

# Review of Isle of Man's electoral legislation

## Phase I Revised Report

### 1. Introduction

I have been engaged by the Cabinet Office of the Isle of Man Government to undertake a root and branch review of the Isle of Man's existing electoral legislation and related matters. This paper outlines the conclusions I have reached following a visit to the Isle of Man (IOM) on 21 and 22 April 2016 and, subsequently in November 2017 and September 2018, to discuss the current position in relation to the various subject matters to be included in Phase I. As part of those visits, I met representatives from a number of Government departments, various members of the House of Keys and a senior representative of the IOM constabulary to discuss and investigate issues relating to those various areas.

### 2. Background and Context

2.1. Set out below are the items which have been agreed should be considered in Phase I. The numbers following each item refer to the corresponding numbers used in the original scoping paper).

- Jury service (4)
- Registration system (7)
- Edited register (8)
- Registration prior to an election (9)
- Special categories (10)
- Use of other data (11)
- Penalties (12)

2.2. By way of background, attached to this report at Appendix I is an extract from the original agreed scoping paper for each of the above subject matters. This sets out the issues which I identified for this review and the response of the Cabinet Office in relation to each matter.

2.3. The creation and maintenance of the electoral register within any jurisdiction is the most critical part of ensuring that democratic elections can be held. Without a comprehensive, complete and accurate register, it is virtually impossible to claim that any election is likely to deliver a fair result. Without such evidence, it is therefore impossible to measure whether the eventual winners have a democratic mandate to govern.

2.4. The UK Electoral Commission defines completeness and accuracy in this context as:

- Completeness - every person who is entitled to have an entry in an electoral register is registered
- Accuracy - there are no false entries on the electoral registers.

2.5. Legislation in the UK makes it clear that electoral registration officers are responsible for creating and maintaining a complete and accurate electoral register. The same principles are

adopted throughout the world and the International Foundation for Electoral Systems<sup>1</sup> lists the following as a suggested international standard for electoral registers:

- Regardless of all the variations that impact the process, every registration must determine how to:
  - Establish a unique identity through the use of identification cards, documents, etc., so the voter can prove he or she is the person they claim to be
  - Prove eligibility, including a minimum age, citizenship and residency or location where the voter is eligible to be registered
  - Associate every voter with the appropriate constituency and be able to connect each voter to a state or municipality, district, town or village election for which the voter is eligible to cast a vote
  - Efficiently capture necessary data about every voter and store it in an accessible and usable form
  - Remove voters who become ineligible due to being declared not of sound mind, criminal conviction or other reason
  - Keep the data current by tracking changes in voter status if a continuous registration process is deemed necessary and/or cost-effective
  - Build confidence among the public and the stakeholders in the accuracy, comprehensiveness and, most importantly, the political neutrality of the voter register.

### 3. Jury service

3.1. This report has been advised by the work of the Select Committee on the operation of the jury system and the Committee report published its report in June 2016.

3.2. As outlined in Appendix I, from an electoral registration viewpoint, there are three main issues that relate to the question of whether it is appropriate that the register of electors should be used for the purpose of selecting jury lists. They are:

- a) Does the current practice act as disincentive to citizens being registered as an elector?
- b) Is the register of electors the most accurate source of information for the purpose of selecting jury lists?
- c) Is the register of electors the most appropriate source to provide juries that are truly representative of the population as a whole?

3.3. In terms of the disincentive issue, I am unaware of any hard evidence that confirms that this is the case and certainly not within the Isle of Man. However, a Google search on the subject reveals a plethora of statements and reports which raises the issue in several different administrations.

3.4. In terms of b) and c), the information that I received from those officials which I met is that the answer to both questions is "no". In terms of accuracy, it is clear from the canvass which was carried out in 2016 that there are a large number of citizens that do not engage with the process. For example, on 6 April 2016, some 9,500 households (some 23%) had not responded. This was over a three month period of the canvass and despite a number of reminders. On that basis, it is

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<sup>1</sup> <http://www.ifes.org/>

clear that the register of electors fails the usual test of accuracy and completeness. If that is so, it is extremely unlikely that it is the most appropriate source of information held by the Government that would satisfy a requirement to provide truly representative juries.

