



Modernisation of the Island's Electoral System

A Consultation Document

Cabinet Office



Isle of Man
Government

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Introduction

The Cabinet Office is taking forward the Registration of Electors Bill 2020 and the Elections (Keys and Local Authorities) Bill 2020 as part of this year's legislative programme.

The aim is to provide greater clarity and consistency within the Isle of Man's electoral system, as well as to address issues that have come to light during recent elections.

The two Bills include proposals to streamline processes, remove areas of grey and to put the Island's voters at the heart of the electoral process.

The new legislation has been informed by a review carried out by the Cabinet Office, with the support of John Turner, the former Chief Executive of the Association of Electoral Administrators.

Evidence and recommendations have been taken into account from a wide range of stakeholders, including the Select Committee report on the 'Organisation and Operation of the General Election', responses to the 2018 public consultation 'Elections That Work For Everyone' and meetings with Tynwald Members, Keys election candidates, local authorities, political parties and returning officers.

Whilst there has already been extensive engagement and feedback as part of this process, the latest consultation provides a further opportunity to shape the legislation ahead of its introduction into the branches of Tynwald early next year.

This document sets out the main changes that are being proposed within the Registration of Electors Bill 2020 and the Elections (Keys and Local Authorities) Bill 2020.

Members of the public are invited to submit their views via the online questionnaire at <https://consult.gov.im/> or in writing to electionsconsultation@gov.im

Why we are consulting

The consultation will help the Cabinet Office understand views from members of the public and relevant stakeholders on the changes that are being proposed in the new Elections (Keys and Local Authorities) Bill and the Registration of Electors Bill.

What happens next

Consultation responses will be used by the Cabinet Office to inform the final contents of the Bill and a report on responses will be provided.

Registration of Electors Bill 2020

Register of Electors

The new Registration of Electors Bill is based on the principle that individuals are responsible for their own registration, therefore moving away from the current household registration system.

1. Do you agree that individuals should be responsible for their own registration, rather than the head of household?

- Yes
- No

Comments:

The Registration of Electors Bill also introduces the concept of continuous registration for life, with the register to be revised on a rolling basis.

2. Do you agree with lifelong registration, with the onus on the individual to update their details when their circumstances change?

- Yes
- No

Comments:

The electoral register is currently published on a quarterly basis, with any changes made during these three-month periods. This can cause problems for new applicants in terms of the time it takes to be included on the updated version of the register.

In place of preparing and publishing the registers every quarter, the new Bill proposes the annual publication of the full register, with all changes to be published on a monthly basis via an "Alteration Notice".

During the month of an election the Alteration Notice will be published 7 days prior to the date of the election; the intention for this change is to allow more time for individuals to register prior to an imminent election, within administrative processing limits.

3. Do you agree that any changes to the electoral register should be published every month?

- Yes
- No

Comments:

In future it is proposed to use existing Government records to verify data for electoral registration purposes. The Bill allows for future electoral registers to be compiled utilising data from a central Government data source currently being developed.

4. Do you agree that it should be possible for electoral registration information to be verified using other data already held by the Government?

- Yes
- No

Comments:

Special categories of qualifying persons

The Bill allows for special categories of electors to be included on the register and provided with the ability to vote. There are currently no provisions to enable categories of electors who are unable to vote in person by reason of their overseas employment, service or education, to actually cast a vote. The Bill provides for the following categories to be given the opportunity to vote and appear on the electoral register:

1. Persons and their families resident overseas because of the nature of their employment in the public service
2. Persons normally resident in the Isle of Man but off Island due to service requirements in the Armed Forces
3. Students normally resident in the Isle of Man but studying overseas.
4. Anonymously registered individuals

These categories would be registered and entitled to vote in an election via a postal vote.

5. Do you agree that special voting arrangements should be introduced for people normally resident in the Isle of Man serving in the Armed Forces, public servants and students who are overseas?

- Yes
- No

Comments:

A special category of "Anonymous" registration will be added to the legislation to protect the identity of an individual who is deemed to be vulnerable and/or "at risk".

