

# The Electoral Commission response to the recommendations of the eleventh report of the Committee on Standards in Public Life

This paper sets out the Electoral Commission's views on the recommendations made in the eleventh report of the Committee on Standards in Public Life, which was submitted to the Prime Minister on 18 January 2007.

We recognise that many of the recommendations made in the report are for the Government to consider and respond to, while others are directed at the Commission or the Speaker's Committee. But all have an impact on the future role of the Commission itself. We are therefore submitting this response to the Prime Minister to provide a clear statement of the Commission's reaction to the report.

The Commission will also be publishing shortly its own five year plan, which is currently being considered by the Speaker's Committee in Parliament. In addition to taking account – where appropriate – of the recommendations of the Committee on Standards in Public Life, our new five year plan has benefited enormously from hearing and reading the views of the many individuals and organisations who gave evidence to the Committee during the course of its review. We summarise in this paper both where there are differences and the points of agreement between the Committee's recommendations and our own vision for the future.

Within the wide remit given to the Commission under the Political Parties Elections and Referendums Act 2000 (PPERA), the Commission has demonstrated its value in providing authoritative leadership and expertise on a number of key issues:

- electoral registration (where the Commission has been at the forefront of the campaign to change the law to a system of individual registration since 2003)
- action to tackle electoral fraud (where the Commission has been proactive in bringing together the police, Crown Prosecution Service, political parties and Returning Officers to bring new energy to the promotion of integrity in our election processes)
- the regulation of political parties (where the Commission has established unprecedented transparency and identified the need for changes to the structure of the regulatory framework)
- promotion of public participation in our democracy (where the Commission has invested in successful, cutting-edge research and campaigns)
- completing 136 electoral reviews and local government reviews affecting 50 local authorities in England.

But looking ahead, change is required. We argued in our own evidence to the Committee that our mandate should now be more focused. We believe that our key priorities for the next five years must be to build our effectiveness as the regulator of party and election finance and to implement our new role in setting and monitoring performance standards for electoral registration and administration. We are therefore pleased that the report from the Committee endorses this view and makes it a central recommendation.

More generally, the Commission welcomes the extent to which the Committee's findings reflect our own proposals and intentions, as outlined in our evidence to the Committee. We have an ambitious agenda for the next five years, which requires a significant shift in our focus and our attitude. These changes are already underway. We look forward to working with Government and Parliament, through the Speaker's Committee, in implementing this change agenda.

**R1. The mandate of the Electoral Commission as set out in PPERA should be amended and refocused so that it has two principal statutory duties: as a regulator of political party funding and campaign expenditure in the UK; and as regulator of electoral administration in Great Britain with the aim of ensuring integrity and public confidence in the system of political party funding and campaign expenditure and in the administration and conduct of elections.**

This is entirely in line with our corporate plan for the next five years, which states that our central purpose over that period is to set and guarantee standards in key areas of democratic life in the UK. For the next five years we will look to demonstrate and enhance our effectiveness as the regulator of party and election finance – overseeing the regulatory framework for the reporting of donations and loans to political parties, the ban on foreign donations and the controls on campaign expenditure at elections – while developing our newer function as a standard setter in the electoral administration context. To enable us to focus on these twin priorities, we will be cutting back work in other areas.

**R2. PPERA should be amended to make it clear that the Commission has a duty to investigate proactively allegations or suspicions of failures to comply with the regulatory framework. We recommend that the term 'monitor' be replaced by 'regulate'.**

Even without a change in the legislation, the Commission's regulatory approach will in future be underpinned by comprehensive risk assessment, allowing us to focus resources in areas where they will have most impact and ensuring the Commission does not intervene unnecessarily or excessively in the financial affairs of parties, particularly those parties or issues identified as lower risk.

We have already moved toward being more proactive in identifying breaches and enforcing the requirements. In oral evidence to CSPL we stated that we would want to see the legislation change in relation to the way the role of the Commission is described, and in particular that the description of our role as 'monitoring' may not be the most appropriate term to describe our role as a regulator.

The Commission does not have judicial or direct enforcement powers, nor are we a prosecuting body. However, we want the public to have confidence that the Commission holds parties and other regulated organisations to account.

**R3. The Electoral Commission should establish a compliance unit, separate from the administration of the regulations, which can take prompt investigative action, using the power provided in PPERA following information received either externally or internally of possible breaches of the regulatory framework. If necessary the results of any investigation should be referred to the Crown Prosecution Service. Unless there is evidence of breaches of the law, other than PPERA, the Committee would question the need for the Commission to refer any such investigations to the police.**

**R4. The Electoral Commission should ensure that the compliance unit has a robust and effective system for assessing the potential seriousness and potential risk to public confidence of any allegation.**

A strong investigative capability is critical to our success as a regulator. Our new risk-based approach to regulation will be underpinned by an organisational structure designed to hold regulated bodies effectively to account. The Commission already has a Compliance Team, and our newly appointed Director of Party and Election Finance will be reviewing how we can develop the existing structure, including the place of its current compliance team, with a view to recommending an appropriate design for the future. This will be well within the one-year timeframe recommended by the Committee.

