Title: Electoral Law Reform	Impact Assessment (IA)
IA No: LAWCOM0056	**Date:** February 2016
Lead department or agency: Law Commission	**Stage: Consultation**
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Public law team Henni Ouahes 020 3334 3599

Summary: Intervention and Options

RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
N/A	£m	£m	No	NA

What is the problem under consideration? Why is government intervention necessary?

Electoral laws are voluminous; they are set out in over 25 pieces of primary legislation and much more secondary legislation. The law is fragmented, in part because of the election-specific way in which the laws are set out. A single policy development requires the amendment of multiple measures, and can take many years to implement. This wastes time and resources of Government, Parliament, and key stakeholders involved in consultation over policy. Furthermore, for end-users, the law is unclear and hard to access. Much of the law is outdated, or rendered overly complex due to repeated amendment over the years. In order to ensure that the law can perform its intended task, to guide the conduct of free and fair elections and referendums, reform, and in some places re-statement, is required.

What are the policy objectives and the intended effects?

The policy objectives are: (1) simplification of the legal framework so that electoral laws are presented holistically within a rational framework of primary and secondary legislation, thus ensuring easier access and more effective implementation of policy changes; (2) simplification and modernisation of electoral laws, making them easier to understand and apply by the public, electoral administrators, and political participants; and (3) a more effective and cost-efficient administration of elections and related electoral challenges.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do nothing.
Option 1: Rationalisation and reform of electoral laws.
Relevant law would be holistically set out for all elections with fundamental or constitutional matters contained in primary legislation and detailed rules on the conduct of elections contained in secondary legislation. Electoral laws would be rationalised into a single and consistent framework, maintaining within it the existing differences that are due to use of a particular voting system, or certain policies. This option is a proportionate approach and ensures that the law governing the conduct of elections and referendums is modern, simple, and fit for purpose.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes/No	**< 20** Yes/No	**Small** Yes/No	**Medium** Yes/No	**Large** Yes/No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: ______________ Date: ______________

Summary: Analysis & Evidence

Policy Option 1

Description: Rationalisation and reform of electoral laws

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	**PV Base Year** 2015	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: Optional	**High:** Optional	**Best Estimate:** N/A

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised costs by 'main affected groups'

Transitional costs: Training costs will fall on central, devolved and local government in relation to their various responsibilities for administering elections and referendums.
On going costs: There are only minimal on-going costs in relation to electoral administration generally (second residences, combination). In relation to challenges to electoral events, there may be costs in relation to one recommendation; the proposal for the establishment of a structured system for informal complaints.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	**N/A**
High	N/A		N/A	**N/A**
Best Estimate	N/A		N/A	**N/A**

Description and scale of key monetised benefits by 'main affected groups'

No transitional benefits have been identified.

Key monetised benefits relate to the potential for substantial efficiency savings. These will benefit each of the central, devolved and local government bodies exercising responsibility for various elements of the system of electoral administration. The UK and devolved governments and legislatures will also benefit from an electoral legislative framework that more easily enables policy changes to be implemented.

Other key non-monetised benefits by 'main affected groups'

The converse of the costs referred to above: sustained or enhanced confidence in elections and thereby the maintenance or improvement of confidence in democratic institutions, providing stability and legitimacy. These benefits fall on the general public, the political and governmental system, and indirectly on all other economic and social actors.

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs:	**Benefits:**	**Net:**	Yes/No	IN/OUT/Zero net cost

Evidence Base

Introduction

1. The electoral law project is a tripartite law reform project undertaken by the Law Commissions for England and Wales, Scotland and Northern Ireland. The first was a scoping exercise (conducted by the Law Commission), which reported on 11 December 2012. The second phase concerned substantive review of the law. A consultation paper was published on 9 December 2014, making or asking 114 proposals and questions for reform. Following consultation, we published our interim report on 4 February 2016, setting out our recommendations for reform. There is now a review point for government to consider whether to proceed to the third phase: a final report setting accompanied with a draft Bill. An impact assessment will be published alongside our final report and draft legislation. This draft report seeks to set out preliminary considerations on the likely impact of the recommendations contained in our interim report.

2. The draft report contains a glossary of terms, which is reproduced further below.

3. This interim draft impact assessment accompanies our interim report and is an early draft of the impact assessment that will accompany any eventual final report and draft bill. A number of the terms used in it are explained in our Glossary of election law terms that is appended to this document..

4. Chapter 1 of our consultation paper in December 2014, requested evidence on the costs of elections in order for us to be able to better assess the impact of our proposed reforms. Unfortunately, no public record exists of the overall costs of elections across the UK, or even within its jurisdictions. As we explain further below, that is because the responsibility for bearing the costs of conducting elections is spread across varying local authorities, and government departments.

5. As well as clear financial costs, we asked whether there were any hidden costs under the current legislative regime. After we published our consultation paper, the Electoral Commission published a report on the "hidden costs" of elections, which we discuss in greater detail below.[1] In that report, the Electoral Commission noted that the costs they consider are:

> costs that are not well-known outside the electoral community and which seem capable of either being reduced or completely avoided following the electoral law reform currently being considered by the three UK Law Commissions.[2]

Background

1. Our review of electoral law in the United Kingdom concerns:

- the law governing the conduct and administration of 17 types of electoral events (12 types of elections and five types of referendums);
- the law governing the registration of electors and absent voting, which underpins the right to vote at the above elections and referendums; and

[1] Electoral Commission, *Hidden costs of Electoral Law* (June 2015).

[2] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 39, para 2.104.

- the electoral offences and process for legal challenge of elections and referendums.

2. Specifically the project deals with all aspects of electoral administration:

- the preparation for polls, including designating electoral areas and registration of electors;
- the conduct rules for polls, including the process for nominations, polling and the count;
- postal and proxy voting;
- management and oversight of elections;
- challenging elections, including electoral offences and candidate regulation; and
- referendums.

Which elections and referendums?

3. The review considers these electoral events:

- UK Parliamentary elections;
- European Parliamentary elections;
- Scottish Parliamentary elections;
- Northern Ireland Assembly elections;
- National Assembly for Wales elections;
- Local government elections in England and Wales, including:
  - (a) Principal area local authority elections; and
  - (b) Parish and town councils and community council elections;
- Local government elections in Scotland;
- Local government elections in Northern Ireland;
- Greater London Authority elections;
- Mayoral elections in England and Wales;
- Police and Crime Commissioner elections in England and Wales;
- National referendums conducted under the Political Parties, Elections and Referendums Act 2000;
- Local referendums conducted under statute (neighbourhood plans, council tax and Mayoral referendums); and
- Parish and community polls.

