

Our response to the Assembly Commission's consultation 'Creating a Parliament for Wales' | Electoral Commission Search Our response to the Assembly Commission's consultation 'Creating a Parliament for Wales' You are in the Our responses to consultations section Home Our responses to consultations On this page Introduction How many Assembly Members does the Assembly need? How should Assembly Members be elected? Who should be allowed to vote in Assembly elections? Who should be able to be an Assembly Member? Should the law relating to electoral administration be rationalised? Should the Assembly have flexibility to decide on its internal arrangements? Appendix First published: 6 April 2018 Last updated: 19 August 2019 Introduction The Commission works to promote public confidence in the democratic process and ensure its integrity by: enabling the delivery of free and fair elections and referendums, focusing on the needs of electors and addressing the changing environment to ensure every vote remains secure and accessible; regulating political finance – taking proactive steps to increase transparency, ensure compliance and pursue breaches; using its expertise to make and advocate for changes to our democracy, aiming to improve fairness, transparency and efficiency. This response sets out the Electoral Commission's views on the Assembly Commission's consultation following the recommendations from the Expert Panel on Assembly Electoral Reform and on other reforms to the Assembly's electoral and operational arrangements to make a more accessible and effective legislature. In April 2017 and May 2017 we responded to the Expert Panel's questions on Assembly electoral reform, and our response here builds on these. This consultation takes place in the context of a wider electoral reform agenda in Wales, with changes also having recently being proposed to local government elections by Welsh Government. We expect that the Assembly Commission will work closely with Welsh Government to ensure that any reforms to the Assembly's electoral arrangements are not made in isolation but take into account this wider context. Since last year we have been working with Welsh Government while it has been developing its thinking on electoral reform for local government elections in Wales and were pleased to respond to the Consultation - Electoral Reform in Local Government in Wales that took place in 2017 on this subject. We published our response to this consultation on 9 October 2017. We have indicated our willingness to contribute fully to the modernisation and reform agenda in Wales and will continue to work with Welsh Government and other partners on this important work. We would also like to work in the same way with the Assembly Commission as it develops its own thinking on electoral arrangements for the National Assembly for Wales. Our focus is to ensure that any changes made to modify and reform electoral arrangements are adequately resourced to ensure that they can be implemented in the best interests of voters. We continue to recommend that all legislation should be in place at least six months before it is required to be implemented or complied with by campaigners, Returning Officers or Electoral Registration Officers. There are some aspects of this consultation which do not fall within the Electoral Commission's remit and where this is the case, we have not commented in the response. There are also other areas which have not been specifically addressed in this consultation which we would like the Assembly Commission to consider as part of their reform of National Assembly for Wales elections. We have set these out in an appendix to our response. How many Assembly Members does the Assembly need? Question 1: The Expert Panel has concluded that the Assembly needs to have between 80 and 90 Members to carry out its role effectively. Do you agree? Please give reasons for your answer. Question 2: Would changes to the number of Assembly Members result in i) costs, or ii) benefits, for you or your

organisation? If so, what would the costs or benefits be? A decision about the number of members required for the Assembly to effectively carry out its business is a significant constitutional issue, and is a matter for the Government and Assembly, not for the Electoral Commission. How should Assembly Members be elected? Question 3: The Expert Panel has outlined three possible electoral systems which could operate effectively in Wales to elect an Assembly of at least 80 Members. Which of these systems would be most appropriate for electing Assembly Members and why? Decisions about which voting system should be used for different elections are significant constitutional issues, and are matters for Governments and Parliaments, not for the Electoral Commission. Our role is to ensure that voters understand the electoral system used so they can cast their vote in the way they intended and that appropriate administrative planning is undertaken by the relevant Returning Officer (RO). In October we responded to the Welsh Government consultation "Electoral Reform in Local Government" on issues regarding the introduction of different electoral systems in local government elections. As stated in our response to that consultation, the potential impact on electors in Wales of a new electoral system could be significant and there may be a real risk of voter confusion, particularly in relation to understanding of how to cast their vote. If the system is changed, the provision of an effective public awareness campaign in Wales ahead of an Assembly election would be required. The Assembly Commission should also consider how Returning Officers and their staff will be able to effectively plan for and resource any electoral change. The Commission is committed to working with the electoral community in Wales in implementing any new electoral system to ensure a consistent approach to the arrangements and management of elections in Wales through the Wales Electoral Coordination Board. This Board should be the vehicle to effectively plan and manage major electoral change across Wales. Again we reiterate our recommendation that all legislation should be in place at least six months before it is required to be implemented or complied with by campaigners, Returning Officers or Electoral Registration Officers. In addition to this, the Commission would need to consider how it supports the election and the resource we would require to do so from the National Assembly for Wales. Areas of activity would likely include: The provision of advice and guidance to Returning Officers and their staff The provision of advice and training for political parties, candidates and agents The organisation and resourcing of a national public awareness campaign ahead of an election. Question 4: Do you agree with the Expert Panel's recommendation that a change to the electoral system should be used to encourage the election of an Assembly that more accurately reflects the diverse nature of society in Wales? Question 5: If you answered yes to question 4, do you believe that this should be achieved through legislation such as formal gender quotas, or by less formal means such as voluntary measures put in place by political parties? Please give reasons for your answer. If any changes are introduced to encourage an Assembly that more accurately reflects the diverse nature of society in Wales, the Commission would want to help and support ROs in administering such arrangements, and would look to provide guidance to assist them. Question 6: Should people be able to stand for election to the Assembly on the basis of job sharing? Question 7: What, if any, benefits or risks do you see resulting from allowing people to stand for election on the basis of job sharing arrangements? As current legislation does not allow the presenting of two or more candidates for one seat, the NAW would need to introduce primary legislation in order to permit job-share candidates to stand and be elected at any future Assembly elections. If the law was amended to allow candidates to stand for election under a job sharing arrangement,