We are also revising our enforcement policy to ensure that we can take a flexible and proportionate enforcement approach and that we make use of a broad range of sanctions. Our enhanced enforcement policy seeks to draw on a collaborative approach with the relevant prosecuting authorities and our intention is, as CSPL recommends, to refer cases to the Crown Prosecution Service rather than the police. Recent work has also examined how to develop the strength of our investigative capacity further.

**R5. The Electoral Commission should establish the practice of issuing timely advisory opinions, based upon sound and competent legal advice, on areas of concern or uncertainty about the practical interpretation of the relevant legislation**

We are committed to ensuring that requests for advice are handled in a consistent manner and within prescribed timeframes. We are currently developing a protocol for this purpose, which will be published. The protocol will also address the proactive publication of advice in areas where no specific request for advice has been received, but where the Commission believes the law is open to misunderstanding or misapplication.

The new protocol will build on our existing track record of providing support to parties and others to help them understand and comply with the PPERA rules on party finance and with other rules on election campaigning. In September 2005, 92% of those who responded to a survey said the combined PPERA and Representation of the People Act 1983 guidance from the Commission had improved their knowledge and confidence in the area.

In developing this approach further, we will draw on best practice from other regulatory organisations in the UK and overseas, but the exact format and status of these advisory opinions will reflect the specific UK context. We will also look to learn lessons from our experience of offering advice to Returning Officers and Electoral Registration Officers on legal matters relating to electoral administration.

**R6. The Commission should decentralise responsibility for monitoring and regulating campaign and constituency expenditure in Scotland, Wales and Northern Ireland to its regional offices**

Responsibilities for Party and Election Finance matters were decentralised to posts within the three 'devolved' offices with effect from 1 January 2007, operating within a framework established centrally under guidance from the Director of Party and Election Finance.

**R7. The Government should consider introducing a system of financial penalties, with an appropriate appeal mechanism, that could be applied by the Commission for non-compliance with regulatory requirements. Responsibility for prosecution for criminal offences should continue to lie with the Crown Prosecution Service.**

The Commission is already taking steps to make more effective and consistent use of the penalties (including financial penalties) which are available to us.

But we would welcome consideration by the Government of additional financial penalties for non-compliance. Our 2003 review of the PPERA regulatory framework made a similar recommendation, and the Government indicated that it would support the proposal. Unfortunately, legislative provisions were not included in the Electoral Administration Act 2006. We continue to take the view that a more proportionate and flexible penalties regime will bring benefits, including the opportunity to apply a range of sanctioning options in response to the needs of the particular case and underlying offence

**R8. If the review being conducted by Sir Hayden Phillips results in greater frequency of reporting on donations, or other additional reporting requirements, the Government should consider a lighter reporting regime for very small political parties that have no representation at European, national, devolved or local level.**

The Commission made a similar recommendation to Government in our 2003 review of the PPERA regulatory framework. In response, the Government rejected the Commission's recommendation for a two-tier system stating that they did not consider it would be appropriate for parties contesting the same elections to be subject to different regulations. They did however accept that the framework could be burdensome for smaller parties. We still support the concept of a two-tier system, and welcome CSPL's endorsement of this approach.

**R9. The posts of Regional Electoral Officers should be established in statute, accountable through the Chief Executive to the Electoral Commissioners, with the responsibility for monitoring and reporting on performance standards of local authorities in the region.**

**R10. Regional Electoral Officers should be appointed for Scotland and Wales with the same status, responsibilities as for each region of England.**

The Commission supports fully the case for a regional presence which assists in the effective regulation of electoral administration and successful operation of the performance standards regime. However, we are not convinced that the structure put forward by CSPL and that the statutory regional electoral officer appointments is the right approach. In particular, the specific recommendation for organisational design put forward by CSPL appear to us likely to create a top-heavy management structure which would do little to enhance operational effectiveness at a local level.

The Commission has operated Devolved Offices in Scotland, Wales and Northern Ireland for over five years. The success of these offices in establishing good working relationships with stakeholders and using local knowledge to good effect is recognised by CSPL. We believe that the best way to develop our work in the English regions is to build on this model. In January 2007 we established English regional offices with a primary responsibility for managing the Commission's new responsibilities under the Electoral Administration Act 2006 and to deliver at local level support to local authorities in meeting their statutory obligations, as well as playing a supporting role in other areas of Commission work. Dedicated posts have been created to work within each of the nine English regions, and staff are currently based in four office locations across England. The English regional offices are represented on the Commission's Management Team by a new post, the Head of English Regions, who sits alongside the Heads of our offices in Scotland, Wales and Northern Ireland.

It is through these English regional offices and our existing offices in Scotland and Wales that we intend to deliver the important functions set out by CSPL:

- monitoring and reporting on the performance standards of local authorities
- working closely with local authorities to ensure that they are fully aware of what is required of them
- encouraging joint working to ensure highest standards of electoral registration, the conduct of elections and identifying and eliminating electoral fraud

However, when we established our presence in the English regions we committed to reviewing and evaluating the arrangements within the first 12 months of operation. The aim of this evaluation will be to establish whether the organisational structure in place is right and whether the geographical coverage is sufficient. In addition, we will consider whether the extent to which powers are devolved to the English regional offices is sufficient to promote effective performance by local authorities. We expect to conclude our evaluation in time to feed into the Commission's corporate plan and budget submission to the Speaker's Committee in late 2007.