4. The primary piece of election legislation is the Representation of the People Act 1983 (“the 1983 Act”). Its core provisions set out:

- the franchise for UK Parliamentary and local government elections;
- the infrastructure for registering voters and running elections;
- the regulation of electoral campaigns; and
- the mechanism for challenging elections.

5. Schedule 1 to the 1983 Act contains the detailed rules, called election rules, governing the conduct of UK Parliamentary polls and counts. Many of the election rules are similar or identical to those that appeared in the Ballot Act 1872. Every other set of election rules, for each particular type of election in the UK, is in secondary legislation. Some of the content of the 1983 Act relates to matters of detail that would be suitable for secondary legislation; this increases the cost and complexity of changing the law, since primary legislation is unnecessarily required. Separate primary and secondary legislation governs absent voting, and detailed electoral registration.

6. From 1999 onwards, there was a great increase in the number of elections in the UK. All of these, and the current system of elections to the European Parliament, use a voting system other than first past the post.

7. There was no systematic plan for dealing with this expansion in the number of elections, or for adapting the classical law to the new elections. The laws governing these elections are mostly contained in separate and distinct pieces of legislation, which largely repeat the content and structure of the 1983 Act provisions, and of the above-mentioned separate provisions concerning absent voting and electoral registration.

Problem under consideration

The legislative framework

8. The way in which electoral law has developed in the United Kingdom has resulted in a massive body of law which is confusing, difficult to update and apply, and unnecessarily repetitious. Each time new legal provision is required, whether it be because of a new election or a significant change to the electoral system, new Acts and Statutory Instruments are added to subsisting law. Each time electoral policy is developed, it requires discrete legislative change to the discrete pieces of legislation.

9. Two examples illustrate the problem with the current legal framework.

- **New elections need a whole new set of rules**. Introducing a new election requires new legislation dealing with every aspect of conducting that election, incorporating provisions in the 1983 Act and elsewhere concerning absent voting and registration. The slightest slip-up harms the legal integrity of the election. The legislation governing Police and Crime Commissioner elections, for example, did not include a power to produce Welsh language ballot papers. As such, emergency legislation providing that power had to be rushed through Parliament. Very little of such new legislation in fact addresses the particular characteristics of the new election. It would be much simpler if an existing electoral structure applied holistically to all elections. That would mean, for example, that an absent voter under pre-existing arrangements would automatically be an absent voter at the new election. Similarly, powers to use

Welsh language ballot papers would not need to be specifically introduced for each new election.

- **Legislation is difficult to update**. Even the simplest changes or improvements to electoral processes involve a long and convoluted process. Changes to electoral law that have been made during the course of our review include a new provision ensuring that queuing electors can cast a vote at a polling station before the poll is closed, moving the deadline for withdrawing from candidature at certain elections, and enabling Police Community Support Officers to enter polling stations. These were introduced by the Electoral Registration and Administration Act 2013, which amended the Parliamentary Elections Rules in the 1983 Act. Those provisions received the fullest Parliamentary scrutiny, having taken civil service time in terms of developing policy and drafting. Yet such a change applies only to UK Parliamentary elections. In order to extend them to other elections, discrete amendments were required, affecting up to twelve sets of election rules in total. These take up further civil service time and resources. Once drafted, the additional secondary legislation is subject to further scrutiny by Parliament, despite the policy having already received such scrutiny. Meanwhile, until its legislation is updated, the law governing a particular election will be different than that for others. The wasteful inefficiencies that currently affect the implementation of electoral policy would be redressed and rectified by our recommendations for reform.

10. A separate issue is one of substance. As "classical" electoral laws have been adapted for other elections, differences have crept into discrete election-specific measures. Some are due to the need to "transpose" a classical law devised for first past the post to a new voting system. Some differences arise from inconsistent legislative transpositions within elections using the same voting system, such as the party list system.

11. The result of such complexities are inevitable legislative slip-ups, unintended consequences and confusion. An example is the deadline for registering in time to vote at an election. This had long been thought – by experts, administrators, the Electoral Commission, and Government – to be 11 days, the deadline derived from a mixture of the 1983 Act and secondary legislation. As a result of an amendment to the latter in 2006, the true deadline was discovered to be 12 days, a fact that even experts did not identify until 2013.

Simplification, modernisation and reform

12. As explained above, much of the law on elections is based on legislation enacted in the 19th century, which remains in force today with little modification. The Parliamentary Election Rules as appended to the Ballot Act 1872 are very similar to those which now regulate the running of UK Parliamentary elections under the 1983 Act. Society and the electoral landscape have changed in the intervening years; a much wider franchise and the advent of the digital age mean that some of the concepts still found in electoral law have become outdated.

13. Electoral laws which do not reflect modern reality can cause inefficient administration, or can lead to administrators not following the law where it does not make sense. We highlight the areas of the law which are out of date in our consultation paper, with examples ranging from the formalistic, inflexible nominations process, to out of date references to "telegrams", or the antiquated "doctrine of votes thrown away" in the context of challenging elections.

Rationale for intervention

14. The conventional economic approach to government intervention is based on efficiency or equity arguments. In particular, the Government may consider intervening if there are failures in existing government interventions (e.g. waste generated by misdirected rules). Any proposed intervention should itself avoid creating a further set of disproportionate costs and distortions.

15. The current legal framework establishes a compelling case for reform of electoral law, as the waste of resources resulting from complex, inflexible and outdated electoral laws is determinant. In addition, there are real practical problems affecting electoral administration and the implementation of Government policy.

16. More importantly, the shortcomings in the law risk undermining public confidence in the democratic process. On this basis there is a strong case for our main reform proposal of setting out electoral law within a central framework, and rationalising electoral laws across all elections.

Reform objectives

17. Our reform policy objectives are as follows:

- Comprehensive framework: A holistic set of electoral laws should govern all elections and referendums (subject to devolutionary competences), contained within a hierarchy of primary legislation (for core rules) and secondary legislation (for technical or detailed guidance, prescribed forms and the like).

- Consistency: In particular, electoral law should be set out in such a way that shared elements of legal regulation apply holistically to all elections. Differences should be set out holistically as well; where differences are deliberate — whether arising from different elections, voting systems or jurisdictions — they should be addressed in a consistent and predictable manner within the electoral framework.

