



# Summary Report

Consultation on the draft Representation of the People (Amendment) Bill and Representation of the People Regulations

Cabinet Office

## Representation of the People (Amendment) Bill 2014 Consultation Response Report

### **Contents**

Sect	ion	Page Number
1.0	Introduction	2
2.0	Background	2
3.0	Overview of responses	3
4.0	Comments on the draft Bill	4
5.0	Comment on the Regulations	12
6.0	Comments outside the remit of the Bill	18
7.0	Next Steps	18

#### 1.0 Introduction

- 1.1 This report provides a response by the Cabinet Office to the consultation on the Representation of the People (Amendment) Bill 2014 and Representation of the People Regulations 2014.
- 1.2 The intention of the amendment Bill is to ensure key reforms and modernisation of the existing legislation is undertaken in the time available before the 2016 General Election. Although further reform will need to be considered in the future the changes are an important step towards improving transparency and governance of the Island's election process.
- 1.3 The main aims of the Isle of Man's legislation package, on which views were sought, are to:
  - ensure the electoral process is easily understood by returning officers and those who assist in the running of elections, prospective candidates and the electorate; and
  - to update the legislation to introduce the key recommendations from the Independent Panel's Review (set up as result of the events in connection with the by-election held for the House of Keys constituency for Douglas East in May 2010.) These provisions relate to the registration of political parties and the declaration of candidates' expenses.

#### 2.0 Background

- 2.1 The consultation was launched on Wednesday 30 April and ran for eight weeks closing on Friday 27 June.
- 2.2 In line with the Isle of Man Government code of practice on consultation the following list of persons and organisations were consulted:
  - Tynwald Members
  - Clerk of Tvnwald
  - Attorney General
  - Local Authorities
  - Chief Officers of Government Departments, Boards and Offices
  - Chamber of Commerce
  - Isle of Man Trade Union Council
  - Isle of Man Law Society
  - Liberal Vannin Party
  - Manx Labour Party
  - Mec Vannin
  - Returning Officers

#### 3.0 Overview of Responses

- 3.1 The consultation received a total of 20 responses. The majority were positive agreeing with the suggested amendments. Comments or suggestions received and the Cabinet Office's response is detailed in section 4.0.
- 3.2 In addition there were some comments which fell outside the remit of the Bill which are detailed in section 6.0.
- 3.3 Responses were received from the below individuals or organisations:
  - Douglas Council
  - Santon Commissioners
  - Patrick Commissioners
  - Ramsey Commissioners
  - Mr Taylor Returning Officer
  - Mr Stanley Returning Officer
  - Councillor Ashton
  - Liberal Vannin
  - Department of Infrastructure
  - Mr Norton
  - Mr Bhandari
  - Mr Gough
  - Positive Action Group
  - Mr Henderson MHK
  - Mr Downie OBE MLC
  - General Registry
  - Mr Jelski Returning Officer
  - Mr Tomlinson
  - Mr Gimbert
  - Department of Home Affairs

#### 4.0 Summary of Comments on the draft Bill

4.1 There were a number of areas where there was broad support for the proposals in the draft Bill which have not been detailed in this report. The below provides an overview of queries or suggested changes and the Cabinet Office's response.

Clause	Comments	Response
	Note: Several replies might have been received on one issue therefore the following comments refer to a summary of the key points.	
Clause 5: "1 Qualifications for membership	Why are only offences involving money or property cited – why not others, such offences involving violence, sexual offences or offences involving Class A drugs?	Noted, however the legislation has to comply with Human Rights and therefore the offences have to be relevant.
of the Keys"	'Majority' has been substituted for 'full age'. Interpretation of 'majority' is required.	Noted, however 'majority' is legally defined so a definition is not required.
	It may be seen as inconsistent for people to be granted a vote at age 16, but not to be able to stand for election at that age.	Noted, however there is a difference between having the ability to vote and being able to stand and be elected whilst a young person is still in education.
	The term 'ordinarily resident' requires interpretation.	Noted, this will be discussed with the Attorney General's Chambers to see if an interpretation is required.
	The aggregated residential period of 5 years or more may need to be limited to within 5-10 years of the date of the election.	Noted, however this was the only comment received on this area and the provision is in line with residency criteria in existing legislation.
Clause 6: Part 1A Inserted	Registration implies approval, and the Government should not be able to withhold approval of any political party, no matter how abhorrent its policies may be.	Noted, however the process is one of compliance any refusal would only be made if the Attorney General is of the opinion that the party, or their application, has not complied with the legislation. The party also has a right of appeal to the High