legislation relating to the form of nomination papers and the ballot paper would need to be amended, and a range of technical issues would also need to be addressed. This would include, for example, what would happen if one elected member in a job share partnership decided to stand down.

Question 8: If the Assembly adopted either the Single Transferable Vote or Flexible List Proportional Representation for the election of Assembly Members, should Assembly Members be elected on the basis of: 20 constituencies based on pairing the existing 40 Assembly constituencies 17 constituencies based on the existing 22 local authority areas

As we have said previously in this response (Q3) and in our response to the Welsh Government consultation "Electoral Reform in Local Government", decisions about which voting system should be used for different elections and the basis for how Assembly Members are elected are significant constitutional issues, and are matters for Governments and Parliaments.

Question 9: Would changes to the Assembly's electoral system result in i) costs or ii) benefits for you or your organisation? If so, what would the costs or benefits be?

Before any election to the National Assembly for Wales, the Commission would run a public awareness campaign to encourage people in Wales to register to vote. If the electoral system to elect Assembly Members changes, then it would be necessary for a separate campaign to be organised that would explain to voters about this and how they can vote in the election. This would require additional funding. Building upon our experience of running a similar campaign in Scotland, informing voters about STV, it is likely that this campaign would include the distribution of an information booklet to each household in Wales about the electoral system, as well as additional advertising. Total costs for a voter registration campaign in Wales are typically around £800,000. This compares to around £1.1million for a voter registration campaign in Scotland. This is based on our experience from 2016. Before the Scottish council elections in 2017, the Commission ran two campaigns – one to encourage people to register to vote and another to educate people about how to vote under the STV system. The total cost for these two campaigns was around £1.2million and this was funded by the Scottish Government. In addition to this, the Commission would need to consider how it supports the administration of a new electoral system. For example: The provision of advice and guidance to Returning Officers and their staff The provision of advice and training political parties, candidates and agents Who should be allowed to vote in Assembly elections?

Question 10: The same people should be allowed to vote in National Assembly for Wales elections and in local government elections in Wales.

Question 11: What implications would there be if there were differences between who could vote in Assembly elections and who could vote in local government elections in Wales

If differences were introduced between the National Assembly for Wales and local government franchises this could cause voter confusion, as well as result in significant administrative challenges and require additional public awareness work. The Commission's view is that any changes to the franchise should be clear six months before EROs are due to begin any scheduled annual canvass activities to enable all those who are newly eligible to vote to take the steps they need to successfully register and participate in the elections. All this would need to be adequately resourced.