- Flexibility: Electoral laws should be such that future policy developments, or new electoral events, should be capable of being “slotted in” within the rationalised framework, thus avoiding the need to lay down comprehensive laws or “re-inventing the wheel” for new elections, local referendums, or the initiation of a national referendum.

- Simplification: The content of electoral laws should be simplified so that they can be readily understood and applied, and to avoid confusion or the risk of error.

- Modernisation: Outdated principles and approaches should be replaced by laws that are relevant to modern circumstances and needs.

Scale and scope

18. Our review of electoral law in the United Kingdom concerns the law governing the conduct and administration of 17 types of electoral events (12 types of elections and five types of referendums); the law governing the registration of electors and absent voting, which underpins the right to vote at the above elections and referendums; and the electoral offences and process for legal challenge of elections and referendums.

19. This section is divided into three sub-sections as follows:

- the Identification of the main stakeholders and their functional role;
- the election procedure, and
- the costs involved in running an election
  - (a) overt costs
  - (b) hidden costs

i. Main stakeholders and functional role

20. The main stakeholders in this project are:

- members of the public who are or will be entitled to vote in elections and referendums;
- electoral administrators (registration and returning officers and their staff);
- political participants (candidates, agents, and their staff; political parties);
- the Electoral Commission;
- Governments;
- legal advisers; and
- the judiciary and wider justice system.

21. Elections are contests involving the public, participants including candidates, their parties and local campaigners, and local government officials who are electoral administrators (returning officers who run the election, and registration officers who maintain electoral registers and absent voting records). Elections and referendums are conducted under laws proposed by Government and made by Parliament or made by statutory instrument by Government subject to parliamentary scrutiny.

22. No one Government body has oversight for all elections. Although the Cabinet Office is responsible for legislating for and overseeing UK and EU Parliamentary elections and national referendums, other Government departments have oversight over other events. They include the Home Office (for Police and Crime Commissioner elections) and Department for Communities and Local Government (for local and Mayoral elections, and local referendums and parish polls), while the Northern Ireland and Wales office have responsibility for Northern Ireland Assembly and local elections in Northern Ireland, and Welsh Assembly and local government elections and referendums in Wales respectively.

23. Local government elections in Scotland are overseen by the Scottish Ministers, who will also have responsibility for Scottish Parliamentary elections since the current Scotland Bill which, once enacted, will devolve nearly full legislative competence over both local government and Scottish Parliament elections. In the past, the latter were overseen by the Scotland Office, although since the commencement of section 1 of the Scotland Act 2012 on 1st July 2015 certain of the executive functions in section 12 of the Scotland Act 1998 relating to the conduct and administration of Scottish Parliament elections have been transferred from the Secretary of State to the Scottish Ministers. The Welsh Assembly will also be given legislative competence over Welsh Assembly and local government elections in a forthcoming Wales Bill.

ii. Election procedure

24. When it comes to the cost of elections, it is important to distinguish between certain aspects of the conduct of the elections. The delivery of an election involves electoral administration costs which fall into three categories

- **Electoral registration**: the permanent, year-round form of electoral administration performed by registration officers, the costs of which are borne by local authorities in Great Britain. These are paid out of the central government grant to local authorities, although the transition to individual electoral registration after 2013 did see some ring-fencing of costs to oversee that transition. In Northern Ireland, the costs incurred by the Chief Electoral Officer are met by Parliament.

- **The administration of polls**: This is the task, contingent on an electoral event being in course, of running the poll by returning officers. In Great Britain, local government staff administer polls, and incur expenses in doing so. For some elections another institution may ultimately be responsible for meeting those costs; for example, the Cabinet Office meets the fees and charges of returning officers at UK Parliamentary elections under section 29 of the 1983 Act.

- **Publicity costs:** costs associated with candidates' legal entitlement to free mailings to electors, the production of a candidate booklet or hosting a website on which election addresses are published. These arrangements differ at different elections.

iii. The costs involved in running elections

25. None of our provisional proposals affect the cost of election publicity above. These costs are reasonably well documented for UK and EU Parliamentary elections, since the Cabinet Office is responsible for them. The challenge lies in establishing the cost of electoral administration, a year-round cost met by local government in Great Britain, and the cost of administering polls, which depends on a particular election falling due and the availability of data as to their cost.

a. Overt costs

Fees and charges orders

26. Fees and charges orders are issued in advance of certain elections, the cost of which is met by central Government. These specify what constitute a returning officer's services in respect of an election: conducting the election, discharging the returning officers' duties and making arrangements for the election. They specify a maximum amount recoverable for the returning officer's services as specified in the order and any expenses associated with the election, including providing and paying staff, conducting the poll and count and any ancillary expenses. The amounts are specified with respect to the region that a returning officer is responsible for.

27. The Secretary of State has a discretion to pay over the maximum recoverable amount if it was reasonable for the returning officer to incur the extra charge and the expense or charge is reasonable. The actual amounts spent may also differ where other elections take place in the area on the same day and polls may be combined and costs shared with other funding bodies such as local authorities.[3]

The available data

28. Institutional responsibility for the cost of electoral administration being complex, and the various tasks involved in electoral administration being funded by different streams, means there is very little data on the cost of elections. The 2013 Cabinet Office report on returning officers' expenses in England and Wales concentrates on the costs it is responsible for (that is, the costs which it will pay under a fees and charges order). These are the costs of administration of polls and candidates' mailings for the 2009 European Parliamentary elections (£90.3 million), the 2010 UK Parliamentary general elections (£99.1 million), and UK Parliamentary by-elections since 2010 (£2.5 million).

29. For a wider overview of the cost of electoral administration, table 1 below sets out the total costs recorded by the Electoral Commission for four financial years covered in two reports on the costs of electoral administration.[4] These are based on surveys sent to local authorities, along with guidance on their return. The reliability of the data thus depends on the accuracy of responses. Nevertheless, it illustrates the relatively stable cost of electoral registration compared to the variable cost of administering elections, which depends on the incidence of particular polls in any given year.

30. The Electoral Commission's reports on the cost of electoral administration exclude the cost of candidates' mailings. They do not cover elections held in Northern Ireland or the cost of local government elections in Scotland, for the technical reason that the power to request information from returning officers did not then extend to them.

31. The Electoral Commission's costs surveys necessarily reflect the number of elections, ordinary and casual, faced by each responding returning officer, which varies from one returning officer to another. It is difficult, therefore, to obtain from them a baseline figure for the cost of electoral administration in any given year.