"10A Requirement for Political Parties to be registered"	The regulation of political parties is excessive when there is currently only one widely recognized party on the Island; if such regulation is provided then a definition should be included as to what constitutes a political party.	Bailiff.  Noted, however there are three political parties in existence on the Island and regulation was a key outcome of the Independent Review Panel set up as a result of the Douglas East by-election. Regulation is light touch but requires amendments to the legislation to enforce.
Clause 6: Part 1A Inserted	It is suggested that as not all parties will necessarily have a "Leader", the requirement in Clause 10B(3) of the Bill be simply for three designated office holders to be nominated.	Agreed, a number of comments were received in this area. Although a lead Officer will still need to be identified the clause will be amended.
"10B Conditions of registration"	In some countries political parties do not have a leader as such but are governed by a general committee, equally in the UK until recently the Green Party actually had its leadership split between two individuals. These would not technically meet the criteria of the proposed regulation. I would support the statement simply saying "The party must have a minimum of 3 named officeholders with specified roles within its organisational structure".	
	The requirement for candidates to make a declaration of donations should apply also to political parties.	Noted, however this is covered by the requirement for political parties to have their accounts audited and filed under Clause 10I.
	They should be similarly prohibited from retaining anonymous donations.	Agreed, this was an omission in the draft Bill and will be added to the Bill ahead of its introduction to the Branches.
	Consideration might be given to whether there should be a minimum amount to which the provision applies.	Noted, as outlined above Government does not want to limit the activity of political parties but ensure they are regulated and their activities are open and transparent to voters. The cap on

		election expenses will create equality in expenditure during a campaign.
"10E Consideration of application for registration of political party"	Allowance should be made for the Chief Registrar to refer a defective application to the applicant for correction, rather than outright refusal.	Noted, however the legislation is clear on what the party must supply. No change is required as there is nothing to stop a political party, if an application is refused, from addressing any areas of non-compliance and submitting a further application.
Clause 11: Sections 20A to 20F inserted	Interpretation of 'services' required.  The days before a poll are particularly pressurised and stressful for candidates, so to require a written declaration of donations	Noted, however this is clarified in Schedule 2 of the Bill.  Noted, however it is clear what a candidate's obligations are under the legislation and they can make the declaration earlier
"20A Donations received"	during that period is too onerous.  The minimum amount should be more realistic; £50 is low and would increase bureaucracy.  The requirement to disclosure donors could deter new candidates and it is queried if this requirement is fully necessary.	but a deadline is required.  Noted, however given the maximum amounts this seems fair and reasonable.  Noted, however this was a key recommendation of the Independent Review Panel set up as a result of the Douglas East by-election.
"20C Election expenses"	Not convinced of the practical enforceability of such a cap, and if it could be enforced, the danger of a significant number of legal actions being taken. Loopholes will be found and that the increasing amount of bureaucracy will be off-putting to candidates.	Whilst the system will be self-regulating, it is a vast improvement as candidates will have to declare and the Chief Registrar will have the ability to verify expenses.  There will be an addition to the Bill to allow the Chief Registrar to nominate a person to verify or investigate complaints about election expenses.  In addition, the Bill contains an offence if a candidate's expenses exceed the maximum amount.

