement No 7) Order 2008

European Parliamentary Elections (Returning Officers) Order 2008

The European Parliament (Number of MEPs and Distribution between Electoral Regions (United Kingdom and Gibraltar) Order 2008

The Local Elections (Ordinary day of Elections in 2009) Order 2008

European Parliamentary Elections (Appointed Day of Poll) Regulations 2008

Local Authorities (Elected Mayors) (England) Regulations 2008

Absent Voting at Scottish Local Government Elections (Provision of Personal Identifiers) Regulations 2009

Electoral Administration Act 2006 (Commencement No 8 and Transitional Provision) Order 2009

The Electoral Administration Act 2006 (Commencement No.8 and Transitional Provision) Order 2009

The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2009

The European Parliament (Disqualification)(United Kingdom and Gibraltar) Order 2009

The European Parliamentary Elections (Amendment) Regulations 2009

The European Parliamentary Elections (Amendment) (No.2) Regulations 2009

The European Parliamentary Elections (Loans and Related Transactions and Miscellaneous Provisions) (United Kingdom and Gibraltar) Order 2009

The European Parliamentary Elections (Local Returning Officers' Charges) (Scotland) Order 2009

The European Parliamentary Elections (Local Returning Officers' Charges) (England, Wales and Gibraltar) Order 2009

The European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2009

The European Parliamentary Elections (Returning Officers' Charges) (Great Britain and Gibraltar) Order 2009

The European Parliamentary Elections (Returning Officer's Charges) (Northern Ireland) Order 2009

The European Parliamentary Elections (Welsh Forms) Order 2009

The European Parliamentary Election Petition (Amendment) Rules 2009

The Health Board Elections (Scotland) Regulations 2009

The Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 5 and Transitional Provision) Order 2009

The Northern Ireland Assembly (Elections) (Amendment) Order 2009

The Parliamentary Constituencies (England) (Amendment) Order 2009

The Political Parties and Elections Act 2009 (Commencement No.1 and Transitional Provisions) Order 2009

The Political Parties and Elections Act 2009 (Commencement No.2 and Transitional Provisions) Order 2009

The Postponement of Local Elections (Northern Ireland) Order 2009

The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Order 2009

The Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009

The Representation of the People (Amendment) Regulations 2009

The Scottish Local Government Elections Amendment Order 2009

Cairngorms National Park Elections (Scotland) Amendment Order 2010

The Electoral Administration Act 2006 (Commencement No. 1 and Saving Provision) (Scotland) Order 2010

The Electoral Law Act (Northern Ireland) 1962 (Amendment) Order 2010

The Electoral Law (Polling Station Scheme) (Northern Ireland) Regulations 2010

The European Parliamentary Elections (Northern Ireland) (Amendment) Regulations 2010

The Health Board Elections (Scotland) Amendment Regulations 2010

The Local Elections (Northern Ireland) Order 2010

The National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010

The National Assembly for Wales Referendum (Assembly Act Provisions) (Limit on Referendum Expenses Etc.) Order 2010

The National Assembly for Wales (Legislative Competence) (Local Government) Order 2010

The National Assembly for Wales (Representation of the People) (Amendment) Order 2010

The Northern Ireland Assembly (Elections) (Amendment) Order 2010

The Northern Ireland Assembly (Minimum Period) Order 2010

The Parliamentary Elections (Returning Officer's Charges) (Northern Ireland) Order 2010

The Parliamentary Elections (Returning Officers' Charges) Order 2010

The Parliamentary Elections (Welsh Forms) (Amendment) Order 2010

The Political Parties and Elections Act 2009 (Commencement No. 3 and Saving Provision) Order 2010

The Political Parties and Elections Act 2009 (Commencement No. 4) Order 2010

The Political Parties and Elections Act 2009 (Commencement No. 5 and Saving Provisions) Order 2010

The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010

The Representation of the People (Northern Ireland) (Amendment) Regulations 2010

The Representation of the People (Scotland) (Amendment) Regulations 2010

The Scottish Local Government (Elections) Act 2009 (Commencement) Order 2010

The Scottish Parliament (Constituencies and Regions) Order 2010

The Scottish Parliament (Disqualification) Order 2010

The Scottish Parliament (Elections etc.) Order 2010

Service Voters' Registration Period Order 2010

Crofting Commission (Elections) (Scotland) Regulations 2011

The Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2011

The Local Elections (Parishes and Communities) (England and Wales) (Amendment) Rules 2011