[3] Some examples of fees and charges orders issued include: the European Parliamentary Elections (Returning Officers' and Local Returning Officers' Charges) (Great Britain and Gibraltar) Order 2014 SI No 325; Police and Crime Commissioner Elections (Local Returning Officers' and Police Area Returning Officers' Charges) Order 2012 SI 2012 No 2378; Scottish Parliament (Returning Officers' Charges) Order 2011 SI 2011 No 1013; Parliamentary Elections (Returning Officers' Charges) Order 2015 SI 2015 No 476; National Assembly for Wales (Returning Officers' Charges) Order 2011 SI 2011 No 632.

[4] Electoral Commission, *The Cost of Electoral Administration in Great Britain* (June 2010); Electoral Commission, *The Cost of Electoral Administration in Great Britain* (December 2012).

Table 1: Electoral administration costs (£ millions) (source: the Electoral Commission)

	Electoral registration (A)	Elections (B)	Administration (A+B)
2007/08			
England	67.3	67.9	135.2
Scotland	10.1	16.3	26.4
Wales	3.7	3.6	7.3
GB	81.1	87.7	168.9
2008/09			
England	68.8	48.4	117.1
Scotland	10.1	2.2	12.2
Wales	4.0	4.8	8.8
GB	82.8	55.4	138.2
2009/10			
England	69.8	76.7	146.6
Scotland	8.5	8.6	17.1
Wales	3.9	4.1	8.0
GB	82.3	89.5	171.8
2010/11			
England	72.3	90.6	162.9
Scotland	8.3	11.6	19.9
Wales	4.9	4.5	9.4
GB	85.5	106.7	192.2

32. The Electoral Commission has also published a report detailing the electoral administration costs of the referendum concerning a change to the voting system in the UK held in May 2011.[5] The Electoral Commission observed that “this [was] the first time a report has been published on the costs of running a national poll and the first time the Electoral Commission [had] overseen the process for managing those costs.” The breakdown of costs is shown in table 2 below.

[5] Electoral Commission, *Costs of the May 2011 referendum on the UK Parliamentary voting system* (December 2012), available here: http://www.electoralcommission.org.uk/i-am-a/journalist/electoral-commission-media-centre/news-releases-reviews-and-research/costs-of-running-a-uk-wide-poll-published-for-first-time.

Table 2: Referendum administration costs. (source: the Electoral Commission)

	Costs authorised by Parliament through the Parliamentary Voting System and Constituencies Act 2011 (£m)	Costs authorised by Parliament through the Electoral Commission's annual estimates (£m)
Costs paid direct by the Electoral Commission: £17.139m		
Cost of campaign group mailings	8.530	
Postal vote 'sweeps'[6]	0.269	
Electoral Commission public awareness activity		7.523
Electoral Commission grants to campaign groups		0.287
Electoral Commission additional staffing		0.080
Electoral Commission costs of administering payment of fees and costs to Counting Officers		0.450
Costs paid to Counting Officers & Regional Counting Officers: £58.126m		
Reimbursement of counting/regional counting officer costs	55.62	
Counting/Regional Counting Officer fees	2.464	
Sub-totals by method of authorisation	**66.925**	**8.340**
Total costs paid	**75.265**	

b. *"Hidden" costs*

33. Obtaining figures for the cost of electoral administration – registration, the administration of polls – for all elections within the scope of this reform project is the first challenge in assessing the impact of law reform. The second challenge lies in estimating the hidden costs within electoral governance, such as the cost of managing electoral legislation, and implementing policy for all elections. We noted that a central reform aim, and important benefit of reform, will be a more consistent and streamlined legislative framework, thus simplifying and making more predictable the tasks of stakeholders such as Government departments and the Electoral Commission. This is likely to have a beneficial costs impact, but the current cost of maintaining legislation is hidden. The final challenge is to take into account non-monetised costs within electoral law. These are the intangible and non-pecuniary benefits of a simplified and more modern set of laws, such as accessibility of electoral rules to the general public, or the reduction in the likelihood of administrative errors which might adversely impact upon public confidence in electoral administration and outcomes.

34. The Electoral Commission in a report on the hidden costs in electoral law prepared in response to our consultation paper, considers the costs associated with:

- making and updating electoral legislation;

[6] This refers to searches of mail centres on polling day, to collect any postal ballot packs which might have been posted by electors on or very close to polling day, in order to deliver them to the counting/returning officer before the close of poll.

- legal processes arising from elections; and
- standing for elections.

Making electoral legislation

35. The volume of electoral law continues to increase, and, as the Electoral Commission explain, the "process of making legislation involves governments, legislatures and their committees and those who are consulted on draft legislation. The process of making and amending law inevitably imposes costs on all of these bodies but…the current state of electoral law imposes unnecessary burdens".[7]

36. These unnecessary burdens fall on UK and devolved governments and legislatures, as well as on electoral bodies, such as the Association of Electoral Administrators and the Electoral Commission.

37. There are at least three layers of costs to governments in making electoral legislation. First, governments must determine what the law is, in order, as the Electoral Commission explain:

> to establish whether the policy can be delivered within the current law or whether amendment to the law is necessary and, if so, what amendment.[8]

38. As the current legislative framework is so complex and fragmented, this is a very challenging task for policy makers and drafters. Devolution adds further difficulty to this process. The Electoral Commission note:

> The complexity of UK electoral law causes particular challenges in Northern Ireland, where there is no electronically maintained up to date set of electoral legislation. Some of Northern Ireland's electoral process derives from the Electoral law (Northern Ireland) Act 1962 (the 1962 Act) but the majority is found in legislation that applies to the whole of the UK but which in some cases has been amended for Northern Ireland. The lack of up to date electoral law in Northern Ireland presents complexity for the Government to make changes to the law as it is not easy to identify the existing legal position. As it is not possible to rely on an updated electronic resource, there is a need to trace amendments to the legislation manually, which is a difficult and onerous task.[9]

39. Secondly, the process of updating or reforming the law itself is also difficult and onerous. This is largely due to the complex election-specific way that the legislation has evolved. As we noted above, in order for a single policy to be implemented for all elections in the UK, discrete amendments have been, and continue to be made, to twelve sets of election rules in total. This arduous drafting process requires further civil service time and resources. Once drafted, secondary legislation is subject of scrutiny by Parliament, despite the policy having received that scrutiny already. This duplication of effort and resources is wasteful and inefficient. As the Electoral Commission observe:

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[7] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 10, para 2.2.