3.5. From the information which I have been given, I understand that more accurate and complete information about citizens is held on three databases maintained by the Treasury, namely:

- National insurance
- Tax
- Benefits

3.6. I am now advised that agreement has been reached that the upper age for jury service should be raised from 70 to 75. Additionally, the Select Committee's recommendation is that everyone should be eligible to serve on a jury, except those involved in the administration of justice (including police officers) and Members of Tynwald. Other persons with public duties should be allowed excusal for cause. These changes will have a minor administrative effect on the process used for the compilation of the register of electors.

### **Recommendation**

3.7. In addition to the changes agreed as a result of the Select Committee report, to pursue the discontinuance of the electoral register as the source to be used for the selection of juries in favour of using other Government records that are likely to be more accurate and representative of the population.

## **4. Registration system**

4.1. As can be seen from Appendix I, it has been agreed in principle that a new registration system should be based on the principle that individuals are responsible for their own registration. Using the system now operating in GB, an online facility should be provided as an alternative to a paper form as the means for registering. Using such a system, all applications would be verified against the existing electoral register or, failing that, another database. The overall aim of such a system is to make the register more complete and accurate.

4.2. The underlying principle of moving to a new system of individual registration would be one of registration for life. If such a principle were to be adopted, it would be possible to move away from the traditional form of an annual canvass and instead provide a form of continuous registration. In addition to a more accurate and complete register, it would have the added benefits of administrative and financial savings.

4.3. The primary components of a new system as outlined above would need to take account of the following elements.

4.3.1 **The form of the register** - The format of the registers should largely follow the current model in terms of setting out all electors, both parliamentary and local government. The layout of the registers will be clearly prescribed in legislation and will require to be framed into polling districts for each constituency, local government area and local government wards, where applicable, with a different letter or letters for each district. The order of electors will be prescribed, probably arranged in street order, although there could be an optional alternative such

as alphabetical surname order where it is considered more practical. An “other electors” section will be required at the end of each polling district register to take account of the residence arrangements for some electors. An electoral number will be allocated to each elector with the numbers running consecutively wherever possible.

**4.3.2 The steps to be taken to compile and publish the register** –The compilation of the register at present is based on the requirement to carry out a household canvass. As noted in paragraph 4.2 above, the introduction of individual registration leading to continuous registration for life would mean that the need for the household canvass would be removed and that the register would be revised on a rolling basis allowing revisions to be made at any time to take account of changes of circumstance including residents newly qualified, changes of name and/or address, attainment by age, death etc. The Registration Officer (RO) will be required to publish the electoral register and any relevant lists at his/her office and at other places which allow members of the public reasonable facilities to inspect under supervision. In addition, the RO will be required to publish all notices of alteration in the same manner.

**4.3.3 Revisions of the register** – The revisions to the register caused by the circumstances outlined in the previous paragraph would take place on a monthly basis with a list of revisions published each month and available for public inspection. There would be clear deadlines for the receipt of applications to be considered for revision to the register by the due date in the following month.

**4.3.4 Determination of register applications or entries** - The RO may ask for further information and take no action until it is received. The RO must take into account the verification results when determining the application. The RO may allow an application without a hearing if no objection is made. Once an applicant’s identity has been assured, the RO is satisfied that, on the date of their application, they reside at the qualifying address and all other registration and eligibility requirements have been met, the application can be determined and the person added to the register at the next opportunity. As a result of a successful application, the RO must provide confirmation to the applicant of that fact before the relevant revised register or notice of alteration is published.

**4.3.5 Verification of applications to be registered** – If the registration system is changed to a continuous one as suggested in paragraphs 4.1 and 2 above, it would be sensible to follow the methodology used in the UK to create the new system. On that basis, the transition would take place in two stages, namely:

- Stage 1 would involve “porting” all existing registered electors from the existing register to the new register. Once registered, such electors would be maintained on the register for life or until such time as they permanently ceased to be a resident.
- Stage 2 would introduce the need for all future applicants to apply to be registered by the submission of a form, either paper or electronically.