The Local Elections (Principal Areas) (England and Wales) (Amendment) Rules 2011

The Local Electoral Administration (Scotland) Act 2011 (Commencement) Order 2011

The National Assembly for Wales (Returning Officers' Accounts) Regulations 2011

The National Assembly for Wales (Returning Officers' Charges) Order 2011

The Northern Ireland Assembly Elections (Returning Officer's Charges) Order 2011

The Parliamentary Voting System and Constituencies Act 2011 (Repeal of Alternative Vote Provisions) Order 2011

The Referendum on the Voting System (Counting Officers' and Regional Counting Officers' Charges) Order 2011

The Referendum on the Voting System (Welsh Forms) Order 2011

The Representation of the People (Electoral Registration Data Schemes) Regulations 2011

The Scottish Local Government Elections Order 2011

The Scottish Parliament (Regional Returning Officers) Order 2011

The Scottish Parliament (Returning Officers' Charges) Order 2011

Representation of the People (Post-Local Government Elections Supply and Inspection of Documents) (Scotland) Amendment Regulations 2012

Representation of the People (Variation of Limits of Candidates' Local Government Election Expenses) (Scotland) Order 2012

Scottish Local Government Elections (Amendment) Order 2012

Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012

Local Authorities (Conduct of Referendums) (England) Regulations 2012

Local Authorities (Mayoral Elections) (England and Wales) (Amendment) Regulations 2012

Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2012

Local Elections (Declaration of Acceptance of Office) Order 2012

Greater London Authority Elections (Amendment) Rules 2012

Local Authorities (Conduct of Referendums) (England) Regulations 2012

Neighbourhood Planning (Referendums) Regulations 2012

Local Authorities (Conduct of Referendums) (Council Tax Increases) (England) Regulations 2012

Local Authorities (Referendums Relating to Council Tax Increases) (England) Regulations 2012

Police and Crime Commissioner Elections Order 2012

Police and Crime Commissioner Elections (Designation of Local Authorities) Order 2012

Police and Crime Commissioner Elections (Designation of Local Authorities) (No 2) Order 2012

Police and Crime Commissioner Elections (Designation of Police Area returning Officers) Order 2012

Police and Crime Commissioner Elections (Designation of Police Area Returning Officers) (No 2) Order 2012

Police and Crime Commissioner Elections (Returning Officer Accounts) Regulations 2012

Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) (England and Wales) Order 2012

Endnotes

¹ The International Institute for Democracy and Electoral Assistance ('the IDEA') is an intergovernmental organisation that supports democracy worldwide by providing comparative knowledge, assisting in democratic reform and influencing policies and politics. IDEA produces comparative knowledge in its key areas of expertise, which include electoral processes and political participation and representation. IDEA is an impartial organisation and a Permanent Observer to the United Nations. For more information, see International IDEA, *The International Institute for Democracy and Electoral Assistance At a Glance*, available at: <http://www.idea.int/about/>

² The European Commission for Democracy through Law, more commonly known as the Venice Commission, is a Council of Europe independent consultative body on issues of constitutional law, including electoral law. Its members are independent experts in the area. The UK is a member state of the Council of Europe. For an overview of the Venice Commission's role and recent activities, see its 2010 Report: http://www.venice.coe.int/site/dynamics/N_Series_ef.asp?Y=all+years&S=12&L=E&R=

³ OSCE / ODIHR, *UK General Election 6 May 2010: OSCE/ODIHR Election Assessment Mission Report*, 9 July 2010, pp. 1, 4 and 8, available at: http://www.osce.org/odihr/elections/uk/general_2010

⁴ Law Commission, *Electoral Law in the United Kingdom: A Scoping Consultation Paper*, 15 June 2012, p. 10, paragraph 2.18.

⁵ In this report, the term 'electoral events' means all elections and referendums.

⁶ This report has not looked in detail at the content of electoral legislation and has instead examined the structure of electoral law at a high-level.

⁷ Australia's principal electoral enactment (the Commonwealth Electoral Act 1918), although dated 1918 was substantially rewritten in 1984. Canada's electoral law was reformed and consolidated in 2000; New Zealand's in 1993, Ireland's was consolidated throughout the 1990s (especially in 1992) and the Netherlands in 1989. More recent electoral reform exercises have been carried out in the states of some of the federal nations, this report has taken into account substantial reform projects undertaken for example in Tasmania and Victoria within the past ten years.

⁸ Law Commission, *op. cit.*, paragraph 2.17.