	The proposals at the moment seem to unfairly favour sitting members and candidates standing as 'independents'.	Noted, however unclear about the substance of this comment as the legislation would apply to both equally.
	Cap too low and unrealistic and not fitting a general election Support restrictions on election spending	Noted, there were a number of comments received on the cap on election expenses, some supporting the maximum amount, and others stating it was too low. However, there is already
	The cap should be variable by Order so that it can be inflated in future without the need for primary legislation.	provision in Clause 20C (6) for the maximum amount of election expenses allowed to be varied by Regulations so an amendment to the Bill is not required.
20C (4) Maximum amount	Election expenses/donations being declared could lead to additional costs for the candidates, the Chief Registrar should make provision for appropriate support so that all candidates' expenses/donations are fairly reflected.	Noted, however this was a key recommendation of the Independent Review Panel set up as a result of the Douglas East by-election. The system is simple and should have minimal impact on candidates.
	Donations can be in voluntary support and yet could have an impact on election spending.	Noted, however as detailed in Schedule 2 Part 1 (4) there is an exception for services of an individual provided without charge. Therefore, if any person volunteers their support without charge, this would not have to be included in donations or expenses.
	Strict timeframes for submitting the documents should be greater.	Noted, however it is clear what a candidate's obligations are under the legislation and they can make the declaration earlier.
	The formula may be unnecessarily complicated, given the plans to have twelve two-seat constituencies – perhaps all candidates should be given the same upper limit?	Noted, however there may still be some variance in the number of constituents therefore a formula is required to ensure equity.
	Why is the submission of audited and filed accounts for political parties required but not from individual candidates?	Noted, however there needs to be variance as one is an individual return and one is for a registered organisation.

	Section 18(1A) (a) Page 15 – there is a repetition of the words "or all"	Noted, and will be amended.
Clause 17: Section 27 amended: "Proxy voting"	As absent voting is to be available to all, proxy voting should be dispensed with altogether.  With absent voting being easier to do I feel proxy voting should be removed all together. It is not allowed in local elections anyway so why is it so necessary for national elections. That would resolve most of the issues experienced at the election that has generated this bill.	Noted, however Proxy Voting needs to be retained. The Cabinet Office undertook detailed research into whether those currently eligible to apply for a proxy vote could instead exercise their right to vote through the advance voting system. Although the majority of people would be able to vote in person or by exercising an advance vote, there are some who would be disenfranchised if proxy voting was not available.  These include:-  • Members of the armed forces serving overseas • People who are on holiday in the UK but who are travelling around and there is nowhere to send a ballot paper to.  • People who are on extended holidays abroad or who, although being on the electoral register, spend lengthy periods living abroad.
Clause 18: Section 30 and 31 substituted "30 Public Notices"	Interpretation of 'an appropriate website' and 'appropriate manner' is needed.  The use of any media to broaden the publication of election material is to be encouraged, however would also contend that publishing manifestos on the Government web-site does not allow everyone to access them, there remains a large element of the voting population who do have limited or no access to the internet. The new arrangements are welcomed as an addition to but should not replace the requirement to provide public notice	Noted, but 'appropriate' is legally defined and so a definition is not required.  Noted, however this is still covered in the provision.

	in the press or on public notice boards where many of the population expect to see such publications.	
Clause 18:"31 – Distribution of Election Manifestos"	Not convinced that candidates' manifestos should be published by the Chief Secretary as that implies a level of responsibility for the content. Candidates must be responsible for their own publications.	Noted, however this is to increase accessibility for voters and is the most resource effective. A disclaimer will be included on the website to provide clarity that Government holds no responsibility for the content.
	After 'Isle of Man Post Office' insert 'at letter rate and normal postage schedule'. [This could be stated in Regulation 23]	Noted, however this is operational detail and is therefore contained in the Regulations.
Clause 19: Section 31A to 31C inserted "31(A) Election Observers"	The Council supports election observers being permitted to attend election proceedings but the Returning Officer should decide whether or not to allow observers after consultation with the candidates.	Noted, it is for the relevant officer to decide on numbers and ensure conduct. However this does not need to be in consultation with the candidates.
Obscivers	No objection to having observers as long as they are fully accredited and there are procedures in place to regulate their actions in polling stations etc.	Noted, this process is set out in the Bill and the Code of Practice which must be prepared.
Clause 25: Section 44A inserted "44A Offences	As the draft Bill introduces new provisions for the registration of political parties and funding new offences are required to allow effective enforcement.	Noted, these are contained in the Bill.
in connection with political parties"	Further consideration needs to be given to the maximum level of fine, which could be considered too high.	Noted, however the fines are a maximum and it will be up to the Court to determine what fine is given.
Clause 27:	"anonymous" is in the wrong place in the alphabetical order	Noted, typo will be amended.