Such applications would need to be verified against records held by the Government and specified in the necessary legislation.

**4.3.6 Objections to register applications or entries** - An objection may be made to an application to register, an application that has been determined but is yet to be included as an entry in the register and an entry in the register. No objection may be made to an anonymous

application (if such a provision is introduced). Objections to applications may only be made within the period of, say, one week after the application has been received. Objections to pending entries and entries in the register may be made at any time. In all cases, an objector must already be included on the register. Objections will have to be made in writing and include the necessary details prescribed by law including those of the person being objected to and the grounds of the objection. Objections will be made available for public inspection until the matter has been determined. The RO will consider the objection and determine whether it should be upheld. The decision of the RO will be challengeable in the courts.

**4.3.7 Registration appeals** - A right of appeal is permitted against the RO's decision on any registration matter. A written notice of appeal must be made to the RO within fourteen calendar days of the decision. The grounds of appeal must be specified and the RO must then forward the notice to the appropriate court. Where it appears to the RO that notices of appeal are based on similar grounds, s/he shall inform the court so as to enable the court to consolidate the appeals (if it thinks fit).

**4.3.8 Alterations or corrections to the register** - The law should allow the RO to correct a clerical error, to implement a court (registration appeal) decision in the register or correct any information in the register that s/he determines to be incorrect. The ERO would be required to publish a notice of alteration. Outside of an election period, such notices must be published at the same time as the alteration notices for standard additions and deletions. However, at the time of an election, clerical errors can be amended, court decisions implemented and corrections made throughout the election period. Such amendments should be made at the same time as the notices of alteration issued throughout the election period and, where notified to the RO a fixed time on polling day, right up to the close of poll.

**4.3.9 Restrictions on the use of the register** - Any individual will be allowed to inspect the electoral register and notices of alteration but only under supervision. A person wishing to inspect will not have to give a reason as to why they wish to do so. However, they may only make hand-written notes and it will be an offence to use such notes for marketing purposes or for other purposes unrelated to the electoral system.

**4.3.10 Supply of information contained in the register** - The electoral register should be available for supply free of charge in connection with electoral purposes, to facilitate the democratic process and for the purposes of research, security, law enforcement and the prevention and detection of crime. In addition, it is usual that the electoral register may be sold to government departments (for similar purposes) and to credit reference agencies carrying on the business of providing credit reference services (for money laundering and credit assessment checks). Specific other restrictions will apply to the use of the electoral register.

4.4. There are also a number of technical issues that would need to be addressed in terms of the new system. The principal issues would be:

- a) Which existing database(s) would be used to verify applications for entry on the register?
- b) Clarification of the data protection and other legal gateway issues which might arise from the above
- c) The introduction of the notion of residence as a means of qualification to become an elector
- d) What length of period of residence would entitle a citizen to be registered?

- e) Is there a linkage between the Residency Act provisions and the definition of residency for electoral registration purposes?

4.5. I have been advised of work currently being carried out on a project entitled "smart services platform" which is consistent with work undertaken in 2016 towards a longer term proposal aimed at creating "a centralised Citizens' database to be used for supporting increased citizenship, improving public services and supporting evidenced based policy formation".

4.6. I strongly favour the "tell us once" principle in terms of public administration. It seems to me therefore that the above work would make a significant difference in terms of moving to a new electoral registration system as outlined above. This is particularly true given the significant number of Government databases that currently exist and could be used as the basis for a Citizens' database which would then become the obvious tool for the verification of applications for entry on the electoral register. These could include those Treasury databases identified above in paragraph 3.5 together with GP records, driving licences, vehicle tax, rating records, health and schools.

### ***Recommendation***

4.7. To design a new electoral registration system based on the principle of individual and continuous registration and addressing the various elements set out in paragraphs 4.3 and 4.4.

