

Political Parties and Elections Bill

House of Lords Grand Committee 5 & 6 May 2009

Please note that this briefing note comments on certain amendments which the Commission believes raise significant issues of workability or policy. The note does not set out the Commission's views on more detailed points of drafting, nor does it comment on every amendment tabled. The absence of comment on an amendment does not imply that we support it.

New Clauses after Clause 9

'Reasonable excuse' in relation to certain offences under the 2000 Act'

The Commission supports **Government amendment 97** which simplifies the offences in the 2000 Act relating to failures in statutory reporting, by introducing an automatic defence of "reasonable excuse". The law currently only allows a defence in respect of such failures where a regulated entity has been charged, and makes it subject to the more demanding test of taking "all reasonable steps". The Commission believes the proposed new defences are more proportionate, providing greater protection to those we regulate and more certainty to the Commission and to prosecuting authorities.

New Clause - Control of donations to members associations:
responsible persons

New Clause - Control of loans etc to members associations:
responsible persons

The Commission welcomes **Government amendments 98 and 105**, which introduce new provisions in respect of members' associations. At present, a breach of the law on donation reporting by a members' association is difficult to sanction if the association has not appointed a treasurer or other responsible person to comply with the law. The amendments apply only to those members' associations that receive a donation which has to be reported to us, either because it exceeds the donation reporting threshold of £7,500 or because it is impermissible. The amendments will require any such association to nominate a responsible person if it does not have a treasurer, and to notify us of that person's identity. The new requirements are therefore targeted at circumstances where a breach of the law is most likely to affect confidence in the transparency and integrity of political finance. They will enable the Commission both to give members' associations a clear account of what they need to do to comply with the law, and to deal appropriately with cases of non-compliance.

Clause 10 – Control of donations to holders of elective office: compliance officers

The Commission is content with the proposals to allow holders of elective office to appoint a compliance officer to assist them in meeting their obligations under the 2000 Act. We support the approach taken in Clause 10, which does not allow holders of elective office to delegate or waive their own responsibility for complying with the law.

Recommendations on amendments

The Commission supports **Government amendment 106** which provides that compliance officers may assist with obligations in respect of loans as well as donations. We also support the procedural Government amendments which amend the compliance officer provisions in a way consistent with the new notification requirements on members' associations.

Clause 12 - Reports of gifts received by unincorporated associations making donations

The Commission supports the aim of Clause 12, to increase the transparency of large political donations made by unincorporated associations. We believe the Bill should help to increase transparency in respect of the most politically active associations, while avoiding the imposition of new regulatory burdens on associations that donate smaller amounts.

We have some concerns about the practical operation of the new reporting requirement, which were set out in our Lords Second Reading¹ briefing on the Bill.

New Clauses after Clause 12

New Clause - £50,000 cap on donations

New Clause - Treatment of contributions from trade union political funds'

Amendments 108 and 109 in the names of Lord Tyler and Lord Rennard, would introduce a £50,000 cap on donations, and would apply that cap to donations from trade union political funds except where certain conditions are met. These amendments along with **amendments 114-120** following Clause 13, seek to introduce fundamental changes to the structure and scope of the current statutory limits on fundraising and campaign spending by political parties. The Commission has previously published reports on broad issues of policy in relation to party funding (e.g. *The funding of political parties* [December 2004]; *Public perspectives: the future of party funding in the UK* [October 2006]). We have since published our views on emerging policy proposals on party and election funding, including the provisions in the Political Parties and Elections Bill and amendments to it, where

¹ Electoral Commission Lord Second Reading Briefing can be downloaded from the website here: http://www.electoralcommission.org.uk/_data/assets/pdf_file/0005/72617/Lords-Second-Reading-FINAL.pdf

our experience of regulating the current system can assist in the consideration of the policy intentions of proposals or their workability in practice. However, the Commission does not comment in detail on the workability of amendments that would create systemic change to the party funding system; such changes are primarily for Parliament to consider. If Parliament were to decide to take forward proposals along the lines set out in these amendments, the practical implications of the resulting legislation would need careful consideration and the Commission would welcome the opportunity to comment on such proposals.