Impact of varying franchises

Electoral Register

Currently Electoral Registration Officers (EROs) have a duty to maintain several registers: a register of parliamentary electors a register of local government electors a register of relevant citizens of the European Union entitled to vote at European Parliamentary elections; and a register of peers living outside the UK who have made a declaration to vote at European Parliamentary elections

If there were a difference in who could vote in

National Assembly for Wales elections and who could vote in local government elections, additional registers may need to be compiled. Voter confusion

Introducing differing franchises for Assembly and local government elections could introduce an element of confusion for voters as they could be unclear which elections they would be entitled to participate in. Public awareness activity

Before any election to the National Assembly for Wales, the Commission expects to run a public awareness campaign to encourage people in Wales to register to vote. If any changes were made to the franchise this campaign would need to include specific activity to inform those newly enfranchised of the changes, that they were now eligible to vote and how they could register to enable them to vote. Automatic registration

Welsh Government is currently considering changing the franchise for local government elections and also introducing automatic registration for the local government register. One of the proposed changes to the franchise is to allow nonUK nationals resident in Wales to vote in local government elections. Therefore, as nationality would not be a criteria for registration for local elections, it may not be captured as part of the automatic registration process. If the franchise were to differ for National Assembly for Wales elections and nationality determined eligibility to vote, this data may not be available from the local government register. We recommend that the registers and registration process for the National Assembly for Wales and Local Government elections should remain aligned. We therefore suggest that the Assembly Commission works closely with Welsh Government to ensure that any reforms to the Assembly's electoral arrangements are not made in isolation but take into account their plans.

What should be the minimum voting age for Assembly elections? Question 12: What should be the minimum voting age for Assembly elections 16 or 18? The Commission does not take a view on what the minimum voting age should be for Assembly elections. Our response concentrates instead on the practical implications which would need to be considered if such a change was introduced. The Commission's view is that any changes to the franchise should be clear six months before EROs are due to begin any scheduled annual canvass activities to enable all those who are newly eligible to vote to take the steps they need to successfully register and participate in the elections. The Welsh Government have consulted on and is currently considering whether to reduce the minimum voting age for local government elections in Wales to 16. We suggest that the Assembly Commission works closely with Welsh Government to ensure that any reforms to the Assembly's electoral arrangements are not made in isolation but take into account their plans. Public awareness activity

Before any election to the National Assembly for Wales, the Commission expects to run a public awareness campaign to encourage people in Wales to register to vote. If the minimum voting age was reduced, the Commission would undertake specific public awareness activities to target 16 and 17 year olds informing them that they are eligible to vote and how they can register to vote. This would likely require two campaigns – one around the first canvass prior to any change if changes were to be introduced and one prior to the election itself. Sixteen and seventeen year olds were able to vote for the first time at the Scottish Independence Referendum in 2014, and have been able to vote in local government and Scottish Parliament elections since May 2016. The Commission has worked with Scottish Government and other partners, such as the Society of Local Authority Chief Executives, the Scottish Assessors Association, the Electoral Management Board for Scotland (EMB), Education Scotland, School Leaders Scotland and the Association of Directors of Education Scotland, to undertake public awareness activities aimed at 16 and 17 year olds. We also produced a political literacy briefing which provided guidance and information sources to schools,

colleges, universities and all other organisations who wished to develop political literacy amongst young people. We would want to build upon this approach in Wales if the voting age was lowered. Our experience in Scotland makes clear that it is important that 16 and 17 year olds are engaged and that specific public awareness activity is undertaken. We would seek to work with educational partners and councils in Wales to identify opportunities for supporting ongoing political literacy in schools and encouraging young people to register to vote. Attainers Currently, the minimum voting age stands at 18. This means that 17 year olds and some 16 year olds are entitled to be included on the register as attainers if they will turn 18 during the lifetime of that register. If the minimum voting age is lowered to 16, the register will include 16 and 17 year olds as full electors. Additionally, 15 year olds and some 14 year olds would be entitled to be included on the register as attainers. If this change is implemented you may wish to consider the arrangement in Scotland, where no information on those aged under 16 must be included on any version of the register published or otherwise made available, except in very limited circumstances, for example as part of a criminal investigation or related to the administration of an election.

Question 13: Would reducing the minimum voting age for Assembly elections result in i) costs or ii) benefits for you or your organisation? If so, what would the costs or benefits be? Question 14: Are there any other issues, benefits or risks you would like us to consider in relation to changing the minimum voting age for Assembly elections? Please give reasons for your answer. As set out in our response to the Expert Panel in May 2017 the cost implications of a reduction in the minimum voting age for Assembly elections would be wide ranging. As a guide the following outlines the costs associated with the additional work relating to the enfranchisement of 16/17 year olds in Scotland. From the financial memorandum published with the Scottish Elections (Reduction of voting age) Bill 2015, the total of the costs falling on the Scottish Government was expected to be within the range of £1,115,000 to £1,365,000, across the 2015/16 and 2016/17 financial years. The Commission actually spent £55,000 on user testing and development and design of the forms and £124k carrying out public awareness activity ahead of the referendum.