Section 77 amended:		
Interpretation Clause 28: Section 80 amended: Regulations	Amendment seems unnecessary	Noted, however this is to give some flexibility to allow timescales in the Bill to be amended by Regulations rather than having to make an amendment to the Bill.
Schedule 2	Considers that greater clarity and prescription is required as to what constitutes expenditure, for example should expenditure by a political party be recognized within the limitations placed upon individual candidates who may be promoted by such party, and how costs are to be recorded.	Noted, however this clarity is contained in Schedule 2 already. This defines the meaning of Donation and Election Expenses within the Bill.
	It is not clear if the free postage of the manifesto is included in this limit?	Noted, the free postage of one manifesto (under the Bill) is not included within a candidates election expenses. However this matter with be discussed with the Attorney General's Chambers to see if a specific exclusion is required.
	If a printer decided to support a candidate and provide printing at cost price does that class as a donation against the amount and if so how is the true value assessed?	Noted, however this is clarified in Schedule 2. The printers time may be given voluntarily but any goods (i.e. ink/paper) would need to be declared and count as part of a candidates expenses.
	If a sitting candidate put out a constituency newsletter in the 12 months prior is that classed as electioneering and marked against the amount?	Yes, as stated in the Bill election expenses are for the 12 months prior to the election.
	Could a political party advertise generically across the island and put out a party manifesto does that class against the individual candidates amounts?	No, Schedule 2 provides clarity about the endorsement of a candidate or candidates by political parties.
General	Concerned though if a 'sitting government' attempted	Noted, however the Government has to legislate for all areas

Comments	to introduce legislative proposals, in respect of election procedures, that could be perceived as an attempt to protect the 'status quo' and unduly interfere with candidates choice of campaign and/or to influence the form of government the electorate might chose to support.	and the provisions contained in the Bill came from an Independent Review Panel.
	Therefore, it is very important that any new regulations do not favour one type of candidate over another or unduly influence a candidate's decision, one way or the other, whether to stand as an individual or within a party structure.	Noted, however the legislation applies equally to candidates and sitting Members there are no differences.
	Concerned as to whether the Returning Officers are liable to be prosecuted for a strict liability offence. (For example failure to meet deadlines could expose the Returning Officer to criminal prosecution even in circumstances where it was entirely innocent and/or excusable for example where the Returning Officer has been hospitalised and unable to comply). The Returning Officer would accordingly be subject to disciplinary sanctions by their professional body arising out of such a conviction.	Noted, the concerns outlined had been discussed with the Attorney General's Chambers who had confirmed that sufficient safeguards were in place to address the concerns raised. However, this matter will be considered in more detail following additional information provided with the submission.
Human Rights	At present a record is kept as the number of the ballot paper and the counterfoil is the same and the number of the person voting is written on the back of the counterfoil. Thereby from the counterfoil and the number at the back, the person who voted, can be traced easily. However the word secret is specifically meant to compel that the vote is untraceable and is secret.	Noted, however the Cabinet Office have confirmed that the legislation is Human Rights compliant. This process is in place to combat against electoral fraud. The ballot documents would only be accessed if legal proceedings were to take place.

#### **5.0** Summary of comments on the draft Regulations

- There were a number of areas where there was broad support for the proposals in the draft Regulations which have not been detailed in this report. The below provides an overview of queries or suggested changes and the Cabinet Office's response.
- The Regulations will be revised following the consultation but will not be finalised until the Bill has been re-drafted and completed its passage through the Branches.

Regulation	Comments	Response
Regulation 3:	Should be "Regulations".	Noted, typo will be amended.
Interpretation		
Regulation 5:	Should the heading to column 2 be simply "When"?	Noted, no change required.
Timetable		
	In the table the event of the Registration Officer issuing copies of list of proxies should be numbered (7) and a corresponding entry in column (2) inserted (presumably 3 days before the election). Later events should be renumbered accordingly.	Noted, table will be amended to provide clarity.
Regulation 8: Nomination of candidates	Under Regulation 8 Nomination of Candidates, Clause 3 provides that each candidate must produce to the Returning Officer his or her passport as proof of compliance with Section 1(1) (b) of the Act. There appears to be an omission in Rule 10 where the nomination paper is not delivered personally by candidates to the Returning Officer. There should be included in line 3, after the word "witness" and before the word "is" the words "together with a photostat copy of the passport of the candidate duly certified by an Advocate, Justice of the Peace,	Noted, however even if the nomination paper is not delivered personally by the candidate, the candidate would still have to produce their passport to the returning officer.