New Clause - Tax relief on donations

New Schedule - Tax Relief on Donations

Amendments 107 and 110 in the name of Lord Goodhart, propose the introduction of tax relief on donations to political parties. In principle the Commission welcomes measures that incentivise public engagement in politics and help parties to campaign effectively. Proposals for fiscal incentives are of course for Parliament to consider in the light of other priorities.

Clause 13 - Increased Thresholds in Relations to Donations etc

Clause 13 proposes significant increases to the donation permissibility and reporting thresholds in the 2000 Act. As set out in our Second Reading briefing, we believe that increasing the permissibility threshold from £200 to £500 has the potential to reduce public confidence in the transparency and integrity of political funding, and its impact will need to be monitored closely. The increases in the reporting thresholds, from £1,000 to £1,500 for party accounting units and from £5,000 to £7,500 for central parties, are also substantial, and we would not support any further material increase to these thresholds.

Recommendations on amendments

The Commission is content with **Government amendment 112** which augments the current provision in the 2000 Act for Ministers to increase thresholds in the Act in line with the value of money. The amendment requires the Secretary of State either to make such an order once each Parliament, or to provide a statement to Parliament explaining why an order has not been made. It supersedes **amendment 113** in the names of Lord Bates and Lord Henley.

We do not support **amendment 111** in the names of Lord Bates and Lord Henley, which would increase the donation reporting threshold for party accounting units from £1,500 to £3,000. As noted in our briefing on Clause 8 above, this would significantly reduce transparency. We believe that the Government's amendments to the declaration thresholds in Clause 8 address the concerns that have been raised about excessive administrative burdens on local parties. Increasing the donation reporting threshold further would not lead to any significant further reduction in administrative burdens, since all donations above £500 already need to be checked for permissibility and recorded.

New Clauses after Clause 13

Amendments 114-120 in the names of Lord Tyler and Lord Rennard are discussed in the context of **amendments 108 and 109** after Clause 12, above.

Clause 14 - Limitation of pre-candidacy election expenses for certain general elections

The Commission has argued for a longer regulated period for candidate expenditure for some time. However, the ‘triggering’ proposals in the Bill as introduced in the Commons were widely defined and we had concerns that they would be difficult for candidates and agents to interpret and comply with. We therefore welcomed the replacement of those proposals with the current Clause 14, which imposes new controls on spending at those Westminster general elections held more than 55 months after a Parliament first met. The new controls will offer greater certainty to candidates and agents than the triggering proposals. The Commission continues to believe that in principle it would be preferable to introduce a longer regulated period for spending at the end of all Parliaments, but we recognise the practical difficulties involved.

Recommendations on amendments

The Commission does not **support amendment 121** in the name of Lord Campbell-Savours, which would reinstate the ‘triggering’ proposals contained in the Bill as introduced in the Commons. As outlined above, we believe that the provisions now contained in Clause 14 are clearer and simpler than the ‘triggering’ proposals.

Elections and electoral registration

Clause 16 – Election falling within canvass period

Clause 16 adapts the law on the annual canvass to allow Electoral Registration Officers (EROs) to capture changes recorded on canvass forms during the canvass period and to ensure those changes are reflected in the electoral register in the event of an election taking place between 1 July and 1 December. The aim is to prevent electors who have returned canvass forms from being unexpectedly disenfranchised. The Clause also enables EROs to suspend publication of the electoral register from 1 December to 1 February in the following year to allow time to compile the revised register.

The Commission supports the intention behind this Clause but would welcome clarification from the Government on a number of issues, including (a) whether the Clause is intended to apply to referendums conducted under the 2000 Act; (b) the reasoning behind the selection of the 1 July date.

We also note that the intended changes will have resource implications for electoral administrators. We have asked the Government to ensure that any funding

identified as necessary to support the effective implementation of these revised working practices is made available.

Clause 17 – Candidate at parliamentary election may withhold home address from publication

The Commission believes that there is a case for full addresses not to be publicly available on ballot papers or nomination documents at UK Parliamentary elections. Equally, though, we believe that voters should have access to sufficient information to indicate a candidate's proximity or otherwise to the constituency in which they are standing.