6. Do you agree with the introduction of anonymous registration to help protect the identity of a person who is deemed to be at personal risk?

- Yes
- No

Comments:

Electoral Registration Officer

The current Electoral Registration Officer is an individual employed within the Cabinet Office and appointed by the Chief Secretary. This is presently the Executive Director of External Relations. The Registration of Electors Bill enables the Chief Secretary to appoint a Deputy Electoral Registration Officer, also employed within the Cabinet Office, who can act in the role of the Registration Officer in the absence of the Executive Director.

7. Should there be a Deputy Electoral Registration Officer, who can act in the role of the Registration Officer during periods when the Electoral Registration Officer is absent from office?

- Yes
 No

Comments:

Provision of information to electoral registration officer

Under the current legislation it is a requirement to provide information to the Electoral Registration Officer for the purpose of electoral registration. Any person who without reasonable excuse fails to do so is guilty of an offence and liable to a fine not exceeding £1,000. The Bill proposes to introduce a civil penalty rather than treat this as a criminal matter.

While it is a legal requirement to provide information to the Electoral Registration Officer when asked to do so, the current legislation does not explicitly state that it is compulsory for eligible electors to be registered. This requires greater clarity as some people mistakenly believe they do not need to be registered if they have no intention of voting in an election.

The Bill includes a provision making it compulsory for all eligible electors to be registered.

8. Do you agree that people who provide false information or who fail to comply with the legislation should receive a civil penalty?

- Yes
 No

Comments:

Supply of information contained in register

The current legislation requires the Electoral Registration Officer to prepare two copies of the register, the "full" and the "edited" registers. The edited version of the register is

available for companies and individuals to purchase. Individuals can opt out of the edited register, meaning their name and address is omitted from the edited version of the register.

The Bill proposes to remove an edited version of the register on the basis that the Government can use the full register for defined statutory purposes only. In the absence of the edited register, individuals who are vulnerable or at risk will be able to register anonymously.

9. Do you agree with the abolition of the edited version of the electoral register?

- Yes
- No

Comments:

Discretion to permit persons to vote

The Bill provides for the Cabinet Office to exercise discretion in allowing a qualifying individual the opportunity to vote in an upcoming election, either if that person has been excluded in error or by an act of omission or under extenuating circumstances is unable to make it onto the last alteration notice published before the election. The current legislation does not allow for this.

10. Do you agree that there should be discretion to add a person to the electoral register before an election if that person has been excluded in error, by an act of omission or under extenuating circumstances?

- Yes
- No

Comments:

Elections (Keys and Local Authorities) Bill 2020

Consolidation of election rules

To reflect the general desire expressed during the previous consultation for greater consistency across all elections in the Isle of Man, the new Bill proposes to repeal and replace the Representation of the People Act 1995 and the Local Elections Act 1986 and to consolidate election rules in a single piece of primary legislation.

11. Do you agree that election rules should be consolidated into one piece of primary legislation?

- Yes
- No

Comments:

Minimum age requirement

There is currently a disparity in the minimum age requirement for the election of members to the House of Keys and the Legislative Council. To qualify as an elected member of the Legislative Council a person must be not less than 21 years of age. In comparison, qualification for the House of Keys is 18 years.

12. Do you agree that the minimum age requirement to be elected to either branch of Tynwald or to a Local Authority should be 18 years?

- Yes
- No

Comments:

Public servants as candidates

There is also a disparity in the rules regarding public servants standing as candidates for the branches of Tynwald. Those in receipt of a Government salary must resign or retire from their post before standing as a candidate for the Legislative Council. However, Isle of Man public servants are not required to resign or retire to be eligible to stand as a candidate for election to the House of Keys.

13. Do you agree that a person in receipt of an Isle of Man Government salary should be able to offer themselves for election to either branch of Tynwald without first having to resign or retire?

- Yes
- No

Comments:

Disqualifications

There are currently no office-based disqualifications in the Isle of Man's Representation of the People Act 1995 and there is nothing analogous to the UK Act, which disqualifies Supreme Court, High Court and Circuit Judges from serving as MPs.