⁹ IDEA, *International Electoral Standards Guidelines for reviewing the legal framework of elections*, p. 15, http://www.idea.int/publications/ies/upload/electoral_guidelines-2.pdf

¹⁰ OSCE / ODIHR, *UK General Election 5 May 2005: OSCE/ODIHR Assessment Mission Report*, 5 August 2005, p. 4.

¹¹ Note however that the Parliamentary Voting System and Constituencies Act 2011 conferred on the Chair of the Commission, as Chief Counting Officer, the power to issue directions to counting officers at the referendum on the parliamentary voting system. Also, some statutory officials or bodies do have such powers for some elections in the UK including European Parliamentary elections, for the Mayor of London and London Assembly, local government elections in Scotland and Northern Ireland and, most recently, elections for police and crime commissioners in England and Wales.

¹² For example, Section 10 of the Political Parties, Elections and Referendums Act 2000 ('PPERA').

¹³ Section 9A to 9C PERA.

¹⁴ Section 5 PPERA.

¹⁵ IDEA, *Guidelines*, p. 37.

¹⁶ Provincial / territorial government authorities in Canada have their own central electoral bodies headed by a Chief Electoral Officer ('CEO') that administers elections within their jurisdiction. Therefore, references in this report to the central electoral body in Canada denote the federal Office of the CEO of Canada ('Elections Canada').

¹⁷ The Commission has a range of electoral and regulatory functions, including setting the standards for electoral registration and running of elections; reporting on how well this is done; making sure people understand that it is important to register to vote, and know how to vote; running any referendums held in accordance with PPERA.

¹⁸ Law Commission, *op. cit.*

¹⁹ Section 1 of the Electoral Commission's submission to the Law Commission requesting the inclusion of electoral law in the Law Commission's 11th electoral law reform programme, dated 15 October 2010,

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/148424/Law-Commission-consultation-response.pdf

²⁰ The term 'central electoral body' in this report refers to a central independent body with statutory functions relating to the management of elections in a particular country. The functions of such bodies vary between countries. In some countries the body is called an 'electoral commission', such as in the UK, Australia and New Zealand. However, in other countries different terminology is used such as in Canada and the Netherlands. Some bodies are directly responsible for administering elections (for example the Australian Electoral Commission), whereas others only provide guidance and set standards for election officials (for example the UK's Electoral Commission). Some countries do not have an independent central electoral body, for example Ireland. Instead, in Ireland the functions that would otherwise be exercised by a central electoral body are to some extent exercised by a Government Department.

²¹ In order to consider these questions, the relevant central electoral body in each selected country (in the case of Ireland, the Department of the Environment, Community and Local Government) was approached, and asked to provide information on these matters. In addition, the UK's Electoral Commission carried out its own research using publicly available online resources.

²² The exceptions to this are Queensland and the territories, which have unicameral legislatures.

²³ A parliament without an upper-house.

²⁴ The UK is not a member state of the IDEA. Of the sample countries, Australia, Canada and the Netherlands are member states.

²⁵ The UK is a member of the Council of Europe, as is the Netherlands.

²⁶ These include the fundamental principles that all OSCE participating States in the 1990 Copenhagen Document recognised to be central to a democratic tradition and which can be summarised in seven key words: universal, equal, fair, secret, free, transparent, and accountable.

²⁷ The UK is an OSCE participating state, as is Canada, Ireland and the Netherlands. For more information on the OSCE, see <http://www.osce.org/odihr/elections/72781>

²⁸ Article 21 of the Universal Declaration of Human Rights (UDHR); Article 25 of the International Covenant on Civil and Political Rights (ICCPR); Article 3 of the First Protocol to the European Convention on Human Rights (ECHR).

²⁹ Venice Commission, *Code of Good Practice in Electoral Matters*, 23 May 2003, CDLAD(2002)023rev, pp. 5-9, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf)

³⁰ *ibid.*, p. 13.

³¹ IDEA, *Guidelines*, p. 13.

³² OSCE / ODIHR, *The UK General Election 6 May 2010*, p. 1.

³³ *ibid.*, p. 4.

³⁴ *ibid.*, p. 8. 'EAM' refers to an Election Assessment Mission carried out by the OSCE / ODIHR.

³⁵ *ibid.*, also see the Review of the Electoral Commission by the Committee on Standards in Public Life, Eleventh Report, January 2007, p. 4, available at www.public-standards.gov.uk/Library/OurWork/11thReport_FullReport.pdf.

³⁶ An enactment that has a higher status than normal primary legislation.