## **5. Edited register**

5.1. As can be seen from Appendix I, the Council of Ministers has already decided to abolish the edited register. I am firmly of the view that this is entirely the correct decision for the reasons set out in section 8 of the Scoping paper. The only issue which was raised with me during meetings in 2016 was that relating to the inability of the Government to use the full register for surveys etc. in the absence of an edited register. A solution to that issue would be to ensure that the new legislation provided the necessary power to overcome that situation subject to the necessary safeguards.

### ***Recommendation***

5.2. To recommend the Council of Ministers to confirm its previous decision to abolish the edited register on the basis that the necessary power for the Government to use the full register for defined statutory purposes will be provided in the legislation relating to the new system of electoral registration recommended in this paper.

## **6. Registration prior to an election**

6.1. As noted in Appendix I, the register to be used for a general election to the House of Keys is produced seven days prior to the date of the election. However, the provision does not extend to by-elections or local authority elections. I raised the question as to whether this provision should apply to all general elections and by-elections.

6.2. There is no technical reason as to why the register to be used at any election could not be in line with the current seven days permitted for a general election to the House of Keys. There was

no particular dissent from those I met about this change. However, three interesting issues were raised, namely:

- a) How close to an election could the register be produced?
- b) Would it be possible to facilitate registration on the day of an election?
- c) What register (and therefore what electorate) would be used to calculate the formula for the limit on candidates' expenses?

6.3. In terms of a), the major issue would be the need to provide the various registers to the presiding officers for each polling station in advance of the opening of the poll. From a contingency and risk management viewpoint, it would seem sensible for this day to be no later than two days prior to the election being held. If that were the case, the registration deadline would have to be a sufficient number of days prior to that to allow any "late" applications to be processed, determined and, if appropriate, added to the election register.

6.4. In terms of b) and the comments in the previous paragraph, there are good reasons why this could not be done because of the need for proper safeguards to ensure the propriety of the registration application in terms of the processing of "late" applications and to protect the integrity of the election.

6.5. In terms of c), the electorate figure to be used for the purpose of candidates' expenses should be that existing on the appropriate register on the last day for publication of the notice of election. In addition, the figure for each constituency should be published by the registration officer on the same day.

### **Recommendations**

6.6. To use the same time period for the publication of the register prior to an election for all elections and by-elections.

6.7. To implement the changes identified in paragraphs 6.3 and 6.5 above to allow for the election register to be produced as late as possible and to provide a fixed date linked to the notice of election in terms of determining the electorate figures to be used to settle the limits on candidates' expenses.

## **7. Special categories**

7.1. There are no current arrangements within the IOM system for categories of electors who are unable to vote in person by reason of their employment or service to actually cast a vote. Taking the UK system as a model, provision is made for the following categories to have special arrangements to enable them to vote.

- a) Persons and their families resident overseas because of the nature of their employment
- b) Persons serving in the armed forces
- c) Persons who qualify for anonymous registration

7.2. It is likely that persons in the above categories will be low in numbers. Electors who are in the UK and Europe could probably use a postal vote. Electors living outside those areas would probably have to appoint a proxy to vote on their behalf.

7.3. From the information provided to me, if there was a restriction on category a) which only permitted those living overseas because of government service to be registered in this way, the numbers would be very small and definitely within single figures. If it was broadened to allow any person and their families to register by virtue of being overseas for employment and/or education reasons, then the numbers are likely to be significantly higher.

7.4. In terms of category b), I am advised that persons from IOM serve in the UK regular armed forces and could be based in any part of the world on active service. In addition, a new reserve unit has been created in IOM with some 50 reservists. Clearly, the latter could be posted abroad at short notice. The same voting arrangements as outlined in the previous paragraph could be used for this category.

7.5. In terms of category c), there is currently no provision for any person to be registered anonymously. In the UK, this category of elector is used to protect the identity of any person who is deemed to be at personal risk and can include those who reside with such a person. From discussions which I had with representatives of Social Services and the Constabulary, it is clear to me that there is a need for this form of special registration which is consistent with the request made by the Cabinet Office to include this group of electors (see Appendix 1). Applicants for this category would need to have their applications supported and attested by either Social Services or the Constabulary.