Should residents in Wales who are not UK nationals be allowed to vote in Assembly elections? Question 15: To what extent do you agree or disagree or disagree with the following statement: All legal residents in Wales should be allowed to vote in Assembly elections, irrespective of their nationality or citizenship. Question 16: Are there any other issues, risks or benefits you would like us to consider in relation to changing the rights of non-UK nationals legally resident in Wales to vote in Assembly elections? Please give reasons for your answer. The Commission does not take a view on what the minimum voting age should be for Assembly elections. Our response concentrates instead on the practical implications which would need to be considered if such a change was introduced.

Nationality requirement The nationality of an individual determines which, if any, elections in the UK a person is entitled to be registered to vote at. Currently if an applicant is unsure of any aspect of their nationality they are advised to contact the Home Office. EROs also have the power to ask an applicant to provide documentary evidence confirming their nationality. If an ERO is in doubt as to whether an applicant or elector is legally resident, they can request checks of a person's immigration status against Home Office records. The Welsh Government has consulted on and is currently considering changing the franchise to allow non-UK nationals resident in Wales to vote at local government elections. If the same changes are not made to the National Assembly franchise this will result in a difference to who could vote in the two sets of

elections. This would require EROs to maintain an additional National Assembly for Wales register. The Electoral Commission produces guidance for EROs to maintain the electoral registers. This guidance would be updated in the event of any changes to the franchise. Whichever decision is made, all information and guidance provided to candidates will need to be updated and clearly communicated to them. Public awareness activity Should the National Assembly for Wales decide to implement these suggestions, we would expect to carry out work to ensure effective public awareness among these groups so that they are aware they are able to register to vote and vote and of how to do so. As mentioned previously this would require two campaigns – one around the first canvass prior to the change being introduced and one prior to the election itself. Should prisoners be allowed to vote in Assembly elections? Question 17: To what extent do you agree or disagree or disagree with the following statement: Prisoners released on temporary licence or on home detention curfew should be allowed to vote in Assembly elections, in line with the UK Government's intention for UK elections. Question 18: Are there any other issues, risks or benefits you would like us to consider in relation to changing the rights of prisoners to vote in Assembly elections? Please give reasons for your answer. We take no view on whether prisoners should be entitled to vote or not, nor whether the franchise should be limited to certain prisoners with a specific sentence length. If the decision is made to allow Welsh prisoners to vote then we would expect to be consulted further on how this would be implemented. Some of the issues that would need to be considered are: the eligibility criteria for prisoners to register, bearing in mind that residence is one of the main criteria for registration. For example if prisoners register to vote at the prison address, then this would result in registered prisoners having a disproportionate impact on the electorate in the ward in which the prison is located. Given that prisoners are only present at the prison address as a result of their sentence, an alternative option would be for prisoners to register in respect of a previous or intended address. how Welsh voters imprisoned in prisons would be affected. the method by which prisoners would cast their vote. Setting up polling stations in prisons would be logistically very difficult, for example ensuring that all prisoners were able to be issued with the correct ballot paper for their registered address. It may be easier to restrict prisoners to a system of absent voting. the right to a secret ballot for all prisoners regardless of how they cast their vote. the entitlement to a proxy vote without the need for their application to be attested (as is already the case for overseas and service voters). By nature of being in prison, the voter has a sufficient reason for not being able to attend their polling station. an awareness programme to highlight the process in order to enable prisoners to register to vote and cast their vote. how prisoners could access information about the policies of candidates, parties and other campaigners. Who should be able to be an Assembly Member? Question 19: Should legislation to reform the Assembly's electoral arrangements include provision to implement the recommendations of the Fourth Assembly's Constitutional and Legislative Affairs Committee in relation to disqualification from being an Assembly Member? Are there any other changes which should be made to the disqualification arrangements? In our report Standing for Election, published in January 2015 we recommended that the law in England, Wales and Northern Ireland be changed to make a clear distinction between offices or employment which would prevent someone standing for election, and those which would prevent someone from holding office if elected. In this report we set out a framework of questions which the National Assembly for Wales may find useful as a reference if it