³⁷ IDEA, *Guidelines*, p. 12-14.

³⁸ Venice Commission, *Code of Good Practice* also states at Principle II.2:

The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, [or should be written in the constitution or at a level higher than ordinary law]

³⁹ *ibid.*, p. 26.

⁴⁰ The Northern Ireland Assembly does not have legislative competence in electoral law.

⁴¹ The law governing broadcasting and the registration and financing of political parties is outside the scope of this report. We have suggested that the law relating to party registration and financing should not be included in the Law Commission review except to the extent that the provisions in Part II of the Representation of the People Act 1983 should still be considered to ensure consistency, especially in terms of definition, so that terms established by the new legislation read across. Electoral Commission, *Our preliminary views on the scope of the review*, 07.11.2011, p. 5, http://www.electoralcommission.org.uk/_data/assets/pdf_file/0006/148425/Preliminary-views-on-project-scope.pdf

⁴² *ibid.*, p. 10.

⁴³ *ibid.*, pp. 10 and 14.

⁴⁴ *ibid.*

⁴⁵ *ibid.*, p. 16. 'EMB' refers to electoral management body. In this report the term 'central electoral body' is intended to convey the same meaning as the term EMB, namely an independent central body with powers relating to the management of elections.

⁴⁶ *ibid.*

⁴⁷ *ibid.*, p. 17.

⁴⁸ Venice Commission, *Code of Good Practice*, p. 26.

⁴⁹ *ibid.*, p. 18.

⁵⁰ As previously mentioned, Australia is a federal state with separate Commonwealth, state and territory governments and legislatures. Federal elections are held under the Commonwealth Electoral Act 1918, state, territory and local government elections are held under legislation passed in the state or territory.

⁵¹ Australian Government, *Electoral Reform Green Paper: Strengthening Australia's Democracy*, September 2009, http://www.dpmc.gov.au/consultation/elect_reform/strengthening_democracy/docs/strengthening_australias_democracy.pdf

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- ⁵² Constitution Act 1902 (NSW) Section 7A.
- ⁵³ Under Section 45 of the Referendum (Machinery Provisions) Act 1984, voting in federal referendums is also compulsory.
- ⁵⁴ Section 209 Commonwealth Electoral Act 1918.
- ⁵⁵ Section 266 Commonwealth Electoral Act 1918.
- ⁵⁶ Section 392 Commonwealth Electoral Act 1918.
- ⁵⁷ Australian Government, *op. cit.*, p. 25.
- ⁵⁸ *ibid.*, p. 28.
- ⁵⁹ *ibid.*, p. 100.
- ⁶⁰ JSCEM, *Report on the Conduct of the 2007 Federal Election and Matters Related Thereto*, 2009, pp. 273-275.
- ⁶¹ Australian Government, *op. cit.*, p. 25.
- ⁶² *ibid.*
- ⁶³ Victorian Electoral Commission (Paul Thornton-Smith, Senior Information and Research Officer), 'A New Electoral Act for a new century', *Selections*, vol. 9, July 2002, p. 4, available at <http://www.vec.vic.gov.au/publications/publications-brochures.html>
- ⁶⁴ *ibid.*
- ⁶⁵ Mr Hulls (Attorney General of Victoria), Hansard, Legislative Assembly, Second Reading, 21 March 2002, p. 420.
- ⁶⁶ *ibid.*, p. 422.
- ⁶⁷ The 2002 Act also modernised electoral terminology; the term 'returning officers' was replaced with 'election managers', 'polling day' with 'election day' and 'polling places' with 'voting centres'.
- ⁶⁸ Tasmanian Electoral Commission, *Public comment invited on new Electoral Act for Tasmania*, Media Release, 5 August 2004, www.tec.tas.gov.au/pages/Media/PDF/PublicBill.pdf
- ⁶⁹ Tasmanian Electoral Commission, *1st Annual Report 2005-2006*, 15.11.2006, p. 5, <http://www.electoral.tas.gov.au/pages/ElectoralInformationMain.html>
- ⁷⁰ *ibid.*
- ⁷¹ *ibid.*
- ⁷² *ibid.*, p. 21.
- ⁷³ *ibid.*, p. 20.
- ⁷⁴ *ibid.*, pp. 18-24.
- ⁷⁵ Section 279 of the Commonwealth Electoral Act 1918.
- ⁷⁶ Australian Government, *op. cit.*
- ⁷⁷ The District Courts Act 1947 provides similar protection (for example their tenure) for District Court Judges.
- ⁷⁸ This relates to the calculation of the number of Māori electorates, which is determined by the Māori electoral population. The Māori Election Option allows New Zealand Māori and their descendants to choose to be on the Māori Electoral Roll or the General Electoral Roll when they vote in the next two General Elections.
- ⁷⁹ This will be superseded by the 2012 Order with effect 26 October 2012.