The Commission therefore supports **Clause 17** in principle. However, we are concerned that it would potentially enable only candidates, agents, proposers, seconders and representatives of the Electoral Commission to see candidates' full addresses. Clause 17 would therefore make it difficult for a member of the public to confirm or disprove a suspicion that a candidate does not live within the constituency that they claim

Moreover, even the people who can see the full address cannot record it for verification at a later date – as existing legislation does not allow those inspecting nomination papers to record information contained within them.

For this reason, we have suggested that it should be possible to view the home addresses of any candidate if done under the supervision of the Returning Officer, who must record their identity.

In addition, we believe that giving candidates the option of having different categories of information (that is, constituency or full home address) on the ballot paper could increase the potential for voter confusion.

New Clauses after Clause 17

New Clause – Opting in to the edited electoral register

New Clause – Abolition of the edited electoral register

Amendment 122 in the names of Lord Bates, Lord Henley and Lord Norton of Louth would amend existing legislation to the effect that electors in England and Wales would only be included on the edited register if they make a request on an annual canvass form to opt-in to it. This would replace provisions in existing legislation whereby electors are by default included on the edited register unless they choose to opt-out of it. Under existing legislation this change would also be applied to the requirements for the rolling registration form.

The Commission's overarching position is that the edited register should be abolished, a recommendation which has also been made by the Information Commissioner.²

² Richard Thomas and Mark Walport *Data Sharing Review Report*, 11 July 2008.

But if the edited register is to be retained then we would in principle support **Amendment 122**, since we believe that the presumption on the registration form should be that the elector does not want the data they provide to be used for non-electoral purposes.

The new Clause should, however, be extended to apply to electoral registers in Scotland. It would also be necessary to amend separate legislation so that the prescribed annual canvass form includes an opt-in rather than opt-out tick box, and so that the notes accompanying the form explain what opting-in means. In addition, the prescribed annual canvass form would need to explain clearly the new changes, in order to address any potential confusion for electors who are familiar with the existing arrangements.

Amendment 124 in the name of Lord Norton of Louth would enable the Secretary of State to provide by Order that no further edited versions of the register should be compiled and published, and that such an Order be laid before, and approved by a resolution of, each House.

Although the Commission supports the intention of **amendment 124**, the existing provisions enabling the supply of the edited register are contained in secondary legislation, and as such it is not necessary to provide in primary legislation for these provisions to be amended.

Clause 19 – Filling Vacant European Parliament Seats in Northern Ireland

Clause 19 amends the European Parliamentary Elections Act 2002 so that when a European Parliamentary seat in Northern Ireland becomes vacant:

- a. if the previous MEP stood in the name of a registered party when elected, then the seat may be filled by a person nominated by the nominating officer of that party; or
- b. where this does not apply, the seat may be filled by a person named in a notice made by the previous MEP in accordance with Regulations under the European Parliamentary Elections Act 2002

This would effectively replace the current system of filling vacant European Parliamentary seats in Northern Ireland through holding by-elections.

The Commission supports the intent of this Clause insofar as it allows for vacant seats to be filled by a nominated person. However, we have concerns about its implications for transparency, since the voter would not know when voting the names of substitutes who might subsequently be put forward.

Clause 20 – Local Returning Officers for elections to European Parliament

Clause 20 provides for European Parliamentary elections in England, Wales and Scotland to be run on the basis of local authority rather than UK Parliamentary boundaries. We welcome this provision. The situation in Northern Ireland is different and in this case the Returning Officer will continue to be the Chief Electoral Officer.

Clause 21 – CORE information and action to be taken by electoral registration officers

Clause 21 amends the role and powers of the CORE-keeper, as set out in the Electoral Administration Act 2006. The changes introduced will:

- require the CORE-keeper to inform the relevant ERO if more than a specified number of postal votes are requested for a certain address.
- allow any CORE scheme to give the power to the CORE-keeper to report any potential breach of electoral law to an ERO. It also requires the ERO to take appropriate steps to investigate issues highlighted by the CORE-keeper and to report back what these steps were.
- ensure that the CORE-keeper does not give data from one ERO to another, other than as is required to investigate registration irregularities.