The Cabinet Office has reviewed the rules on disqualification and the Elections Bill mirrors the judicial disqualifications provided in Schedule 1 of the House of Commons Disqualification Act 1975 for all elections in the Isle of Man.

This will result in the disqualification of the six members of the Isle of Man judiciary – First Deemster, Second Deemster, Judge of Appeal, Deemster, High Bailiff and Deputy High Bailiff.

14. Do you agree that the six members of the Isle of Man judiciary (First Deemster, Second Deemster, Judge of Appeal, Deemster, High Bailiff and Deputy High Bailiff) should be disqualified from serving as members?

- Yes
 No

Comments:

Day of election

15. Do you agree that national elections should take place on the fourth Thursday in September once every five years and that local elections take place on the fourth Thursday in April once every four years?

- Yes
 No

Comments:

Extension of term of Keys in emergency

During a period of national emergency, the Governor in Council may extend the term of the House of Keys. The Elections Bill proposes to apply this provision to Local Authorities. This is on the basis that it may not be practicable or desirable to hold elections during a period of national emergency.

16. Should the Governor in Council have the power to extend parliament for Local Authorities in a state of emergency in order to align with the current rules governing Keys?

- Yes
 No

Comments:

Report of casual vacancies

There is currently a lack of clarity in respect of what happens when there are not enough candidates at a local election to fill the number of vacant seats. The Bill proposes to allow Local Authorities to treat these vacancies as casual vacancies and hold a by-election.

In terms of the timetable for casual vacancies it is proposed to remove the current requirement for the election to take place within 42 days of being notified and to instead change this to a date set by the Returning Officer 'as soon as reasonably practicable.'

17. Do you agree that Local Authorities should be able to treat unfilled seats at a local election as casual vacancies?

- Yes
- No

Comments:

18. Do you agree that the requirement for a casual vacancy election to take place within 42 days should be removed?

- Yes
- No

Comments:

Registration and conduct of political parties

The current requirements for registered political parties to be registered refer only to election to the House of Keys. The Elections Bill proposes an amendment to take into account support or endorsement for Local Authority election candidates.

At present, no penalty is provided for if requirements are not met by registered political parties, although ultimate sanction is removal from register. The Elections Bill introduces the option of imposing a fine.

19. Should a fine be imposed when political parties do not meet their registration requirements?

- Yes
- No

Comments:

20. Should it be an offence with penalties imposed when a candidate in any election gives a false statement on their nomination papers such as failing to declare political party affiliation?

- Yes
- No

Comments:

The Electoral Commission

It is reasonable that there should be a boundary review every 10 years and that there is the ability to consider other electoral matters if Tynwald directs.

The Elections Bill specifies that a sitting MHK is not eligible to be appointed to the Electoral Commission, although former MHKs should not be ruled out. Members of the Commission will be able to claim an attendance allowance and will be paid at the same rate Members of Tynwald can claim for expenses.

21. Should former MHKs be allowed to be appointed to the Electoral Commission?

- Yes
- No

Comments:

Appointment of Returning Officers

It is usual for there to be two Responsible Officers to discharge the legal responsibilities relating to electoral registration and elections administration – the Electoral Registration Officer and the Returning Officer.

It has become the custom for Returning Officers for elections to the House of Keys to be appointed from a list of practising local advocates, although there is nothing in statute that prescribes this. This practice has sometimes led to difficulties in recruiting enough Returning Officers for General Elections.

The proposed option is for the Chief Secretary to be appointed as the Returning Officer for House of Keys and Local Authority elections and to have the power to appoint Deputy Returning Officers to run elections at a constituency level – this is the role performed by local advocates.

22. Do you agree that the Chief Secretary should be the Returning Officer for elections in the Isle of Man, with the power to appoint Deputy Returning Officers to run elections at a constituency level?

- Yes
- No

Comments:

Disqualification as Deputy Returning Officer

The current list of disqualifications for Returning Officers includes a minister of religion, a coroner, a constable, an officer of an institution, the Chief Registrar and any member of the staff of the General Registry, and any member of the Council or the Keys.

It has been suggested that politicians should not be appointed as Deputy Returning Officers for either House of Keys or Local Authority elections.