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- ⁸⁰ Section 6(1)(e) of the Electoral Act 1993.
- ⁸¹ Section 20A(1) of the Electoral Act 1993.
- ⁸² Sections 4C and 7 of the Electoral Act 1993
- ⁸³ The majority of referendum law in Canada is found in secondary legislation, the Canada Elections Act as Adapted for the Purposes of a Referendum (DORS/2002-25). This regulation governs all administrative and procedural requirements to run a referendum. The primary legislative vehicle for referendums is the Referendum Act which is a short statute containing basic provisions on the management and administration of referendums.
- ⁸⁴ Information provided to the Electoral Commission by Elections Canada.
- ⁸⁵ Issued under Section 16(c) of the 2000 Act.
- ⁸⁶ Section 24(7)(b) gives the CEO a power to remove from office any Returning Officer who fails to discharge competently a duty of a Returning Officer under the Act or to comply with an instruction of the CEO under Section 16(c).
- ⁸⁷ In Ireland the National Parliament (*Oireachtas*) consists of the President and two Houses: *Dáil Éireann* (House of Representatives) and *Seanad Éireann* (the Senate) whose functions and powers derive from the Constitution of Ireland enacted by the People on 1st July 1937. See <http://www.oireachtas.ie/parliament/about/>
- ⁸⁸ IDEA, *Guidelines*, p. 12.
- ⁸⁹ The Bill of Rights Act 1990 is an ordinary statute and so does not override other legislation.
- ⁹⁰ IDEA, *Guidelines*, p. 14.
- ⁹¹ *ibid.*
- ⁹² As mentioned in the previous section on the number of electoral law vehicles, the UK has multiple primary legislative vehicles dealing with electoral law; this approach differs from the selected countries, which appear to have fewer primary enactments.
- ⁹³ For example, a Returning Officer's power to correct procedural errors, which is an important provision, is found in Section 46 of the Electoral Administration Act 2006.
- ⁹⁴ Law Commission, *op. cit.*, p. 10.
- ⁹⁵ Provisions other than election rules, such as those that create electoral offences and those that govern election petitions.
- ⁹⁶ European Parliamentary Elections Regulations 2004, the Scottish Parliament (Elections etc.) Order 2010 and the National Assembly for Wales (Representation of the People) Order 2007.
- ⁹⁷ For example see OSCE / ODIHR, *The UK General Election 6 May 2010*, p. 8. This is discussed in more detail in the section of the report dealing with the consistency of the law governing different electoral events.
- ⁹⁸ *ibid.*
- ⁹⁹ *ibid.*
- ¹⁰⁰ IDEA, *Guidelines*, p. 14.
- ¹⁰¹ It could be argued that matters such as the wording of prescribed forms are 'administrative and procedural'.
- ¹⁰² This is recommended by the Law Commission, *op. cit.*, p. 11.
- ¹⁰³ Australian Government, *op. cit.*, p. 28.

¹⁰⁴ This has been used, for example, to standardise address formats and to bring forward 2012's annual canvass so that an accurate register of electors will be in place for the Police and Crime Commissioner elections in November.

¹⁰⁵ The Electoral Commission's report on the administration of the referendum, which includes a discussion on the use of its power to issue directions, is available at http://www.electoralcommission.org.uk/data/assets/pdf_file/0019/141328/Final-PVS-report.pdf

¹⁰⁶ IDEA, *Guidelines*, p. 16.

¹⁰⁷ The UK Electoral Commission uses its performance monitoring and information powers under sections 9A - 9C PPERA to obtain information from Electoral Registration Officers, Returning Officers and Counting Officers on how the administration of electoral registration, an election or referendum is progressing, and can issue further guidance in response to any current issues.

¹⁰⁸ *ibid.*

¹⁰⁹ Paragraph 5.8 of the 1990 OSCE Copenhagen Document.

¹¹⁰ IDEA, *Guidelines*, p. 15.

¹¹¹ *ibid.*

¹¹² Venice Commission, *Report On Electoral Law*, paragraph 12-13.

¹¹³ Australian Government, *op. cit.*, paragraph 3.7.