### **Recommendations**

7.6. To introduce special category electors for the following:

- Persons and their families resident overseas because of the nature of their employment
- Persons serving in the armed forces
- Persons who qualify for anonymous registration.

7.7. To determine whether the first category above is restricted solely to employment in the public service or to any person who is employed overseas.

7.8. To permit absent voting for special category electors by the use of postal voting and/or voting by proxy.

### **8. Use of other data**

This issue is dealt with in paragraph 4.6. above.

### **9. Penalties**

9.1. Under current legislation, any householder or person is required to give information required for the purpose of electoral registration and any person who without reasonable excuse fails to do so is guilty of an offence and liable to a fine not exceeding £1,000 <sup>2</sup>.

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<sup>2</sup> Registration of Electors Act 2006, section 5(3) and (4)

9.2. At the conclusion of the annual canvass this year, the list of non-responding households was sent to the Attorney General's chambers with a view to prosecutions under the above legislation. So far as I understand it, no decision has yet been taken to initiate the necessary proceedings. Clearly, the prosecution of so many would place very considerable burdens on the court and the prosecuting authorities. There is also a potential problem in terms of identifying who might be liable for a prosecution given that there is no definition of householder in the primary Act.

9.3. As noted in Appendix I, an alternative approach to treating this as a criminal matter is to issue civil penalties in such cases. This system has been adopted in the UK since the introduction of the new system of individual registration. I understand that a similar system is used in IOM for parking offences. There was no consensus in terms of introducing such a change with some interviewees in favour of such a system while others were concerned with problems in terms of the administrative burdens of imposing civil penalties and the collection of such penalties.

9.4. The introduction of individual registration as recommended in section 4 of this paper would remove the impediment in the current legislation relating to householder or individual person. The responsibility for complying with any request for information made by the registration officer would fall on the latter.

### **Recommendation**

9.5. To determine whether the offence of failing to provide required information for the purpose of electoral registration under the new system should attract a civil penalty rather than a criminal penalty.

## **10. Information technology implications**

The change to a new registration system will necessitate the need to consider a new i.t. system to accommodate the changes required to the existing software. It may be possible to utilise the proposed Citizens' database for this purpose but that is more properly a matter for GTS to advise upon. Any such system would also need to take account of the changes that could be made under phase 2 of this review, largely to the administration of elections.

## **11. Conclusion**

11.1. I consider that the recommendations made in this paper will:

- Modernise the registration system in IOM
- Address the current deficiencies in terms of completeness and accuracy
- Provide a system that complies with current electoral good practice

11.2. The undertaking of phase I of this review is a positive step in itself given that it indicates a desire by the Government to examine the current arrangements and to identify areas for improvement or change. The various issues identified as a result of this process now need to be addressed. Those recommendations which are agreed should be implemented in accordance with a timetable which ensures that any new registration system is in place well before the next General Election scheduled to take place in 2021.

## **12. Summary of recommendations**

The full list of recommendations set out in this paper can be found at Appendix 2.