Regulation	Comments	Response
	Commissioner for Oaths or a Notary Public and such certification being no earlier in date than one month prior before its presentation".	
Regulation 12: Place and time for early delivery of nomination papers	This is in place for local elections and I see no reason why it should not be in place for general elections.  The current two hour system is archaic and disadvantages candidates who may not be fully politically conversant, as should an error be found with their paper it is near enough impossible for them to get it corrected in time.  It is undesirable to have nomination papers delivered over too long a period of time. The Council suggest a one-day nomination period with the returning Officer accepting nominations at any time up until 5.00 p.m.	Noted, however this revision has been made following review of the process and a week was determined to be an acceptable amount of time.
Regulation 21: Use of schools and public rooms	"subsection (2)" should say "paragraph (2)".	Noted, typo will be amended.
Regulation 23: Distribution of election manifestos	Needs to be clarified that this expense, borne by the Government, does not form part of the overall expenditure of the candidate which is capped.  The proposal introduces a constraint upon the size of manifesto distributed for which costs may be recovered and might be seen as disadvantaging new candidates who	Noted, this will be discussed to decide if any addition to the Regulations is required or if it is more appropriate to detail in guidance.  Noted, however this is to ensure consistency and transparency for all candidates. Further information can be provided in an additional manifesto distributed at the candidates cost or on a

Regulation	Comments	Response
	might wish to provide more information about their background and policies than might be desired by a candidate seeking re-election.	website.
	Consideration should be given to publishing all candidate manifestos in a combined booklet form for each electoral district. Candidates could be invited to submit their manifesto statements, subject to any common restriction on volume, and these could be combined in a single booklet perhaps delivered with Poll Cards. The order of manifesto presentation would be determined by lots to ensure that no advantage is given, or perceived to be given, to any candidate as a result of the order of presentation. Candidates could choose not to provide a manifesto; the booklet would however list the name of all candidates.  The distribution of a single document either together with or separately to Poll Cards would cost considerably less than funding the distribution of individual manifestos and would ensure that voters received a copy of all manifestos for comparison. Candidates could choose to distribute separately further literature at their own cost but within any expenditure limits.	Noted, however responsibility for the publication of candidates' manifestos is not a role for Government and the timing of such publication, if any, is a matter for candidates.
	Suggest alternative: 'is limited to a letter rate and normal postage schedule'	Noted, however this wording has been drafted with input from the Post Office and no change is required.
Regulation 24: Death of candidate	(6)(a) – are a couple of words missing? Should it read "it is not deemed to be necessary"?	Noted, this provision will be amended.

Regulation	Comments	Response
Regulation 29: Issue of official poll cards	(1)(a) - the word "whose" should be "who".	Noted, typo and will be amended.
Regulation 32: Declaration of secrecy	(3) - in the 3rd line there is a superfluous word "of" before the words "a justice of peace".	Noted, typo and will be amended.
Regulation 42: Adjournment of poll in case of riot	"this Act" should say "these Regulations".	Noted, typo will be amended.
Regulation 43: Procedure on close of poll	numbering has gone wrong (see sub-paragraph (e) and "ji)").	Noted, formatting will be amended.
Regulation 51/53	(1) (b) Return of the writ procedures less clear than currently.	Noted, however this wording has been drafted to take into account the need for arrangements to be made for successful candidates to be sworn in as soon as possible and for this to happen the candidate needs to produce a certificate that they have been elected. The requirement for the returning officer to give to the successful candidate a photocopy or handwritten copy of the certificate at the time they are elected addresses this issue.
Regulation 53: Delivery of documents to Clerk of the Rolls	Expands the category of documents to be returned to the Clerk of the Rolls – could create a "dumping" ground. Obligation should be clear about what is submitted to the Clerk of Rolls.  Category (m) Cross references difficult for the reader.	Noted, the intention of this revision is to ensure the returning officers and the staff at General Registry are clear as to what is expected to be returned to the Clerk of the Rolls and can use the legislation as a "tick list". Further consideration will be given to this provision to ensure the legislation is clear.
Regulation 56:	Candidates whether successful or not should be able to	Noted, currently, except for ballot papers and counterfoils,

Regulation	Comments	Response
Regulation Purchase of copies of marked registers, etc.	have a free copy.  Successful candidates should represent all constituents equally, regardless of whether they have voted or not.  Marked registers are an important part of the voting process and also provides openness and transparency to the voting process.  The supply of copies of the marked registers used at an election should not be permitted, even on the restricted basis proposed. Whether or not an individual has exercised their right to vote is not of use to candidates.  Marked register of electors should not be made publicly available in any form.  Registering a vote is confidential and ought to remain so after a poll.	election documents are already open to public inspection at such time and subject to such conditions as the Clerk of the Rolls may decide. The vote of any elector must be kept secret but the fact that any person voted or not is a matter of public record (with some restrictions) once the election is over. The public may make notes when inspecting election documents but copies of the documents are not available.  The majority of respondents did not think that the suggested addition was appropriate and therefore it will be removed from the Regulations.
	Serious concerns and should be revisited. Unclear what is meant by "a person entitled under regulations". Insufficient qualifications and provisos – e.g. right to refuse; only having access to constituency a candidate stood in.	
Schedule 1	In the heading "Regulation 4 and 28(5)" should say "Regulations 4 and 28(5)"	Noted, typo will be amended.
Schedule 2	Paragraph 16(4) – "sub-paragraph 10(3)" should say "paragraph 10(3)".	Noted, typo will be amended.

Regulation	Comments	Response
	Paragraph 21(5)(c) – should "sub-paragraph (b)" be "head (b)"? Paragraph 21(7)(c) – at the end "or" should say "and" and "; and" on the following line should be removed.	Noted, not required.  Noted, typo will be amended.
General Comments	The "computation of time" provisions have been excluded from the new Regulations. The presumption is that the returning officers will be relying on section 36 of the Interpretation Act 1976 but if you could clarify that point it would be appreciated.	Yes, the Regulations rely on the Interpretation Act. Guidance will be provided on this to returning officers.
	Concerned at the possibility of intimidation of voters at the polling stations and note no mention of this in the proposals. Unless, therefore, if powers exist elsewhere to deal with this protection should be included.	Noted, the Guidance for Candidates document includes a section on Guidance for Tellers at Polling Stations.
	At Paragraph 6.4.2, page 14 in the Information on the Representation of the People Regulations 2014 it states 'Candidates may supply an electronic copy of their manifesto to be displayed on the election website' It implies that one 'official' website is to be established. We doubt that to be so.	The Bill specifies that the manifestos will be displayed on an "appropriate website". Currently there is an election section of the gov.im website and this would be where the manifestos would be published.

#### 6.0 Comments outside the remit of the Bill

6.1 The following comments were also received as part of the consultation but do not relate to the draft provisions of the Bill or Regulations.

Comments	Response
<ul> <li>Electronic voting</li> <li>Compulsory         voting</li> <li>Elected         Legislative         Council</li> <li>MHK's salaries</li> <li>Increasing voter         turnout</li> <li>MHK's giving up         seats if there is         an appropriate</li> </ul>	These issues are outside the remit of the draft Bill which seeks to amend the existing legislation to the extent that the electoral process is easily understood by returning officers, and those who assist in the running of elections, prospective candidates and the electorate.  Issues such as these will be considered as part of the root and branch review of Manx election legislation that Council of Ministers directed should take place in 2016/17.
vote of no confidence by constituents	
More should be done to encourage young people and women to stand for election.	The role of Government in the democratic process is being considered and will form part of the root and branch review.
Ward Boundaries and Polling Stations	These comments related to the Representation of the People (Amendment) Bill 2013 and the resulting changes that will be required following the changes to the constituencies.
	These are currently being considered by the Cabinet Office and the comments received have been taken into account.

#### 7.0 Next Steps

- 7.1 The Cabinet Office will now seek to make the amendments to the draft Bill as outlined in this document. The Bill will then go to Council of Ministers for approval for introduction to the Branches of Tynwald.
- 7.2 As outlined in section 5.0 the Regulations will be revised but will not be finalised until the Bill has passed through the Branches of Tynwald and received Royal Assent.



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