¹¹⁴ For more information on the electoral law balance, see question 2 below.

¹¹⁵ Although the UK is not a federal system, the devolution of powers in the UK to Scotland, Wales and Northern Ireland since 1998 is one factor that has contributed to the fragmentation of the UK's electoral law. The UK has devolved governments and legislatures. Elections to the Scottish Parliament, the National Assembly of Wales and the Northern Ireland Assembly are conducted under separate secondary legislation. Similarly, in the UK, local government elections in both Scotland and Northern Ireland are conducted under separate legislation from local government elections in England and Wales. In Scotland, it is the Scottish Parliament that legislates for Scottish local government elections.

¹¹⁶ Electoral boundaries, however, are dealt with in the Electoral Boundaries Readjustment Act 1985 and referendums, as noted above, in the Referendum Act 1992.

¹¹⁷ Elections Canada, *A History of the Vote in Canada*, Chapter 4 (The Charter Era 1982-2006), <http://www.elections.ca/content.aspx?section=res&dir=his&document=chap4&lang=e#a424>.

¹¹⁸ For example, see Section 9 of the Electoral Referendum Act 2010.

¹¹⁹ Electoral (No.2) Bill, 1991—Second Stage (7 October 1992) 423 *Dáil Debates* col 14 (Mr D Wallace, TD.)

¹²⁰ There has not yet been an ordinary referendum in Ireland.

¹²¹ The Department of the Environment, Community and Local Government, *The Referendum in Ireland*, March 2012, <http://www.environ.ie/en/LocalGovernment/Voting/PublicationsDocuments/FileDownload.1893.en.pdf>

¹²² We recognise that in federal systems, it may not always be feasible or desirable for all legislation for the federal and sub-federal levels to be contained as a single, unified code.

¹²³ In October 2009, the Canadian Parliament undertook to review the Referendum Act however the review was interrupted on 30 December 2009 when Parliament was prorogued. All bills that had not received Royal Assent prior to prorogation ceased to exist. As yet, Parliament has not chosen to begin the review again.

¹²⁴ For more information on consistency between rules for referendums and rules for elections, see the section below in this report on 'National practice - Achieving consistency through a single set of rules'.

¹²⁵ The list of electoral legislation in the UK, which does not purport to be comprehensive, is likely to be more comprehensive than the lists of electoral legislation in Australia, Canada, New Zealand and Ireland (Appendices B - E). This is because information is more readily available in the UK about UK electoral law than electoral law elsewhere.

¹²⁶ OSCE /ODIHR, *EAM Report on the UK General Election, 5 May 2005*, p. 4.

¹²⁷ OSCE / ODIHR, *UK General Election 6 May 2010*, p. 1.

¹²⁸ *ibid.*, p. 4.

¹²⁹ The parliamentary election was combined with local government elections.

¹³⁰ Venice Commission, *Report On Electoral Law*, paragraph 195.

¹³¹ Venice Commission, *Code of Good Practice*, p. 26.

¹³² R Sinnott, J Coakley, J O'Dowd, J McBride, *Preliminary Study on the Establishment of an Electoral Commission in Ireland*, November 2008, p. 49.

¹³³ *ibid.*

¹³⁴ *ibid.*, p. 50.

¹³⁵ *ibid.*

¹³⁶ Elections Canada, *A History of the Vote*, Chapter 4.

¹³⁷ The Electoral Registration and Administration Bill was introduced to the UK's Parliament on 10 May 2012.

¹³⁸ See Sections 10 to 13D.

¹³⁹ IDEA, *Guidelines*, p. 15.

¹⁴⁰ *ibid.*

¹⁴¹ Venice Commission, *Report on Electoral Law*, paragraph 12-13.

¹⁴² House of Representatives Standing Committee on Legal and Constitutional Affairs, Commonwealth Parliament, *Harmonisation of legal systems within Australia and between Australia and New Zealand*, 2006, pp. 5-6.

¹⁴³ As noted elsewhere in this report, the Netherlands' Elections Act contains provision for elections to the Senate and the House, for the provincial and municipal councils, and for the European Parliament. Only Water Management Boards elections are governed by a separate law. The Elections Act does not cover all aspects of the electoral process; elections are also regulated by the Elections Decree (secondary legislation) and/or by ministerial regulations.

¹⁴⁴ Sections 28 and 29 Tasmanian Constitution Act 1934.

¹⁴⁵ Tasmanian Electoral Commission, *1st Annual Report 2005-2006*, p. 19.

