

Review of Isle of Man's electoral legislation

Phase 2 Report – Final Version

I. 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 report outlines the conclusions I have reached following visits to the Isle of Man (IOM) in April and September 2016 (for the General election) 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 2. During those visits, I met representatives from a number of Government departments, various members of the House of Keys, some unsuccessful candidates at the above election and a senior representative of the IOM constabulary to discuss and investigate issues relating to those various areas.

2. Background and Context

2.1. Article 21(3) of The United Nations Universal Declaration of Human Rights states that "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." The arrangements for voting for registered electors in a secret ballot clearly need to comply with this requirement.

2.2. Set out below are the items which have been agreed should be considered in Phase 2.

- The franchise
- Registration of electors, including link to Jury Service
- Voting arrangements, which fall within scope, including polling districts
- Absent voting
- The responsible officers, including future options for Returning Officers
- Electoral offences
- The election campaign, including candidate spending
- Legal proceedings
- The Referendum Act 1979
- Associated public policy questions (to be agreed in conjunction with the Cabinet Office)

2.3. 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.

2.4. For the avoidance of doubt, the following matters fall without the scope of the review:

- House of Keys' constituency boundaries
- Reform of Legislative Council (but not the election thereto if necessary)
- Alternative voting systems
- Local Government reform (structures and functions)

2.5. This report takes account of the consultation earlier this year which invited views on how elections should be run in the Isle of Man and, in particular, the summary of responses published in the paper “Elections that work for everyone” (hereinafter referred to as “the consultation paper”).

2.6. The consultation paper records the fact that there were clear themes arising from the consultation exercise, namely:

- Accessibility
- Modernisation and digitisation
- Consistency between national and local elections
- Need for guidance and good practice information

2.7. The consultation sought views on the principles which should form the foundations for the future policy and resulting legislation for electoral matters. These principles were:

- Robustness - protecting the integrity of free and fair elections
- Clarity - no areas of grey
- Simplicity - easy to understand
- Consistent - across all public elections
- Modern - enabling of future technology, where appropriate
- Clear on obligations of officials (i.e. Electoral Registration Officer, Returning Officer, Presiding Officer)

Other aims that were identified by respondents to the consultation were:

- Online Voting
- Democracy
- An increase in voter turnout
- An inclusive and accessible system for all
- Ensuring integrity of the system

3. The Franchise, Registration of Electors and Jury Service

3.1. Issues relating to the registration of electors and jury service are dealt with in the Phase I report. This leaves the question of the franchise. In the Phase I report, two issues relating to the franchise were raised, namely:

- a) The introduction of the notion of residence as a means of qualification to become an elector
- b) What length of period of residence would entitle a citizen to be registered?

3.2. The right to be registered as an elector should be defined in statute. This is currently provided in Part I of the Registration of Electors Act 2006. In essence, a person who has lived in the Isle of Man for the preceding 12 months and has attained the age of 16 is entitled to be registered.

3.3. As part of the consultation, the issue of the residency period was raised. 70% of the respondents agreed that the current arrangement was still relevant. Of the 26% of respondents

who thought that it was no longer relevant, their alternative suggestions ranged from as soon as residence had been taken up to 10 years. However, both of those examples were suggested by only one person. On that basis, I conclude that the current arrangements in relation to the period of residency and age should remain unchanged.

3.4. There would be a technical issue created by the introduction of individual registration and the current wording of the above Act which would need to be resolved. This relates to the definition of residence within section 3(2)(a) which would need to be amended in the new registration legislation.

Recommendation

3.5. To confirm the current arrangements for the franchise in respect of residency and qualifying age subject to the necessary amendment to the legislation outlined in paragraph 3.4 above.

4. Voting arrangements

Polling districts

4.1. Accepted international standards¹ for the construction of electoral boundaries provide that the legal framework needs to address the issue of how constituencies and the electoral units being represented (commonly called polling districts) are to be defined and drawn. The overriding importance of this subject means that it is often part of the constitutional provisions of a country. The legal framework regulating drawing boundaries for electoral units should state:

- The frequency of such determination;
- The criteria for such determination;
- The degree of public participation in the process;
- The respective roles of the legislature, judiciary and executive in the process;
- The ultimate authority for the final determination of the electoral units.

4.2. To meet the above standards, it is important that there is a clear legal provision for the creation and review of polling district boundaries within each constituency. This would include the review periods, the timetable for the review, the process for carrying out the review, the requirements for consultation, the involvement where necessary of the various arms of governance and the provision of an appeal process.

4.3. The current provision in relation to polling districts is contained within section 12 of the Representation of the People Act 1995 which states:

“(1) Unless an order under subsection (2) is in force in relation to a constituency, the whole constituency shall constitute a single polling district.

(2) The Treasury, after consulting each local authority whose district includes the whole or any part of the constituency, may by order divide any constituency into 2 or more polling districts specified in the order.

(3) An order under subsection (2) shall not have effect unless it is approved by Tynwald.”

¹ International Institute for Democracy and Electoral Assistance

4.4. The normal concept for polling districts is that there should be one polling station for each district in the constituency. At the 2016 General Election, the average number of polling stations per constituency was 4.7. On that basis, the above provision should be amended to reflect the need for additional polling districts which would require a new process for the identification of such districts.

4.5. A model for carrying out a polling district review is set out below:

- publish a notice of the holding of a review and the timetable to be followed
- consult the Returning Officer for every constituency
- publish all representations made by a Returning Officer
- seek representations from such persons/organisations that will have particular expertise
- in relation to access to premises or facilities for persons who have different forms of disability
- on completion of a review, give reasons for its decisions and publish all correspondence, representations and the minutes of meetings in connection with the review
- publish details of the designation of polling districts and polling stations as a result of the review

4.6. The Council of Ministers in its response to the report of the Select Committee on the organisation and operation of the 2016 General Election accepted the recommendation “That the Cabinet Office, in consultation with the Returning Officers should review the number and location of polling stations. While staffing costs must be taken into consideration, the ultimate aim of the review must be to maximise accessibility to all voters.”

Recommendations

4.7. To adopt provisions whereby there is a polling station for each polling district and that a review of polling districts is carried out two years before each scheduled General Election.

Polling stations (accessible public buildings)

4.8. The Select Committee commented as follows in its report “Many of the polling stations used historically, whilst being conveniently located in an area, are not universally accessible. With the new requirements of equality legislation many older buildings which may have been used as polling stations in previous elections are no longer suitable. This will have the effect of naturally reducing the number of venues available.”. As noted in paragraph 4.6 above, the Council of Ministers accepted the recommendation relating to accessibility.

4.9. In terms of opening hours, polling stations are currently open for a 12 hour period on polling day from 8 am to 8 pm, whilst in the UK they open from 7 am until 10 pm. The responses to the consultation paper show that most respondents (57%) felt that the current 12 hour period of 8 am to 8 pm should not be changed. 39% felt that the opening times should be amended with the most popular option (21%) from these respondents being 7 am to 10 pm.

Recommendations

- 4.10. a) To only use premises as polling stations that are accessible and compliant with current equality legislation.
b) To make no change to the opening hours of polling stations.

Security marks for ballot papers

4.11. The legislation requires that every ballot paper shall be marked at the time of issue by way of an official mark. The current practice is to use a stamping instrument to make a pre-determined mark by way of perforation through the paper. Regulation 20 of the Representation of the People Regulations 2015 provides that “Every ballot paper must be marked with an official mark in the manner specified by the Chief Secretary so as to preclude false ballot papers being included in the count.”.

4.12. In the UK, the use of stamping instruments for this purpose has all but disappeared. The law now requires that an appropriate security mark is to be added to the ballot paper. The mark should be distinctive. It could therefore be a printed emblem or mark or a special printing device such as a watermark. It should be capable of being seen on the front of the ballot paper so that it can be seen without having to turn the ballot paper over. This approach saves time in the polling station in terms of the issuing process and overcomes the difficulties that can be caused when a stamping instrument malfunctions.

Recommendation

4.13. To abandon the use of stamping instruments for the purpose of applying the official mark and replace it with an alternative method such as those indicated in paragraph 4.12 above.

Timing of elections

4.14. As part of the consultation, the issues of when elections should take place were raised. 79% of respondents thought that the House of Keys General Election should continue to be held in September while 18% felt that it would be more appropriate to hold a General Election in a different month of the year. In terms of the day of voting, the majority (64%) of respondents thought that elections should continue to be held on Thursdays. Of those who disagreed, the most popular choice was for elections to be held on Saturdays (12%).

4.15. In response to the consultation issue on terms of office, 42% of respondents thought that the House of Keys and Local Authorities should have the same term of office with the majority agreeing that a five year term would be most appropriate. 34% of respondents thought that the term of office should be four years and 20% felt that they should not be the same. Having the same term of office would lead to consistency of approach. However, the scale and complexity of having both sets of elections combined on the same day would probably be neither effective nor efficient.

Recommendations

4.16. a) To make no change to the month or day of elections.

b) To change the terms of office for both House of Keys and Local Authorities to five years with the respective elections being held in different years.

Rules for House of Keys or Local Authority elections

4.17. The primary legislation governing elections to the House of Keys and Local Authorities is covered within two separate acts, i.e. the Representation of the People Act 1995 for the former and the Local Elections Act 1986 for the latter. The conduct of the two elections is governed by two different sets of rules. The process presented by this root and branch review of the current legislative provisions for these elections provides a rare opportunity to standardise the rules of conduct for both elections within one single piece of legislation. Such an approach should lead to more consistency, clearer understanding and greater transparency. The approach I envisage to achieve that would be to create one single Act covering the administration of all elections with separate schedules setting out the rules for the conduct of the elections to the House of Keys and Local Authorities. The Act would set out the matters common to both elections such as qualifications for candidates, terms of office, casual vacancies, organisation and holding of elections, offences, legal proceedings, expenses etc. with the detailed rules set out in the schedules. The variations between the two types of election would be covered in the latter. The Act would make provision for the amendment of the schedules to be made by order with all such orders subject to approval by Tynwald.

Recommendation

4.18. To standardise the rules for elections to the House of Keys and Local Authorities into one single piece of legislation.

Place and manner of voting including Absent voting mechanisms

4.19. The two current alternatives for the place and manner of voting are polling stations and absent voting. The issues relating to polling stations are set out in paragraphs 4.8 to 4.10 above. The term absent voting is used to describe a system of voting whereby electors who are unable or unwilling to vote at their allocated polling station can cast their vote by alternative means. The means commonly include postal voting or voting by proxy but can also include advance or early voting including special arrangements for electors living or working overseas. 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.

4.20. In terms of absent voting, the Council of Ministers in its response to the report of the Select Committee on the organisation and operation of the 2016 General Election noted that, in addition to the high number of polling stations, advance voting was introduced in 2016 which was open to all electors, with no pre requisites (other than being on the electoral register) to be met. This change in procedure was widely publicised and provided a popular option for those seeking an alternative to voting at a polling station, with nearly 2,000 electors casting their vote in this way. This service provided electors the opportunity to vote prior to polling day at a venue agreed with the returning officer, including from home if circumstances required.

4.21. In response to the consultation issue on the concept of postal voting, the majority (72%) of respondents agreed that there should be postal voting as an alternative to the current advance and

absent vote systems. Views on proxy voting were split. 49% of respondents felt the practice of proxy voting should continue. However, 49% felt that proxy voting should no longer be allowed as an option with the general feeling that the practice was open to abuse and fraud.

4.22. In the Phase I report, I recommended that special category electors should be introduced for the following and that absent voting for special category electors should be permitted by the use of postal voting and/or voting by proxy.

- 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.

4.23. Having considered the various options available, I have concluded that the universal use of postal voting for those electors who wish to vote in that way together with limited use of proxy voting in particular situations and under close control should replace the current arrangement for advance voting. This change would apply to all elections.

4.24. The third possibility for voting would be the introduction of electronic voting. This topic is dealt with in the section on public policy questions in Section 10.

Recommendation

4.25. To replace the current system of advance voting for all elections with the introduction of postal voting on demand and the use of proxy voting in particular situations and under close control.

Notices relating to an election

4.26. There are a number of public notices that have to be published by the Returning Officer in relation to the administration of an election. For an election to the House of Keys, these include:

- Notice of Election
- Notice of Nominations
- Notice of Poll
- Notice of Result

4.27. The Election Rules for elections to the House of Keys generally provides that such notices shall be published by insertion in one or more newspapers published and circulating in the Island, and by posting in one or more conspicuous places in the constituency. Given the changes within society to the ways in which public information is provided and sought, it would seem appropriate to permit the use of websites for the publication of the various notices in addition to or in the place of newspapers.

Recommendation

4.28. To permit the use of websites for the publication of all notices relating to an election either in addition to or in the place of newspapers.

5. Responsible Officers

5.1. It is usual for there to be two responsible officers to discharge the legal responsibilities relating to electoral registration and elections administration. The common names used for these positions are electoral registration officer and returning officer respectively. There is no reason why the same person cannot hold both positions. The key issue is that the responsible officers should be independent and only answerable to the courts.

5.2. Section 4 of the Registration of Electors Act 2006 provides that a registration officer shall be appointed for the purpose of the Act. The current registration officer is the Executive Director, Crown & External Relations within the Cabinet Office.

5.3. Returning Officers (ROs) for elections to the House of Keys are appointed normally from a list of practising advocates (although there is nothing in statute that prescribes this). As noted in the original scoping paper for this review, this can lead to difficulties in recruiting enough ROs particularly for a General Election. This arrangement also places serious responsibilities on an RO which could lead to difficulties and also raises the issue of a possible perception of conflicts of interest. Similar issues can arise in respect of ROs for local government elections. If a centralised approach is adopted, the responsibility for the appointment of ROs could transfer to the Cabinet Office with a predilection that ROs will be appointed from a pool of senior public officials and local authority staff. By way of comparison, ROs in Great Britain are senior local government officers (largely Chief Executives) for all elections and referendums. There is no requirement for these officers to hold any particular professional qualification.

5.4. The consultation raised questions in relation to the current rules which exist in relation to Returning Officers. Currently, Returning Officers for a General Election are usually advocates. In relation to the question as to whether this should remain the case, 83% of respondents thought that the Returning Officer did not need to be an advocate. The general feedback received was that, if adequate training was provided to a professional, then the Returning Officer would not need to be an advocate. 61% of respondents thought that the Returning Officer could be a Government or Local Authority employee.

5.5. Given the points raised in the original scoping paper and the results of the consultation process, I am of the view that the time has come to change the present arrangements with the appointment of the Chief Secretary as the RO for House of Keys elections and, for elections to Local Authorities. In each case, the RO would have the power to appoint Deputy ROs. For the former, it would be Civil Servants and for the latter it would be the senior officer (employee) of the authority concerned. Where there is the need for legal advice, this could be provided by the Attorney General's Chambers as is the case for most Government functions. Suitable arrangements would need to be put in place for training and support for DROs and their staff (polling and counting).

5.6. So far as the appointment of the responsible officers is concerned under these arrangements, the power could remain with the Governor (as it presently does) or specify that the Chief Secretary is the Returning Officer for all elections. There would be no need to change the provision for the appointment of the Registration Officer although it would seem sensible to provide the power for that person to appoint a Deputy.

5.7. Section 14 of the Representation of the People Act 1995 deals with the Disqualification of persons who cannot be appointed as a Returning Officer (RO). This 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. Given the suggestion above that the Chief Secretary be appointed the RO for all elections, it would be appropriate to apply the list in Section 14 to the appointment of Deputy Returning Officers.

5.8. Currently, for a General Election, ROs do not pay for the cost of hiring polling stations, providing public notices, the materials supplied by the Cabinet Office and other overheads. A payment of £10,000 is made to each RO to cover their time and their staff's time. If a change is made to the arrangements for ROs, it is anticipated that there could be some overall savings in the costs of running the election.

5.9. In the UK, the legislation governing the conduct of a General Election provides for a Returning Officer at a parliamentary election to receive a fee in respect of the services rendered by that officer. For such elections, this is achieved by reference to a Returning Officers' Charges Order. This Order sets out how such a fee is calculated and the maximum amounts which can be claimed. For local government elections, it is usual for the above practice to be replicated by reference to a similar scale of election fees. The legislation provides that the cost of such elections shall be met by the authority provided that the expenditure does not exceed any scale fixed for the purposes of meeting the costs of the election. It follows that, if no such scale exists, there is no limit on the level of expenditure. For that reason, it is sensible in financial and budgetary terms to have an approved scale. It also adds transparency to the electoral administration process and removes doubt of what can legitimately be paid to officers responsible for and working within the process.

Recommendations

- 5.10. a) To change the arrangements for the appointment of the Returning Officer for all elections to be the Chief Secretary.
- b) To provide for the Chief Secretary to have the power to appoint Deputy Returning Officers for all elections.
- c) To provide for the Registration Officer to have the power to appoint a Deputy Registration Officer.
- d) To provide that the list of disqualifications for appointment as a Returning Officer also applies to Deputy Returning Officers.
- e) To make suitable provisions for the adoption of scales of fees for all elections.

6. Electoral offences

6.1. Generally, the regulation of an election campaign is controlled through electoral offences. It is necessary therefore that the law provides detailed rules for such regulation. Some are administrative in character and their breach is a ground for invalidating the election. Others relate to the conduct of the public generally, and candidates and campaigners in particular. All of these matters are dealt with in some detail in Part 4 of the Representation of the People Act 1995 and closely follow the provisions contained within the appropriate legislation in the UK. As a result, the language and the issues covered are somewhat archaic given the changes in society since these provisions were first brought into being. As a result, I would recommend that, in revising existing

legislation as a result of the review, replacement legislation should reflect the need for modernisation of the language to the current day.

6.2. The following are corrupt practices:

- personation
- bribery
- treating
- undue influence

So far as I can ascertain, there are no particular issues that need to be dealt with as part of the review with the exception of treating and its relationship to the other corrupt practices. However, the Law Commissions in the UK have carried out a comprehensive review of electoral law and have recommended that a single set of electoral offences should be set out in primary legislation which should apply to all elections. Specific recommendations of the Law Commissions in relation to corrupt practices are:

- The offence of bribery should be simplified with its mental element stated as intention to procure or prevent the casting of a vote at an election
- The electoral offence of treating should be abolished and the behaviour that it captures should, where appropriate, be prosecuted as bribery
- Undue influence should be restated as offences of intimidation, deception and improper pressure. Pressure will be improper if (a) it involves the commission or threat of commission of an illegal act or (b) a reasonable person would regard it as improperly infringing the free exercise of the franchise.

6.3. The corrupt practice of treating caused considerable interest at the General Election 2016, 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.

6.4. In term of treating, the consultation posed a question about the provision of ordinary hospitality, namely, whether candidates should be allowed to provide ordinary hospitality at public meetings (i.e. food and drink). Views on this matter were fairly evenly split, 53% of respondents agreed that ordinary hospitality at public meetings would be acceptable, while 42% felt that this was not acceptable. Most respondents who thought it was acceptable felt that this should be limited to light refreshments e.g. tea and biscuits.

6.5. The Council of Ministers in its response to the report of the Select Committee on the organisation and operation of the 2016 General Election accepted the recommendation "The Cabinet Office should issue guidance to candidates on the meaning of treating and should not merely advise candidates to seek their own legal advice. The factsheet on electoral offences issued in the UK in 2012 should serve as a model for such guidance."

6.6. The following are illegal practices:

- Election publications (It is an offence not to include the name of the printer and publisher on election material)

- Imitation poll cards (It is an offence to issue a poll card or document closely resembling an official poll card with an intention to deceive)
- Corrupt withdrawal from candidature (It is an offence for a person to corruptly induce or procure another person to withdraw from an election.)
- Premises not to be used as committee rooms (It is an offence to use a room on licensed premises as a committee room for the purpose of promoting or procuring the election of a candidate.)
- Providing money for illegal purposes (It is an offence for a person to provide money in contravention of the provisions of the Representation of the People Act 1995.)

6.7. Specific recommendations of the Law Commissions in relation to illegal practices are:

- The imprint requirement should extend to online campaign material which may reasonably be regarded as intending to procure or promote any particular result, subject to a reasonable practicability defence.
- The offence of falsely stating that another candidate has withdrawn should not be retained; where such a statement is effective to convince voters that a candidate had withdrawn, it should amount to undue influence by deception.
- A maximum sentence of ten years' custody should be available in cases of serious electoral fraud as an alternative to recourse to the common law offence of conspiracy to defraud.

6.8. There are a number of criminal offences set out in the Representation of the People Act 1995. These include:

- Offences of corrupt practices and illegal practices
- Breach of official duty
- Offences in respect of nomination papers etc,
- Requirement of secrecy
- Refusal to obey lawful commands of returning officer
- Defacing of notices
- Display of lists showing how persons will vote
- Issue etc. of certain election documents
- Officials not to act for candidates
- Canvassing by police officers

6.9. The issue of the electoral registration offence of failing to provide information is dealt with in my report on Phase 1 of the review. For ease of reference, the relevant section of that report is reproduced at Appendix 3. There are however further offences in relation to registration matters which carry a maximum fine of £5,000. These include:

- Making unlawful copies of lists and registers
- Unlawful processing of data
- Restrictions on disclosure of data

Recommendations

6.10. a) To adopt the recommendations of the UK Law Commissions in respect of changes to corrupt and illegal practices set out in paragraphs 6.2 and 6.7 above.

- b) To determine whether the provision of modest hospitality (soft drinks and biscuits) should be permissible at campaign meetings and, if so, whether the cost thereof should be declared on the candidate's declaration and return of expenses.
- c) To include guidance on electoral offences in information to be provided by the Cabinet Office to prospective candidates.

7. The election campaign, including candidate spending

7.1. It is normal within electoral law to provide for the regulation and control of election spending by candidates. The principal steps to provide that regulation at elections are to:

- a) make the candidate (or their election agent) responsible for election spending
- b) prescribe expense limits as fixed ceilings or formulae
- c) require the candidate (or election agent) to complete and deliver a return and declaration of expenses
- d) make breaches by candidates or their agents of expenditure regulations (whether to do with expense limits or accuracy of the returns reporting spending) corrupt or illegal practices, bringing into play criminal sentences, disqualifying the candidate and agent from involvement in elections for a defined period, and constituting grounds for the invalidity of the election if challenged by election petition. This places the onus of complying with the regulation on candidates and their election agents.

Expense limits, Donations and Returns/Declarations

7.2. Legislation to prevent excessive spending by electoral candidates in the UK has been in place since 1883. The UK's system of regulating campaign financing focuses on limiting the expenditure rather than donations of political parties and individual candidates, using a transparent reporting system of donations received and election expenditure incurred.

7.3. I have been advised about 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. As a result of these events, an independent review was carried out into the appropriateness of the rules and transparency of processes regarding election funding in the Isle of Man. Following the review, a system of recording and declaring donations and expenses was introduced with the revisions to the legislation used for the first time in the General Election to the House of Keys in 2016. The detailed provisions about expenses and donations can be found in the Guidance for Candidates provided by the Cabinet Office for the 2016 General Election ² and the Guidance on Election Funding for candidates.

7.4. Candidates are required to keep records of expenses and donations. However, they only have to make a declaration in relation to the former if a complaint is made. In terms of the latter, this has to be made prior to the election. The Isle of Man is the only comparable country where declarations of either donations or expenses are made prior to polling day. There were issues during the election with obtaining the paperwork on time, owing to the fact that candidates were

2

<https://www.gov.im/media/1352256/guidance-for-candidates.pdf>

generally preoccupied with the final days of canvassing. Extra pressure was also placed on Cabinet Office so close to polling day to make the information publicly available. Additionally there is the added complication of the possibility of candidates receiving donations after the deadline and having to make an additional declaration.

7.5. The filing arrangements for both cases are rather different. This has been a cause for comment by some elected members and candidates. In practice, candidates make a declaration of donations. However, there is no requirement to publish it. It is made available at Central Registry and members of the public can request access to the information. The argument could be made that if the information is not published, it becomes a pointless exercise. Whilst there has been no objection from candidates, either before the introduction of this legislation or since, to having to make the declarations, good practice suggests that declarations and returns of both donations and expenses should be made after the elections and then made available for public inspection. In essence, this aids openness and transparency and is far more likely to ensure compliance and establish a level playing field for all candidates.

7.6. In terms of donations, candidates in the UK can only accept donations of money, items or services towards their campaign spending from certain mainly UK-based sources otherwise they have to be returned within 30 days. Keeping the donation longer will deem it to have been accepted and, additionally, that may be a criminal offence.

7.7. Candidates are required to record any donations received equal to or worth £50 or more. This requirement includes donations that are notional expenses. Relevant donations also include aggregated amounts, i.e. any donations from the same source which total £50 or more.

7.8. In response to the consultation question as to what period a candidate/prospective candidate or individual should have to declare any expenditure or donations received prior to a poll, a very clear majority of 61% responded 12 months, 26% responded more than 12 months and 8% thought it should be less than 12 months. As to whether the current limit on expenditure by a candidate of £2,000.00 plus 50p per registered elector was appropriate, the majority of respondents felt that this was adequate, with 70% stating “Yes”. As to whether all candidates (successful or otherwise) should have to declare their expenditure on their campaign costs, 89% of those that responded to the consultation said “Yes – all required to declare expenditure”.

Recommendations

7.9. To amend the law so that:

- a) declarations and returns of both donations and expenses have to be made after the elections and then made available for public inspection.
- b) the period covered by the returns commences one year before the scheduled date of the election in question.
- c) all candidates (successful or otherwise) are required to submit declarations and returns of both donations and expenses.
- d) the requirements apply to all candidates at both House of Keys and Local Authority elections.

7.10. To retain the current expense limit for House of Keys elections of £2,000.00 plus 50p per registered elector and to determine a proportionate lower level for Local Authority elections.

Election agents/other agents

7.11. In the UK, election agents are appointed by the candidate for the duration of the campaign, and until the necessary documentation such as the declarations and return of expenses have been made. This is a legal requirement in all but parish and community council elections. If a candidate fails to appoint an agent by the due time s/he will be considered to be their own agent.

7.12. An agent is ultimately in charge of the campaign and takes on key responsibilities, such as incurring debts and paying bills. No expenditure should be incurred without the agent's knowledge and prior approval and no bills should be paid by anyone other than the agent without the agent's express permission. The agent then prepares and submits an account of expenses incurred during the election. The agent has to approve all campaigning literature before printing and accept responsibility as the publisher of the literature. The agent oversees the polling and counting of votes to ensure the accuracy and impartiality of the election and appoints polling and counting agents, if required.

7.13. 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. Given the more localised nature of elections in the island, vast sums are not spent conducting a campaign therefore the appointment of an agent may be considered unnecessary in terms of managing a campaign and associated finances. However the decision to appoint would rest with the candidate and therefore election agents could be an option for some.

Recommendation

7.14. To consider whether the appointment of an election agent should be available to candidates and, if so, to include suitable provisions within legislation.

Tellers

7.15. Tellers (otherwise known as candidates' representatives) stand outside polling stations and record the elector numbers of voters 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.

7.16. UK Guidance suggests there should be no more than one teller at a polling station for each candidate at any time and they must remain outside the polling station unless casting their own vote. Whilst these rules are generally adhered to, there have been cases both in the UK and the Isle of Man, where tellers have created an air of intimidation around the entrance to a polling station and potentially deterred voters.

7.17. The issue of candidate's representatives was raised in the evidence to the Select Committee in to the organisation and operation of the General Election. There were incidences of overcrowding at some polling stations, due to the number of representatives gathering, with suggestion that some voters were reluctant to enter. These could have been a mixture of tellers, agents and, possibly, other supporters. Whilst there is no legal requirement for a candidate to

appoint either polling or counting agents, these roles are defined within the Representation of the People legislation. However, there is no mention of tellers in the legislation.

7.18. The Council of Ministers in its response to the report of the Select Committee on the organisation and operation of the 2016 General Election accepted the recommendation “The Cabinet Office, in consultation with returning officers, should review the available means to minimise any risk that a voter might be intimidated by crowds surrounding the entrance of a polling station.”

7.19. In response to the consultation issue on whether tellers or candidate supporters should be allowed outside a polling station. 52% of respondents felt that tellers and agents should not be allowed and 45% disagreed.

Recommendation

7.20. To determine whether tellers should be recognised in law and/or whether there should be a statutory code of conduct to govern the activities of such persons.

Campaigning offences and other issues

7.21. Most campaigning offences are illegal practices and are covered in paragraph 6.6. above. There are, however, some other issues in terms of campaigning which need to be considered, namely, election meetings, guidance for candidates, manifestos and banners/election publications.

Election meetings

7.22. In the Isle of Man, it has been the case for many years to hold requisition meetings for House of Key elections. These are arranged and chaired by a Captain of the Parish on receipt of a petition signed by 10 or 12 electors. I understand this to be a unique Manx custom which has been in existence since the early 1860s. However, issues which arose during the 2016 General Election have highlighted how anachronistic the process is, and the fact that it needs to be updated to reflect more modern practices. During that election, there was an emergence of candidate meetings which one or more candidates arranged to garner support. Although there is nothing intrinsically wrong with this approach, it does raise the question as to whether the costs of the latter meetings are election expenses which should be included in the statutory return.

7.23. There were undoubtedly issues in relation to the meetings which led the Select Committee to recommend “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.”

7.24. In considering and accepting this recommendation, the Council of Ministers noted that “Many voters see pre-electoral meetings, where they have an opportunity to gauge the performance of candidates, side by side, as a key part of making their decision on whom to cast their vote for. Whilst these events are undoubtedly popular with some voters, they are not a statutory electoral event. A House of Keys election can take place validly without a meeting of this sort occurring at any stage. This recommendation makes Government responsible for ensuring that a pre-election 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 sheding, parish or Local Authority basis. At the 2016 General Election some constituencies had several pre-election meetings as they had been arranged on a parish basis. On the basis there will be one meeting for each constituency; suitable accessible premises for public meetings for potentially relatively large numbers of people could be in short supply. It may be that the most suitable venue for a meeting is, in certain cases, outside the constituency boundary.”

Recommendations

7.25. a) To clarify in legislation that the cost of holding pre-election meetings for House of Key elections arranged by a candidate or candidates should be an election expense to be included in the statutory returns.

b) To make provision in legislation for the Returning Officer to be responsible for ensuring that suitable arrangements for pre-election meetings are made that and the cost thereof should be funded by Government.

Guidance for Candidates

7.26. Guidance for candidates for the General Election in 2016 was produced by the Cabinet Office, and distributed as soon as candidates declared their intention to stand. It was also available on the Government website. In general, the information provided was well received. However some representations were made to the Select Committee to suggest that further detail could have been provided in certain areas, namely around treating, expenses and banners. As a result, the Select Committee recommended “That the Cabinet Office should revise its Guidance for Candidates and the associated webpages. In doing so it should take account of the concerns identified in this Report and in the appended evidence and of any points raised during the debate on this Report.” The Council of Ministers accepted the recommendation.

7.27. I understand that following the 2016 election, consideration has been given by the Cabinet Office to the idea of holding a candidates’ briefing, following nominations. This would give candidates the opportunity to ask any questions and to clarify any areas of concern.

Recommendations

7.28. a) To carry out a review of the present guidance for candidates in readiness for the next General Election.

b) As part of the above review, to investigate further the idea of providing a candidates’ briefing following the close of nominations at future elections.

Manifestos at House of Key elections

7.29. During the 2016 General Election, the Government funded the delivery of one manifesto per household, for each candidate, up to the value of a standard letter. Candidates were not prevented from sending more than this, but the cost had to be met individually and recorded as an expense. This was a change from previous elections and a move away from the UK standard of one manifesto per elector. The change to the legislation was largely accepted by candidates, with

only a few negative comments received. The main complaint was with regard to the processing of the data required to extract just addresses, rather than electors.

7.30. Consideration will now need to be given to how this is to be managed in the future, as a move to individual electoral registration will only compound the situation, i.e. individually registered electors but only one manifesto per household. The cost savings are significant, with £65,126 being spent on postage in 2016. This represents a saving of over £60,000 had Government funded one manifesto per elector. A move back to the previous policy would be expensive in the current financial climate. Given the advances of information technology, it has to be noted that mailing manifestos is now only one way for candidates to get their message out. Social media now plays a significant role and candidates could also have their manifestos published on the Government website - both of these options offer considerable savings.

7.31. In terms of the consultation on this issue, there was a clear divergence in the responses. 51% of respondents thought that Government should continue to pay for the postage of candidates' manifestos. However, given that there are alternative ways of promoting the candidates' policies, 47% felt that this was not necessary.

7.32. The Council of Ministers in its response to the report of the Select Committee on the organisation and operation of the 2016 General Election accepted the recommendation "That the Cabinet Office should review the definition of household for the purposes of Section 31 of the Representation of the People Act 1995 and should provide clarity on registered voters in multiple occupancy households". It was noted that Section 31 of the Act presently states that candidates are entitled to receive funding to cover delivery of one copy of their manifesto to each household containing one or more persons on the electoral register for their constituency. It is, however, acknowledged that households, in the broader sense of the term, were not defined within the legislation, specifically to include care homes. Many candidates visit such homes as part of their election campaign and could leave copies of their manifestos with the manager for distribution to registered electors at that home.

Recommendations

- 7.33. a) To determine whether the Government should continue to fund the cost of postage in respect of candidates' manifestos at House of Key elections.
b) If so, to decide whether the manifestos should be sent to each household or each elector.
c) Subject to the above, to revise the definition of household for the purposes of Section 31 of the Representation of the People Act 1995.

Banners/Election publications

7.34. There is a requirement to print the name of the printer and publisher on any election publication as it serves to promote transparency. Generally, candidates comply with this requirement although there are complaints about compliance at most elections. Consideration could be given to strengthening the guidance in this area to make it clear to candidates at the outset what is expected, and also to clarify that the RO can insist on certain courses of action when legislation is breached. Given the move to using electronic media as well as printed material, the need for the name of the printer is far less relevant and, indeed, would lead to a lack of consistency in terms of the respective material.

7.35. The size and placement of banners during the 2016 election was cause for comment by candidates and the public alike. In the consultation, nearly all respondents (95%) agreed that there should be guidance for candidates linked to a statutory code of conduct for all elections. Additionally, 54% agreed that such a code should also contain clear guidance on the provision and placement of posters and other advertising.

Recommendations

- 7.36. a) To introduce a statutory code of conduct in respect of election materials and the size and placement of election banners.
b) To remove the need for the printer's details on any election publication.

Restrictions on Officers

7.37. There are three major restrictions on officers in relation to their involvement in the administration and conduct of elections. These are:

Breach of Official Duty (section 45, ROPA 1995): Penalty – up to £1,000 fine

Requirement of Secrecy (section 47, ROPA 1995): Penalty – up to 6 months custody

Officials not to act for candidates (section 52, ROPA 1995): Penalty – up to £2,500 fine

7.38. Clearly, the three offences carry different penalties which are probably historic in nature. This review provides an opportunity to consider whether the penalties would act as a deterrent, are still appropriate and/or whether there should be a greater consistency.

Recommendation

7.39. To consider whether there should be any amendment to the penalties for the offences set out in paragraph 7.37 above.

8. Legal proceedings

8.1. Laws governing electoral administration and the regime prohibiting corrupt and illegal practices based on the current British system are largely enforced by private legal challenge before election courts – the “election petition”. The consequence of such a system is to have to make provision for the consequences of a successful candidate being reported for corrupt or illegal practices which could lead to the election result being put aside and/or the prosecution of that candidate.

8.2. The result of an election can only be challenged by a petition complaining of an undue election or undue return. Such an election petition can be presented by:

- a person who voted as an elector at the election or had a right so to vote;
- a person claiming to have had a right to be elected or returned at the election; or
- a person alleging himself to have been a candidate at the election

8.3. There are two categories of challenge:

- Petitions alleging an error on the part of an election official (this includes a petition based, for example, on a complaint that the votes were not correctly adjudicated as valid or invalid or not counted accurately); and
- Petitions alleging that a candidate or agent of a candidate committed an electoral offence.

The rules are complex³ and the legislation has changed little since 1868, being based upon the Parliamentary Elections Act 1868. A petition has to be served within 28 days of the return of the candidate's election.

8.4. In short, the election petition system is not accessible or transparent; it 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. 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 person who should not have been elected has held their seat, and possibly contributed to the making of major policy decisions, for a lengthy period of time.

8.5. 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.

8.6. Current maximum penalties which can be imposed upon those found guilty of offences of corrupt or illegal practices are, on summary conviction, a fine not exceeding £5,000 and/or custody for a term not exceeding two years. In addition, that person is incapable of being elected to the House of Keys or being a member of a local authority for a maximum period of 10 years.

8.7. In response to the consultation issue on whether there should be an additional process to deal with election complaints which do not fall within the election petition process, 80% of the respondents agreed that there should be such a process. This issue has been a matter of considerable debate as part of the Law Commissions' review of electoral law in the UK. The commentary on this issue in the Law Commissions' report is attached at Appendix 4. The purpose of this proposal is to ensure that genuine complaints can properly be dealt with outside of the election petition process for the reasons set out at paragraphs 13.139 to 144 of the extract at Appendix 4.

8.8. If a candidate has mistakenly acted in contravention of the election rules, they can apply to the High Court for relief from the penalties for an offence of an illegal practice or payment or hiring⁴. If the High Court is satisfied by the evidence provided that the "act or omission arose from inadvertence or from accidental miscalculation or from such other reasonable cause of like nature, and in any case did not arise from any want of good faith"; the Court can make an order which has the effect of allowing the act or omission to be an exception from the provisions of the Act.

Recommendations

8.9. a) To make provision in law for Returning Officers to be able to correct procedural mistakes in cases where it affects the result of the election.

³ See Schedule 3 of the Representation of the People Act 1995

⁴ See Section 63 of the Representation of the People Act 1995

b) To introduce a system to deal with electoral complaints which do not fall within the election petition process.

9. The Referendum Act 1979

9.1. The legislation governing referendums in the Isle of Man is the Referendum Act 1979. No referendums have been held in the Isle of Man since the coming into force of this Act, or, indeed, at any prior time. The legislation provides that a resolution of Tynwald is required for a referendum to be held and thereafter the Deemsters shall, after consultation with the Attorney General, state the questions to be asked in the referendum.

9.2. However, the current legislation contains no provisions relating to campaigns, the distribution of campaign material, donations, expenses and supporters all of which may become controversial issues if a referendum were to be called in the future.

9.3. There are several important issues to be considered, namely:

- It is important that the legislation clearly defines the purpose of a referendum, considers whether in all cases the only options are “yes” or “no” and whether the result of the referendum is binding.
- The legislation needs to specify for which type of issue a referendum could be held and to restrict it to being of national and/or constitutional importance.
- The conduct of a referendum would closely mirror that which applies to the conduct of elections. It would therefore be an opportune time to include a separate section/ schedule for referendums in the revised legislation envisaged by this review.
- The issues identified in paragraph 9.2 need to be addressed.

9.4. The issue of legislation for referendums was considered as part of the Law Commissions’ review of electoral law in the UK. As a result, the Commissions concluded that:

- Primary legislation governing electoral registers, entitlement to absent voting, core polling rules and electoral offences should be expressed to extend to national referendums where appropriate.
- Secondary legislation should set out the detailed conduct rules governing national referendums, mirroring that governing elections, save for necessary modifications.

Recommendations

9.5. a) To revise the Referendum Act 1979 to take account of the changes required and outlined in paragraphs 9.2. and 9.3. above.

b) To adopt the recommendations in terms of the format of the legislation as set out in the recommendations of the UK Law Commissions.

10. Associated public policy questions (to be agreed in conjunction with the Cabinet Office)

10.1. In preparing the topics from the main subject areas to be included within the scope of the review (and which are listed above in paragraph 2.2), I have identified a number of other areas which need consideration as to whether they might also fall within the scope of this review. Most relate either to existing practices where change to the present arrangements might be desirable or to areas of electoral administration which are currently not included, in full or in part, in the Isle of Man framework.

10.2. I refer to these as public policy issues because they affect other parts of public administration or because they would introduce new arrangements or requirements in respect of the provision of electoral administration. The issues which I have identified are set out in the table below. However, it has to be recognised that this list may not be complete because of the iterative nature of this review and the fact that more areas for consideration may be raised as a result of the discussions and consultation which will take place in relation to this paper.

Item no.	Subject area	Comment
1	Eligibility to stand for public office	From the consultation, 74% thought that the qualifications and requirements for candidates to be eligible to stand for election to the House of Keys or a Local Authority should be the same.
2	Candidates – support of political parties	From the consultation, affiliation to or support by a political party should be declared on the nomination paper for inclusion on the ballot paper. There would need to be an offence for any breach of the requirement with suitable penalties. The legislation should also prohibit candidates from accepting support/funding from parties outside the IOM.
3	Identification at polling stations	From the consultation, a large number of respondents (68%) supported a requirement that voters should be required to show identification at the polling station, often citing it as a means to prevent electoral fraud. However, other respondents saw it as unnecessary, bureaucratic and a potential deterrent from voting. If this were to be introduced, what type of ID would be required? Is this a disproportionate response to an issue that does not really exist? Turnout could be reduced by preventing individuals without ID from voting which could have a significant impact on the results of elections. The pilot schemes held in the UK in local elections in May 2018 did not produce meaningful results.
4	Donations made to electors	From the consultation, 92% of respondents 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. A new requirement would be needed in the legislation. Should this be separate from the requirement for the expenses return or is this a parliamentary issue best dealt with through members' standards? If adopted, a similar provision for local authorities would be required. It is worth noting that any donations within the relevant

		period could be considered to be treating.
5	Recall of elected members	From the consultation, 76% of the respondents considered that registered electors should have the ability to recall elected members in certain prescribed circumstances. There is a recall provision in the UK for MPs with the first recall petition recently held in Northern Ireland.
6	Candidate standing in more than one Constituency/Local Authority area	From the consultation, 85% of respondents felt that a candidate should not be able to stand in more than one Constituency/Local Authority area at the same election. New legislation would be required.
7	Responsibility for local authority elections	At present, the departmental responsibility for local authority elections rests with the Department of Infrastructure. Should this continue to be the case? Should there be one central unit for all electoral matters within the Cabinet Office? There would need to be suitable consultation with the local authorities in respect of what such a change would mean for them.
8	Storage of election documents	After an election, there are numerous documents which are required to be kept securely for 12 months and then destroyed. Some of these documents are available for public inspection at a given period of time. Election documents are retained in the event they are required in respect of an Election Petition. Should the responsibility for storage of all election documents be passed to the Central Registry which does have storage facilities and offers a viewing facility for other documents which are available for public inspection?
9	Media activity	There are currently no specific controls within the legislation in respect of the involvement of the media in electoral matters. In many countries, there are codes of conduct which control the way in which the media should operate during an election campaign. International standards suggest that some form of control is necessary to ensure that the activities of the media cannot have a detrimental effect on the fairness of the election.
10	Electronic voting	A recommendation from the Select Committee was that "The Cabinet Office should continue to investigate the use of electronic voting systems at polling stations but should report to Tynwald with a list of recommendations before any trial takes place." In its response, the Council of Ministers stated "Consideration of the feasibility of electronic voting systems is underway at a high level. Council of Ministers agrees with the Committee's conclusion that the use of electronic systems at polling stations is worthy of exploration. Issues regarding maintaining the secrecy of the ballot, system security and robustness will all need to be addressed and reported to Tynwald when consideration is given to the use of electronic voting systems at the polling station. Such systems would have a financial cost and would need to be suitably resilient to possibly only be deployed on a five yearly basis. The Cabinet Office will report to Tynwald with recommendations prior to any trial of electronic voting systems at the polling station taking place."

		In pursuing this, it needs to be borne in mind that the current trend, particularly in Europe, is to move away from electronic voting systems for statutory elections because of security and integrity concerns and those relating to cyber interference from outside agencies.
11	Modernisation of legislation	There are a number of outdated requirements in the existing legislation that need revision, amendment or removal, e.g. the provisions for election staff to swear oaths. Similarly, the legislation for elections to the House of Keys and to the local authorities needs to be consistent, wherever possible.

11. Conclusion

11.1. I consider that the recommendations made in this report together with consideration of the outstanding public policy questions will:

- Modernise the administration of elections in the IOM
- Address the various issues raised as part of the consultation exercise particularly in respect of those that commanded a clear majority in favour of change
- Provide a system that complies with current election good practice and international standards

11.2. The undertaking of both phases of this review is an extremely 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 the necessary changes are 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

September 19

Items included in Phase 2 of the Review

Item no.	Subject area	Issue
1	Electoral Administration	Electoral administration is currently provided through a number of agencies and individuals. A more centralised approach should lead to a more effective and efficient service and improvements in consistency. A possible way forward would be to establish a central electoral unit within the Cabinet Office.
2	Local government elections	Local government elections are currently the responsibility of the Department of Infrastructure. If a centralised approach is adopted, this responsibility should transfer to the Cabinet Office.
3	Storage of election documents	Storage of electoral documents (including the current register of electors) is the responsibility of the Chief Registrar. If a centralised approach is adopted, this responsibility should transfer to the Cabinet Office particularly as there is a potential conflict of interest in the current arrangement, given the responsibility of the Court in terms of dealing with election petitions and other electoral offences.
4	Returning Officers	Returning Officers (ROs) for elections to the House of Keys are appointed normally from a list of practising advocates (although there is nothing in statute that prescribes this). This can lead to difficulties in recruiting enough ROs particularly for a general election. This arrangement also places serious responsibilities on an RO which could lead to difficulties and also raises the issue of a possible perception of conflicts of interest. Similar issues can arise in respect of ROs for local government elections. If a centralised approach is adopted, the responsibility for the appointment of ROs could transfer to the Cabinet Office with a predilection that ROs will be appointed from a pool of senior public officials. A related issue to this is that of permitting ROs to stand for election.
5	Elections to the House of Keys and to local authorities.	The qualification to stand as a candidate for the House of Keys appears to be less onerous than that for a candidate for a local authority in that the former does not need to be on the register of electors. An opportunity now exists to review the qualification of candidates at both levels and to ensure, where possible and practicable, that they are consistent.
6	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 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.
7	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.
8	Election agents	IoM legislation is silent on the question of election agents as distinct from counting or polling agents. The main role of an election agent is to take responsibility for the election campaign and, in particular, for the expenses of the campaign. The responsibility for proper accounting and the necessary returns falls to the election agent. In cases where election agents are required, it is open to the candidate to not appoint an agent. In such circumstances, the candidate is then deemed to be their own agent.
9	Election expenses	The issue of elections expenses and returns are currently provided for by sections 20A to 20G of the 1995 Act. The control of financing of and spending for election campaigns is a fundamental part of achieving an equality of opportunity to all candidates wishing to contest an election.
10	Referendums	Although the Referendum Act 1979 remains on the statute book, I understand that referendums are not used in IoM as a normal part of the governance arrangements.
11	Recall of elected members	Several jurisdictions in the world have provisions whereby an elected representative can be subject to a recall process (e.g. Canada, Switzerland, UK, Ukraine, USA, Venezuela).
12	Media activity	The current legislation does not deal with the involvement of the media in relation to election campaigning nor does it take into account more recent developments in terms of social media and the use of electronic media generally. This review provides an opportunity to consider whether there should be legislation to provide controls over the use of conventional and electronic media.

List of recommendations for Phase 2 of the Review

Subject area	Recommendations
The Franchise, Registration of Electors and Jury Service	To confirm the current arrangements for the franchise in respect of residency and qualifying age subject to the necessary amendment to the legislation outlined in paragraph 3.4 above.
Voting arrangements	<p>To adopt provisions whereby there is a polling station for each polling district and that a review of polling districts is carried out two years before each scheduled General Election.</p> <p>To only use premises as polling stations that are accessible and compliant with current equality legislation.</p> <p>To make no change to the opening hours of polling stations.</p> <p>To abandon the use of stamping instruments for the purpose of applying the official mark and replace it with an alternative method such as those indicated in paragraph 4.12 above.</p> <p>To make no change to the month or day of elections.</p> <p>To change the terms of office for both House of Keys and Local Authorities to five years with the respective elections being held in different years.</p> <p>To standardise the rules for elections to the House of Keys and Local Authorities into one single piece of legislation.</p> <p>To replace the current system of advance voting for all elections with the introduction of postal voting on demand and the use of proxy voting in particular situations and under close control.</p> <p>To permit the use of websites for the publication of all notices relating to an election either in addition to or in the place of newspapers.</p>
Responsible Officers	<p>To change the arrangements for the appointment of the Returning Officer for all elections to be the Chief Secretary.</p> <p>To provide for the Chief Secretary to have the power to appoint Deputy Returning Officers for all elections.</p> <p>To provide for the Registration Officer to have the power to appoint a Deputy Registration Officer.</p> <p>To provide that the list of disqualifications for appointment as a Returning Officer also applies to Deputy Returning Officers.</p> <p>To make suitable provisions for the adoption of scales of fees for all elections.</p>

Electoral offences	<p>To adopt the recommendations of the UK Law Commissions in respect of changes to corrupt and illegal practices set out in paragraphs 6.2 and 6.7 above.</p> <p>To determine whether the provision of modest hospitality (soft drinks and biscuits) should be permissible at campaign meetings and, if so, whether the cost thereof should be declared on the candidate's declaration and return of expenses.</p> <p>To include guidance on electoral offences in information to be provided by the Cabinet Office to prospective candidates.</p>
The election campaign, including candidate spending	<p>To amend the law so that:</p> <ul style="list-style-type: none"> a) declarations and returns of both donations and expenses have to be made after the elections and then made available for public inspection. b) the period covered by the returns commences one year before the scheduled date of the election in question. c) all candidates (successful or otherwise) are required to submit declarations and returns of both donations and expenses. d) the requirements apply to all candidates at both House of Keys and Local Authority elections. <p>To retain the current expense limit for House of Keys elections of £2,000.00 plus 50p per registered elector and to determine a proportionate lower level for Local Authority elections.</p>
Election agents/ other agents	<p>To consider whether the appointment of an election agent should be available to candidates and, if so, to include suitable provisions within legislation.</p> <p>To determine whether tellers should be recognised in law and/or whether there should be a statutory code of conduct to govern the activities of such persons.</p>
Election meetings	<p>To clarify in legislation that the cost of holding pre-election meetings for House of Key elections arranged by a candidate or candidates should be an election expense to be included in the statutory returns.</p> <p>To make provision in legislation for the Returning Officer to be responsible for ensuring that suitable arrangements for pre-election meetings are made that and the cost thereof should be funded by Government.</p>
Guidance for Candidates	<p>To carry out a review of the present guidance for candidates in readiness for the next General Election.</p> <p>As part of the above review, to investigate further the idea of providing a candidates' briefing following the close of nominations at future elections.</p>
Manifestos at House of Key elections	<p>To determine whether the Government should continue to fund the cost of postage in respect of candidates' manifestos at House of Key elections.</p> <p>If so, to decide whether the manifestos should be sent to each household or each elector.</p> <p>Subject to the above, to revise the definition of household for the purposes of</p>

	Section 31 of the Representation of the People Act 1995.
Banners/Election publications	To introduce a statutory code of conduct in respect of election materials and the size and placement of election banners. To remove the need for the printer's details on any election publication.
Restrictions on Officers	To consider whether there should be any amendment to the penalties for the offences set out in paragraph 7.36 above.
Legal proceedings	To make provision in law for Returning Officers to be able to correct procedural mistakes in cases where it affects the result of the election. To introduce a system to deal with electoral complaints which do not fall within the election petition process.
The Referendum Act 1979	To revise the Referendum Act 1979 to take account of the changes required and outlined in paragraphs 9.2. and 9.3. above. To adopt the recommendations in terms of the format of the legislation as set out in the recommendations of the UK Law Commissions.

Extract from Phase I report relating to Electoral Registration penalties

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 £1,000⁵.

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.

⁵ Registration of Electors Act 2006, section 5(3) and (4)

Extract from UK Law Commissions' Report on Electoral Law**There should be an informal means of reviewing complaints about elections which do not aim to overturn the result. (Provisional proposal 13-17)**

13.139. We provisionally proposed that there should be an informal means of reviewing complaints about elections which did not seek to affect the outcome or validity of an election, and offered options in the various jurisdictions as to who should be the recipient of complaints: existing ombudsmen, returning officers for adjacent areas or regional returning officers, or the Electoral Commission. Of the 36 consultees who responded to this proposal, 34 agreed with it, including the Electoral Commission. Two consultees disagreed.

13.140. Several electoral administrators noted that complaints about the administration of elections are currently already dealt with directly by the returning officer. Nonetheless, they agreed that there should be a means of third party review of complaints. However, there was some disagreement as to whether the forum for hearing the complaint should be the ombudsman, the use of a scheme whereby adjacent returning officers consider complaints, or the regional officer at European Parliamentary elections (for complaints which are not against their service); or consideration by the Electoral Commission.

13.141. The national branch of the AEA considered that the Electoral Commission was the most appropriate forum, as the Commission has “wide experience of electoral administration”. The Electoral Commission itself stated that it would be content to take on the role, adding that if the Law Commissions were to confirm that this proposal should be further developed it “would be happy to consider how such a role could be developed alongside, or incorporated within, the Commission’s existing performance standards framework for electoral registration officers and returning officers”.

13.142. Other consultees considered that the independence of the ombudsman service rendered it a more appropriate forum for complaints. Some Scottish consultees, including SOLAR and the Electoral Management Board for Scotland, pointed out that in Scotland, electoral maladministration is already within the jurisdiction of the Scottish Public Services Ombudsman.

13.143. The Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales and the Northern Ireland Ombudsman (the UK Ombudsmen) in a joint response said that complaints should go to the Ombudsmen rather than the Electoral Commission or returning officers. This would “provide people with the reassurance of an independent consideration of their complaint where it has not been possible to resolve matters locally”. The UK Ombudsmen remarked that the proposal would be in line with current procedures, as most complaints pertaining to local authorities are under their jurisdiction. They commented that the Electoral Commission’s role as a regulator is very different to that of an ombudsman. It stated that “the primary purpose of an ombudsman is to remedy injustice that has been caused to an individual through the independent investigation of their complaint”. On the other hand, the role of a regulator is to ensure that systems are operating fairly and effectively. They added that “consideration by a regulator [like the Electoral of redress that the public want and need”. They also pointed out that the Electoral Commission, as a public body, is within the jurisdiction of the Ombudsmen “in relation to some aspects of its function”.

13.144. Maladministration is deliberately undefined in statute, but it is understood to encompass a wide range of administrative failure.³² If a grievance is due to inaction, inattention, or poor administrative practice generally, then that is plainly a matter which is within the ombudsmen's expertise. Complaints that are to do with the interpretation and application of electoral law by electoral administrators may be considered by the Electoral Commission when assessing whether returning officers meet its performance standards. But this is no substitute for a complaints mechanism, where the complainant's grievance is investigated, resolved, and if appropriate, redress is given and lessons are learned. As the UK ombudsmen point out, those are the characteristics of the ombudsman process. On balance, we recommend as follows.

Recommendation 13-13: Electors' complaints about the administration of elections (which do not aim to overturn the result) should be investigated by the Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales and the Northern Ireland Ombudsman.