[8] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 11, para 2.5.

[9] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 11, para 2.6.

> There is a large burden on Government officials, sometimes in departments which do not have prior experience of making election law, in having to produce new rules for each new electoral event and also a burden on those who are consulted on these draft laws.[10]

40. Thirdly, the drafting process is rendered even more inefficient due to two further factors, as described by the Electoral Commission report. The first is that the majority of the rules governing the administration of elections in the UK are contained in primary legislation, in particular, the Representation of the People Act 1983. Any amendments to be made to primary legislation place more demands on parliamentary time than if these rules were contained in secondary legislation. The second factor is that many electoral law rules are prescribed in extensive detail, across both primary and secondary legislation.

41. The process of making electoral legislation also imposes unnecessary costs on legislatures. The most obvious cost occurs due to legislatures' scrutiny of primary legislation. However, secondary legislation also requires legislative scrutiny through the Joint Committee on Statutory Instruments. As we noted above, as a result of the fragmented and election-specific nature of the electoral law legislative framework, a single policy change requires multiple pieces of secondary legislation for its implementation. The Electoral Commission commented that:

> Examples include relatively minor changes such as a requirement to notify individuals of a failure to match their postal vote identifiers to local authority records. This change took up a large amount of time to enact largely because they had to be enacted across every individual election.[11]

42. The Electoral Commission also explained that electoral bodies, such as the Commission, also incur unnecessary burdens due to challenges inherent to the legislation making process. In responding to consultations on changes to the law, electoral bodies face the same problems as governments in determining what the current law is, and how the law may be impacted under the proposed changes. The Electoral Commission, in particular, issued guidance, noting that this role was made significantly more difficult by the state of the current legislative framework:

> there is also a cost in having to amend guidance at short notice where the complexity of electoral law has led to a drafting error requiring urgent legislative change. The European Parliamentary Election Regulations 2004 were amended twice in the run-up to the May 2014 elections on 3 November 2013 and 3 April 2014. Updating the Commission's guidance for these regulations represented a significant and unplanned workload, which had impacts on other areas of the Commission's planned work.[12]

Legal processes arising from elections

43. Unnecessary costs also occur due to legal processes arising from elections. As the Electoral Commission explained; "large burdens are placed on the time of police, prosecutors, electoral administrators, candidates, parties and others (including the Electoral Commission) by their involvement in legal processes arising from elections. These legal processes largely fall under two categories: the investigation of electoral offences by the police and challenges to election results ('election petitions')."[13]

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[10] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 12, para 2.9.

[11] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 13, para 2.15.

[12] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 14, para 2.21.

[13] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 28, para 2.70.

Investigation of electoral offences

44. Electoral conduct is regulated by special criminal offences. These are set out in the 1983 Act and repeated in election-specific legislation. Some general criminal offences are relevant in the electoral law context, but "electoral offences" are important because they specially target serious electoral offending and candidates and their agents. One of the chief problems with electoral offences is that they are complex. Many electoral offences originate from the Victorian era, and the drafting of electoral offences has not changed significantly since. This renders many offences difficult to understand. The legislative framework for electoral offences is also fragmented, and provision for offences is also repeated in each discrete election-specific measure.[14]

45. The Electoral Commission observed that:

> Interpreting offences not designed for the modern world is challenging and is compounded by a lack of recent case law on some offences, which makes interpreting how they apply today even harder. This is made even worse by the highly complex nature of the drafting of some offences.[15]

46. Some unnecessary costs arise because the offences are out of date. For example, the offence of treating criminalises the "corrupt" provision of "meat, drink, entertainment or other provision" for the purpose of influencing that person or any other person to vote or refrain from voting, or on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting. This offence also sought to combat the indirect consequence of largesse at elections in the 19th century, the problem of violent or intimidating inebriated mobs. The Electoral Commission commented that:

> the offence may not be as relevant today, especially when such behaviour may be caught by the offence of bribery. To our understanding treating is hardly ever prosecuted. Nonetheless, many allegations are received at every election that treating has occurred simply because refreshments have been provided at a meeting or event. In 2015 a candidate for the United Kingdom Independence Party was accused of treating partly because they provided food at a community meeting. On investigation by the police this case was resolved as 'No Further Action – No offence'. In 2013 a candidate was accused of treating because members of their staff were seen handing out cakes while campaigning, once again this case was resolved no further action. We understand that in these cases the police concluded that there was no indication that the food was intended to sway voters' decision as to who to vote for.[16]

47. Other unnecessary costs arise because electoral offences are drafted in a complex manner, and consequentially are not well understood by the institutional actors involved in their investigation. For example:

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[14] See Electoral Law (2015) Law Commission Consultation Paper No 218; Scottish Law Commission Discussion Paper No 158; Northern Ireland Law Commission No 20, pp 237 to 252, and Electoral Law *Interim report* xxx # insert ref to IR here.

[15] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 29, para 2.73.

[16] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 29, para 2.74.

> The drafting of the offence of undue influence demonstrates the complex nature of some offences.[17] One scenario when undue influence will have taken place is where someone, by abduction, duress or any fraudulent device or contrivance, impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of an elector or proxy for an electors, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon… an elector either to vote or to refrain from voting. This offence combines old drafting with some twenty first century additions and is a highly complex provision that proves difficult to interpret and apply to elections today.[18]

48. Electoral offences that are complexly drafted or out of date impose quantifiable and non-quantifiable costs. Quantifiable costs are incurred because, as the Electoral Commission explained:

> The lack of clarity in the law is likely to contribute to the large number of allegations of offences that are made each year, some of which are based on a misunderstanding of the offence. Many allegations of electoral offences are recorded by the police are described as not requiring any further action, either because no offence had been committed or there was insufficient evidence. A large amount of the police's (and others') time is therefore taken up recording and investigating allegations that prove to be baseless; in our experience this is partly because many allegations are misguided because they are based on an incorrect understanding of a law that is not well-understood.[19]

49. In addition, there is a non-quantifiable cost at stake. A fundamental principle of the rule of law is that individuals that may be subject to these sanctions should be capable of finding out how to avoid them. This principle is currently compromised as electoral offences are so complex and outdated that they are difficult to understand.

Challenging elections

50. The laws governing electoral administration and the regime prohibiting corrupt and illegal practices are largely enforced by private legal challenge before election courts – the "election petition". This is also a very complex area of law. Unnecessary costs are imposed on petitioners, respondents and the court system for a range of reasons, which are discussed in turn below.