¹⁴⁶ Australian Government, *op. cit.*, p. 27.

¹⁴⁷ *ibid.*, p. 28.

¹⁴⁸ JSCEM, *op. cit.*, p. 283. This is the approach in New Zealand.

¹⁴⁹ For example in New Zealand following each election the Commission is required to provide a report on the administration of the election to the Minister of Justice and the Minister is required to table the report in the House of Representatives (Section 8 of the Electoral Act 1993). The report must include, for example, any recommendations to change administrative practices or the law. By convention, after each general election, a parliamentary select committee also

conducts an inquiry into the general election. The Commission can be asked to appear and assist the Committee.

¹⁵⁰ The AEC and Elections Canada are only responsible for ensuring consistency at a federal level.

¹⁵¹ Information provided to the Commission by the AEC.

¹⁵² OSCE / ODIHR, *The Netherlands Parliamentary Elections 22 November 2006: OSCE/ODIHR Election Assessment Mission Report*, 12 March 2007, p. 12, available at http://www.osce.org/odihr/elections/netherlands/parliamentary_2006.

¹⁵³ *ibid.*

¹⁵⁴ The Elections Act does not cover all aspects of the electoral process; elections are also regulated by the Elections Decree (secondary legislation) and/or by ministerial regulations.

¹⁵⁵ This is addressed in the Commission's *Report on Challenging Elections in the UK*, published at the same time as this report.

¹⁵⁶ OSCE / ODIHR, *UK General Election 5 May 2005*, p. 4.

¹⁵⁷ *ibid.*

¹⁵⁸ *ibid.*, p. 8.

¹⁵⁹ Sections 9A to 9C of PPERA.

¹⁶⁰ Consideration has been given in Ireland to establishing an electoral commission, as can be seen by the preliminary study undertaken in 2008.

<http://www.environ.ie/en/LocalGovernment/Voting/PublicationsDocuments/FileDownload.19472.en.pdf>

¹⁶¹ IDEA, *Guidelines*, p. 37.

¹⁶² *ibid.*

¹⁶³ *ibid.*, pp. 37-43.

¹⁶⁴ *ibid.*, p. 41.

¹⁶⁵ In Canada, the most senior federal electoral official in each electoral district is appointed directly by the federal central electoral body. This Returning Officer is then responsible for appointing all other federal election officers in their electoral district.

¹⁶⁶ Paragraph 1.9 of the Returning Officer Manual, http://www.elections.ca/res/pub/ecdocs/EC10470_e.pdf

¹⁶⁷ Employ should also be taken as 'appoint', as election officers in Canada are statutory office-holders appointed by law rather than 'employed'.

¹⁶⁸ See the Electoral Regulations 1996.

¹⁶⁹ IDEA, *Guidelines*, pp. 14- 16.

¹⁷⁰ *ibid.*, p. 16.

¹⁷¹ *ibid.*, pp. 16-17.

¹⁷² *ibid.*

¹⁷³ *ibid.*

¹⁷⁴ Section 20A(1) of the Electoral Act 1993.

¹⁷⁵ Section 18(3) of the Commonwealth Electoral Act 1918.

¹⁷⁶ In Australia, electoral officials are employed by the AEC.