decides to review its own rules on disqualification (although it would be up to Assembly to determine how these should apply when reviewing the law). These are: Firstly, is there a real conflict of interest between the appointed post and the elected post? If so, the postholder would have to resign before taking up elected office. Secondly, does the postholder need to have resigned and served out notice by nomination or election, for example: Does the postholder's role require political impartiality during the election campaign? Does the postholder have access to privileged information that would advantage them over other candidates? Could the postholder exert undue influence over electors by virtue of their position? Is the postholder involved in the administration of the election? A reduction in restrictions on potential candidates would also enable wider choice for voters. Should the law relating to electoral administration be rationalised? Question 20: Should legislation to reform the Assembly's electoral arrangements include provision to implement the following? Please give reasons for your answers. Question 20 (i): The Electoral Commission's recommendations that costs relating to translation between Welsh and should not count towards expenditure limits for political parties and candidates in relation to Assembly elections as they already are for non-party campaigners. In our report on the 2016 elections to the National Assembly for Wales, we recommended that: Governments with legislative competence over elections within the UK should amend the definitions of political party and candidate spending so that reasonable expenses that can be attributed to an individual's disability are exempt, (as was recently set out in the revised PPERA rules for non-party campaigners). As the PPERA non-party campaigner rules now exempt the costs associated with translating Welsh to and vice versa, we recommend that equivalent legal provisions should be introduced by the relevant Government into the election rules covering spending by political parties and candidates. The Commission continues to support the view that costs relating to translating campaign material between Welsh and should be exempt from the spending limits of political parties and candidates at elections, including those to the National Assembly for Wales and we welcome the proposal as set out in this consultation. As noted previously, this exemption already exists for non-party campaigners, and by exempting it from the spending limits of political parties and candidates it would ensure that all barriers are removed from making campaigning at Assembly elections inclusive of all official languages of Wales. The Assembly Commission may want to consider what these costs are – are they purely translation costs or do they include other areas of campaigning material which are impacted by the inclusion of two languages, for example, additional design or printing costs brought about as a result of the provision of bilingual material. When considering the drafting, the Assembly Commission may wish also to consider drawing on wording from the non-party campaigner rules, which has been used at three elections in Wales: This wording exempts "expenses incurred in respect of, or in consequence of, the translation of anything from into Welsh or from Welsh into ". (Political Parties, Elections and Referendums Act, Schedule 8A). The Assembly Commission may also wish to consider whether costs relating to providing bilingual Welsh and material should be exempted from both the spending limits and reporting requirements, or whether there should continue to be a reporting requirement for such costs. This will partly depend on the policy objectives and overall aims of creating an exemption. Maintaining a requirement to report on any costs associated with translation would provide transparency about the levels of spending on such costs. It would allow monitoring of expenditure levels and continuing visibility of what campaigners spend on the provision of bilingual materials in Welsh and . This kind of approach is used for

some items that are exempted from electoral spending limits, such as for the personal expenses of candidates. In contrast, the Assembly Commission may prefer an approach where the costs cease to be regulated or recorded in any sense, by being exempted from both spending limits and reporting requirements. This kind of approach is used in electoral law for a number of exemptions and exclusions. The Commission set up the Welsh Language Legislation Advisory Group following the 2016 National Assembly for Wales elections. It includes representatives from the Electoral Commission, Welsh Government and Electoral Services Managers and Returning Officers from across Wales. This group could be useful in future as an opportunity to discuss ideas and proposals regarding the Welsh language and its use in elections. The Electoral Commission would welcome the opportunity to work with the Assembly Commission on considering the practical implications of the exemption, so it is in place for the next scheduled Assembly election in 2021.

Question 20 (ii): The Electoral Commission's recommendations that costs relating to an individual's disability should not count towards expenditure limits for political parties and candidates in relation to Assembly elections as they already are for nonparty campaigners. As above, we are pleased that the Assembly are considering implementing our recommendation to amend the definitions of political party and candidate spending, so that reasonable expenses that can be attributed to an individual's disability are exempt, and would welcome the opportunity to have further discussions with the Assembly officials about the practical implications of this recommendation.

Candidates Costs that are reasonably attributable to a candidate's disability are already explicitly exempt from the spending limit of candidates at Scottish Parliament, and Scottish council elections. The legislation for these two elections, have been drafted in different ways, and the Assembly Commission may wish to draw on lessons learned about the practical implications of each approach to drafting when considering the legislative wording they wish to adopt. The Assembly Commission should also consider the implications for regional list candidates if expenses reasonably attributable to a candidate's disability are exempt from the spending limit of constituency candidates and independent regional list candidates. This aim could be achieved by also exempting these expenses from the spending limit of political parties, as regional list candidates are subject to the spending rules for political parties.

