

UK electoral law is fragmented, convoluted and causing errors in the running of elections. It needs to be consolidated

Toby James discusses the convoluted nature of electoral law in the UK. He argues that a reduction in the complexity will lead to a significant improvement in the conduct of elections in the UK.



A quick quiz question: how many pieces of electoral law do you think that electoral administrators have to consider when running elections? Have a guess. Answer: [The Electoral Commission](#) has estimated that there over 35 primary pieces of legislation and over 100 pieces of secondary legislation that they must have regard to when running elections.

There has recently been a rise in concerns about the quality of elections in the UK and electoral administrators have commonly been blamed for making administrative errors or not planning properly for elections. For example, the UK Electoral Commission [claimed](#) that problems experienced at the 2010 General Election were mainly a result 'of poor planning, the use of unsuitable buildings, inadequate staffing arrangements and the failure of contingency plans'. One academic accused administrators of 'incompetence'.

I am currently undertaking a project funded by the Nuffield Foundation and the McDougall Trust on election administration in the UK. This involved interviewing officials involved in the implementation of elections. Over 70 officials were interviewed from England, Scotland and Wales in 2011.

I asked election officials on the challenges that they faced in the implementation of elections. My sample included Returning Officers, Electoral Registration Officers, Democratic Services Managers and Election Managers. The initial research findings were reported in a [recent conference paper](#) for the American Political Science Association Annual Meeting. One key theme was the complexity of electoral law. Election officials reported that the fragmentation of electoral law often made them uncertain of procedures, especially where there were different arrangements for different elections.

To quote some electoral administrators directly:

'The legislation, certainly in Scotland and I think across the rest of the country too, is very fragmented. So a lot of the legislation goes back to, for instance, 1983 and everything is as amended, and then there's the introduction of all the different orders, statutory instruments and acts that have come in in the interim. So almost 30 years later. So it's a long period to have a lot of different pieces of legislation, but without them actually being pulled together into one, so consolidated legislation would be hugely helpful. It's fine once you get into the way of it, and if you know you are starting at a more recent point, then you know where you are working back to. But if you were to go back to an older piece of legislation, you don't know what follows from that unless you've got some familiarity with the actual legislation itself. But if you were to come in as a newcomer now, I think that would be a huge challenge, to get your head round the actual legislative aspect of it. So yes, consolidated legislation would be good.'

One of the things that we all find quite difficult the convoluted legislation. Different pieces of legislation have different timetables and different days count in and count not in. Some of the legislation is UK some of it is Scottish Government. And it's all amendment Act, amendment Act, amendment Act... It's just not understandable to the vast majority of people and most of the administrators as well.

The consequences of this are administrative errors and a drain on the time and resources of electoral officers as they try to grapple with the relevant legislation. One returning officer recalled that:

'on one occasion we had a by-election and a local election on the same day so we had two candidates being elected and an error was made in the way the count was done. What effectively happened was they counted all the ones that were both one party and they counted separately the mixes where there was more than one. Then through an administrative error they added them all up and they double counted some of the mixed ones. The result was that a BNP candidate got elected rather than a Labour candidate.'

The way in which elections are administered can be a key determinant, research shows, of public confidence in electoral processes. The drain on resources and time may become particularly problematic as electoral administrators come to terms with the changes involved in the switch from household to individual registration. It is predicted that [individual electoral registration](#) will lead to a considerable increase in the work burden of electoral officials.

The consequences of rising complexity are heightened, electoral administrators report, by an exodus of staff from the profession. Many long-standing members of the profession are retiring early because of public sector cuts or pressures of the job. New staff are not being brought through the system, they suggest.

The causes of legal fragmentation and complexity are partly devolution. This has created many overlapping frameworks of electoral law, more frequent elections and more combined elections and the lack of consolidation. But it is also that electoral law needs to be consolidated periodically and this has not been done since the 1980s. Thankfully, [the Law Commission](#) has recently launched a scoping exercise as a preliminary stage to proposing reforms to the law governing electoral administration. A [consultation paper](#) was issued in June and this consultation closes on 17 September. The project proposes a consolidation of electoral law so that it is simplified and easier for politicians, administrators and candidates to understand. This is urgently needed and it could lead to a significant improvement in the conduct of elections in the UK.

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