51. A person wishing to commence an election petition must face upfront costs. This is not unusual and is the case for persons commencing any other form litigation, but there are two particular aspects to the election petition process that make these costs especially onerous. First, petitioners must provide security for costs upfront; up to £5,000 for UK Parliamentary elections, or up to £2,500 for a local government election petition.[20] As such, along with the fee payable upon the commencement of an election petition, a petitioner attempting to challenge a UK Parliamentary election will usually pay approximately £5,500.

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[17] Representation of the People Act 1983, s 115.

[18] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 30, para 2.75.

[19] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), pp 31 to 32, para 2.82.

[20] Representation of the People Act 1983, s 136. In Scotland, security for expenses is set by the court.

52. There is no detailed account of the cost to parties of funding an election petition. The petitioners in the *Tower Hamlets* successfully obtained an order for costs against the respondent, to be assessed in future. Commissioner Mawrey QC estimated that these would be in the region of £500,000 after what was a very wide ranging and extensive hearing. He ordered payment of £250,000 in costs on account. Recent news reports on an unsuccessful application by Alistair Carmichael MP for his costs of successfully defending a petition against him suggested his legal expenses amounted to £150,000. As the Electoral Commission previously observed:

> the election petition process and the expense of bringing a petition are not well known outside those closely involved in elections. Also, a reader of the legislation would only know the maximum amount of the security of costs and would not appreciate that the maximum is normally ordered. By the time the petition is finally determined by the court, this figure will be much higher, especially if the petitioner has legal representation. Non-monetary costs to the petitioner must be added to this, for example the time and stress of engaging in lengthy litigation.[21]

53. This is problematic because the challenge process relies entirely on private individuals. Without having candidates or concerned electors willing to spend significant sums of money on the petition procedure, unsafe elections could go unchallenged. The Electoral Commission's report states:

> It seems difficult to argue that these costs to the person seeking a review of an election result are justifiable. There can be no doubt that they serve to deter the bringing of petitions and it is likely that that is their intention. Although there should be controls on bringing a petition, we do not consider that financial controls are appropriate. The ability to challenge and overturn an election result should not be affected by a person's financial resources but by the merits of their grounds of challenge. There is a strong public interest in an election result that is flawed, whether because of an administrative error by the Returning Officer or by illegality on the part of candidates and their supporters, being subjected to scrutiny and being overturned, with a fresh election ordered if necessary. As discussed in our 2012 report, there is evidence that petitions are not brought simply because of the costs of doing so, not because of the merits of the case.[22]

54. This has a significant unquantifiable cost. Public confidence may be seriously undermined if an unsafe election stands unchallenged because of financial deterrents.

55. It is also problematic, as highlighted by the Electoral Commission, that returning officers currently do not have standing to correct an obvious administrative error. This means that expensive, and potentially lengthy, litigation must be undertaken by a private citizen in order to correct a result that the person administering the election that delivered the result considers unsound. This is plainly inefficient. Once successful, the returning officer will have to bear, not only his or her own costs, but the costs of the petitioner:

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[21] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 33, para 2.86.

[22] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 33, para 2.87.

> In Challenging Elections in the UK we reported that in one case the returning officer incurred total costs of £122,000 in responding to the petition. An election petition in Fermanagh and South Tyrone in 2010 resulted in costs to the returning officer of £92,000. Even if the court determines in the returning officer's favour, the returning officer is unlikely to be able to recover such costs. In Bradford in 2008, despite the failure of the election petition, less than one fifth of the returning officer's total costs were recovered, leaving £38,000 outstanding. Although, costs may be recoverable under an insurance policy, we understand that having to respond to a petition may lead to a significant increase in future insurance premiums and it seems likely that the cost of all insurance policies reflects the possibility of having to respond to a petition.[23]

56. A further inefficiency in the current petitions process arises due to the fact that there is no mechanism for parties to test, and the court to determine, the initial merits of a petition, and to filter out unmeritorious claims. In ordinary civil procedure in England and Wales, it is open to respondents to apply for a claim, or part of it, to be struck out for disclosing no reasonable grounds for bringing the claim.[24] Respondents to petitions are limited to applying to strike out for informality. This means that unmeritorious claims, which comply with formality requirements, must be heard at a full trial. This generates unnecessary costs for respondents and the court system. The procedural rules for elections are also complex and outdated.[25]

Standing for elections

57. The problems described above, concerning the volume, fragmentation and complexity of electoral law, also pose unnecessary burdens on candidates and potential candidates.[26] Potential candidates must find out what the current law is and how it applies to them, in order to determine whether or not they are eligible to stand for elections. There are a number of ways in which candidates are burdened inefficiently by the current law, and we consider two examples here. The first concerns the delivery of the nomination paper. Potential candidates must submit a series of forms and authorisations in order to nominate themselves. For UK Parliamentary elections, the nomination form must be hand delivered by the candidate, their proposer or seconder, or their election agent (if one is appointed). For local government elections, the legislation simply requires candidates to "deliver" the nomination form. The legislation is not clear as to whether electronic submission of the nomination form is permissible for local government elections. The restrictive means of delivery for UK parliamentary and local government elections imposes additional and unnecessary costs on candidates.

58. A further example of a glaring inefficiency in the current nomination process concerns the requirement for subscribers to assent to a potential candidate's nomination. Where subscribers are required, the nomination paper must be signed by each and contain the subscribers' electoral numbers. A subscriber assents not to the candidacy but to the nomination *paper*, and cannot validly subscribe more than one paper, even if they nominate the same candidate.[27] If a first nomination paper is rejected for any reason, all of its subscribers are ineligible to be subscribers to another paper. This can have adverse consequences for candidates. At an election for Mayor of London, 330 subscribers are required (10 from each borough plus the City of London). A defective nomination paper is a disaster for the candidate, who must look for 330 new subscribers.

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[23] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 34, para 2.90.

[24] Civil Procedure Rules, r 3.4(2).

[25] Election Petition Rules SI 1960 No 543.

[26] Electoral Commission, *Hidden costs of Electoral Law* (June 2015), p 36, para 2.94.

[27] Representation of the People Act 1983, sch 1 r 7(5).

59. Candidates, once nominated, need to ensure their campaigns are compliant with electoral law. In particular, candidates must ensure they do not commit electoral offences. As we noted above, many electoral offences are complex and out dated. This may make it unnecessary onerous for candidates to understand how they can, and can not, campaign.