Political parties The Wales Act 2017 devolves the responsibility of political party spending and thereby gives the Assembly Commission the opportunity to align the rules for all types of candidates at an Assembly election, as well as exempting disability related expenses from the spending limit of political parties. There are currently no elections in the UK where disability related expenses are exempt from the spending limit of political parties. In drafting the legislation the Assembly Commission may want to draw on lessons from the exemption of disability related expenses for non-party campaigners. This wording covers both the costs associated with the disability of a campaigner, and also the recipients of the campaign material, hence the legislation refers to expenses that are reasonably attributable to the disability of an "individual", as opposed to the legislation for candidates which refers to the disability of a "candidate".

Considerations The Assembly Commission should consider the following when deciding on the final drafting of the legislation: The level of transparency there should be for the voters about money spent by candidates and political parties, versus the level of privacy there should be about expenses relating to a campaigner's disability. The transparency rules help to reduce the risks of evasion of the spending rules, but appropriate levels of personal privacy are also an important consideration. Whether to use wording that has already been

tested (for example the wording used in legislation for candidates at Scottish Parliament 1 and local government elections 2 , or the exemption for non-party campaigners 3), or whether to create new wording for an exemption, How a 'disability' and a 'reasonable' expense' should be defined in legislation. Whether the exemption should explicitly apply to reasonable costs associated with both a campaigner's or a voter's disability – or whether it would be preferable to draft separate exemptions relating to costs incurred as a result of a campaigner's disability, and to costs incurred to make campaign materials or events accessible to voters. For example, it may encourage campaigners to provide accessible campaign leaflets, events, etc. if the spending rules included an explicit exemption and a reporting requirement for the costs of providing accessible campaigns to voters.

Access to Elected Office Funds and other measures to promote greater democratic participation by disabled people Whilst creating legal exemptions in law for costs relating to disability is an important step in encouraging greater democratic participation by disabled people, the Assembly Commission and Welsh Government should consider additional measures to promote greater democratic participation by disabled people. For example, "Access to Elected Office Funds" have been established by the UK and Scottish Governments in 2013 and 2016 respectively, and independent bodies were appointed to allocate funding to a number of prospective candidates. The Funds were intended to cover additional costs related to seeking elected office and arising from a prospective candidate's disability. The Funds were accompanied by other initiatives to provide opportunities for disabled people to get involved in politics. As part of exploring establishing such a Fund in Wales, it would be necessary to consider how financial support towards costs relating to a campaigner's disability would be covered by the election spending and donation rules, and whether any legal exemptions should be developed, as was the case for the UK and Scottish Government Funds.

Question 20 (iii): The Law Commissions' recommendations in relation to the conduct and administration of elections. We strongly support the Law Commissions' recommendations to simplify, rationalise and consolidate electoral law. The Law Commissions' recommendations have already been supported by the overwhelming majority of electoral stakeholders. A clearer, better organised and more up to date electoral law that is fit for purpose for elections today would benefit all those involved in the electoral process. This includes the Welsh Government and the National Assembly for Wales (who make the relevant legislation), Electoral Registration Officers and Returning Officers (and their staff), candidates, campaigners and voters. From 1 April, legislative competence to implement the Law Commissions' recommendations in respect of elections to the National Assembly for Wales and local government elections and referendums in Wales passed to the Assembly. In our 2017 local government election report, we called for the Law Commissions' recommendations to be implemented in Wales when these powers are devolved. Given the benefits of reform, and the risks of continuing to run elections under the existing law, our view is that these recommendations should be implemented as soon as possible. Some of the law Commissions' recommendations that relate to Assembly elections can only be implemented by primary legislation (i.e. by way of an Act of the Assembly). Other recommendations can be implemented by the Welsh Ministers using secondary legislation. Welsh Ministers have powers to make secondary legislation regarding Assembly elections under section 13 of the Government of Wales Act (GOWA) 2006 (as substituted by section 5 of the Wales Act 2017). In our view this combination of primary and secondary legislation making powers is likely to be sufficient for the Assembly and the Welsh Ministers respectively to implement the Law Commissions'

recommendations that are relevant to Assembly elections, without the need for the enabling provision that is suggested on page 43 of the consultation document. We would be happy to assist with work to implement the Law Commissions' recommendations for Assembly elections. Should the Assembly have flexibility to decide on its internal arrangements? Question 21: Should the Government of Wales Act 2006 be amended as set out in this consultation document, in order to give the Assembly greater flexibility to determine its own working practices and arrangements through its internal procedures rather than in legislation? The Electoral Commission does not hold a view on this matter. What impact might these proposals have? Question 22: Should the Government of Wales Act 2006 be amended as set out in this consultation document, in order to give the Assembly greater flexibility to determine its own working practices and arrangements through its internal procedures rather than in legislation? Question 23: Would any of the proposals in this paper result in i) costs or ii) benefits for you or your organisation which you have not already outlined in your response to this consultation? If so, what would the costs or benefits be? Please see previous responses.