23. Do you agree that it is inappropriate for politicians to be appointed as Deputy Returning Officers for both Local Authority and House of Keys elections?

- Yes
- No

Comments:

Returning Officer to take oath of office

The requirement for a Returning Officer to take an oath of office is considered outdated and in need of revision. This provision has been replaced with language stating that a Returning Officer must accept the appointment.

24. Do you agree that a Returning Officer must accept the appointment instead of declaring an oath of office?

- Yes
- No

Comments:

Election donations and expenses

It is normal within electoral law to provide for the regulation and control of election spending by candidates.

A system of recording and declaring a candidate's donations and expenses was introduced in response to a review of the 2010 by-election in Douglas East, which saw the emergence of the use of blind trusts in election funding in the Isle of Man. The revised legislation was used for the first time in the 2016 House of Keys General Election.

Candidates are now required to keep a record of their expenses and donations. However, they currently only have to make a declaration if a complaint is made. Good practice suggests that declarations and returns of both donations and expenses should be published. This supports openness and transparency and is more likely to ensure compliance with election rules and establish a level playing field for all candidates.

As part of the desire to standardise election rules, it is proposed that the legislation in respect of the declaration of expenses and donations should also be applied to local election candidates.

Provision has therefore been introduced into the Bill so that a declaration of donations and expenses has to be made before Election Day and a second declaration submitted within 35 days after the election. Both declarations should be made available for public inspection.

The new Bill also recommends that the current expense limit of £2,000 plus 50p per registered elector is increased in line with CPI. In addition it is proposed that candidates should be prohibited from accepting support or funding from parties or entities outside the Isle of Man.

25. Do you agree that all candidates whether successful or otherwise should be required to submit declarations and returns of donations and expenses – and that the information is then published?

- a. Yes
- b. No

Comments:

26. Do you agree that the period covered by the returns should commence one year before the scheduled date of an election?

- Yes
- No

Comments:

27. Do you agree that the current expenses limit of £2,000 plus 50p per electors should be increased in line with CPI and apply to both House of Keys and Local Authority candidates?

- Yes
- No

Comments:

28. Do you agree that candidates should be prohibited from accepting support or funding from parties or entities from outside the Isle of Man?

- Yes
- No

Comments:

Donations/expenses by candidates to electors

92% of respondents to the previous public consultation thought that it should be a requirement for any Member of the House of Keys or a Local Authority who is standing for re-election to declare any donations made to electors in the 12 months prior to the scheduled date of the election in question. The Bill provides for how donations/expenses by election candidates should be dealt with.

29. Do you agree that the elections legislation should govern donations/expenses made by candidates?

- Yes
- No

Comments:

Identification at polling stations

Voters are not currently required to produce any form of personal identification in order to vote in elections in the Isle of Man.

There is a concern that turnout could be substantially reduced by preventing individuals without identification from voting. This, in turn, could have an impact on the results of elections. The pilot schemes held in the UK in local elections in May 2018 did not produce meaningful results.

One option is to provide discretionary powers to compel voters to provide identification when requested by the Deputy Returning Officer. This could be used by the Deputy Returning Officer in the event of any concern about the identity of a particular voter.

30. Do you agree with retaining the current position, where it is not compulsory to produce identification in order to vote, but to include a provision within the legislation to compel a voter to produce identification if requested by the Deputy Returning Officer?

- Yes
- No

Comments:

Place and manner of voting

Alternative means are in place for electors unable or unwilling to vote in person at their allocated polling station on Election Day.

Advance voting on demand was introduced at the 2016 House of Keys General Election. This measure was implemented in order to restrict proxy voting, following attempted abuse of the system in a House of Keys by-election.

The change in procedure was widely publicised and proved popular with the Isle of Man electorate, with nearly 2,000 people casting their vote in this way.

Postal voting on demand was introduced in Great Britain in 2001 and has proved to be very popular and well used. At the UK General Election in 2017, some 18% of all votes cast were postal votes, with the highest percentage being 44.3% in the Newcastle upon Tyne North constituency.

