

Constitutional Reform and Governance Bill Commons Committee Stage - Tuesday 9 February

This briefing note comments on certain amendments which the Commission believes raise significant issues of workability or policy. The note does not comment on every amendment tabled. The absence of comment on an amendment does not imply that we support it.

Electoral Commission's role in referendums

The Political Parties, Elections and Referendums Act 2000 (PPERA) established the Electoral Commission and gave us statutory responsibilities in relation to elections and referendums. In particular, Part 7 of PERA sets out the legal framework for UK-wide, national and regional referendums and the Commission's role in those. Additional legislation must be made to enable any specific referendum to take place.¹

Our role in elections is twofold: we are the independent regulator of party and election finance, and we set standards for electoral administrators, provide advice and assistance and report on their performance.² In **referendums** our role is significantly wider, as we have the additional responsibility for the conduct of the referendum. A referendum under PERA is the only electoral event that has a framework for national coordination and accountability.

Our powers and responsibilities relating to referendums include:

- commenting on the intelligibility of the referendum question
- registering those who want to spend significant amounts on campaigning in the referendum as 'permitted participants'
- where appropriate, appointing lead campaign groups ('designated organisations') for each outcome
- ensuring that designated organisations have access to certain assistance, including grants that we determine within statutory limits
- making recommendations to Government on campaign spending limits for sub-UK referendums
- monitoring and reporting on campaign spending
- reporting on the administration of the referendum

The Chair of the Commission (or someone they appoint) will be the Chief Counting Officer (CCO), responsible for the conduct of the referendum and ensuring the accuracy of the overall result. The CCO appoints a Counting Officer for each local authority within the referendum area.

¹ Such as an enabling Act; a Conduct Order; a Fees and Charges Order.

² The Electoral Administration Act 2006 gave the Commission powers to set and monitor performance standards for the administration of elections.

Overview

A number of amendments have been tabled which seek to introduce a referendum on voting systems. Whilst it is for Parliament to decide on whether to hold a referendum and on the legislative framework for such a referendum, the Commission has provided comment below on those amendments which will impact on the work we will undertake during a referendum.

Comments on amendments

Referendum question

Further amendments have been tabled to Government **New Clause 88** (*Referendum on voting systems*).

Amendment (f) removes the requirement for the Secretary of State to specify the referendum question (and any statement that is to precede it) by order, and **amendment (i)** removes the requirement for that order to be subject to approval by both Houses of Parliament. **Amendments (g) and (h)** together instead require the Electoral Commission to specify the question to be asked at the referendum within three months of the Bill receiving Royal Assent.

This would be a departure from the provisions currently specified in PPERA that apply to other referendums held under that framework, whereby the Government proposes the question and Parliament approves it, with the Electoral Commission's views on the intelligibility of the question being made available to Parliament for its consideration. We are content with the approach set out in PPERA, which has been followed in previous cases, as we believe it strikes the right balance between Government responsibility for proposing the question, Commission responsibility for providing an independent assessment of it, and Parliamentary accountability in approving the question.

Payments to counting officers

Government New Clause 92 provides for Counting Officers at a referendum to recover their charges (in respect of services rendered or expenses incurred) subject to maximum recoverable amounts specified in, or determined in accordance with, an order made by the Secretary of State, with the consent of Treasury. It requires the Electoral Commission to make payments to Counting Officers for any recoverable charges, up to the maximum amounts specified by the Secretary of State in such an order. It also provides that the Commission may, with the consent of the Treasury, authorise payments that exceed the maximum amounts if it is satisfied that it was reasonable for the services to be rendered or the expenses to be incurred, and that the charges are reasonable.

The Chair of the Commission (in the role of Chief Counting Officer) would be responsible for overseeing the conduct of the referendum, including providing guidance to Counting Officers as to how they should perform their duties. It is therefore important that the Commission is given the opportunity to input into the calculation of the amounts of money that can be claimed, and the categories of expense under which claims can be made. For that reason we

would expect to be consulted on the draft order before it is laid before Parliament.

Spending by permitted participants

Government New Clauses 95 and 96 tighten the rules on campaign spending by permitted participants. In particular, **New Clause 96** requires that where different campaigners are operating to a common plan, the total aggregate spending of all those campaigners should count against the spending limit of each campaigner. This will prevent campaigners getting around the statutory spending limits by registering a number of separate permitted participants which then campaign closely together. PPERA already applies similar restrictions to non-party campaigners at elections. The Commission identified the need for this change to the rules on spending by permitted participants after the 2004 North East referendum, and welcomes the new clause.

Government New Clause 95 introduces an additional control on permitted participants, by providing that a single individual cannot be legally responsible for complying with the law on behalf of more than one permitted participant. Again, this mirrors a restriction that already applies to non-party campaigners at elections. The Commission supports the new clause.

Overview – timing of parliamentary election counts

An amendment has been tabled relating to the timing of parliamentary election counts. The Commission has issued extensive guidance for (Acting) Returning Officers on managing UK Parliamentary elections, including guidance on the current statutory requirements which specify that the counting of votes should begin as soon as practicable after the close of poll.

Comments on amendment

Counting of votes in parliamentary elections

New Clause 98 would require the counting of votes at any UK parliamentary election to begin no later than 2am, four hours after the close of poll. It would provide for exceptions to be allowed to this requirement, to be specified in guidance issued by the Secretary of State after consultation with the Electoral Commission and the approval of both Houses of Parliament.

We are aware that this issue has provoked a great deal of interest and debate, and we understand the desire of Parliamentarians and election candidates to have certainty about when election counts will be conducted.

Our guidance to (Acting) Returning Officers outlines a number of factors which they should consider in deciding when to begin the counting of votes, including the geography of the constituency, the availability of staff and counting venues, the security of ballot boxes, and the volume and management of postal votes returned across the constituency. The Chief Executive of the Commission also

wrote directly to (Acting) Returning Officers in September 2009 setting out the Commission's views on the factors which would be relevant in deciding when it would be practicable to begin counting votes at UK Parliamentary elections.

Any guidance issued under this provision would go further by specifying a number of exceptional circumstances in which Returning Officers might delay beginning the counting of votes. We note, however, that such guidance could never be exhaustive and could not reasonably anticipate all of the local circumstances which might be relevant in any given constituency.

We also note that, under the current legal framework for the conduct of elections Parliament has not provided the Secretary of State with any powers to issue directions or guidance to (Acting) Returning Officers in the conduct of their statutory duties. Given the importance of respecting the operational independence of (Acting) Returning Officers, we do not believe it would be appropriate for any such guidance to be issued by the Secretary of State.

Further information

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