Description of Options

Two options are considered as follows:

- Option 0 – Do nothing
- Option 1 – Rationalisation and reform

Option 0 – Do Nothing

60. Under this option the legal framework and the content of electoral laws would remain unchanged.

61. The problems with the current law, outlined above, would therefore persist:

- fragmentation of election rules;
- difficult to update;
- new elections require a whole new set of rules;
- conflict between existing provisions; and
- unjustified differences between election-specific provisions.

Option 1 - Rationalisation and reform

62. This option would ensure that the law governing the conduct of elections and referendums is modern, simple, and fit for purpose.

63. Our overarching recommendation is that electoral law should be holistically set out for all elections, with fundamental or constitutional matters contained in primary legislation, and detailed rules on the conduct of elections contained in secondary legislation. In addition, we provisionally propose that electoral laws should be rationalised into a single and consistent framework, maintaining within it the existing differences that are due to use of a particular voting system, or certain policies.

64. Many of our recommendations concern rationalising discrete aspects of electoral law holistically for all elections. We consider that this will bring clear costs benefits to the overt costs of maintaining electoral legislation, as well as to some non-monetised costs, such as the difficulty of accessing and understanding electoral law for voters and political participants. In addition, it will substantially reduce the risk of a serious failing in electoral arrangements that could cause very serious non-monetised damage to the UK's democracy.

65. Our interim report makes several recommendations. Those that have a particular impact on cost are those that will reduce the hidden costs involved with the current legislative framework. The particular features of rationalisation include the following.

66. **A clearer framework for all elections and referendums**. Our view is that electoral law should be governed by a rational and holistic framework governing all existing elections. Any new elections – or referendums – 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 just one instance of legislative amendment, not several. Chapter 2 makes two recommendations to that effect:

- Recommendation 2-1: The current laws governing elections should be rationalised into a single, consistent legislative framework governing all elections (enacted in accordance with the UK legislatures' legislative competences).

- Recommendation 2-2: Electoral laws should be consistent across elections, subject to differentiation due to the voting system or some other justifiable principle or policy.

67. This approach extends to national and local referendums, which we recommend should similarly be governed by the holistic electoral law framework, making changes to reflect the difference between a referendum and an election.

- Recommendation 14-1: 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.

- Recommendation 14-2: Secondary legislation should set out the detailed conduct rules governing national referendums, mirroring that governing elections, save for necessary modifications.

- Recommendation 14-3: A single legislative framework should govern the detailed conduct of local referendums in England and Wales, subject to the primary legislation governing their instigation.

68. The approach behind the above 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 a reforming Act to achieve considerable savings in terms of detail and volume of laws on the conduct of elections in chapters 7, 8, 9 (on nominations, polling and the count) and chapter 10 (on the combination of polls, where the current approach introduces significant complexity). Some of the recommendations which are ramifications from the above include:

- a single electoral register and absent voting framework should apply to any and all elections and referendums [recommendations 4-11, 6-3, 14-1];

- Recommendation 9-6: 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 10-4: 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 10-6: The law governing combination of coinciding polls should be in a single set of rules for all elections; Recommendation 10-7: Any elections coinciding in the same area on the same day must be combined; and Recommendation 10-10: A single set of adaptations should provide for situations where a poll involves several ballot papers.

- Recommendation 11-1: A single set of electoral offences should be set out in primary legislation which should apply to all elections.

- Recommendation 13-2: The law governing challenging elections should be set out in primary legislation governing all elections.

Consultation Responses

69. We received a total of 75 written submissions responding to our 2014 consultation paper. Respondents included the Electoral Commission, the Association of Electoral Administrators, the Scottish Assessors Association, and the Senators of the College of Justice as well as a variety of political parties, third party organisations and private individuals. The total amount of specific answers to the 94 provisional proposals contained in the consultation paper amounted to 3242, of which 2963 conveyed total agreement. The average response rate to proposals was 47%.

70. The average provisional proposal received a 91% rate of approval from respondents. Chapter 2 (Legislative framework) was the most discussed by respondents. Provisional proposal 2-1 and 2-2 received the highest amount of responses (response rate 63.5% and 62%). Both proposals for reform to the legislative framework were unanimously agreed to (though in each case one respondent commented without offering a firm view).

71. 24 of the 94 provisional proposals contained in the consultation paper received unanimous support from respondents. Provisional proposal 8-12 (death of a party and independent candidates) was the most contentious, with the lowest rate of respondent approval, at 74%.

Costs and Benefits

72. This impact assessment identifies both monetised and non-monetised impacts of intervention, with the aim of understanding the overall impact on society and the wider environment. The costs and benefits of each option are measured against the "do nothing" option. Impact assessments place a strong emphasis on valuing the additional costs and benefits in monetary terms (including estimating the value of non-market goods and services). However there are important aspects that cannot sensibly be monetised such as environmental impacts on health and well-being.

73. The impact assessment process requires that we make an assessment of the quantifiable costs and benefits even when there is insufficient material on which to base those calculations. Where possible we have spoken to practitioners to inform our view of the likely aspects to be affected by the change in policy. It has, nonetheless not been possible to obtain even a rough indication of numbers at this stage.

74. We are grateful for the assistance of stakeholders, in particular the Electoral Commission and the Cabinet Office, so far. We will continue to engage with stakeholders in order to build upon our evidence base.

75. As a result of the current lack of evidence we focus on outlining the cost and benefit areas that we anticipate will be affected by our recommended policy change.

Option 0 – Do Nothing

76. Option 0, do nothing, would leave the current arrangements in place. We consider in the long term this would exacerbate the current problems, risking further cost. Principally, the introduction of any new electoral event, and of further policies in the context of electoral administration, would continue to require, respectively fresh and comprehensive legislation, or comprehensive amendment of election-specific legislation.

77. Given that option 0 is the "do-nothing" option the additional costs and benefits of option 0 are, by definition, zero.

Option 1 – Rationalisation and reform

Costs

Transitional costs

Training and guidance

78. Training costs will fall on central, devolved and local government in relation to their responsibilities for administering elections and referendums. Party organisers must similarly brief staff and volunteers on the new law. Both sets of stakeholders will look to the new Electoral Commission guidance, which will have to be redrafted to fit a new holistic legal framework.