The concept of postal voting was highlighted during the public consultation, with 72% of respondents agreeing that postal voting should be offered as an alternative to the current advance and absent vote systems used in House of Keys and Local Authority elections.

It is proposed to retain proxy voting for Isle of Man elections, but to restrict its use to particular situations, so that it is effectively a last resort for voters.

31. Do you agree with replacing the system of advance voting with postal voting on demand together with the use of proxy voting in particular situations and under close control?

- Yes
- No

Comments:

Distribution of election manifestos

Currently, House of Keys election candidates are entitled to have one manifesto delivered to each household on the electoral register in the constituency they are standing in. The cost is met by money provided by Tynwald.

32. Do you agree that the Government should continue to fund the cost of posting candidates election manifestos to each household for House of Keys elections only?

- Yes
- No

Comments:

Treating

The corrupt practice of treating caused considerable interest at the 2016 House of Keys General Election, in the context of candidates providing refreshment at meetings with electors. It is clear that there needs to be a corrupt intent before an offence is committed in relation to treating. However, candidates and others said that they found themselves in a difficult situation as one person's idea of 'ordinary hospitality' could vary greatly from another's.

The Council of Ministers has agreed that the provision of modest hospitality (tea, coffee, soft drinks and biscuits) should be permissible at campaign meetings and that the cost should be listed on the candidate's declaration and return of expenses.

33. Do you agree that the provision of modest hospitality (tea, coffee, soft drinks, biscuits) should be permissible at campaign meetings and the cost listed on the candidate's declaration and return of expenses?

- Yes
- No

Comments:

34. Do you agree that the guidance should be provided to candidates on the meaning of "treating" from the Cabinet Office

- Yes
- No

Comments:

Election publications

The current legislation requires candidates to print the name of the printer and publisher on any election publication as it serves to promote transparency. Generally, candidates adhere to this requirement although there are complaints about compliance at most elections.

Given the move to using electronic media as well as printed material, the need for the name of the printer is now less relevant and, indeed, could lead to a lack of consistency in terms of published election material.

The size and placement of banners during the 2016 House of Keys General Election attracted comment by candidates and the public.

While the regulations include standard conditions for advertisements that must be adhered to, it is considered desirable to provide further clarity about the size and placement of election posters, such as restricting them to the constituency in which the candidate is standing, and also about the prohibiting of threatening, abusive or insulting material.

35. Do you agree with the introduction of a statutory code of conduct in respect of election materials and the size and placement of election banners?

- Yes
- No

Comments:

36. Do you agree with the removal of the printer's details having to be displayed on any election publication?

- Yes
- No

Comments:

Legal proceedings

The Cabinet Office wishes to introduce a 'court of first resort' to deal with matters that fall outside the current election petition process. The intention is to put in place a system that allows genuine, often lower-level complaints to be dealt with in a timely fashion.

The current system that provides for a private legal challenge to the result of an election by way of an election petition is complex and lacks accessibility and transparency. The legislation has changed little in the past 150 years as it based on the Parliamentary Elections

Act 1868. Rules state that a petition has to be served within 28 days of the return of the candidate's election.

The current system does not allow for challenges to elections to be dealt with promptly and does not provide a right of appeal. It also involves the payment of a security for all costs which may become payable by the petitioner. It is understood that this requirement can deter individuals from presenting a petition. The petition process is lengthy and in complex cases can take nearly two years to resolve. This can mean a candidate who should not have been elected has held their seat, and possibly contributed to major policy decisions, for a lengthy period of time.

If the Returning Officer concludes that the wrong person was declared 'duly' elected because of a procedural mistake, he or she currently has no powers to correct the error beyond advising the candidate affected by that mistake to lodge an election petition.

In order to address these issues, it is proposed to introduce an additional process to deal with election complaints that do not fall within the current election petition process, including those that do not aim to overturn the result.

37. Do you agree that complaints that fall outside the current election petition process should be referred to the Tynwald Commissioner for Administration?

- Yes
- No

Comments:

38. Do you agree that the Returning Officer should be able to correct a procedural mistake in cases where it affects the result of an election?

