

## Constitutional Reform and Governance Bill Lords Second Reading – Wednesday 24 March

### Electoral Commission's role in referendums

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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.<sup>1</sup>

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.<sup>2</sup>

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.

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<sup>1</sup> Such as an enabling Act; a Conduct Order; a Fees and Charges Order.

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

## Clauses 88 and 89 - Referendum provisions in the Bill

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The Commission welcomes the provisions in clauses 88 and 89 of the Bill which tighten the rules on campaign spending in referendums by permitted participants. We identified the need for this change as a result of the 2004 North East referendum. We similarly welcome the provision in clause 33 that requires Regional Counting Officers to be appointed for the referendum, something we also called for following the 2004 referendum, to enable more effective management of the referendum and bring a greater degree of assurance to the results process.

## Clause 90 – Parliamentary elections: counting of votes

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A new clause was accepted during Commons Report Stage which placed Returning Officers under a new requirement to begin counting votes at a UK Parliamentary election within four hours of the close of poll.

The clause has the effect of:

- Placing Returning Officers under a duty to take reasonable steps to begin counting the votes on ballot papers for UK Parliamentary elections within four hours of the close of poll.
- Requires the Electoral Commission to issue guidance for Returning Officers on complying with the new duty.
- Requires any Returning Officer who did not comply with the new duty to publish and submit to the Commission a statement setting out the time at which counting did begin, the steps which had been taken to comply with the new duty and the reasons why the duty had not been met.
- Requiring the Commission to include in its report on the administration of any UK Parliamentary election a list of the constituencies in respect of which such a statement has been submitted.

We particularly welcome the provision in Clause 90 to improve the accountability of Returning Officers by providing a statement to the Commission which would state when the count commenced and provide further explanation if they did not commence their count within four hours of close of poll. Nonetheless, we continue to have concerns about commencing the new duty provided for in Clause 90 very close to the date of the election.

### Draft Guidance for Returning Officers

Since this clause was added to the Bill the Commission has produced draft guidance for Returning Officers to ensure they understand the effect of the new clause. Our intention is to issue a final version of the guidance as soon as the clause becomes law.

Our guidance will assist (Acting) Returning Officers as they consider all of the implications of the new clause for their role. In the event of the clause becoming law, it remains the case that it is for each individual (Acting) Returning Officer to decide what steps it is reasonable to take given the particular circumstances of their constituency.

A copy of our draft guidance has been attached separately with this briefing. It is also available on our website here:

**Draft Guidance:**

[www.electoralcommission.org.uk/\\_data/assets/electoral\\_commission\\_pdf\\_file/0006/87504/EC08---Draft-guidance-on-timing-of-UK-Parliamentary-election-counts.pdf](http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0006/87504/EC08---Draft-guidance-on-timing-of-UK-Parliamentary-election-counts.pdf)

**Appendix A:**

[www.electoralcommission.org.uk/\\_data/assets/electoral\\_commission\\_pdf\\_file/0007/87505/Appendix-A---Draft-guidance-on-timing-of-UK-Parliamentary-election-counts.pdf](http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0007/87505/Appendix-A---Draft-guidance-on-timing-of-UK-Parliamentary-election-counts.pdf)

**The timing of changes to electoral law**

The Constitutional Reform and Governance Bill was introduced in July 2009, and is now before the House of Lords, in the final session of the current Parliament before the next UK Parliamentary general election which must be held by 3 June 2010.

We note that the Bill may not complete its Parliamentary passage until April 2010. We are very concerned about the degree of uncertainty which will remain about possible changes to the statutory framework for the administration of the next UK Parliamentary general election, with the statutory election timetable likely to begin within a matter of weeks.

Returning Officers for Parliamentary constituencies across the United Kingdom have spent considerable time in the last 12 months preparing and putting in place plans to deliver their duties in accordance with the statutory framework set out in the Parliamentary Elections Rules in Schedule 1 to the Representation of the People Act 1983. Changes to election rules at such a late stage will inevitably have an impact on many of those plans, including in relation to key issues such as the number of counting staff required and the suitability of venues for counting. The statutory timetable for the scheduled 2010 English local government elections, which would also be affected by this clause if polling day for the general election were to be held on 6 May, must begin by 29 March 2010.

The Commission and others - including the independent investigation into the 2007 Scottish elections carried out by Ron Gould - have highlighted previously the risk that such late changes may have an impact on the effective conduct of elections. As well as publishing a list of the constituencies that did not begin counting votes by 2am, we will provide an analysis of any issues that arise, in relation to the implementation of Clause 90, in our statutory report on the administration of the forthcoming UK Parliamentary general election.

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**Further information**

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