Appendix Electoral Registration In our Report on the UK Parliamentary general election held on 8 June 2017 we set out our views on reforming the electoral registration process. We said that we want to work with the UK, Scottish and Welsh Governments and EROs across the UK to explore options to enable people to make an application to register to vote when using other online public services including, for example, as part of their driving licence or passport application or tax return submission. to improve opportunities for EROs' access to data from other public service providers – particularly where that data is held by national rather than local providers – to enable them to target their activity at new electors or those who have recently moved. to explore how a more integrated approach to electoral registration could feature greater use of direct registration by EROs, or more automatic enrolment processes (for example, direct enrolment of young people alongside issuing their national insurance number). Improving and modernising the regulatory framework for elections As part of our role to keep electoral law under review, the Commission has made a number of recommendations about improving and modernising the regulatory framework for elections. Following the devolution of powers in the Wales Act 2017, we advise that the Assembly Commission should consider the following changes when legislating for future National Assembly for Wales elections.

Transparency of online campaigning Recent years have seen rapid increases in the use of digital and online campaign techniques at elections, including increasingly sophisticated uses of data, more personalised and targeted messaging, and the capacity for campaigners to reach more voters at a lower cost than ever before. Political parties and other campaigners can determine how best to use the campaign techniques available to them and the rules on campaigning should not restrict lawful permitted campaigning. However, our priority is to make sure that the rules are followed and appropriate transparency of campaign spending is maintained in order to ensure voters' confidence in the political finance rules. While spending on online campaigning is subject to regulation in the same way as other, more traditional campaign methods, it does present some specific regulatory challenges. We want to make sure that electoral law appropriately reflects changes in campaigning techniques, and we have made several recommendations for improvements following previous elections. We recommend the following improvements to the current rules for campaigning at National Assembly for Wales elections.

Imprints on digital material Online campaign material produced by political parties and non-party campaigners should – like its printed equivalent – be required to include an imprint stating who

has published it. This would enable voters to identify who is spending money on trying to influence them at elections. Such a provision was introduced at the Scottish Independence Referendum in 2014, and we would welcome the opportunity to discuss with the Assembly Commission how a similar provision could be introduced for Assembly elections. Reporting of digital and other campaigning Parties, candidates and NPCs at Assembly elections have to report their spending using prescribed categories. Reporting against these categories is not detailed enough to provide a representative picture of what is actually spent on digital campaigning. Voters should be entitled to expect the same transparency about spending by campaigners at elections, regardless of whether that spending relates to online and social media advertising or other more familiar types of political advertising such as leaflets and billboards. The rules should therefore be improved by ensuring that campaigners report more detailed breakdowns of spending, including on different types of advertising such as online and social media promotion. Codes of practice The Electoral Commission is enabled under PPERA to prepare a statutory Code on qualifying expenses for political parties, and under the Representation of the People Act 1983 to make a statutory Code on candidate election expenses. The Code has to be approved by Parliament. We are interested in the possibility of making Codes for future National Assembly for Wales elections. We understand that the power for the Electoral Commission to prepare Codes for the Assembly elections still needs to be clarified as part of the commencement of the Wales Act 2017 and associated transfer of powers. Creating a code for parties and for candidates would allow us to address areas of electoral law where the law currently allows for more than one way of accounting for election spending. The results of the codes will improve transparency and enforceability of the law, and would lead to improved public confidence in the rules on election spending. Spending on staff time for political parties The election spending rules provide insufficient transparency and limits on the money that political parties spend on staffing their election campaigns. The money that is spent on activities such as producing campaign material or market research is regulated. But many of the staffing costs of parties are exempt from the rules, whilst the staffing costs of candidates and NPCs are included. We have recommended that this inconsistency should be addressed in the interests of transparency and ensuring that relevant election spending is controlled by spending limits. Increasing the Commission's regulatory and sanctioning powers Since 2010 we have had investigatory powers and sanctions relating to most of the obligations set out in PPERA for political parties and NPCs. The civil sanctions powers introduced a toolkit of measures that could be used for addressing noncompliance, with criminal prosecution remaining as the sole remedy for the most serious breaches. Our sanctions include compliance notices, fixed monetary penalties of £200 and variable monetary penalties up to a maximum value of £20,000. There is a case for reviewing and significantly increasing the present cap, so that we can impose sanctions proportionate to the amounts of money that major campaigners raise and spend at elections. While the Commission is responsible for enforcing the rules for political parties and non-party campaigners, the police and prosecuting authorities are currently responsible for enforcing the rules for candidates and investigating breaches. We have recommended that our investigative and sanctioning powers should be extended to offences relating to candidate spending and donations at Assembly elections. This change would help ensure compliance with the rules and strengthen voters' trust in the regulatory system. This would also ensure that parties and candidates are subject to the same sanctions if they do not comply with the legislation. Registration of party names and

descriptions for use on ballot papers We continue to recommend that where a candidate represents a political party on a ballot paper, it should be clear to voters which party the candidate represents. The legal provisions for registration of party descriptions present risks of confusion for voters and restrict the participation of political parties. We would welcome the opportunity to work with the Assembly Commission to reform the provisions for party names and descriptions. Transparency and accessibility of candidate spending To improve transparency and accessibility of candidate spending returns, we have previously recommended that Returning Officers should be required to publish spending returns online as well as through the existing methods of public inspection. We highlight the Law Commissions' review of Electoral Law which proposes a method for implementing this change through legislation (in recommendation 12-5). The accessibility of elections There should be no barriers to voting for disabled people and everyone should have a right to vote on their own and in secret. Following the June 2017 UK Parliament election, the Electoral Commission asked disabled voters about their experiences of voting at the election and asked them what they would like to see changed to make it easier for them to register to vote and vote at future elections. Our report on these findings, *Elections for Everyone 4*, contained the following recommendations for governments to improve the accessibility of elections based on the experiences of disabled voters: Changes to electoral forms: Many people with learning disabilities said they found electoral forms – including registration forms, poll cards and postal voting packs – to be confusing and full of jargon. Other disabled people said that they found it hard to read forms which were not in large print or where there is black text on a white background. The Commission would support a review of statutory electoral forms to ensure that they are as accessible as possible. Widening the range of people able to assist a disabled voter when they vote in a polling station: Some disabled people told us that the rules relating to who could assist them were too restrictive and could make it hard for them to find someone to assist them. The Commission believes that the Welsh Government should review the legislation to provide disabled people with more choice over who assists them. Greater flexibility and choice over methods of voting: Respondents to our survey suggested that there should be a wider range of voting methods in order to ensure that disabled people are able to choose a way of voting which meets their needs. This would include voting in mobile polling stations in hospitals, nursing homes, care homes or those set up in remote areas. In addition to the recommendations aimed at governments, disabled people also highlighted the following as areas for improvement: Information provided by political parties and candidates: Concerns were raised about the lack of accessible campaigning materials and manifestos, particularly in Easy Read format. Respondents called for political parties to make their accessible manifestos available at the same time as they publish their other manifestos and in good time for people to be able to read them before they come to vote. The role of electoral administrators: Disabled voters told us that there needs to be better awareness and understanding amongst election staff and polling station staff of the support available for people to vote independently. This includes the availability of accessible versions of electoral forms and voting aids, such as a tactile voting template. The role of carers and support workers: Disabled voters told us that there needs to be improved information available in care services to educate support workers on the voting rights of disabled people and how they can be supported to vote. The Commission will continue to work with the Welsh Government, disability organisations and the wider electoral community to improve the accessibility of electoral registration and elections. In consultation with

accessibility groups we will also review the guidance on accessibility that we provide for Returning Officers, Electoral Registration Officers and their staff. 1. The Scottish Parliament (Elections etc.) Order 2015 ■ [Back to content at footnote 1](#) 2. The Scottish Local Government Elections Amendment (No.2) Order ■ [Back to content at footnote 2](#) 3. Schedule 8A of Political Parties Elections and Referendums Act 2000 ■ [Back to content at footnote 3](#) 4. The Electoral Commission, Elections for Everyone, November 2017 ■ [Back to content at footnote 4](#) Related content Consultation: Equality, Diversity and Inclusion Strategy Statutory consultation on guidance for Returning Officers: Assistance with voting for disabled people Draft guidance for Returning Officers: Assistance with voting for disabled voters (statutory consultation) Response to inquiry into voting rights for prisoners Read our response to inquiry into voting rights for prisoners from January 2019