We also note that a number of individuals who gave evidence to the Committee highlighted the separate need for an enhanced leadership role at regional level among Returning Officers. We see this as distinct from the Commission's own regulatory functions, but equally important. We will therefore continue to discuss with other interested parties the potential value of putting Regional Returning Officers appointed for the purpose of European Parliamentary elections on a more permanent footing to create a key point of contact for the Commission at the regional level across the UK.

**R11. The Commission should use its powers enacted in the Electoral Administration Act to establish, monitor and report on performance standards for electoral administrators in the areas of electoral registration, the conduct of elections and minimising electoral fraud.**

**R12. The Electoral Commission should make public reports on their assessment of levels of performance of electoral administrators. In circumstances where it has identified and publicised unacceptably low standards, and where there has been failure by the relevant electoral administrators to agree to implement the necessary measures for improvement, the Electoral Commission should formally request the Secretary of State for Constitutional Affairs (Secretary of State for Scotland if electoral administrator is Scottish) to exercise his existing powers of direction contained in the Representation of the People Act 1983 over the said officers. In the event that any such request is declined then the Secretary of State should be required to report to Parliament on the reasons for his refusal to exercise the power.**

**R13. The Commission should report to Parliament annually on standards of electoral administration, including any action it is proposing to tackle areas of underperformance in relation to electoral registration, the conduct of elections and minimising the risk of electoral fraud.**

Our plans for the next five years make establishing a performance standards regime a priority, following implementation of the Electoral Administration Act 2006. Establishing and operating a performance standards regime to drive improvement in the accuracy and completeness of the electoral register and in the quality of election and referendum management is a key activity for us.

We will focus on electoral registration in the first 18 months of the performance standards programme through the setting, testing and rolling out of tight, specific indicators on registration work. Following intensive preparatory work, a consultation on initial electoral registration indicators recently concluded and we are now moving to pilot the planned indicators. At the same time, we will develop a model for costing electoral registration services across the UK. We will work towards a full system of collection and assessment of performance information for electoral *registration* by early 2008. We are committed to having a full system of electoral *event* indicators in place for the 2009 elections. This timescale allows for piloting of the indicators at the scheduled elections in May 2008.

The Commission agrees with the need to make public reports on the assessment of levels of performance of electoral administrators and we are already required by law to publish reports of progress against the standards, following consultation with the relevant electoral registration officer or returning officer. If it appeared appropriate, we would also consider asking the Secretary of State to exercise his existing powers of direction. However, we would question how effective this sanction would be in practice. This power established in 1983 is limited to matters of registration and was not intended as a way of picking up the deficiencies of an individual Electoral Registration Officer. There is also no guarantee that a direction from the Secretary of State would be acted upon, as there is no penalty for non-compliance.

Indeed, we believe that a wider range of powers to effect performance improvement may prove necessary. We recognise that a comprehensive programme of support and assistance will be integral to the roll-out of the regime and our next step will be to institute a programme of support and assistance for any electoral officer who fails to respond to a Commission direction for information against the standards, or who does not perform well against the standards. However, the legislative framework is such that compliance, while required by law, cannot be compelled by the Commission. The Commission also has no specific powers to mandate an improvement programme or similar remedy. We are therefore currently consulting on the most effective approach to ensuring compliance. We would welcome the opportunity to engage in discussions with Government about what other levers could be established in order for the Commission to improve or guarantee performance standards.

**R14. The Government should consider whether Northern Ireland should adopt these arrangements once they have been successfully established in the rest of UK.**

The Commission accepts the principle of consistency in performance standards should be applicable throughout the UK, and has already pressed for performance standards to apply to elections in Northern Ireland. This has been accepted by the Secretary for State for Northern Ireland and the Chief Electoral Officer for Northern Ireland.

**R15. The current funding arrangements for electoral administration and for elections should be retained. The Department of Constitutional Affairs should publish annually indicative levels of local authority expenditure allocated to deliver electoral services.**

We strongly disagree with the conclusion that current funding arrangements should be retained. We are disappointed that CSPL did not take the opportunity to examine these issues in greater detail.

During the course of the review electoral services managers and Returning Officers highlighted serious concerns that money intended for electoral services is in fact being diverted to other priorities. These problems are long-standing and were examined by the Commission in our 2003 report *Funding Electoral Services*, where

we recommended that the system should be changed to provide for greater centralisation and ring-fencing of funding decisions.

While the Electoral Administration Act 2006 provides the Commission with the power to set performance standards, it has not addressed recommendations made about funding more broadly. We would welcome further discussions with Government to identify the most efficient and effective funding arrangements.

In addition, while the Commission supports publication of annual indicative figures illustrating the level of resources required to run an election effectively, we do not agree that the Department for Constitutional Affairs is best placed to do this, as the Commission now has the authority to collect data on funding. It is therefore unlikely that the Department for Constitutional Affairs would be in a better position than the Commission to publish indicative levels of expenditure for local electoral services.