The Commission supports this Clause but notes that the increase in the circumstances under which postal votes are investigated could have significant resource implications for any future CORE-keeper; these will need to be addressed when setting their budget. We welcome the requirement for EROs to react to certain directions from the CORE-keeper, but would ask the Government to consider how best this requirement can be combined with the Electoral Commission's performance standards framework.

New Clauses after Clause 21

Individual Electoral Registration (IER) in Great Britain

The Commission has since 2003 been calling for a system of IER with personal identifiers to be introduced in Great Britain. We therefore support **Government amendments 125A to 125E**, which would from 1 July 2010 begin a process of introducing a system of individual electoral registration (IER) to Great Britain.

We are clear that this would be a major change to the electoral registration system in Great Britain, requiring detailed planning and identification of key milestones to provide the basis for moving towards implementation of individual electoral registration over a number of years. The Commission welcomes the opportunity to report annually to Parliament on progress of the voluntary collection of personal identifiers from electors, to ensure that conditions are appropriate for the move to the compulsory collection of identifiers.

Both the completeness and accuracy of electoral registers are important to us, ensuring that all those who are entitled to be register to vote are helped to do so, and that that no one is included in registers who is not entitled to be registered. There will need to be a real effort to make sure Electoral Registration Officers throughout Great Britain have the right tools to ensure complete and accurate registers, and there will also be a need for effective public information during any transition to a new system.

We provide below more detailed comments on these Government amendments below.

New Clause – Voluntary provision of identifying information

We support **Government amendment 125A**, which introduces new provisions requiring Electoral Registration Officers (EROs) to ask electors to provide, on a voluntary basis, their signature, date of birth and national insurance number. The Commission would, however, like to see subsection (2) amended to include inability to write as well as to read. This would be more consistent with the provisions relating to those electors not required to provide a signature for absent voting in Schedule 4, Paragraph 3(8) of the Representation of the People Act 2000.

New Clause – Regulations amending or supplementing section (*Voluntary provision of identifying information*)

The Commission supports **Government amendment 125B**, which allows the Secretary of State to make regulations in a number of areas relating to the voluntary provision of identifiers. We are broadly content with the Clause as drafted, which will enable important features of the voluntary scheme, such as the forms on which identifying information may be provided and the form and manner in which personal identifier records are kept, to be determined in due course following consultation with the Commission.

We would, however, welcome clarification from the Government as to why the term 'persons' has been used in the definition of the 'registration objectives' in subsection (6) instead of 'every person' and 'no person', which are the terms used in the context of Northern Ireland in Section 10ZB of the Representation of the People Act 1983

New Clause – Report by Electoral Commission on provision of identifying information

We are broadly content with the reporting arrangements set out in **Government amendment 125C**. These would require the Commission from 2011 to produce annual reports on the adequacy of the electoral registration system in Great Britain and the changes to it that would be needed if IER were to be made obligatory. In 2014, the Commission would produce a report, in addition to the points required to be covered in the annual reports, that must state whether making IER obligatory would help or hinder the achievement of the registration objectives stated in **Government amendment 125B** and make a recommendation accordingly as to whether the voluntary arrangements should be made compulsory.

This report would be submitted to the Secretary of State by 31 July 2014 and then laid before Parliament as soon as possible thereafter. If the Commission's recommendation is positive and Parliament approves it, then the Secretary of State must make an order bringing permanent IER into effect.

If our recommendation was negative, or was positive but rejected by Parliament, then the Secretary of State could require the Commission to submit a further report at least one year but not more than two years after his direction.

We believe that, in order to help enable the Commission to deliver effectively its reporting duties in relation to IER, the new Clause should include a duty on EROs and other relevant bodies to provide the Commission with such assistance as it may reasonably require in connection with the preparation of the annual reports.

New Clause – Obligatory provision of identifying information

We broadly support the intent of **Government amendment 125D**, which provides for a system of IER to be put in place if Parliament approves the introduction of compulsory IER with personal identifiers.

125E – Provision supplementing section (*Obligatory provision of identifying information*)

Government amendment 125E covers a number of issues relating to the implementation of obligatory IER following approval by Parliament, including the extension of the carry-forward to the next year's electoral register so that no electors are removed from the register for failing to respond to the canvass during the transition from voluntary to obligatory IER. It also gives the Secretary of State the power to make regulations by affirmative resolution in connection with the operation of the obligatory scheme. While we broadly support this new Clause, we would question the desirability of the Secretary of State being able to make through these regulations different provisions for different areas on the grounds that it could lead to inconsistencies in relation to the fundamentals of the IER framework implemented across the UK.