John Turner

19 October 2018

## Items included in Phase I of the Review

Item no.	Subject area	Issue	Cabinet Office response
4	Jury service	The register of electors is currently also used for selecting jurors. It has been argued that this could act as a disincentive in terms of applying to be on the register given the voluntary nature of registration. An alternative source of information for the selection of jurors could also lead to a better balance for the constitution of juries, e.g. the national insurance database given that it is likely to be more representative of society as a whole.	Select Committee of Tynwald currently considering Jury service. Findings (when issued) will need to be factored in.
7	Registration system	The registration system in the UK is now one based on the principle that individuals are responsible for their own registration. The system now operating in GB provides an online facility as an alternative to a paper form as the means for registering. Using this system, an online application can be made in less than three minutes. All applications are verified against another database (i.e. the DWP national insurance database). The overall aim of this new system is to make the register more complete and accurate. The ease of registration under this system together with the points made above about jury service could be of some value in pursuing a similar aim for the IoM register.	Agreed. The mechanics for data sharing, such as necessary legal gateways etc. will require early consideration in the review.
8	The edited register	The edited register is that version of the register which contains the details of all those electors who have opted to be included in that register. The edited register is available for sale without restrictions. It is possible that would be electors are dissuaded from registering because of a misapprehension that both the full and edited registers are made available for sale. There is little public benefit in having the edited register at all and this review presents an opportunity to consider the matter again.	Council of Ministers has already made decision to do away with the edited register. We will supply details of this decision which can be incorporated into the tasks which will fall out of the review.
9	Registration prior to an election	The current legislation provides that a register has to be provided for a general election to the House of Keys seven days	In principle it would be logical for there to be a seven day register prior to all elections.

		prior to date of the election. However, the provision does not extend to by-elections or local authority elections. Given advances in technology and the fact that such a register can be produced for a national general election, there is an argument that the provision should apply to all general elections and by-elections. Should the current legislation be amended to make such a provision?	
10	Special category electors	It is not uncommon to have a provision within electoral arrangements to allow for the registration of those citizens who might not meet the residence qualification because of the nature of their employment or who live overseas a result of government service. Such persons are provided for in UK legislation and are known as special category electors. The current arrangement only permits those who meet the residence qualification and have been in the IoM for 12 months to be registered. Electors who are in the UK could use an absent vote and electors living overseas would have to appoint a proxy. Should the issue of a suitable arrangement for special category electors be included within the scope of this review?	Yes, these should be included. Additionally it would be useful to include the ability to provide an anonymous electoral registration facility for at risk individuals (as may be done in the UK).
11	Use of other data	Given the importance to the democratic process of having an accurate and complete register of electors, it is usual to permit access to data held by other government agencies as a means of verifying or identifying potential electors notwithstanding any data protection implications. I would suggest that this opportunity should be included within the scope of this review.	Agreed. See comments to point 7.
12	Penalty for failing to provide information	The current legislation states that a person who fails to comply with a requirement to provide information is liable to a fine of up to £1,000. An alternative approach to treating this as a criminal matter is to issue civil penalties in such cases. This has been adopted in the UK since the introduction of the new system of individual registration. Should the issue of such an arrangement be included within the scope of this review?	If we have civil penalties, will we required to issue them (this will have an administrative impact).

## List of recommendations for Phase I of the Review

Subject area	Recommendations
Jury service	Subject to the findings of the Select Committee, to pursue the discontinuance of the electoral register as the source to be used for the selection of juries.
Registration system	To design a new electoral registration system based on the principle of individual and continuous registration and addressing the various elements set out in paragraphs 4.3 and 4.4.
The edited register	To recommend the Council of Ministers to confirm its previous decision to abolish the edited register on the basis that the necessary power for the Government to use the full register for defined statutory purposes will be provided in the legislation relating to the new system of electoral registration recommended in this paper.
Registration prior to an election	<p>To use the same time period for the publication of the register prior to an election for all elections and by-elections.</p> <p>To implement the changes identified in paragraphs 6.3 and 6.5 above to allow for the election register to be produced as late as possible and to provide a fixed date linked to the notice of election in terms of determining the electorate figures to be used to settle the limits on candidates' expenses.</p>
Special category electors	<p>To introduce special category electors for the following:</p> <ul style="list-style-type: none"> <li>• Persons and their families resident overseas because of the nature of their employment</li> <li>• Persons serving in the armed forces</li> <li>• Persons who qualify for anonymous registration.</li> </ul> <p>To determine whether the first category above is restricted solely to employment in the public service or to any person who is employed overseas.</p> <p>To permit absent voting for special category electors by the use of postal voting and/or voting by proxy.</p>
Penalty for failing to provide information	To determine whether the offence of failing to provide required information for the purpose of electoral registration under the new system should attract a civil penalty rather than a criminal penalty.