In one respect, however, we do concur with the recommendation. Provision is included in PPERA for management of the claims process for Returning Officers' charges for UK Parliamentary and European Parliamentary elections in England, Wales and Scotland to transfer to the Commission. Insofar as the recommendation for 'no change' addresses this issue, we agree that this transfer should not proceed as such a function would be difficult to reconcile with the more regulatory role envisaged for the Commission in relation to electoral administration.

**R16. The Electoral Commission should consider the level of funding provided for electoral administration as part of its monitoring and reporting on the performance of individual local authorities**

As the Commission has the statutory power to collect financial data, it would seem most logical for us also to advise on whether funding is adequate for the job we define in our performance standards.

**R17. The Electoral Commission should no longer have any involvement in electoral boundary matters and the provision in PPERA to allow the transfer of boundary-setting functions to the Commission should be repealed.**

**R18. The Boundary Committee for England should become an independent body in line with local government boundary commissions in the rest of the UK.**

**R19. The Parliamentary Boundary Commission and local boundary commission in each of the four home countries should share joint secretariats.**

**R20. There is a strong case for the current legislation in relation to the conduct of parliamentary boundary work to be reviewed and where necessary amended before the commencement of the sixth general review due around 2012.**

**The review should, in particular consider:**

- **addressing the progressive inequality of electoral quotas, and increase in the size of the House of Commons that appear inbuilt to the operation of the current rules;**
- **the time taken to conduct reviews, particularly where, in addition to changes to the procedures, the possibility of carrying out inquiries on a regional basis should be considered;**
- **alignment between the timing of local and parliamentary boundary reviews to ensure stable local government boundaries as the basis for each parliamentary review; and**
- **the question of a role for keeping the operation of the rules under review and ensuring consistency of approach by the four Boundary Commissions**

**The review should not be undertaken by the Electoral Commission. An independent review commission for this purpose could be established and overseen by the Speaker's Committee with the outcome presented to Parliament through the Speaker.**

The case for the Commission assuming all boundary review work UK-wide has never been wholly consistent with the devolution settlement of the late 1990s, and the Electoral Commission's relationship with the Boundary Committee for England is inconsistent with the position in rest of the UK. We therefore agree that the Boundary Committee should be independent of the Commission. We also agree that the interests of boundary work in England, both local government and Parliamentary, would best be served by some form of closer working relationship between the Boundary Committee for England and the Parliamentary Boundary Commission at operational level. There are several potential models under which this could be achieved and any conclusions about the way forward should include consultation with the Commission and other relevant stakeholders. The Commission also notes that closer working relationships could be achieved prior to any legislation securing the independence of the Boundary Committee.

The Commission notes that the CSPL may have misunderstood or overlooked one of the Commission's current functions in relation to electoral boundaries. Since April 2002, the Commission has had sole responsibility for making Orders implementing changes to local authority electoral arrangements in England, whether flowing from reviews conducted by the Boundary Committee or by local authorities (in relation to parish councils). The Secretary of State has no locus in such matters.

Political impartiality and independence from the Executive in the conduct of electoral reviews is widely recognised as a keystone of our democracy. In England, successive administrations have recognised the need to be seen to be impartial in their consideration of changes to local government electoral arrangements.

Since 2002, when the functions of the Local Government Commission were transferred to the Electoral Commission, the Boundary Committee for England has submitted its recommendations to the Electoral Commission, a process which has reaffirmed the independence of the review and decision-making process. Whatever

approach might be taken to the integration of boundary functions in England, there are clear benefits in the final decision and Order-making processes being undertaken by a body independent of Government, whether this be the Electoral Commission or some other such organisation; neither the Commission nor its Boundary Committee could support any initiative to see these powers revert to the Secretary of State, which might be an implication of the recommendation that ‘The Electoral Commission should no longer have **any** involvement in electoral boundary matters’ (our emphasis). Indeed, the Commission sees merit in a similar approach to local authority electoral boundary-making being taken in other parts of the UK.

The Electoral Commission welcomes the Committee’s recommendation that there should be a review of the current legislation in relation to Parliamentary boundary work and agrees with the main elements such a review might address. In particular we are pleased that the terms of reference for the review include consideration of the need for strategic oversight in ensuring consistency of approach UK-wide. The Commission has no strong views on whether it or some other body should undertake any review. However, as boundaries, at both the local government and Parliamentary level, are integral to the wider electoral process, given its UK-wide responsibilities in this respect, the Commission considers that it will be in a position to make a significant contribution to any review, whatever body is responsible for its conduct.

**R21. The Commission should retain a clearly defined statutory duty for the provision of public information on the mechanics of the electoral process including electoral registration procedures, how to vote and explaining any changes to the electoral system.**

**R22. The Commission should no longer have the wider statutory duty to encourage participation in the democratic process.**

It is essential that voters have a right to information they can trust about how to register to vote and take part in elections. To date, the Commission’s public awareness work has included encouraging people to vote and to engage more generally in politics. However, we are not the only organisation with responsibility in this area, nor have we ever claimed to be the most important. Above all the onus is on political parties and others campaigning for election to engage and motivate the public.