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- ¹⁷⁷ AEC Scrutineers Handbook, Version 3, Federal Election 2010, <http://www.aec.gov.au/Elections/candidates/files/scrutineers-handbook-e2010-v3.pdf>
- ¹⁷⁸ With very limited exceptions, all electoral officials are employees of the Commission.
- ¹⁷⁹ The manuals can be viewed on the Elections Canada website at: <http://www.elections.ca/content.aspx?section=res&dir=pub/ecdocs&document=index&lang=e>
- ¹⁸⁰ Issued under Section 16(c) (see above).
- ¹⁸¹ Section 24(7)(b) gives the CEO a power to remove from office any returning officer who fails to discharge competently a duty of a returning officer under the Act or to comply with an instruction of the CEO under Section 16(c).
- ¹⁸² The Returning Officer's manual, for example, runs to 838 pages.
- ¹⁸³ In Canada, although there is no statutory process whereby complaints arising from the adoption and implementation of central electoral body instructions can be lodged, it is provided that the Returning Officer submits all comments or complaints received from the political parties to Elections Canada. Electors may provide feedback directly on the Elections Canada website.
- ¹⁸⁴ IDEA, *Guidelines*, p. 41.
- ¹⁸⁵ In the 2011 referendum on the UK Parliamentary voting system, however, the Electoral Commission was given a power to direct counting officers to use forms designed by the Commission.
- ¹⁸⁶ IDEA, *Guidelines*, p. 13 and paragraph 5.8 of the 1990 OSCE Copenhagen Document.
- ¹⁸⁷ IDEA, *Guidelines*, p. 14; Venice Commission, *Code of Good Practice*, p. 26.
- ¹⁸⁸ *ibid.*, p. 15.
- ¹⁸⁹ *ibid.*
- ¹⁹⁰ Venice Commission, *Report on Electoral Law*, paragraph 195.
- ¹⁹¹ IDEA, *Guidelines*, pp. 37-38.
- ¹⁹² *ibid.*, p. 41.
- ¹⁹³ *ibid.*, p. 16.
- ¹⁹⁴ Australian Government, *op. cit.*, p. 73.
- ¹⁹⁵ The Hon K Beazley MP (Minister for Aviation, Special Minister of State and Minister Assisting the Minister for Defence), Second Reading Speech, Commonwealth Electoral Legislation Amendment Bill 1983, House of Representatives, Debates, 2 November 1983, p. 2216.
- ¹⁹⁶ A list of eligible persons who are registered to vote in Australian elections.
- ¹⁹⁷ Section 7(1) of the Commonwealth Electoral Act 1918. Also see: Australian Government, *op. cit.*, pp. 73-74.
- ¹⁹⁸ *ibid.*, p. 75.
- ¹⁹⁹ *ibid.*
- ²⁰⁰ *ibid.*
- ²⁰¹ *ibid.*, pp. 75-76.
- ²⁰² *ibid.*, p. 14.
- ²⁰³ Although the UK remains a unitary state, since 1998 an increasing number of executive and legislative powers have been devolved to governments and legislatures in Scotland, Wales and Northern Ireland. In New Zealand, some powers have been devolved to the sixteen regions, which are the highest level of local government.

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- ²⁰⁴ As of 1 July 2012, when the role of Chief Registrar of Electors was disestablished, and the Commission assumed statutory responsibility for enrolment services, New Zealand's Electoral Commission is now the country's sole 'agency'.
- ²⁰⁵ Section 5 of the Electoral Act 1993. Also see: Elections New Zealand, *About New Zealand's electoral agencies*, <http://www.elections.org.nz/sitehelp/about.html>
- ²⁰⁶ Section 6 of the Electoral Act 1993.
- ²⁰⁷ Sections 4C and 7 of the Electoral Act 1993.
- ²⁰⁸ Section 20B of the Electoral Act 1993.
- ²⁰⁹ Prior to the passage of this Act, the majority of electoral legislation in force in Canada at the end of the last century was enacted in 1970. The complexity brought about by a number of amendments to the existing legislation and the need to modernise electoral law were factors that led to a project of reform and ultimately the passage of the Canada Elections Act 2000.
- ²¹⁰ Elections Canada, *The Role and Structure of Elections Canada*, <http://www.elections.ca/content.aspx?section=abo&dir=role&document=index&lang=e>
- ²¹¹ Section 24(1) Canada Elections Act 2000.
- ²¹² The *Dáil Éireann* (House of Representatives) lower house of the *Oireachtas* (Irish Parliament), which has primacy over the *Seanad Éireann* (Senate).
- ²¹³ Information provided to the Electoral Commission by the Franchise Section, Department of the Environment, Community and Local Government.
- ²¹⁴ Regional government consists of 12 provinces. Each province has a legislative body (*provinciale staten*) to which members are directly elected and an executive body (*gedeputeerde staten*) that prepares and implements decision taken by the legislative body (Council of European Municipalities and Regions, Netherlands, <http://www.ccre.org/en/membres/Pays-Bas.htm>).
- ²¹⁵ The body became the Electoral Council under the Election Act 1951.
- ²¹⁶ Section A 2 (1) of the Elections Act 1989.
- ²¹⁷ Section A 2 (2) of the Elections Act 1989.
- ²¹⁸ Electoral Council, *Annual Report Dutch Electoral Council 2010*, p. 11, http://www.kiesraad.nl/nl/Overige_Content/Bestanden/Engelse_website/Annual_Report_2010.pdf
- ²¹⁹ OSCE / ODIHR, *Early Parliamentary Elections 9 June 2010*, p. 12.
- ²²⁰ The list does not include statutes which relate only indirectly to elections, such as taxation, residential tenancy, hydroelectricity and liquor control statutes.