On-going costs

79. Most of our discrete reform proposals, which are not concerned with rationalisation, are likely to be neutral as to overt costs. However, we consider that the following recommendations will result in a net additional cost compared to current arrangements:

1. In relation to electors applying to register at a second residence, we recommend that the law should lay down factors to be considered, and that applicants for registration in respect of a second home should be required to state that fact. We also recommend that "second residence" electors should designate one residence as the one they will vote at for national elections. This may require further administrative costs, borne by registration officers, which would only marginally be offset by savings in the cost of producing and posting a second set of postal voting papers. Any additional cost may be offset to some degree by a reduction in "double" postal votes being sent to electors with two residences, however.

2. We recommend that there should be an informal means of reviewing complaints about elections which do not aim to overturn the result. Electors' complaints about the administration of elections (which do not aim to overturn the result) should be investigated by Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales and the Northern Ireland Ombudsman. This would establish a clearer and local system of accountability and challenge.[28] There will be some cost in administering this informal complaints review procedure. However, we expect that these costs will be offset against quantifiable and non-quantifiable benefits. The quantifiable benefits are that complaints would more cost effectively dealt with. Such complaints would likely otherwise be made to the Electoral Commission or local authority administrators, who do not necessarily have the capacity to properly address them. The un-quantifiable benefit is the increase in public confidence in electoral outcomes afforded by the provision of an appropriate forum for hearing complaints.

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[28] See, The Association of Electoral Administrators: *Beyond 2010: the future of electoral administration in the UK, July 2010* at pp 19 to 22. Available at http://www.aea-elections.co.uk/downloads/reports/aea_election_report_final_PUBLICATION.pdf (last accessed 2 December 2014).

Benefits

Transitional benefits

80. No transitional benefits have been identified.

On-going benefits

Administering elections

81. We think simplifying the law in several areas will have beneficial impacts on hidden costs of understanding and applying the law by administrators, whose costs are met by central and/or local government, participants and the wider public. Our reforms to the legislative framework across electoral law will also reduce costs on bodies like the Electoral Commission and the Association of Electoral Administrators, who provide guidance and training for electoral administrators, as the law will be much easier to understand. Accessible law will serve to increase public confidence in the electoral process and outcomes; our proposed reforms thus also has less easily quantifiable, but important, benefits.

Making electoral legislation

82. The cost of maintaining the legislation, including of implementing new policy, will be centralised. It will no longer require successive amendments of election specific legislation, and the consequent resources required by Government to do that, and Parliamentary time to scrutinise changes at every round. A policy decision will be made, primary or secondary legislation drafted, and once scrutinised by Parliament, it will become law for all elections. Similarly, our recommendations relating to local referendums will mean updating the law concerning these will be much simpler.

83. The cost of introducing a new type of election, or of instigating a referendum, will also decrease. As to an election, what will be required will be to select the franchise and voting system, and to incorporate the new election within the centralised framework. As to calling a national referendum, there will no longer be any need to "reinvent the wheel" in the instigating Act in order to invoke the existing registration and absent voting framework, and to lay down detailed rules for the conduct of the referendum poll.

Legal processes arising from elections

Investigation of electoral offences

84. We recommend that electoral offences should be simplified. Our reform to the fragmented legislative framework governing electoral offences proposes that there should be a single set of electoral offences set out in primary legislation which should apply to all elections. We also recommend that electoral offences be restated clearly, so as to make them easier to understand. We also consider that certain offences are updated in order to be more easily understood by those potentially subject to the offences, and the institutional actors who apply them. For example, we consider that the offence of treating does not need to continue to be a separate offence, and we therefore recommend that it should be subsumed into the offence of bribery. This will save the costs incurred by the police, described above, in having to respond to and investigate complaints made about candidates providing refreshment where there was no indication that the refreshment was intended to sway voters as to who to vote for. In addition, we also recommend that the complexly drafted offence of undue influence, noted in the Electoral Commission's report above, should be restated in a simpler manner.

85. We consider that our reform of electoral offences will greatly reduce the disproportionate quantifiable costs imposed by the current law, as identified above. By ensuring that criminal offences are accessible, we also intend to ensure that individuals are able to find out how to avoid sanctions that may apply to them. This would ensure that electoral offences are compliant with the rule of law; a non-quantifiable, but important, benefit.

Challenging elections

86. The grounds for challenging elections, which are presently extremely unclear, will be simplified and restated under our reform recommendations. We also recommend that the outdated procedural rules currently employed for election petitions be updated and simplified. This will make the electoral challenge process easier to conduct for petitioners, respondents and the court system. An important aspect of our reforms of the petition procedure is that parties will be able to test, and the courts determine, the initial merits of a petition. This will filter out unmeritorious claims, which would otherwise currently go to full trial. This will provide significant benefits for the respondents to an unmeritorious petition, the court system and indeed the petitioners, who may otherwise have to pay the costs of the respondents; a potentially ruinous prospect.

87. We also recommend that returning officers should have standing to challenge elections. This will mean that where returning officers admit an administrative error, they are able to bring an expedited petition in order to rectify the error. This would save the significant costs that would be incurred otherwise, by petitioners and returning officers, as described above.

Standing for elections

88. Finally, our reform recommendations, particularly the simplification and centralisation of electoral law, would benefit those standing for elections. These reforms would also reduce the financial burden on the Electoral Commission, who issue guidance to candidates, in determining what the current law is.

89. We consider that the liberalisation of certain methods of communication, for example allowing the nomination paper to be delivered electronically, would result in reduced transport and staff costs when compared to the current system. We also recommend that subscribers should be legally assenting to the nomination, and not to the paper. This would avoid the disastrous scenario described as a subscriber may subscribe a subsequent paper nominating the same candidate if the first was defective.

Specific Impact Tests

An impact assessment must consider the specific impacts of a policy options upon various groups within society. These specific tests are carried out below and refer the implementation of Option 1.

Statutory equality duty

We do not think that the proposed reform will have an adverse equality impact on any social groups as defined by their race, religion or belief, sexual orientation, gender, age or disability. Some proposals will enhance the ability of disabled people to take a full part in the democratic process.

Competition

We do not anticipate that there will be any particular effect, whether positive or negative on competition.

Small business

We do not anticipate that there will be any particular effect, whether positive or negative, on small business.

Environmental impact and wider environmental issues

We do not anticipate that there will be any particular effect, whether positive or negative on competition.

Health and well-being

We do not anticipate that there will be any particular effect, whether positive or negative on health or well-being.

Human rights

We do not anticipate that there will be any human rights implications.

Justice system

There will be some impacts on the justice system as a result of our proposals in relation to challenges to elections. Quantification of these changes will central to the development of a more detailed impact assessment.