As such over the next five years we will be refocusing our public awareness efforts on providing information about registration, elections and democratic institutions, rather than seeking to drive voter turnout or broader civic engagement. We expect to take a UK, national and regional view while working closely with local authorities to share our expertise and provide resources to support them in developing effective local campaigns.

The aim of our campaigns will be to increase:

- the number of eligible people registered to vote (and so targeting those groups that are less likely to be registered but are eligible)

- awareness and understanding of the registration process, elections and democratic institutions

We are not convinced that this change in focus requires a change in the current legislation. It is certainly possible to make the changes proposed within the existing statutory framework, and this is reflected in our plans for the next five years.

**R23. The Electoral Commission should no longer have a role in undertaking policy development in relation to electoral legislation. This function should be the responsibility of the appropriate Secretary of State.**

**R24. The Commission should continue to provide advice on suitability of existing and new electoral legislation in respect of its ability to perform its two principal statutory duties.**

This approach is in line with our own plans for the future. However, it is important to take these recommendations together, as the Commission will continue to have a keen interest in providing advice on electoral legislation in respect of our two principal duties. For example, we plan to monitor registration law and practice to identify changes that could drive improvement in the accuracy and completeness of electoral registers.

We will also continue to advise Government on new electoral legislation (as we did during the passage of the Electoral Administration Act 2006 and do regularly in relation to statutory instruments). We will also monitor and evaluate the impact of existing legislation in those areas in which we have developed operational expertise and will continue to respond to directions to provide policy advice from the Government. For example, the Secretary of State for Constitutional Affairs (under section 6 of PPERA) recently directed the Commission to carry out a review of the introduction of personal identifiers for absent voting in England and Wales. However, we will no longer initiate policy reviews in areas where we have no operational role.

**R25. The Electoral Commission's reports on each election should cover incidents of electoral fraud and the actions taken to minimise fraud, also the effectiveness of the new provisions on postal voting on demand. This should apply in reports for the May 2007 local elections.**

The Commission has addressed the issue of electoral malpractice in all of its election reports since 2003 and in all electoral pilot reports since 2002. The Commission has established good relationships and networks with police and prosecutors. In our report on the May 2006 elections we explained that we felt that we would have sufficient information from 2007 onwards to offer an opinion in our election reports as to whether malpractice and the opportunity for malpractice had decreased or increased in Great Britain. Plans are accordingly in hand to do this after the May 2007 elections in England, Scotland and Wales.

This will complement the Commission's existing work in this area, which includes:

- the publication of a range of materials to promote the integrity of elections and prevent and detect malpractice in collaboration with a variety of partners
- working together with the associations of chief police officers to issue guidance to police forces in England and Wales and in Scotland, including pocket guides for beat officers; the Commission is also running briefing seminars with these associations to provide further advice and assistance
- agreeing a revised Code of conduct on the handling of postal vote applications and postal ballot papers
- providing guidance to Returning Officers which includes steps to be taken to promote electoral integrity at a local level and is supplemented if required to address emerging issues
- chairing regular electoral integrity roundtable meetings with stakeholders, including the police, political parties and electoral administrators

In reporting on, and making any conclusions about, levels of electoral malpractice, the Commission is likely to have regard only to allegations substantiated by evidence and, where appropriate, by a written statement. Our guidance to police, Returning Officers, candidates and agents reiterates that as allegations can seriously undermine electors' confidence in the electoral system, we would expect any reported allegations to be able to be so substantiated.

**R26. The Electoral Commission's statutory remit to report on the conduct of elections should be extended to cover local elections in Northern Ireland, Scotland and Wales.**

In practice, the Commission has been invited to report on all such elections since its establishment at the request of the relevant authorities, and these reports have been well-received. We would hope to continue this practice even if no legislation were introduced, but would certainly welcome clarification that this was an integral part of the Commission's responsibilities.

The recommendation omits reference to English local elections, but this is covered in the text that precedes the recommendation within the body of the report. There is no statutory obligation at present to report on any English local elections (including elections to the Greater London Assembly) except those involved in election pilot schemes. Moreover, the Commission has never been asked by Government to prepare such a report. We believe that local elections provide a useful additional opportunity to identify good practice and performance issues, and would welcome statutory powers or a duty to report on such elections.

We would also urge the devolved administrations to use this opportunity to consider whether it might be appropriate to extend our remit more generally to cover local election activities in Scotland and Wales, for example in the area of campaign activities.

**R27. The current ban on employing individuals at the Commission who have been politically active over the previous ten years should be reduced to one year. For senior management and regional electoral officers the length of the ban should be reduced to five years.**

We recognise the benefits of being able to employ staff with personal experience of working in the type of organisations we are regulating. As we indicated in our evidence, we see no objection to a relaxation of the 10 year rule in relation to staff – and potentially even the removal of any restriction whatsoever except for senior managers.

See our response to recommendations 9 and 10 for our position on regional electoral officers.