- Yes
- No

Comments:

Election Agents

In the UK, election agents are appointed by the candidate for the duration of the campaign and take on key responsibilities such as submitting the declaration of expenses and donations, approving campaign literature and overseeing the polling and counting of votes. Candidates who do not appoint an agent are considered to be their own agent.

The Isle of Man does not make provision for the appointment of election agents, although both polling and counting agents are widely used, as are tellers. The appointment of an

election agent in the Island may be considered unnecessary in terms of managing a campaign and the associated finances. However, it could be an option for some candidates.

The Council of Ministers has agreed that the appointment of an election agent should be available to candidates and that suitable provisions are included within legislation.

39. Do you agree that candidates in an election should have the option to appoint an Election Agent?

- Yes
- No

Comments:

Tellers

Tellers are candidates' representatives who stand outside polling stations and record the elector numbers of individuals who have voted. They have no legal status and voters have the right to refuse to give them any information. However, by identifying electors who have not voted and relaying this information to the candidates, tellers play an important role in elections. Voters who have not yet been to vote during polling day can then be contacted and potentially persuaded to vote, thereby increasing turnout.

The evidence provided to the Select Committee on the Organisation and Operation of the General Election referred to incidences of overcrowding at some polling stations, due to the number of representatives gathering, with a suggestion that some voters were reluctant to enter.

The Council of Ministers has agreed that tellers should be recognised in law and that a statutory code of conduct is drawn up to govern the activities of such individuals.

40. Do you agree that a statutory code of conduct should be drawn up to govern the activities of Tellers?

- Yes
- No

Comments:

Election meetings

It is custom in the Isle of Man for requisition meetings for House of Keys elections to be arranged and chaired by a Captain of the Parish on receipt of a petition signed by a specified number of electors.

Issues that arose during the 2016 House of Keys General Election highlighted the need to update the process to reflect more modern practices. Pre-election meetings were also arranged by one or more candidates. While there is nothing wrong with this approach, it raises the question as to whether the costs of such meetings are an election expense that should be included in a candidate's statutory return.

The Select Committee on the Organisation and Operation of the General Election recommended that 'A new system of pre-election meetings should be established so that meetings can be arranged and publicised well in advance as a matter of routine. Arrangements on the ground could be made by local authorities, Captains of the Parish or others but the overall responsibility for ensuring the meetings take place should lie with the Cabinet Office.'

This recommendation makes Government responsible for ensuring that a meeting takes place for every House of Keys election; both at the general election and any by-elections. Council of Ministers highlights that, should this recommendation be approved, the Cabinet Office can only be responsible for ensuring that pre-election meetings are held on a constituency basis. Accordingly, these meetings will relate to constituencies and will not be held on sheading, parish or Local Authority basis.

41. Do you agree that Government should fund one pre-election public meeting per constituency for elections to the House of Keys?

- Yes
- No

Comments:

Recall of elected members

Recall legislation provides the electorate with the power to remove elected members who fail to perform their role to a satisfactory standard or those who grossly neglect their duties. Without recall, the electorate must wait until the next scheduled election to voice their opinions on an incumbent's performance.

The Council of Ministers has determined that legislation should be introduced to provide for the ability to recall elected Members of the House of Keys in certain prescribed circumstances.

It is intended that those prescribed circumstances would mirror the relevant sections of the UK legislation and be restricted to a Member receiving a prison sentence or being suspended from the House of Keys or Tynwald for a certain period. Similarly, other aspects of the

process could be largely based on the UK legislation in respect of the petition arrangements and the triggering of a by-election.

In the Isle of Man, the Representation of the People Act 1995 provides for there to be a vacancy in a seat if a Member is punished with custody or fails to attend, without good reason, at least three quarters of the total number of sittings of the Keys and Tynwald within any period of 12 months.

Suspension from Tynwald is covered in the Standing Orders of Tynwald. Currently Members can be suspended indefinitely, but there is no recourse to a recall process.

42. Do you agree that electors should have the right to recall a Member of the House of Keys if the MHK is sentenced to custody or is suspended from parliament for a specified period?

- Yes
- No

Comments: