



**Law
Commission**
Reforming the law


Scottish Law Commission
promoting law reform

Electoral Law – A joint final report

Summary of report

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The Law Commissions

The Law Commission of England and Wales and the Scottish Law Commission were set up by section 1 of the Law Commissions Act 1965, for the purpose of promoting the reform of the law.

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The terms of the full final report were agreed on 27 February 2020.

The text of this report is available at

<http://www.lawcom.gov.uk/project/electoral-law>

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Chapter 1: Introduction

- 1.1 The electoral law reform project originated in the Law Commission for England and Wales' Eleventh Programme of Law Reform. Its scope, determined in 2012, extends to electoral administration law, offences and legal challenges. It excludes reform of the franchise, voting systems, electoral boundaries, national campaign, party, and broadcast regulation, and fundamental change to institutions.
- 1.2 After references were made by the UK and Scottish Governments, the three Law Commissions in the UK engaged in substantive reform work, resulting in the publication of our consultation paper, *Electoral Law in the UK*.¹ Our subsequent interim report reviewed the responses to our consultation paper on UK electoral law and set out our 108 interim recommendations for reform. This report presents our final recommendations. A glossary, which also appears in the report, can be found at the end of this summary.
- 1.3 The response to this project has been overwhelmingly positive, with many proposals attracting unanimous or near-unanimous support. Key stakeholders in the electoral community have repeatedly stressed the need for sensible, rational reform of our complex electoral laws. The House of Commons Public Administration and Constitutional Affairs Committee recently described the consolidation and simplification of electoral law as a "serious priority".²
- 1.4 A detailed account of the current law is contained in our consultation paper, which runs to 357 pages. This summary outlines our recommendations in the final report, and summarises the thinking behind them. It focuses on the wider aims of the reform project: the rationalisation of electoral law into a new, rational and modern legislative framework. Some recommendations are not discussed in detail if they are of a technical nature. Many such recommendations are born of the aim of rationalising inconsistent electoral laws, modernising out of date laws, or correcting apparent errors or infelicities in the current law. The reasons in support of these recommendations are given in detail in our consultation paper and final report.

Why an interim and a final report?

- 1.5 Following the publication of our interim report, the project entered a review period prescribed by our terms of reference, with a view to securing Government approval to progress to the third stage (which involved significant Bill drafting work). In due course, however, it became clear that work on exiting the European Union, and the attendant unprecedented pressure on parliamentary business, meant that no comprehensive draft reform Bill would be introduced in the short term.

¹ *Electoral Law (2014) Law Commission Consultation Paper No 218; Scottish Law Commission Discussion Paper No 158; Northern Ireland Law Commission No 20*, available at http://www.lawcom.gov.uk/wp-content/uploads/2015/03/cp218_electoral_law.pdf.

² *Electoral law: the urgent need for review*, Report of the Public Administration and Constitutional Affairs Committee (2017-19) HC 244, p 5.

- 1.6 We then explored whether we could implement some of our recommendations through redrafting and rationalising existing conduct rules, which are found in secondary legislation. Working with Parliamentary Counsel we produced specimen drafting of conduct rules governing three polls. However, we decided in mid-2019, with the agreement of the Cabinet Office, that the priority should be to move on to producing this final report.

Law reform and policy

- 1.7 Chapter 1 of the report outlines the scope of the project and the list of electoral events within its scope. Our reform work must be based on the current law, while being sufficiently flexible to adapt to ongoing changes in policy.
- 1.8 The challenges faced by electoral law have continued to evolve during the life of this project. These include regulating online advertising, disinformation, and online intimidation. Many of these problems are not limited to electoral law, and are not properly within the scope of this report.
- 1.9 Several have been considered by other bodies; by way of example, the Committee on Standards in Public Life published a report on the intimidation of those in public life (in particular candidates and campaigners) in 2017.³ Some of the recommendations made by that report have been considered by the Government in its response to the report and in the Cabinet Office's Protecting the Debate consultation and subsequent report.⁴
- 1.10 Without further consultation we are reluctant to make recommendations on these new topics. Nonetheless, our final report seeks to consider the effect of recent developments on recommendations made in the interim report. We hope that implementing our recommendations and modernising the framework of electoral law will mean that making changes to the law will be quicker and less complicated. As a result, electoral law will be able to respond faster to societal and technological developments.

Devolution and a tri-partite reform project

- 1.11 The reform of electoral law was formerly a tripartite law reform project, undertaken by all three UK Law Commissions. Earlier stages of the project benefitted greatly from the work of the Northern Ireland Law Commission. That organisation became non-operational in 2015, due to budgetary pressures within the Department of Justice. The Chair of the Northern Ireland Law Commission, the Honourable Mr Justice Maguire, signed the 2016 interim report on the strength of the recent involvement of the Northern Ireland Law Commission. He has not been able to do so for this final report, and as a result its recommendations are confined to Great Britain. We continue to refer to the electoral law of Northern Ireland where this informs our recommendations.

³ Report of the Committee on Standards in Public Life on Intimidation in public life (December 2017) Cm 9543.

⁴ Cabinet Office, Protecting the Debate: Intimidation, Influence and Information (July 2018) and Response to Protecting the Debate: Intimidation, Influence and Information (May 2019).

- 1.12 Since our interim report, legislative competence in relation to certain elections has been further devolved by the Scotland Act 2016 and the Wales Act 2017. The Welsh and Scottish Parliaments have recently passed legislation governing their own elections and referendums, and other Bills are under consideration.⁵
- 1.13 The conception that we had at the start of this project, of a single Act of the UK Parliament governing all elections, has therefore become outdated. Though we no longer recommend a single Act, we remain of the view that consistency of approach is valuable; discrepancies can make administering elections difficult, particularly when elections coincide. We would encourage legislatures to cooperate, to avoid devolution throwing up fresh sets of discrepancies where these are avoidable. This topic is discussed in more detail in chapter 2.

⁵ The Scottish Parliament has passed the Referendums (Scotland) Act 2020, and is currently considering the Scottish Elections (Reform) Bill and the Scottish Elections (Franchise and Representation) Bill. In Wales, the Welsh Parliament recently passed the Senedd and Elections (Wales) Act 2020, and the Local Government and Elections (Wales) Bill was introduced on 18 November 2019.

Chapter 2: The legislative structure

- 2.1 Electoral law is complex, voluminous and fragmented. After 1999 many more types of election and local referendums were created, while recourse to national referendums grew. Secondary legislation providing for a further species of election, the combined authority mayoral election, was passed after the publication of our interim report. Each type of election or referendum is generally governed by its own bespoke legislation. We describe this framework of bespoke legislation as “election-specific”.
- 2.2 More than 25 statutes and many more pieces of secondary legislation govern the area of electoral law that is considered by this reform project. Some of their content is repeated, almost word for word, from the “classical” law which is contained in the Representation of the People Act 1983 (“the 1983 Act”), which governs UK Parliamentary elections and some aspects of local government elections in England, Wales and Scotland.
- 2.3 All of the newly created elections use a voting system other than first past the post, for which the classical law contained in the 1983 Act was designed. Accordingly, some of the classical law had to be adapted to account for the different voting system. We call efforts to adapt a classical rule to a new voting system “transpositions”. These have not been consistent, even for elections which use the same voting system. This greatly contributes to the problems of volume and complexity.
- 2.4 It poses problems not only for those consulting the law, but also for implementing new or changed policies. Introducing a new election requires replicating every aspect of the existing electoral law, while introducing new policy requires many different pieces of legislation for each election type. This is undesirable when, in fact, a large number of rules are shared by all elections. It is not a good and efficient use of Government and Parliamentary resources to draft, and to scrutinise the same change of policy, or new policy, in multiple pieces of primary and secondary legislation. Nor is it helpful to those who use electoral law to have such a plethora of sources, and the inevitable differences that creep into the detail of electoral administration of particular electoral events.
- 2.5 Our view is that electoral law should be governed by a rational and holistic framework governing all existing elections, subject to the devolutionary framework. That framework has evolved during the life of this project: the Scottish and Welsh Parliaments have nearly full legislative competence over elections to the Scottish and Welsh Parliaments respectively, as well as local government elections in Scotland and in Wales.⁶ Some matters remain reserved to the UK Parliament, including certain aspects of the incidence and combination of polls.
- 2.6 Such a rational and holistic framework would therefore include a UK Act (governing United Kingdom Parliamentary elections, elections in England and other elections for which legislative competence is reserved), a Scotland-only Act (governing devolved

⁶ Unlike the Scottish Parliament and Senedd the Northern Ireland Assembly has no legislative competence in respect of elections.

elections in Scotland), and a Wales-only Act (governing devolved elections in Wales). Under our proposed scheme any new election – or referendum – would be able to make use of the existing electoral law infrastructure, once certain policy decisions are made, such as the franchise to be employed. Any changes in electoral policy would require far fewer legislative amendments. Chapter 2 makes two recommendations to that effect which we set out below.

- 2.7 It is important to note, however, that the approach behind these recommendations underpins recommendations made in other chapters where the election-specific arrangement of electoral law causes particular problems. Rationalising the legislative framework is the key reform aim, and will allow reform to achieve considerable savings in terms of detail and volume of laws on the conduct of elections. The current approach has resulted in significant complexity in the rules governing nominations (chapter 7), polling (chapter 8), the count (chapter 9) and the combination of polls (chapter 10).

Recommendation 1.

- 2.8 The current laws governing elections should be rationalised into a single, consistent legislative framework governing all elections (enacted in accordance with the UK legislative competences).

Recommendation 2.

- 2.9 Electoral laws should be consistent across elections, subject to differentiation due to the voting system or some other justifiable principle or policy.

Chapter 3: Management and oversight

- 3.1 Running elections divides into three principal tasks. The first two – maintaining a register of electors and arrangements for absent voting (by post or proxy) – are undertaken by registration officers and are considered in chapters 4 and 6 respectively. The third task, running elections, falls to returning officers. Since this reform project does not consider fundamental institutional questions, its task is to clarify and to simplify the law governing the functions of returning officers in the UK.
- 3.2 One source of complexity is the legal notion that, at Parliamentary elections in England and Wales, local dignitaries (such as the sheriff of a county or mayor or council chairman) are returning officers. In reality their only role is to receive the writ which triggers the election, and to declare the result and return the writ. Every other (and administratively very significant) aspect of running an election is performed by an “acting” returning officer, who is the registration officer within the constituency. This additional layer of complexity is redundant and confusing; in our view the returning officer should be the person actually responsible for running the election. If the policy is to retain the role of ceremonial returning officers in declaring election results, it can be given effect in secondary legislation.

Recommendation 3.

- 3.3 The person who in the current law is the acting returning officer at UK Parliamentary elections in England and Wales shall have all powers in respect of the election, but may be required by secondary legislation to delegate the oral declaration of the result to another person.
- 3.4 This is the first step in having a simpler, and election-wide expression of the powers and duties of returning officers. The next involves the multiplicity of officials involved in running some elections. In Great Britain, returning officers are local government officials. But most elections span more than one local government area. Management of the poll is thus overseen by more than one returning officer, one of whom is in a senior position over the whole election. We call these “directing” returning officers, because most have a power of direction in law over the local returning officers who oversee the poll over a subdivision of the area or constituency. The framing of the power of direction in law varies from one election to the next. In the context of combination of polls,⁷ where one of the combined polls’ returning officers is the “lead” officer, we identified some confusion over the role and status of directions by the directing officer to the lead officer.
- 3.5 Our view is that the law governing the running of elections should be restated and consistently expressed in legislation for all elections, subject to the devolutionary

⁷ This can occur where elections to more than one elected body occur in the same place on the same day.

framework. These should spell out, in particular, the duties and powers of directing or regional returning officers at elections managed by more than one returning officer.

Recommendation 4.

- 3.6 Electoral law should set out the powers and duties of returning officers for all elections within the legislative competence of the parliaments within the United Kingdom.

Recommendation 5.

- 3.7 The functions, duties, and powers of direction of regional returning officers at elections managed by more than one returning officer should be set out in primary legislation, along with the duty of officers to cooperate with others running the same poll. It should extend to the administration of the election in question. Secondary legislation may provide more detail as to the extent of powers of direction, including the effect on combined polls.

- 3.8 To facilitate the running of the poll, electoral areas (constituencies, wards or divisions) are broken down into administrative areas in which polling will take place. In the legislation, these are called “polling districts”. Within them is a “polling place” – a term not defined in the legislation, but understood to be the building in which the polling station is located. The legal significance of polling places is that the returning officer must locate polling stations within the designated polling place.

- 3.9 The periodic review and alteration of parliamentary polling districts and places is carried out, in Great Britain, by the local authority council, who are themselves elected and political actors. We maintain the view in our consultation paper and interim report that this administrative task, the aim of which is to make polling convenient for voters, should be the responsibility of returning officers, rather than elected councillors. We also conclude that appeals from polling district reviews should continue to be heard by the Electoral Commission.

Recommendation 6.

- 3.10 The designation and review of polling districts is an administrative matter which, in Great Britain, should be the responsibility of the returning officer rather than local authority councils. Appeals against such decisions should continue to be heard by the Electoral Commission.

Chapter 4: The registration of electors

- 4.1 The law concerning electoral registration has changed substantially since 1983. As policy developed from household registration by annual canvass, through year-round “rolling” registration, to our current system of individual electoral registration, the electoral registration section of the 1983 Act has grown extremely complex. Our primary reform aim is to re-state the current law so that it is simpler to understand and to apply. This starts with a statement of the franchise.

Recommendation 7.

- 4.2 The franchises for all elections should be set out in primary legislation.

- 4.3 Next is the legal concept of residence, which connects a person who has the franchise to a geographical area in which he or she may exercise it. Defining residence in legislation is difficult. In our view the law should continue to set out the factors that registration officers must consider to establish residence. Meanwhile, there is scope for considerable simplification of the law on “notional” residence, tying so-called “special category” electors such as merchant seamen or members of the armed forces to a place, even though they do not actually reside there. We consider that the same requirement of a declaration of local connection should apply to these.

Recommendation 8.

- 4.4 The law on electoral residence, including factors to be considered by electoral registration officers, and on special category electors, should be restated clearly and simply in primary legislation.

Recommendation 9.

- 4.5 Primary legislation should deal with “special category” electors through a single regime providing for a declaration of local connection establishing a notional place of residence; other administrative requirements should be in secondary legislation.

- 4.6 The law governing the registration process is a complex mixture of primary and secondary legislation. It is rooted in an outdated concept of a physical electoral register, compiled once a year, with monthly alterations by a paper process. The complexities of the current arrangements have resulted in the deadline for “late” registration in Great Britain being wrongly thought to be 11 days before the election, instead of 12. Moreover, there are in law five distinct electoral registers. In practice the

five registers are combined onto one dataset contained in an “electoral management system”, a piece of software operated by the registration officer.

- 4.7 The point of registration can be simply stated: it definitively establishes the right to vote, and the elections at which the elector may vote. We consider that the legal treatment of the electoral register is ripe for simplification. There should be a single register in law, capable of reflecting which franchise the elector enjoys. Subject to this, the current law should be restated more simply. Primary legislation should contain core principles, the powers and duties of registration officers, and transparency requirements (including access to the register). Secondary legislation can supply the detail, as required. A number of our recommendations pertain to our aim of simplifying the law on electoral registration.

Recommendation 10.

- 4.8 The 1983 Act’s provisions on maintaining and accessing the register of electors should be simplified and restated.

Recommendation 11.

- 4.9 Primary legislation should contain core registration principles including the objective of a comprehensive and accurate register and the attendant duties and powers of registration officers; the principle that the register determines entitlement to vote; requirements of transparency, local scrutiny and appeals; and the deadline for applying for registration.

Recommendation 12.

- 4.10 The deadline for applying for registration should be expressed as a number of days in advance of a poll. It may be varied by the Secretary of State provided it falls between days 12 and five before the poll.

Recommendation 13.

- 4.11 Primary legislation should prescribe one electoral register, containing records held in a paper or electronic form, which is capable of indicating the election(s) at which the entry entitles the elector to vote.

Recommendation 14.

4.12 Secondary legislation should set out the detailed administrative rules concerning applications to register, their determination, the form and publication of the register and access to the full edited register.

4.13 Other recommendations in this chapter arise from specific problems which we encountered in our review of the current law.

4.14 The first concerns future-proofing. We see the merit of a legal requirement for registration officers' data being capable of being exported to, and their software interacting with, other registration officers' software. This would have a range of uses. If, at some point in the future, technology were devised to allow polling station registers to be updated digitally and in real time, it would pave the way for electors being able to vote at a polling station of choice, not the one allocated to them based on where they live.

Recommendation 15.

4.15 Secondary legislation may require registration officers' systems for managing registration data to be capable of being exported to and interacting with other officers' software, through minimum specifications or a certification requirement laid down in secondary legislation.

Recommendations as to second residence

4.16 Finally, we make a set of recommendations concerning the legal treatment of second electoral residences. The courts have established the possibility of a second residence in principle. Students, for example, can be registered in halls of accommodation as well as the family home. Other examples include a second home required for an elector's career. No legislative guidance is given to registration officers as to how to decide whether a second address amounts to a second electoral residence, risking inconsistent practice in different parts of the UK. Such inconsistency is troubling partly because it may give rise to a perception of political bias in decision-making by registration officers. There is also a risk that electors unwittingly vote twice in the same election if they are sent postal ballot papers for both.

4.17 Our view is that legislative guidance is desirable and feasible, and we give examples of the types of factors that tend to establish a second residence in chapter 4 of our final report.⁸ Key to our recommendations are the principles that the law should lay down some factors to be considered for second residence cases, and that applicants for registration in respect of a second residence should state that fact.

⁸ Final Report, para 4.61.

Recommendation 16.

- 4.18 Primary legislation should explicitly acknowledge the possibility of satisfying the residence test in more than once place.

Recommendation 17.

- 4.19 The law should lay down the factors to be considered by registration officers when determining second residence applications, such as those set out in paragraph 4.61 of our final report.

Recommendation 18.

- 4.20 Applicants for registration in respect of a second home should be required to state that fact. Secondary legislation may prescribe how registration officers should seek to acquire the information required to decide the application.

Recommendation 19.

- 4.21 Electors applying to be registered in respect of a second home should be asked to designate which home they wish to be registered at to vote at national elections.

Chapter 5: Manner of voting

- 5.1 This chapter considers the law concerning the secret ballot and the legal provisions concerning ballot papers.
- 5.2 The principle and operation of voter secrecy is long established. A side-effect is that the main provision on preserving secrecy, section 66 of the 1983 Act, is out of date with modern developments: principally these are the availability of mobile phone photography at polling stations, and extending the protection of voter secrecy to information obtained when an elector completes a postal vote outside a polling station. Our first recommendation seeks to plug that gap.

Recommendation 20.

- 5.3 The secrecy provisions currently in section 66 of the 1983 Act should extend to information obtained at completion of a postal vote and prohibit the taking of photographs at a polling station without prior permission of the presiding officer.

- 5.4 Our next recommendations concern the UK's long-established version of the secret ballot, which provides voters with secrecy while allowing for judicial vote tracing to uncover fraud. The law requires updating to ensure that the UK clearly and demonstrably complies with article 3 of the First Protocol to the European Convention on Human Rights. Qualified secrecy, in place in the UK since 1872, intends that legitimate voters can vote secretly, while allowing for judicial vote tracing to counteract and unearth fraud. This is facilitated by the storage in sealed packets of lists that enable a particular voter's ballot paper to be identified by an election court.
- 5.5 At UK Parliamentary elections, there is a vestigial power of the House of Commons to order the inspection of ballot papers and corresponding number lists, which is in our view an anachronism. It was used only once, and only because the court-supervised vote tracing process could not address the problem in question. Our recommendations here tidy up laws that have been largely unchanged since 1872.

Recommendation 21.

- 5.6 The obligation to store sealed packets after the count should specify that they should be stored securely.

Recommendation 22.

- 5.7 Secrecy should be unlocked only by court order, with safeguards against disclosure of how a person voted extended to an innocently invalid vote; however nothing in such safeguards should prevent public reporting of electoral fraud.

Ballot paper design and content

- 5.8 At present, ballot papers are in a form prescribed in secondary legislation (or annexed to the 1983 Act, but subject to amendment by secondary legislation). The increase in the number of electoral events, and the variety of voting systems in use in the UK, led to some criticism regarding the consistency and clarity of prescribed ballot paper forms. In more recent times, there has been a shift towards professionally designed, user-tested forms of ballot papers, evidenced by changes in the prescribed forms as part of a review by the UK Government.
- 5.9 Reflecting these recent trends, our view is that the form of ballot papers should continue to be prescribed in secondary legislation. In order to improve the experience of voters and the effectiveness of ballot papers, general principles should be enacted so that the existing duty of the Secretary of State to consult the Electoral Commission on changes to electoral law should specifically refer, in the context of prescribed ballot papers, to adherence with those principles. They are set out in our recommendation.
- 5.10 The policy goal is that ballot papers should be as easy to understand and use for as many people as possible; this includes those with disabilities, but also those with poor literacy or English language ability. In our final report we also note the Electoral Commission's recent work on access to the poll for voters with disabilities.

Recommendation 23.

- 5.11 The form and content of ballot papers should continue to be prescribed in secondary legislation.

Recommendation 24.

- 5.12 There should be a duty to consult the Electoral Commission on prescribed ballot paper form and content by reference to the principles of:
- (1) clarity, including for voters with disabilities;
 - (2) internal consistency; and
 - (3) general consistency with other elections.

Chapter 6: Absent voting

6.1 The law on absent voting (by post or proxy) is extremely complicated, and is set out in a mixture of primary and secondary legislation distinct from the legislation and election rules governing conduct of an election. Our focus is on its simplification and modernisation. Questions of entitlement to a postal vote and the balance between access to voting and security from fraud are political policy issues which the Law Commissions do not consider.

Entitlement to an absent vote and absent voting records

6.2 Part of the reason for the complexity is that the legal frameworks for absent voting are election-specific: the law envisages applications, and records of absent voters maintained by registration officers, which relate to the election(s) governed by a particular piece of legislation. The Representation of the People Act 2000 applies to UK Parliamentary elections, local government elections in England and Wales, elections to the Greater London Authority, mayoral and combined authority mayoral elections in England and Wales and local government elections in Scotland. Distinct pieces of election-specific secondary legislation copy their provisions for the particular elections they govern. Election-specific secondary legislation makes awkward and inconsistent attempts at incorporating absent voting records under other elections' legislative frameworks.

6.3 The notion that absent voting applications can be made for specific elections has led to some administrative problems, and at the May 2011 Alternative Vote referendum caused voters real problems where, contrary to their expectation, they had an absent vote only for the referendum and not coinciding local government elections.

6.4 In our view, primary legislation should holistically govern entitlements to an absent vote. Absent voting status and records would apply to any and all elections. The question for the voter is simply whether they want to vote by post or proxy on a particular election day, or for a period. This approach would greatly simplify the legislation, and avoid difficulties encountered in practice under the current fragmented legislative regime.

Recommendation 25.

6.5 Primary legislation should set out the criteria of entitlement to an absent vote. Secondary legislation should contain the law on the administration of postal voter status.

Recommendation 26.

- 6.6 The law governing absent voting should apply to all types of elections, and applications to become an absent voter should not be capable of being made selectively for particular types of elections.

Recommendation 27.

- 6.7 Registration officers should be under an obligation to determine absent voting applications and to establish and maintain an entry in the register recording absent voter status, which can be used to produce absent voting lists.

- 6.8 Presently “personal identifiers”, which are used to verify the legitimacy of postal votes, must be provided in a certain form, but the absent voting application itself is not prescribed. In our view, it would be consistent with other parts of electoral law, and not a significant departure from the current position, if applications for an absent vote should be required to use forms prescribed in secondary legislation, subject to any modifications which are necessary or appropriate in the circumstances.

- 6.9 One of the personal identifiers, a signature, may be waived under the current law. However, no guidance is given as to how the registration officer should make the decision to grant a waiver, which risks inconsistent practice. In our view, applications for a waiver from the requirement for signature should be attested by stipulated persons, as applications to become a proxy currently must be.

- 6.10 In Northern Ireland a special scheme exists, which has never been brought into force, to enable certain voters to vote at a “special polling station”. Our interim report concluded that this legislation is redundant, is in any event unworkable given later developments in electoral law, and should be repealed as a tidying up measure. As Northern Ireland no longer falls within the scope of this project, we do not repeat the recommendation here.

Recommendation 28.

- 6.11 Absent voting applications should substantially adhere to prescribed forms set out in secondary legislation.

Recommendation 29.

6.12 Requests for a waiver of the requirement to provide a signature as a personal identifier should be attested, as proxy applications currently must be.

6.13 Finally, the detailed legal rules governing the postal voting process, through which postal voters are issued with voting papers and cast a vote, are contained in secondary legislation. In our view, there is no longer a need to prescribe the process in significant, step-by-step detail, and there is scope for significantly simplifying these by setting out the powers and duties of returning officers concerning the issuing and receipt of postal voting papers.

Recommendation 30.

6.14 A uniform set of rules should govern the postal voting process in Great Britain.

Recommendation 31.

6.15 The uniform set of rules envisaged by Recommendation 30 should set out the responsibilities of returning officers regarding issuing, receiving, reissuing and cancelling postal votes generally rather than seeking to prescribe the process in detail.

Campaign handling of postal votes

6.16 Our consultation paper set out a case for regulation by law, rather than voluntary code of conduct, of handling by election campaigners of electors' completed absent voting applications and postal votes. The secret ballot provides a protection against fraud in the in-person voting context which is not available in postal voting. The public perception of fraud is damaging, as is the risk of degrading of standards by campaigners who perceive fraud by opponents to be effective, and to go on unpunished. On the other hand, we could also see practical problems in defining who is and who is not a campaigner, and value in promoting participation in the poll, which campaigners can do at no cost to the public purse. We therefore asked the public whether the law should regulate involvement by campaigners in certain activities relating to completed absent voting applications and postal votes.

- 6.17 After consultation, and despite strong support for the principle of regulation by law of campaigner handling of absent voting papers, we were left with significant doubts, in particular over the following objections:
- (1) regulation would criminalise helpful and otherwise unavailable assistance for those voters who need it;
 - (2) regulation would be difficult to enforce, and breaches hard to detect – putting off honest campaigners without deterring the dishonest ones.
- 6.18 Our interim report did not recommend that campaigner handling of postal votes should be regulated by law, noting that finding the balance between access to the poll and security from fraud is a matter for Government and Parliament. Since the publication of our interim report Government policy on this matter has developed. Sir (now Lord) Pickles, in his report *Securing the ballot: review into electoral fraud* recommended prohibiting the campaign handling of postal votes. That recommendation has been endorsed by the UK Government, and featured in the Queen’s Speech delivered in December 2019.

Chapter 7: Notice of election and nominations

- 7.1 The law concerning the first stage of an election – from publication of a notice of election to the publication of the statement of persons nominated, which finally identifies the candidates – is set out in discrete election rules. It is thus voluminous and fragmented across different pieces of legislation. The classical rules for UK Parliamentary and local government elections differ slightly. These rules are “transposed”, sometimes inconsistently, to elections using the party list system, where *parties* stand for election. There is considerable duplication and complexity, which in our view would be eliminated by a holistic, pan-electoral statement of the law governing the stages from notice of election to nominations, with consistent adaptations for party-list elections. Our recommendations are primarily intended to secure a simple, and general statement of the law governing nomination.

Recommendation 32.

- 7.2 A single set of nomination papers, emanating from the candidate, and containing all the requisite details including their name and address, subscribers if required, party affiliation and authorisations should replace the current mixture of forms and authorisations which are required to nominate a candidate for election.

Recommendation 33.

- 7.3 The nomination paper should be capable of being delivered by hand and by such other means as are provided by secondary legislation, which may include post and electronic means of communication.

Recommendation 34.

- 7.4 The nomination paper should be adapted for party list elections to reflect the fact that parties are the candidates; their nomination must be by the party’s nominating officer and should be accompanied by the requisite consents by list candidates.

Recommendation 35.

- 7.5 Subscribers, where required, should be taken legally to assent to a nomination, not a paper, so that they may subscribe a subsequent paper nominating the same candidate if the first is defective.

- 7.6 Our next recommendations concern the returning officer's power to reject nomination papers. The officer is generally restricted to examining the formal validity of the nomination paper: defective particulars or subscribers. There are two exceptions, however. The first is that serving prisoners are disqualified from nomination under the Representation of the People Act 1981 and, unlike with all other disqualifications, the returning officer has a power to reject the nomination on that ground, after following a prescribed process. In practice, only notorious prisoners are likely to have their *nomination* rejected. Our view is that this power is an anachronism and should be abolished; of course, the underlying disqualification will remain.

Recommendation 36.

- 7.7 Returning officers should no longer inquire into and reject the nomination of a candidate who is a serving prisoner. The substantive disqualification under the Representation of the People Act 1981 will be unaffected.

- 7.8 The second exception is based largely on case law, and relates to "sham" nominations. Most of the case law on the subject has been overtaken by developments in the law governing party registration and authorised party descriptions at elections. However, there remain examples of sham nominations which can arise: someone standing under a false name impersonating a real candidate, such as a candidate who changed his name to Margaret Thatcher and stood for election in the then Prime Minister's constituency, or nomination of a fictitious person, such as the example in Aberdeen of a mannequin being nominated for election. It is in our view desirable that legislation should give guidance, based on the existing case law, to returning officers as to how to deal with these examples.

Recommendation 37.

- 7.9 Returning officers should have an express power to reject nominations that use a candidate's name which is designed to confuse or mislead electors or to obstruct the exercise of the franchise, or is obscene or offensive.

Chapter 8: The polling process

8.1 Discrete election rules also regulate the polling process on polling day. Here again, our reform work concentrates on deriving a general statement of the law governing the polling process for all elections, streamlining and simplifying the law. At present, election-specific rules diverge, notably where an election uses the party list system in whole or in part. The first set of recommendations concern preparation for and the organisation of polling day. They largely involve technical restatement and simplification of rules that are consistently shared across all electoral events in the UK.

Recommendation 38.

8.2 A single polling notice should mark the end of nominations and the beginning of the poll, which the returning officer must communicate to candidates and publicise.

Recommendation 39.

8.3 Prescribed forms of poll card should be used at all elections, including those for parish and community councils in England and Wales, subject to a requirement of substantial adherence to the prescribed form.

Recommendation 40.

8.4 Returning officers should be subject to a duty of neutrality. Furthermore, they should not appoint in any capacity – including for the purposes of postal voting – persons who have had any involvement (whether locally or otherwise) in the election campaign in question.

Recommendation 41.

8.5 Returning officers should have a power to select and be in control of premises maintained at public expense for polling subject to a duty to compensate the direct costs of providing the premises; secondary legislation may supplement the definition of premises maintained at public expense.

Recommendation 42.

- 8.6 The law should specifically require that returning officers provide particular pieces of essential equipment for a poll, including ballot papers, ballot boxes, registers and key lists. For the rest, returning officers should be under a general duty to provide polling stations with the equipment required for the legal and effective conduct of the poll.

Recommendation 43.

- 8.7 The procedure for returning officers to issue authorisations to use force should be abolished, leaving only a power of the presiding officer to direct a police officer to remove a person from the polling station who is not entitled to be there, or who is disruptive (provided that they have been given an opportunity to vote, if entitled to do so).

- 8.8 The next set of recommendations concern the voting procedure itself. There are minor differences of detail across elections, but in general the rules are uniform across all elections. In our view, a single set of polling rules should apply to all elections, simplified so that they prescribe only the essential elements of conducting a lawful poll. The current law contains a requirement for voters to show the unique identifying mark on their ballot paper to polling clerks, which emanates from historical concerns dating back to 1872 about an inefficient fraud called the “Tasmanian dodge”. In our view this should be replaced by a power to require the mark to be shown.

Recommendation 44.

- 8.9 A single set of polling rules should apply to all elections, subject to the devolutionary framework. These should be simplified and prescribe only the essential elements of conducting a lawful poll, including: the powers to regulate and restrict entry, hours of polling, the right to vote, the standard, assisted, and tendered polling processes, and securing an audit trail.

Recommendation 45.

- 8.10 Polling rules should set out general requirements for a legal poll which the returning officers and their staff must adhere to, and set out their powers. These should include a power to require voters to show the unique identifying mark on their ballot paper to polling station staff.

8.11 All election rules contain detailed, and in some cases quite complex, prescribed questions that polling staff may put to voters if they suspect there is something amiss. Originally, these were a prelude to oaths which, in the 19th Century, might be taken very seriously and in any event were backed by serious criminal offences concerning oath-breaking. This is no longer the case, and at best the questions may serve to put off a would-be impersonator. In our view, there is no longer a case for setting out, in primary legislation, the precise questions to be put to voters.

Recommendation 46.

8.12 Primary legislation should outline polling clerks' rights to ask voters questions as to their entitlement to vote. Secondary legislation should prescribe how the right should be exercised, including the point that the questioning is designed to elicit.

8.13 Equal access to polling for voters with disabilities is an important policy. This manifests itself not only in the assisted voting procedure, but also in enabling as many electors as possible to vote using the standard procedure, which maximises voter secrecy. This is done by ensuring that large size sample ballot papers are available in polling stations, and by requiring the provision of a tactile voting device which can assist blind and visually impaired electors to vote.⁹ However, the description of the device is excessively detailed in the rules for some elections. In our view there should be a single formulation of the required characteristics of the facilities to be used to help voters with disabilities vote unassisted, and a simplified assisted voting procedure.

8.14 Voters with disabilities may vote with the assistance of a companion at the polling station if they need assistance to cast their vote. To be a companion a person must either be entitled themselves to vote at the election, or be an adult family member (meaning a parent, sibling, spouse, civil partner or child) of the voter who needs assistance. We think the list of family members should be expanded to include grandparents, adult grandchildren and cohabitants.

8.15 We note that the UK Government has stated in the background briefing papers to the December 2019 Queen's Speech that it intends to allow "a wider range of people (for example, carers who would not be entitled to vote in the election)" to act as a companion to voters with disabilities.

8.16 Under the current rules, both the voter and companion must make a formal declaration. We do not think the formal declaration is a meaningful check against deception; in our view it is unnecessary and makes the process overly complicated for voters with disabilities.

⁹ The prescribed tactile voting device has recently been found by the High Court not to comply with the requirements of the 1983 Act, because it does not allow a voter to vote "without assistance" (*R (Rachael Andrews) v Minister for the Cabinet Office* [2019] EWHC 1126 (Admin); [2019] 5 WLUK 28). The Queen's speech made in December 2019 included a commitment to make it easier for voters with disabilities to vote at polling stations.

Recommendation 47.

- 8.17 Voting with the assistance of a companion should not involve formal written declarations, but should be permitted by the presiding officer where a voter appears to be unable to vote without assistance. The definition of “family member” should be expanded to include grandparents, (adult) grandchildren and cohabitants.

Recommendation 48.

- 8.18 There should be a single formulation of the need for the returning officer to provide a facility in every polling station to assist visually impaired voters to vote unaided.

Death of a candidate

- 8.19 Election rules deal with two kinds of events which might frustrate the poll. One is the death of a candidate after nomination but before the close of polls, which can lead to abandoning the poll and calling a new one. The law differs as between parliamentary and local government elections. At parliamentary elections, different rules apply depending on whether the deceased candidate is affiliated with a party, or is independent: only the death of a party candidate leads to postponement of polling. This reflects the importance of party politics at these and other legislative elections. The law also deals inconsistently with the question at elections which use the party list.
- 8.20 In our view, the current law on death of a candidate should be simplified, but retained. A single set of rules should govern elections which use the party list system, such that the death of a list candidate should not prevent the poll from going ahead.

Recommendation 49.

- 8.21 The distinction between the death of party and independent candidates should be retained as regards parliamentary elections.

Recommendation 50.

- 8.22 At elections using the party list voting system, the death of an individual independent candidate should not affect the poll unless he or she gains enough votes for election, in which case he or she should be passed over for the purposes of the allocation of the seat; the death of a list candidate should not affect the poll provided a replacement party candidate can be identified.

Recommendation 51.

- 8.23 At local government elections in England and Wales, the death of an independent candidate should continue to result in the abandonment of the poll.

Emergencies

- 8.24 The other type of event in the current law is rioting and open violence, which must lead to presiding officers suspending the poll until the next day. In our view this is unsatisfactory: with modern communications, a returning officer should be required to decide whether conditions at a polling station are unsafe, not the presiding officer. Furthermore, rioting is not the only conceivable event that might frustrate the poll. A more general power to deal with emergencies which obstruct or frustrate the poll is desirable, as is the case in other jurisdictions such as Australia or Canada. We consider that the test for using such a power is that a significant portion of electors are affected; the power should be the returning officer's, subject to instruction by the Electoral Commission in the case of national disruptions.

Recommendation 52.

- 8.25 The existing rule, requiring the presiding officer to adjourn a poll in cases of rioting or open violence, should be abolished.

Recommendation 53.

- 8.26 Returning officers should have power as a last resort to alter the application of electoral law in order to prevent or mitigate the obstruction or frustration of a poll by an emergency affecting a significant portion of electors in their area.

Recommendation 54.

- 8.27 If an event occurs that affects a significant portion of the UK at an election taking place over more than one electoral area, the above power should be exercised subject to instruction by the Electoral Commission.

Chapter 9: The count and declaration of the results

- 9.1 In contrast to other areas of the law, the classical election rules governing the count are not extensive. Six election rules deal with the logistics and timing of the count, making provision for: counting to commence as soon as practicable, and laying down a power to pause the count overnight; who may attend (in particular, for counting agents appointed by candidates to scrutinise the count); the requirement for verification of the ballot papers received from a polling station against the number of ballot papers allocated to it; the grounds on which ballot papers can be rejected; and the process for determining and declaring the result.
- 9.2 Nevertheless, these rules are replicated in the discrete legislation governing each election. For elections which use the party list system, a difficulty in transposition arises regarding who may attend the count and appointing counting agents. While some differences are due to policy, many appear to be purely the result of different drafting approaches.
- 9.3 Our recommendations are aimed at a single, standard statement of the law governing the count, with a consistent approach to the differences required by use of the party list voting system.

Recommendation 55.

- 9.4 A single standard set of rules in primary legislation should govern the count at all elections.

Recommendation 56.

- 9.5 The standard counting rules should cater for differences between elections as regards their voting system and how their counts are managed.

Recommendation 57.

- 9.6 The rules should empower returning officers to determine the earliest time at which it is practicable to start a count, and to pause one overnight, subject to the duty to commence counting at UK Parliamentary elections within four hours.

Recommendation 58.

9.7 The rules should state that candidates may be represented at the count by their election agents or counting agents, who should be able to scrutinise the count in the way the law currently envisages. At party list elections, parties may appoint counting agents. Election agents and counting agents should be able to act on a candidate's behalf at the count, save that a recount may only be requested by the candidate, an election agent or a counting agent specifically authorised to do so in the absence of the candidate or election agent.

9.8 As to elections using the single transferable vote ("STV") system – Scottish local government elections and elections in Northern Ireland other than those to the UK Parliament – the law's approach is quite different. The counting rules are very detailed because STV itself is an intricate voting system. STV thus calls for some separate treatment in electoral law.

Recommendation 59.

9.9 The standard rules in primary legislation should apply to STV counts so far as they are applicable; the detailed procedure for conducting an STV count should be in secondary legislation.

9.10 Our final set of recommendations deal with electronic counting. Two types of elections are counted electronically: Greater London Authority elections and Scottish local government elections. However, the election rules for each take a different approach. The GLA election rules are written with electronic counting in mind. The Scottish local government election rules are written more simply, with a general provision enabling the returning officer to count electronically.

9.11 Our view is that the standard set of counting rules for elections, while they apply to manual counting, should be written as technologically neutrally as possible. A single subset of the standard rules should make additional provision governing electronic counting. Which elections are subject to electronic counting should be determined by secondary legislation.

9.12 As is the case at manual counts, there is a need in the electronic counting context for a provision for promoting transparency and trust in the electronic counting system. This should also be set out in secondary legislation.

Recommendation 60.

9.13 A standard set of counting rules and subset of rules for electronic counting should apply to all elections. Which elections are subject to electronic counting should be determined by secondary legislation.

Recommendation 61.

9.14 The secondary legislation above must also make provision ensuring sufficient scrutiny by political parties and the Electoral Commission, including but not limited to prior demonstration of the electronic counting system to them and/or certification of that system by a prescribed body.

Chapter 10: Timetables and combination of polls

10.1 Chapter 10 considers the timetable according to which elections are run, as well as the law governing the administration of coinciding elections – referred to as the “combination of polls”.

Electoral timetables

10.2 Each set of election rules contains an administrative timetable. These contain most of the steps covered by election rules, from notice to nomination, ending with polling day. They do not contain deadlines for absent voting or registration, which are covered elsewhere in the electoral legislation.

10.3 In general, what we call an “incidence rule” determines when polling day takes place. The legislative timetable then calculates the timetable by calculating back from polling day. In that case, it truly is an administrative timetable.

10.4 The exception is the UK Parliamentary election timetable, which historically is both an administrative timetable and an incidence rule. The first step in the timetable – the dissolution of Parliament (for general elections) or the warrant for the writ of by-election (for by-elections) – determines when polling day takes place. For general elections that is now done by reference to the Fixed-term Parliaments Act 2011 (or in the case of the 2019 UK Parliamentary election, the Early Parliamentary General Election Act 2019). For by-elections, the complex legislative timetable is arranged so that the returning officer can choose a Thursday occurring on days 23 to 27 after the warrant for by-election is issued. The timetable remains both an administrative one and an incidence rule.

10.5 Our view is that the legal statement of the UK Parliamentary election timetable should be re-oriented so that the timetable counts back from polling day (which is given by the 2011 Act). For by-elections, a separate incidence rule should be enacted which reflects the current law, save that it should expressly state that the polling day is on the last Thursday occurring between days 26 and 30 after the warrant for the writ of by-election (based on a 28 day timetable, as to which see further below). The writ should be capable of electronic communication.

Recommendation 62.

10.6 The UK Parliamentary election timetable should be oriented so that steps in it are counted backwards from polling day.

Recommendation 63.

- 10.7 A separate rule should state that, for by-elections, polling day is on the last Thursday occurring between days 26 and 30 after the warrant for the writ of by-election is issued.

Recommendation 64.

- 10.8 The writ should be capable of communication by electronic means, in addition to physical delivery.

10.9 The above is based on a 28 day timetable. At present, most elections use a 25 day timetable. GLA elections are run under a 30 day timetable to allow for the production of a booklet containing Mayoral candidates' addresses, while Scottish parliamentary and local government elections are run according to a 28 to 35 day timetable.

10.10 Our view is that a standard timetable should govern all UK elections. In our consultation paper, we could see two options for standardisation which least disturb the current arrangements: a 25 day timetable and a 28 day timetable. The first option disturbs the lowest number of elections' timetables. The second affords more time for all elections, while preserving the current timelines for producing the booklet at GLA elections. It would also only minimally affect Scotland-only elections.

10.11 We recommend the second option for a standard timetable. A 28 day timetable should be set out in legislation, and should contain the key milestones in electoral administration for all elections.

Recommendation 65.

- 10.12 A standard legislative timetable should apply to all UK elections, containing the key milestones in electoral administration, including the deadlines for registration and absent voting.

Recommendation 66.

- 10.13 The standard legislative timetable at all UK elections should be 28 days in length.

Combination of polls

- 10.14 The law governing the "combination of polls" is notoriously complex. The key to understanding the subject is to distinguish between the *coincidence* of elections'

polling days and the question of whether coinciding polls should be taken together, or administratively “combined” – the “combination of polls” refers only to the latter, not the former. Thus, if the combination of two polls is said to be prohibited under the current law, it is important to note that the two polls will still go ahead, on the same day, with the same voters.

10.15 The current law is very complex. In outline:

- (1) Every election is conducted by its returning officer according to its election rules.
- (2) Incidence rules govern when elections should occur. By their application, elections will sometimes coincide, meaning their polls will happen on the same day.
- (3) The area of law called the “combination of polls”, properly understood, deals with the following circumstances:
 - (a) two or more elections coincide in the same area; and
 - (b) without more, each returning officer must conduct each poll according to its own election rules.

10.16 The law on the combination of polls considers three distinct issues:

- (1) The combinability of particular polls: some must be combined and others may be. For yet others, nothing is said about combination, meaning there can be no combination – the default position is as we described in (3)(b) above.
- (2) The management issue: where polls are combined, which of the returning officers for the combined elections takes the lead role, and for which functions.
- (3) The combined conduct rules issue: where polls are combined, and irrespective of whether it is the lead or the other returning officer who is performing a particular function in relation to the poll,¹⁰ what adaptations to the ordinary election rules are made to deal with the fact that the polls are combined.

10.17 The answer to these questions is given in a complex array of election-specific provisions, that are difficult for electoral administrators to navigate. Our reform recommendation, therefore, is that the law governing the combination of coinciding polls should be in a single set of rules. The default position should be that any coinciding polls must be combined, meaning that the conduct rules must address the fact of their coincidence and cannot ignore it. A single set of adaptations should provide for situations where a poll involves several ballot papers. Finally, if four or more polls coincide, the returning officer should have a power, exercisable according to secondary legislation to defer one of the polls.

¹⁰ See above at para 3.14.

Recommendation 67.

10.18 The law governing combination of coinciding polls should be in a uniform set of rules for all elections.

Recommendation 68.

10.19 Any elections coinciding in the same area on the same day must be combined.

Recommendation 69.

10.20 If four or more polls coincide, the returning officer should have a power to defer a poll if he or she concludes that the polls cannot be properly administered on the same day. This power should not apply to general or ordinary elections, or national referendums. The power should be exercised in accordance with secondary legislation.

Recommendation 70.

10.21 The lead returning officer and his or her functions should be governed by secondary legislation setting out the hierarchy of returning officers, the functions they must perform, and the functions which may be given to them by agreement.

Recommendation 71.

10.22 A unified set of adaptations should provide for situations where a poll involves several ballot papers.

Chapter 11: Electoral offences

- 11.1 This chapter concerns criminal offences applying only to elections. Since our interim report was published there have been a number of developments in this area, driven primarily by rising concern about intimidation at elections, and the way in which the existing offences interact with new digital campaigning techniques. They include reports by Sir (now Lord) Pickles,¹¹ the Committee on Standards in Public Life (CSPL) on intimidation,¹² and subsequent Government consultation on Intimidation, Influence and Information¹³, and the Public Administration and Constitutional Affairs Committee.¹⁴ All make recommendations about the offences that should regulate elections. They all demonstrate a growing consensus that the existing electoral offences require updating and clarification.
- 11.2 Those offences which are classified as corrupt or illegal practices, also operate as grounds for invalidating an election, and their commission disqualifies a person from standing for election for a period of 3 or 5 years. It is important that these offences are clearly drafted so that they are understood by participants in the election process, who must adapt their conduct to them. It is also important that they are enforced and prosecuted, in order to detect and deter election fraud.
- 11.3 Many of the older offences, however, are opaquely drafted, since they date back to 1883 or even before. Furthermore, the offences set out in the 1983 Act are repeated in election-specific legislation.
- 11.4 Chapter 11 particularly considers the older or “classical” offences. In our view a uniform set of electoral offences should be set out in primary legislation which apply to all elections. Their complex or outdated drafting should be simplified. Most of our recommendations stem from these aims.

Recommendation 72.

- 11.5 A single set of electoral offences should be set out in primary legislation which should apply to all elections.

¹¹ Sir Eric Pickles, *Securing the ballot: review into electoral fraud* (August 2016) p 45.

¹² Report of the Committee on Standards in Public Life on Intimidation in public life (December 2017) Cm 9543.

¹³ Cabinet Office, *Protecting the Debate: Intimidation, Influence and Information* (July 2018) and *Response to Protecting the Debate: Intimidation, Influence and Information* (May 2019).

¹⁴ Electoral law: the Urgent Need for Review, Report of the Public Administration and Constitutional Affairs Committee (2017-19) HC 244.

Recommendation 73.

11.6 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.

Recommendation 74.

11.7 The electoral offence of treating should be abolished and the behaviour that it captures should where appropriate be prosecuted as bribery.

Recommendation 78.

11.8 The illegal practice of disturbing election meetings should apply only to candidates and those supporting them, and should no longer be predicated on the “lawfulness” of the meeting.

Recommendation 79.

11.9 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.

11.10 We consider the corrupt practice of undue influence in significant detail in chapter 11 of our final report. Section 115 of the 1983 Act draws the offence widely, and captures the following conduct:

- (1) Pressure and duress: to include any means of intimidation, whether it involves physical violence or the threat of it, or some other compelling threat.
- (2) Deception: to cover devices and contrivances such as publishing a document masquerading as a rival campaign’s.

11.11 Another mischief caught by the offence of undue influence is the threatening of “spiritual” injury, which was most recently considered by Commissioner Mawrey QC in *Erlam & Ors v Rahman & Anor* [2015] EWHC 1215 (QB). There, a clerics’ letter published in a Bengali local paper with an estimated readership of 20,000 was held to have crossed the line into “misuse of religion” for political purposes.

11.12 However, it is very difficult to express the line between “proper” and “improper” pressure. Voters are faced with all sorts of pressure during electoral campaigns. The conduct which is criminal in undue influence, and the accompanying mental element,

are not clearly set out. In our view the offence should be redrafted and modernised so it can be understood by candidates and campaigners, by police officers called upon to investigate complaints, by prosecutors who must decide whether to prosecute, and by the courts. The key to distinguishing between the application of proper and improper pressure is whether the pressure involves the commission of an illegal act (such as a crime or wrongful eviction), or the application of pressure which a reasonable person would regard as an improper infringement on the free exercise of the franchise.

11.13 In chapter 11 we consider in detail whether undue influence should include a specific reference to “spiritual injury”. In response to Sir Eric Pickles’ report the Government expressed the view that “the offence of spiritual interference should be maintained”. We agree that religious leaders can exert undue influence over individuals; however, we are not persuaded that the level of influence which can be exerted by religious leaders is unique. In our view it can be shared by charismatic leaders of groups of various sorts. We believe that the best approach to proscribing improper pressure is to focus attention on the form of pressure applied rather than the nature of the relationship within which it is applied.

11.14 We remain of the view expressed in our interim report, that it would be impossible to devise a comprehensive catalogue of such relationships, and fear that instancing one particular type of relationship in statute has the potential to distort the application of the provision. Whilst our redrafted offence would capture behaviour now characterised as threats of spiritual injury, we remain of the view that a specific reference to spiritual injury is unnecessary.

Recommendation 75.

11.15 Undue influence should be restated as offences of intimidation, deception and improper pressure. Pressure is 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.

Recommendation 76.

11.16 In England and Wales prosecutions pursuant to Recommendation 75 should only be brought by or with the consent of the Director of Public Prosecutions.

- 11.17 Another recommendation which is not related to our aim of rationalisation and simplification is that relating to the “imprint offence” under section 110 of the 1983 Act. That section makes it a criminal offence to fail to include in a printed document or an advertisement in a newspaper details such as the name and address of the printer, who caused the advertisement to be published, and the name of the person on whose behalf the material is being published (in practice, the candidate).
- 11.18 Our consultation paper asked whether the current provision concerning imprinting of online material in section 110 was sufficient, or whether it was desirable and feasible to recommend regulation of online material. In the light of the response to our question, we recommended that the imprinting offence should be extended to cover online material which may reasonably be regarded as intending to procure or promote any particular result. We further recommended that the offence should be subject to a reasonable practicability defence.
- 11.19 Unsurprisingly, considering the constantly evolving nature of technology and resultant discussions concerning regulation, this area has developed since the publication of our interim report. In 2019 the Electoral Commission gave evidence to the Finance and Constitution Committee on the Referendums (Scotland) Bill (now the Referendums (Scotland) Act 2020). Following its work with social media companies, the Commission expressed the view that it is “absolutely practical in all forms of digital campaigning for there to be imprint information”.
- 11.20 The reasonable practicability defence in the Bill was subsequently removed. Given the increased experience of regulating elections, we no longer specifically recommend a reasonable practicability defence; we believe it is for Government to work with stakeholders to develop the right policy here. The policy might include an exception for statements of personal opinion by individuals acting on a non-commercial basis; we express no view on this. We note Government is currently developing technical proposals for a digital imprint regime for digital election material.

Recommendation 77.

- 11.21 The imprint requirement should extend to online campaign material which may reasonably be regarded as intending to procure or promote any particular result.
- 11.22 Finally, chapter 11 notes that electoral offences can only result in a maximum sentence of 2 years’ custody. That has resulted in prosecutorial recourse in England and Wales to the offence of conspiracy to defraud, which carries a maximum sentence of ten years’ custody and has resulted in harsher sentences. There may be less practical experience in Scotland of that offence in an electoral context, and it may be thought that there are evidential and conceptual difficulties in proving the offence in Scots law.
- 11.23 Our consultation paper asked consultees whether an increased sentence of ten years’ custody should be available in cases of serious electoral fraud, as an alternative to conspiracy to defraud. “Serious electoral fraud” refers generally to serious electoral offences, such as corrupt practices, including the postal and proxy voting offences

contained in section 62A of the 1983 Act. We do not consider it necessary to use that term in legislation. We propose that the maximum sentence for the offences we have in mind should be increased to ten years, not with a view to raising the levels of penalty for these offences across the board but to provide adequate sentencing powers in the most serious cases.

Recommendation 80.

11.24 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.

Chapter 12: Regulation of campaign expenditure

- 12.1 Our recommendations here relate only to the “local” or constituency-level campaign run on behalf of a particular candidate. It was concluded following the scoping phase of this project that the regulation of the national campaigns conducted by political parties (or indeed the separate legal treatment of national campaigns) was too politically sensitive a topic for non-political law reform bodies such as the Law Commissions to address. Nonetheless, a holistic reform of the law of campaign expenditure would ideally address both types of campaign.
- 12.2 The law regulates spending at elections in the following way:
- (1) Responsibility for election spending falls on the candidate’s election agent. An agent must be appointed and, with limited exceptions, no other person may incur expenses to promote or procure the election of a candidate. Third parties may spend money up to a specified limit.
 - (2) Expense limits are prescribed by law as fixed amounts or formulas. The election agent must complete and deliver to the returning officer a return and declaration of expenses signed by the candidate.
 - (3) Breaches by candidates or their agents of expenditure regulations (whether to do with expense limits or accuracy of the returns reporting spending) are criminal offences, and therefore punishable by criminal sentences. They are also corrupt and illegal practices, meaning that they can result in the disqualification of the candidate and agent from involvement in elections for a defined period. Finally, they can also constitute 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.
- 12.3 Our reform aim is to retain this approach, but to set it out more clearly in primary legislation. The law, which is contained in the 1983 Act and replicated in election-specific provisions, is extremely complex. The scheme of the Act is not obvious even to lawyers. We recommend that provisions governing the regulation of campaign expenditure should be in a single code set out for all elections, subject to devolved legislative competence.
- 12.4 There have been a number of developments in campaign regulation since the publication of our interim report. As we note above, the distinction between the local and the national campaign has been the source of some of these, with the major development being the Supreme Court decision in *R v Mackinlay* [2018] UKSC 42, [2019] AC 387. Technological developments have also played a part, as more campaigning is conducted digitally; in the 2017 UK Parliamentary and Northern Ireland Assembly elections, digital advertising accounted for 42.8% of campaigners’

total reported advertising spend.¹⁵ These topics are discussed in more detail in the final report.

Recommendation 81.

- 12.5 Legislation governing the regulation of campaign expenditure should be in a single code set out for all elections, subject to devolved legislative competence.

Recommendation 82.

- 12.6 A single schedule to the legislation should contain the prescribed expense limits and rules governing expenditure and donations.

- 12.7 Certain expenditure limits, for example those for spending at local government elections or UK Parliamentary general elections, are expressed as formulas. The precise limit can only be established if the candidate, agent, or member of the public knows the number of registered electors on the day that notice of election is published. In our view such expense limits should be declared by the returning officer along with the notice of election.

Recommendation 83.

- 12.8 Expenditure limits which are calculated according to a formula should be declared by the returning officer for the constituency or electoral area in a notice accompanying, or immediately following, the notice of election.

- 12.9 At present, the law governing expenses returns and declarations is apt to confuse, with certain authorised persons required to submit a separate expenses return from the candidate's. In our view, returning officers should receive a single expenses return, submitted by the agent and candidate, including any authorised spending.

Recommendation 84.

- 12.10 Returning officers should receive a single set of documents containing the return of expenses and declarations by the election agent and the candidate. These should include any statement by an authorised person containing the particulars currently required to be sent to the returning officer by section 75(2) of the 1983 Act.

¹⁵ Electoral Commission, *Digital campaigning – increasing transparency for voters* (June 2018).

12.11 Finally, the returning officer has a duty under section 88 of the 1983 Act to publicise the availability of expenses returns for inspection, and to publicise non-receipt of returns. In our view this duty should continue, subject to the detailed process being in secondary legislation, so that when a facility exists for publishing expenses returns online, it can be used.

Recommendation 85.

12.12 Returning officers should publicise and make available for inspection expenses returns (as well as publishing non-receipt of a return). Secondary legislation should prescribe in detail the process for that publicity and inspection, paving the way for publication online.

Chapter 13: Legal challenge

13.1 The law governing legal challenge is extremely complex and is predominantly the product of historical developments in the 19th century. The Public Administration and Constitutional Affairs Committee of the House of Commons has recently described the process as “archaic, too complicated and not fit for purpose”.¹⁶ Chapter 13 divides the subject matter between the grounds for reviewing elections, and the procedure governing legal challenge.

The grounds of challenge

13.2 The election court reviews the *validity* of the election, but may also *correct* the result in a process called a “scrutiny”. This is an adversarial process which can use vote tracing to challenge, before the courts, the propriety of any one vote, discard it, or count a tendered vote.

13.3 The so-called doctrine of “votes thrown away” enables an election court to decide that votes for a candidate who is disqualified do not count, so that the next candidate may be elected, and the result thus corrected. However, disqualification of a candidate is also generally a ground for annulling that candidate’s election. Invalidating such an election results in a new election being called, allowing the electorate to elect a properly qualified candidate who is affiliated with their preferred political party. This is a fairer outcome, and we consider that the “doctrine of votes thrown away” should be abolished.

Recommendation 86.

13.4 The doctrine of “votes thrown away” should be abolished.

13.5 The grounds for challenging elections are not positively set out in the 1983 Act. An examination of the statute and case law led us to the conclusion that an election can be annulled on one of three grounds:

- (1) a breach of electoral law during the conduct of the election which was either:
 - (a) fundamental; or
 - (b) materially affected the result of the election;
- (2) corrupt or illegal practices committed either:

¹⁶ Electoral law: the Urgent Need for Review, Report of the Public Administration and Constitutional Affairs Committee (2017-19) HC 244.

- (a) by the winning candidate personally or through that candidate's agents;
or
 - (b) by anyone else, to the benefit of the winning candidate, where such practices were so widespread that they could reasonably be supposed to have affected the result; or
- (3) the winning candidate was at the time of the election disqualified from office.

13.6 However, these grounds are not at all obvious on the face of the legislation, and the above outline is the result of consideration of case law, including the recent decision in *Parkinson v Lewis* [2016] EWHC 725 (QB), [2016] 3 WLUK 546 (handed down after the publication of our interim report). Some issues are still a matter for debate. The extent to which defects in a successful candidate's nomination paper invalidate their election is unclear. The material time at which disqualification "bites", so as to be a ground for annulment, is also not beyond doubt. The 1983 Act provisions refer to the time of election, but at least one local government election case has annulled the election of a candidate for disqualification at the time of *nomination*, which had been cured by the time of the election. Finally, there are problems transposing the above grounds to elections using the party list system, particularly those that relate to corrupt or illegal practices. This is because it is largely parties who stand for election, not individual candidates.

13.7 In our view, the law on challenging elections should be set out in primary legislation governing all elections. The grounds for correcting the outcome or invalidating elections should be restated and positively set out. A standard and consistent set of adaptations to the "classical" grounds of challenge should be used for elections which use the party list system. Our recommendations here are aimed at a principled, clear and consistent set of grounds of challenge for all elections.

Recommendation 87.

13.8 The law governing challenging elections should be set out in primary legislation governing all elections.

Recommendation 88.

13.9 The grounds for correcting the outcome or invalidating elections should be restated and positively set out.

Recommendation 89.

13.10 At elections using the party list voting system, the court should be able to annul the election as a whole, or that of a list candidate, on the grounds of corrupt or illegal practices attributable to the candidate, party or individual, or for extensive corruption.

Recommendation 90.

13.11 Defects in nomination, other than purely formal defects, should invalidate the election if they can reasonably be supposed to have affected the result of the election; knowingly making a false statement or giving false particulars in the nomination form should continue to invalidate an election.

Recommendation 91.

13.12 Disqualification at the time of election should be a ground for invalidating all elections.

Recommendation 92.

13.13 The election court should have a power to consider whether a disqualification has expired and, if so, whether it is proper to disregard it, mirroring the power under section 6 of the House of Commons Disqualification Act 1975.

The procedure for bringing an election petition

13.14 The procedure governing election petitions is set out in the 1983 Act and election-specific legislation, and is supplemented by procedural rules in each jurisdiction in the UK. It is very complex, and in many places outdated. The original scheme was that bespoke election proceedings would be a “one stop shop” for policing elections, so that the election court used to have both a civil and a criminal law jurisdiction. It had inquisitorial features, charged with rooting out corruption. The petition proceedings were designed with finality in mind, with no right of appeal but allowing a case to be stated to a higher court on a point of law.

13.15 In reality election petitions are private proceedings before judges which use a procedure that is very formal, rigid, and outdated. There is no process for filtering out unmeritorious petitions. Time limits are mandatory, with no discretion to extend – but those which are contained in secondary legislation may be disregarded on the basis of article 6 of the European Convention on Human Rights, as was the case in *Miller v*

Bull [2009] EWHC 2640 (QB), [2010] 1 WLR 1861. An election court – even one staffed by two High Court judges as was the case in *Woolas v Parliamentary Election Court* [2010] EWHC 3169 (Admin); [2011] 2 WLR 1362 – is subject in England and Wales to the judicial review jurisdiction of the High Court. The applicability of judicial review to the decisions of Scottish election courts has not been tested.

- 13.16 The cost of bringing election petitions is an issue, with the availability of protective costs orders or the Scottish equivalent, protective expenses orders, to cap the costs of challenge in no way beyond doubt.
- 13.17 Our approach to reform here, which was welcomed by the senior judiciary in England and Wales, is to bring the challenge system within the ordinary civil procedure structure in the UK. In our interim report, we recommended that election challenges should be subject to the ordinary procedure rules of the courts, which are updated over time; they should be heard in the ordinary court system in the UK, with a single right of appeal. This is preferable to the complex and outdated current arrangements.
- 13.18 However, in Scotland, the Senators of the College of Justice disagreed with our proposal to house the election court within the ordinary court system in Scotland. The Senators did see value in “reviewing the current powers and procedures of the electoral court and in clarifying the scope for appeal from the decisions of the electoral court by providing for a single appeal on a point of law to, in Scotland, the Inner House”. After further consideration, we agree that the changes we recommended in our interim report are less necessary in Scotland than in the remainder of the UK. As such we are confining our recommendation (that legal challenges should be heard in the ordinary court system) to England and Wales.

Recommendation 93.

- 13.19 Challenges should be governed in each UK jurisdiction by simple and modern rules of procedure. Judges should continue to have regard to the needs of justice, striking a balance between access to the court and certainty in electoral outcomes.

Recommendation 94.

- 13.20 Legal challenges should be heard in the ordinary court system in England and Wales, with a single right of appeal to the Court of Appeal.

Recommendation 95.

- 13.21 Election petitions in England and Wales should be heard by the High Court; judges, including deputy judges, should be authorised to hear election petitions by the senior judiciary.

13.22 The recommendations above recognise that election challenges are private court proceedings, requiring financial commitment and risk by the challenging party. Our consultation paper proposed, however, that the public interest in election petitions should be recognised, and asked some questions concerning a public interest petitioning body.

13.23 The response to our consultation was in favour of the principle of public interest petitioning, but varied considerably as to the practicalities of what cases a public interest petitioner should take over. There was also concern that the public petitioner process would become a first port of call for legal challenge to elections, putting strain on the body's resources, as well as exposing that body to the risk of being perceived to be politically motivated when bringing petitions in the public interest. We therefore decided not to recommend that there should be a public interest petitioner.

13.24 Protective costs orders, or the Scottish equivalent, protective expenses orders, are a procedural tool, available in some public law cases to promote challenges brought in the public interest by reducing, and fixing in advance, a claimant's exposure to pay the other parties' costs. Our view is that their availability in election cases should be made beyond doubt.

13.25 We also recommend that returning officers should have standing to bring an election petition where there has been an admitted breach of electoral law in running the election; they should not have to wait for others to bring one.

Recommendation 96.

13.26 The power of courts hearing election challenges to make protective costs or expenses orders should if necessary be acknowledged in primary legislation.

Recommendation 97.

13.27 Returning officers should have standing to bring petitions relating to any breach of electoral law in administering the election; they should in particular be able to bring a preliminary application to test whether a putative breach affected the result.

13.28 Finally, we envisage that informal complaints – those which do not seek to affect the outcome or validity of an election – should be formally recognised and addressed by election law. The important issue here is that voters’ complaints are heard, and lessons are learned by electoral administrators. After asking consultees who should consider such complaints, we conclude that it should be ombudsmen with responsibility for local government.

Recommendation 98.

13.29 Electors’ complaints about the administration of elections (which do not aim to overturn the result) should be investigated by the Local Government and Social Care Ombudsman in England, the Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales.

Chapter 14: Referendums

14.1 Chapter 14 considers national referendums, local government referendums and parish polls.

National referendums

14.2 Part VII of the Political Parties, Elections and Referendums Act 2000 governs national referendums, but not their electoral administration. The primary legislation calling a referendum (the “instigating Act”), or secondary legislation made under it, must set out the detailed laws governing the conduct of the referendum, and incorporate the existing structure for conducting the poll, from the electoral register to the absent voting records. In our view this current approach of “reinventing the wheel” for referendums is unsatisfactory. It presents administrators with a large volume of new rules and legislatures with an unnecessary workload, and risks legislative error. It seems to us to be desirable to produce a set of generic referendum conduct rules that could simply be applied with minimal adaptation to a specific referendum. This would reduce the current complexity of the law, speed up the legislative process and make the conduct rules accessible in advance.

14.3 Our interim report was published shortly before the referendum on the UK’s membership of the European Union. We have reconsidered the recommendations made in our interim report carefully to see whether they should be updated in the light of the experience of that referendum. We remain of the view that the law relating to referendums would benefit greatly from the simplification and rationalisation our recommendations would produce. We note in particular that the Electoral Commission in its report on the EU referendum agreed with our view that there should be general provision for the conduct of referendums.¹⁷ We also note that the Scottish Government has taken steps in this direction; the Referendums (Scotland) Act 2020 is discussed in more detail in the final report.

Recommendation 99.

14.4 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.

¹⁷ The Electoral Commission, *Report on the 23 June 2016 referendum on the UK’s membership of the European Union* (September 2016) p 7.

Recommendation 100.

- 14.5 Secondary legislation should set out the detailed conduct rules governing national referendums, mirroring those governing elections, save for necessary modifications.

Local referendums

- 14.6 There are three types of local referendums in England and Wales (Mayoral, council tax and neighbourhood planning referendums). Each is conducted under statute, with an Act setting out the process for instigating such a referendum and rules as to their incidence, as well as identifying the franchise by stating that entitlement to vote at the referendums is based on appearing on the local government register. The detailed conduct rules are set out for each kind of referendum in separate statutory instruments.
- 14.7 Similar problems arise here as in the law of elections. Four distinct pieces of secondary legislation govern the three species of local referendums, largely based on the law governing local government elections, albeit with necessary (though not entirely consistent) adaptations due to the fact that they relate to referendums. Materially identical rules are needlessly replicated across different pieces of legislation. Here again our reform aim is that a single set of provisions should govern the mechanisms by which local referendums are undertaken.
- 14.8 There should be a single set of conduct rules and challenge provisions governing them. This would eliminate inconsistencies in the detail of the rules that are not justified by the nature of the referendum in question.

Recommendation 101.

- 14.9 A single legislative framework should govern the detailed conduct of local referendums, subject to the primary legislation governing their instigation.

Legal challenge

- 14.10 We also consider that a single set of grounds should govern challenging local referendums. These will be identical to those governing challenging elections, save that – since there is no candidate – the commission by anyone of a corrupt and illegal practice cannot serve to annul the validity of the referendum in the same way that conduct by or attributable to a candidate vitiates his or her election. The only ground that is intelligible in the referendum context is that of “extensive” corruption at the referendum which may reasonably be supposed to have affected the outcome. The court will still be able to review, and to annul, referendums for corruption which tended to favour the eventual result. Individual corruption can still be punished through the criminal law.
- 14.11 We also conclude, after consultation, that challenges to neighbourhood planning referendums should continue to be by judicial review before the Administrative Court,

although the latter should have regard to the above grounds of challenge. At present no guidance is given in the law as to what grounds the Administrative Court should consider.

Recommendation 102.

14.12 The grounds of challenge governing elections should apply to local referendums, save that corrupt or illegal practices should only be a ground for annulling the referendum if they extensively prevailed and can reasonably be supposed to have affected its outcome.

Recommendation 103.

14.13 Neighbourhood planning referendums should continue to be challenged by judicial review, but the court should be directed to have regard to the standard grounds for challenging local referendums.

Parish polls

14.14 Parish polls are local citizen-initiated polls that occur in English parishes and Welsh communities, the smallest tier of local councils in England and Wales. They are unlike the local referendums considered above in that they are a form of direct decision by the local electorate on matters before the parish or community council. The outcome of a parish poll thus has the same standing as a council resolution. It may therefore be reversed by subsequent resolution of the council.

Purpose of parish polls

14.15 Parish and community councils may elect a chairman and appoint additional councillors by making resolutions at parish meetings. Such matters may be put to a parish poll under the 1987 rules. In effect, this is an election by the parish or community's electorate to the chairmanship of the parish council or another office. In that case, the poll is conducted according to rules akin to those governing parish council elections. In our view, there is no reason in principle why such polls, if properly demanded at parish meetings, cannot be conducted according to the rules governing parish and council elections within the standard framework governing elections, subject to there being no nomination stage: the candidates for election should be stipulated at the meeting that decides to have a poll.

14.16 The second, and more common, type of parish poll asks a question on any issue arising for decision by the parish council. In such a case, the poll is akin to a referendum on a parish issue. Although this is nowhere expressly stated, the question cannot lie outside the proper range of decision making by a parish council, or be devoid of practical application.

14.17 The rules governing the conduct of parish polls date from 1987 and are thus out of step with the rest of electoral administration law. Our view is that parish polls should

be run according to the standard conduct rules governing local referendums (where the poll asks a question) and the standard rules governing elections (where the poll concerns an appointment), save for a modification to omit the nominations stage.

Recommendation 104.

14.18 A parish or community poll pertaining to an appointment should be governed by the conduct rules governing elections, omitting the nomination stage.

Recommendation 105.

14.19 A parish or community poll pertaining to an issue should be governed by the conduct rules for local referendums.

Recommendation 106.

14.20 The scope of the issues which can be put to a parish or community poll should be defined.

GLOSSARY OF TERMS

The 1983 Act	The Representation of the People Act 1983.
The 1985 Act	The Representation of the People Act 1985.
Absent voting	Voting without personally attending at a polling station: either postal voting or voting by proxy .
Additional member systems (“AMS”)	Systems of voting in which, in addition to candidates elected by the first past the post system, further members of the elected body are elected by a different voting system such as the party list .
Candidate’s agent	The legislation generally requires a person to be appointed by a candidate to perform certain functions in connection with an election on the candidate’s behalf. Other persons acting in support of a particular candidate are also referred to as the candidate’s agents, and misconduct by such agents is capable of invalidating a candidate’s election.
Assisted voting	Voting with the assistance of a companion, or that of the presiding officer .
The canvass/canvass form	The process of identifying people who are qualified to vote, for the purpose of entering them on the local electoral register. It normally involves sending a canvass form to each household in the area.
The corresponding number list	A list supplied to a polling station. When ballot papers are issued to voters, the ballot paper number is entered on the list opposite the voter’s electoral register number. The list can be used if necessary for vote tracing .

Chief Counting Officer	The person with overall responsibility to conduct a national referendum, and sometimes a local referendum.
Chief Electoral Officer for Northern Ireland	The official who is the returning officer and electoral registration officer for all elections in Northern Ireland and is in charge of the Electoral Office for Northern Ireland.
The classical rules	A term we use to refer to the set of rules governing Parliamentary and local government elections originating in the Victorian reforms of 1872 and 1883 and now found primarily in the Representation of the People Act 1983.
An early general election	A term used in the Fixed-term Parliaments Act 2011 to describe a general election occurring as a result of a vote in Parliament rather than at a fixed interval.
Election-specific legislation	Legislation governing elections to a particular elected body or office.
Electoral Commission	The independent statutory body that regulates political party and campaign finance in the United Kingdom, and sets standards and provides guidance on the administration of elections. The Commission is also tasked with administering national referendums.
An election court	The court constituted to hear an election petition .
Election petition	The legal process by which an election can be challenged before an election court .
Electoral Management Board for Scotland	The body which has the general function of co-ordinating the administration of local government elections in Scotland, assisting local authorities and others in carrying out their functions and promoting best practice.

First past the post	The traditional voting system in which the candidate who gains the most votes is elected.
Franchise	The right of suffrage; the legal expression of who is eligible to vote.
Greater London Authority (“GLA”)	The Greater London Authority consists of the Mayor of London and the 25 member London Assembly. The Mayor is elected using the supplementary vote system. There are two types of member of the London Assembly. Constituency members are elected by constituencies within London during the first past the post system. London members are elected on a London-wide basis using the party list system.
Household registration system	A term we use to describe the former process of registering voters on the basis of a completed canvass form . Household registration has been replaced in Great Britain by individual electoral registration , which has been in place in Northern Ireland since 2002.
Individual electoral registration	The process of registering electors on the basis of an application to be registered made by each individual.
The local government model	A term we use to describe those features of the classical rules that are specific to local government elections.
The parliamentary model	A term we use to describe those features of the classical rules that are specific to UK Parliamentary elections.
The party list system	A system of voting in which electors vote for lists of candidates presented by registered political parties as well as for independent (non-party) candidates.
Voting in person	Voting in person at a polling station, rather than postal voting or voting by proxy .

Judicial review	The process for legal challenge, before the High Court or in Scotland the Court of Session, of public and administrative acts and decisions.
Poll clerks	Officials appointed by the returning officer to assist the presiding officer at a polling station .
Polling district	Part of an electoral area served by a particular polling station .
Polling place	An area or building within a polling district designated by the local authority as the area or place in which a polling station is to be set up.
Polling station	The set of apparatus for voting in person, usually consisting principally of a table at which polling clerks mark the polling station register and issue ballot papers, booths in which voters can privately mark their ballot papers and a ballot box or boxes into which marked ballot papers are inserted. A room within a building can contain more than one polling station.
Postal voting	Casting a vote on a ballot paper which is sent by post to the returning officer , accompanied by a postal voting statement ; we refer to the postal voting statement and the ballot paper together as postal voting papers. Postal voting papers can also be handed in at a polling station .
Postal voting statement	A declaration in a prescribed form that a person voting by post is entitled to cast the vote.
Presiding officer	The official appointed by the returning officer to preside over a particular polling station .
Primary legislation	Legislation contained in an Act of the UK Parliament, Scottish Parliament, Welsh Parliament, or Northern Ireland Assembly.

Principal areas	The term used in legislation to refer to counties, districts, boroughs and county boroughs in England and Wales.
Proxy voting	Casting a vote through a “proxy” appointed to cast the vote in person or by post on an elector’s behalf.
Registered political party	A political party that is registered by the Electoral Commission under the Political Parties, Elections and Referendums Act 2000.
Registration officer	An official of a local authority charged with maintaining a register of people residing in the local authority area, who are qualified to vote at elections held in the area.
Returning officer	The official charged with conducting an election in a particular area and making a “return” of the result. Currently in England and Wales the returning officer for Parliamentary elections is a dignitary such as the sheriff of a county and most of the returning officer’s functions are discharged by an acting returning officer.
Secondary legislation	Legislation in the form of Regulations made under law-making powers conferred (usually) upon the Secretary of State or Ministers.
The single transferable vote (“STV”)	A voting system under which voters cast votes for more than one candidate, ranked in order of preference. The successful candidates are those whose vote reaches a 'quota' determined by the size of the electorate and the number of positions to be filled. The counting of voters proceeds in stages. At each stage the lowest scoring candidate is eliminated and votes cast for that candidate are transferred to the candidate marked next in order of preference on the ballot paper. Where a candidate’s vote reaches the quota at any stage, a proportion of the votes cast for that candidate are transferred to the candidate marked next in order of preference on the ballot paper. The process is repeated until all the seats are filled.

The supplementary vote	A voting system under which voters cast a first and second preference vote; if no candidate secures more than half of the first preference votes, the second preference votes are taken into account.
Tendered ballot paper or tendered vote	A ballot paper or vote cast by a voter who appears to have already voted in person or through a proxy or to be on the postal voting list. If the voter denies having voted or having applied for a postal vote, they must be issued with a ballot paper which is to be kept separately once marked. An election court can order the vote to be counted if satisfied it is valid.
Verification	The process of reconciling the number of ballot papers received from a polling station at the count with the number of papers issued to the polling station in question.
Vote tracing	Using the corresponding number list to trace the ballot paper issued to a particular voter. This can generally only be done by order of an election court where voting irregularities are suspected.
Voting system	The system for identifying the successful candidate[s] on the basis of the votes cast; examples include first past the post , the party list system , the single transferable vote and the supplementary vote .
Warrant for a writ of by-election	The step taken by the Speaker of the House of Commons to cause the Clerk of the Crown in Chancery to issue a writ of by-election to the returning officer .
Writ of election or by-election	A Royal document communicating to the returning officer the calling of a general election or by-election.