**R28. The total number of Commissioners (including the chair) should be increased to ten.**

**R29. The current restrictions on who may become an electoral commissioner should be revised for four Commissioner appointments to enable the appointment of individuals with recent experience of politics and the political process. New commissioners would be appointed as individual members of a unitary board, not as representatives or delegates of a particular political party.**

**On taking up appointment such commissioners:**

- **must not be an employee or officer of any political party and/or an elected representative (at European, national, devolved or local level) or an appointed Peer who takes the political party whip; and**
- **would cease being a commissioner on becoming any of these during their term in office**

**R30. The background and political experience of the four new commissioners must respectively represent the three main political parties (Labour, Conservative and Liberal Democrat) and one of the minor parties in the House of Commons. Although individuals may be encouraged to apply by political parties each post should be publicly advertised and candidates must satisfy all other criteria that apply for commissioner posts and be subject to a selection process based upon merit following the Commission for Public Appointments' Code of Practice.**

The existing rules were designed to protect the Electoral Commission's political independence and were the subject of considerable debate in Parliament at the time the Commission was established. At that time, a majority in both Houses took the view that the Commission's independence was best secured through a 10 year prohibition. If Parliament now takes the view that such a lengthy period of political inactivity is not required before seeking appointment as a Commissioner – for at least some members of the Commission – the key issue will be to define what the appropriate minimum period between an active political role and appointment as a

Commissioner should be. We note that the Committee's report refers to 'recent experience' but does not consider in detail whether there should be any interval between an active political role and appointment as a Commissioner. We believe that this issue needs further debate.

We agree with the Committee that if changes are made to the current disqualification criteria sufficient safeguards should be in place to preserve and promote our ability to operate effectively and in a non-partisan manner.

As the report makes clear, the Commission has successfully established its independence in the public mind since its establishment: 'The Electoral Commission does appear to have established itself in the eyes of the public as a truly independent body. Experience from overseas and international best practice demonstrates that the independence of such bodies is highly prized and any erosion of this would be a significant loss for The Electoral Commission.'

To maintain our independence we believe that any Commissioners appointed with recent experience of politics and the political process would need to:

- be in a minority among the wider group of Commissioners
- not be eligible for appointment as Chairman of the Commission
- contribute to Commission proceedings and decision-making on the same basis as any other member, and not be part of a separate 'cadre' of Commissioners, i.e. they should be members of a 'unitary board' as referred to in recommendation 29
- not be nominated as formal representatives of their political party, in order to demonstrate a commitment to the Commission ahead of any party allegiance
- be appointed through a transparent appointment process that is consistent with the OCPA guidelines for other public appointments
- demonstrate the competencies expected of any other Commissioner, in addition to knowledge and understanding of the political world
- ensure adequate representation of minority parties especially those active in Northern Ireland, Scotland and Wales
- not be eligible to Chair the Boundary Committee for England, so long as the Commission continues to be responsible for this function.

**R31. The practice of appointing a commissioner from Scotland and a Commissioner from Wales who have the lead interest in Scottish and Welsh matters should continue and the Speaker's Committee should proceed with appointing a Commissioner from Northern Ireland who will play a similar role to those Commissioners.**

We see significant benefit in having Commissioners from across the UK and are pleased that the present recruitment process has adopted this approach. However, all Commissioners must play an equal role in Commission decisions rather than taking only a particular representational role.

**R32. The Chair of the Electoral Commission should be a part-time non-executive role. Commissioners should also be non-executive and part-time.**

We agree with the Committee that when a new Chair is appointed following the expiry of the present Chair's term of appointment (December 2008), the appointment should be on a part-time basis; and that the Chair and Commissioners should continue to play a non-executive role in the governance of the Commission.

**R33. PPERA should be amended to make clear that responsibility for the oversight of the recruitment and selection process for electoral commissioners lies with the Speaker's Committee, including setting the role specification and convening an independent selection panel. Either PPERA or the Speaker's Committee procedures should stipulate that the Commissioner for Public Appointments' Code of Practice will be followed in such appointments.**

The leading role of the Speaker has in practice been accepted by all concerned in determining the procedures for the present recruitment process. It will be therefore be for Parliament to decide on the urgency with which these arrangements should be formally reinforced in statute.

The Commission decided in 2006 that appointments to Deputy Commissioner roles, which do not come within the remit of the Commissioner for Public Appointments, will nevertheless be made using a process which takes into account the Commissioner's Code of Practice as best practice. The Commission will also invite an independent assessor to join the Selection Panel for future Deputy Commissioner recruitment exercises. We understand that the Speaker has recently agreed that the same approach should be adopted for Commissioner recruitment.

**R34. Evidence-gathering meetings of the Speaker's Committee should be held in public and the transcripts published. Committee deliberations may continue to be held in closed sessions as may certain evidence sessions where the subject matter makes this necessary.**

**R35. The Speaker should assume a role similar to that he performs for the Boundary Commissions, standing back from the day-to-day running of the Committee. A senior backbench MP, possibly from the opposition, as deputy chair could assume the day-to-day responsibility for the Committee including chairing meetings.**

**R36. There should be an appropriate increase in the allocation of resources given to the secretariat support for Speaker's Committee.**

**R37. The House of Commons Scrutiny Unit should be given a formal role to scrutinise the Commission's annual financial plans and advise the Speaker's Committee.**

**R38. There should be an annual debate in Parliament on the work of the Electoral Commission. It might be helpful if this followed the Commission's annual report on standards of electoral administration in the UK.**

**R39. The Select Committee on Constitutional Affairs should build upon its emerging practice of taking regular opportunities to scrutinise the Electoral Commission's policies, actions and decisions.**

We would welcome steps to increase the transparency of the Committee's proceedings, and accordingly support the proposal for public meetings. We would, however, point out that 'evidence gathering sessions' have not – to our knowledge – been part of the Committee's *modus operandi* to date.

We would also welcome an increase in resources given to the secretariat to the Speaker's Committee. To date, some delays (for example in the process of Commissioner recruitment and the organisation of meetings) have occurred due to a lack of resources in this area. We welcome formal scrutiny of our financial plans by the House of Commons Scrutiny Unit and note that the Scrutiny Unit has in fact performed this function in relation to the Commission's plans for 2007–08 and beyond. We have also welcomed previous National Audit Office 'value for money' reviews of our policies, practices and procedures and found the recommendations valuable.

We were pleased to see the first debate on the work of the Commission in the Commons last year and would welcome this being repeated on a regular basis.

In our evidence to CSPL we suggested that there may be other mechanisms for ensuring effective accountability of the Commission to the UK Parliament that could complement the role and work of the Speaker's Committee. We would be pleased if the Constitutional Affairs Committee took on this more regular scrutiny.

**R40. The Commission should undertake detailed research into the scale of electoral fraud in the UK.**

Since 2001, the Commission has undertaken research into perceptions of electoral fraud across the UK. Commission statutory reports on elections and electoral pilot schemes assess the perception of election fraud and general public confidence in the political and electoral system. We have also assessed the **extent** of fraud at particular elections and monitored trends in general public confidence in the political and electoral system. Indeed, it is in large part because of these research findings that the Commission has been pressing for the introduction of individual registration since 2003.

The Commission has also had a particular research focus on registration and electoral fraud. Following the introduction of individual registration in Northern Ireland in 2002 the Commission has monitored the impact of the changes on the accuracy and quality of the register and made regular assessments of public attitudes towards electoral fraud in Northern Ireland. After each election presiding officers who worked at the election, the police service for Northern Ireland and the

political parties have all been asked for their views on electoral fraud. In addition, public opinion research has been undertaken with members of the public to gauge their perceptions of electoral fraud.

In the current year, the Commission is undertaking research into the accuracy and completeness of the electoral registers across the UK. A pilot study has commenced in Greater London prior to a GB-wide study planned for later this year: a separate study is being undertaken in Northern Ireland. The pilot will enable us to determine the feasibility of conducting a larger-scale study, as well as the most appropriate methodology to employ. Such research involves conducting interviews with members of the public to determine their eligibility to be on the electoral register before checking this information against the electoral registers. The research will identify those people who are eligible and registered; eligible and not registered; ineligible and registered; ineligible and not registered.

The Commission is also planning research into developing a local election turnout model. It is hoped that this model will facilitate future work on combating electoral fraud by estimating expected turnout in local government wards. It is anticipated that the model will identify individual wards which diverge considerably from their predicted turnout under the model, which the Commission could investigate in further detail.

#### *A system to record and monitor reported electoral malpractice and prosecutions*

There is no one central database of allegations of electoral malpractice and breaches of electoral legislation. Electoral malpractice can also be pursued in the courts under other more generic legislation, such as that relating to conspiracy and forgery, so even a list of alleged Representation of the People Act 1983 breaches or prosecutions pursued under the Representation of the People Act 1983 will not cover all law enforcement action in respect of electoral matters.

Since 2003 we have examined and proposed various methods of compiling an accurate and complete database of electoral malpractice allegations and prosecutions. However, to date, none of these initiatives has secured the ongoing support of Government and none is without practical limitations. The Commission has therefore concluded that we should attempt to collect information in the future that will provide us with the ability to consider trends in allegations and the relative volume of allegations. We will request information from police and returning officers at least twice in a calendar year. Details of any allegation or case will not be published – and indeed may be the subject of law enforcement activities – but we will report on any trends or patterns disclosed by this data. We are likely to begin this around the May 2007 elections in Great Britain.

#### *Other action to counter electoral fraud*

In our 2003 report *Absent Voting in Great Britain*, the Commission set out a programme of actions that it would take to measure and improve public confidence in the system of postal and proxy voting in Great Britain. The Commission's overall objective for this work is to promote electoral integrity by tackling electoral impropriety both real and perceived, to reach a better understanding of the nature

and extent of electoral fraud and to develop a framework to help others detect and deter electoral fraud. Key actions include:

- providing practical tools for electoral administrators
- guidance to local police forces on electoral offences
- electoral integrity 'roundtable' meetings with the police, Crown Prosecution Service and others.

**R41. The Commission should, as part of its statutory reports on the 2007 elections, include a specific section dealing with the impact of, and any problems encountered in the implementation of the new measures on postal voting. In light of this report the Government should consider similar measures in relation to registering immediately before an election as have been put in place for Northern Ireland in the Miscellaneous Provisions (Northern Ireland) Act 2006.**

As with previous election reports, we will be addressing issues relating to the take-up and operation of postal voting, and public perceptions of the same, in our 2007 publications. In addition, the Government informed Parliament that it intended to ask the Commission to evaluate the new provisions for personal identifiers (i.e. the collection and checking of signatures and dates of birth) for absent voting and we have recently received a direction from the Government under Section 6 of PPERA to conduct a review of the new absent voting measures at the 2007 elections in England and Wales. Initial findings will be included in the reports for elections in England and Wales, as these provisions are not yet commenced in Scotland.

In regard to concerns about late registration and subsequent applications for an absent vote referred to in the body of the report, the Commission will as far as possible include this in the election report for England, Scotland and Wales. It should be noted, however, that the Northern Ireland situation is not entirely comparable. In Northern Ireland all electors are required to provide identifiers, a system recently rejected by Parliament in voting on amendments to the Electoral Administration Act 2006. In addition, the provisions for late registration are not yet commenced in Northern Ireland, even with additional identifiers as outlined in the Northern Ireland (Miscellaneous Provisions) Act 2006. Therefore the Commission would have no experience to draw upon in recommending such a system for Great Britain.

**R42. It should be a requirement that the Commission's views on proposed primary and secondary legislation on electoral issues should accompany draft legislation when it is introduced into Parliament.**

The Commission is statutorily consulted by Government on proposed secondary legislation regularly and, in addition, has provided briefings and other commentary on proposed primary legislation, including the Electoral Administration Bill and the Local Government and Public Involvement in Health Bill. The Commission would welcome the opportunity to assess and advise on the potential impact of relevant proposed primary and secondary legislation in a more public way and so encourage greater discussion and debate around issues of electoral law. However, we would

need to give careful consideration to the timescales, resources and mechanics involved.

In particular, we would wish to consider the precise mechanism for this with other interested parties. The Commission's current practice is to engage with government departments at the very early stages of legislative drafting to ensure that the policy development process is influenced appropriately. In the case of the Electoral Administration Bill this resulted in early changes and refinement of policy before getting to the stage of laying in Parliament.

**R43. A decision should be made and legislation developed to implement a system of individual voter registration immediately following next General Election or by 2010 at the latest.**

**R44. Political parties should start discussions now in order to reach agreement on the precise form the new system may take and the measures needed to assure comprehensiveness and accuracy.**

The Commission is widely acknowledged as having championed reform of the registration system since we first made the proposal for individual registration in 2003.

The central recommendation of our report *Voting for change: An electoral law modernisation programme* was that enhancing the security of the electoral process required a move from the existing system of household registration to one of individual registration: 'individual registration is vital to security'. We welcome the Committee's backing for this essential reform.

Our support for reform in this area has been active and sustained. We have argued repeatedly for its introduction, including extensive briefing on the issue for Parliamentarians during the course of the Electoral Administration Bill through Parliament. We believe that it is a necessary requirement for a modern and secure electoral system.

The Commission would be pleased to work with Government and other stakeholders in developing an appropriate system and in advising on future legislation.

**R45. The Commission's implementation plan for the new system should include a focus on measures to minimise under-registration.**

In our evidence to the Committee we stressed that improving the quality of the electoral register is a central focus for the Commission. Indeed registration will be our first priority in developing performance standards for local authorities. We are also increasingly carrying out targeted advertising aimed at particularly under-registered groups: recent home-movers, people from ethnic minority communities, young people, service voters and overseas voters.

If individual registration is introduced in Great Britain, the Commission would expect to design and implement a comprehensive information campaign for the public along

the lines of that successfully undertaken in Northern Ireland to support the introduction of individual registration there in 2002. This would include information and other measures designed to minimise the risks of under-registration.

**R46. Any agreed system of individual registration should include at least one objective identifier such as the National Insurance number.**

In the Commission's 2003 report *Voting for change: An electoral law modernisation programme* we recommended the move from household registration to individual registration, supported by the inclusion of one or more 'identifier' for each elector as part of the system in order to ensure the security of the arrangements. We welcome the Committee's endorsement of our proposed approach.

At that time, we took the view that National Insurance numbers might not be the most effective identifiers, because of concerns about their inherent insecurity. Our preference was for a system of individual registration to be backed by unique voter numbers generated at the point of registration as they would relate directly to the voting process and the entitlement to vote. However, following their successful introduction as identifiers within the registration process in Northern Ireland, we would not rule out the use of National Insurance numbers in Great Britain.

Our commitment to the principle of individual registration remains and we look forward to continuing to work with Government to explore ways in which to implement a system of individual registration.

**R47. If the new arrangements in Northern Ireland, including the abolition of the annual canvass, are successful they should be adopted as part of the new system of individual registration in the rest of the United Kingdom.**

As a general rule it would be ideal for electoral arrangements in the UK to be similar but at the same time it must be recognised that the scale and nature of electoral administration in Great Britain differs greatly from the Northern Ireland context.

It will be important to evaluate how successful the new arrangements in Northern Ireland have been and why, and whether the solution developed specifically for Northern Ireland could be transferred to Great Britain without considerable modification.

We also believe that it is important to introduce a robust system of individual registration in the rest of the UK before considering the abolition of the annual canvass.

**The Electoral Commission  
March 2007**