Clauses 22 and 23 – Schemes for provision of data to registration officers

Clauses 22 and 23 introduce powers for EROs to use data from other public sources of information to help improve the completeness and accuracy of the register.

The Commission supports these new Clauses. In the context of implementing individual electoral registration, the powers provided by the Clause would be one important way of helping to ensure that eligible people can continue to be registered as effectively as possible, and that people who are entitled to be included on the register are helped to stay registered during the transition to IER.

More widely, we believe these powers would provide EROs with an important resource to help identify those people who may not be included on the electoral register. Although the amendments would only provide for a piloting approach in the first instance, we hope that if the Commission's evaluation indicates that these powers have been used successfully, then they can quickly form a permanent part of the toolkit available to support the implementation of individual electoral registration.

New Clauses after Clause 23

New Clause - Personal identifier adoption schemes

Amendment 126 in the name of Lord Campbell-Savours enables local authorities to apply to the Secretary of State to make an Order to establish a 'personal identifier adoption scheme', which would require people to use one or more personal identifiers in applications to register to vote at that local authority. The new Clause enables the Secretary of State to make the Order only if they are satisfied that the local authority area meets one or more prescribed conditions relating to the 'manipulation of votes' at previous and future elections.

We do not support this new Clause. While we have since 2003 called for IER with personal identifiers to be introduced, we believe that the pilots that would be introduced by the new Clause would provide a limited indication of the likely impact of introducing personal identifier requirement for electors across Great Britain.

Further, the proposal would not amount to the introduction of IER in the pilot areas: the proposed pilots would allow for the collection of personal identifiers but would not entail registration during the annual canvass being conducted on an individual, rather than household, basis. We would also have concerns about any registration system that required individuals to provide confidential personal information on a household form.

We instead support new Clauses 125A to 125E, which introduce personal identifiers across Great Britain alongside a system of IER.

New Clause – Registration of interests by candidates

The Commission does not support **amendment 127** in the name of Lord Campbell-Savours since it appears to raise potentially significant problems of workability. Compiling and publishing these reports will place a significant new burden on both candidates and returning officers, particularly in the limited timescale of a general election. It is not clear what the consequences would be if a candidate failed to make an accurate report, or if a returning officer failed to publish a report. Nor is it clear who would be able to provide candidates with advice on complying with the full range of reporting requirements that would be involved, given that the report is to be based on the wide-ranging requirements of the House of Commons.

New Clause - Verification of absent voting personal identifiers in Great Britain

Amendments 128 and 129 in the names of Lord Bates and Lord Henley amend existing legislation so that Returning Officers in Great Britain would be required to verify the personal identifiers on 100% of postal ballots received against those supplied on applications for absent votes. The existing legislation requires Returning Officers to verify no less than 20% of identifiers received.

We support these new Clauses. We have been calling for 100% verification since before the introduction of absent voter identifiers in 2006. Many Returning Officers already check 100% of identifiers but we believe that, in the interests of consistency and the integrity of the electoral system, this practice should be mandated.

If these new Clauses are enacted, then the Government would need to ensure that sufficient additional funding is made available to ensure that all local authorities in Great Britain have sufficient resources to undertake 100% verification. In this context, we note that the Government has provided resources to support 100% checking of absent voter identifiers at the 2009 European Parliamentary elections.

New Clause - Service declarations

Amendment 130 in the names of Lord Bates and Lord Henley would have the effect of removing the time limit on service voter declarations, thereby making them valid indefinitely unless cancelled or updated. It would also remove the Secretary of State's power to vary this time limit within a period of one to five years.

We do not support this amendment. We recognise the risk of under-registration of members of the Armed Forces, and we believe that the provisions for how long service voter declarations last should reflect the additional barriers to registration that they may face. However, it is also important to maintain the accuracy of the electoral register by ensuring that electors do not remain registered as service voters when they no longer should be.

On that basis, we believe that there should be a requirement on service voters to re-register but that it should not be unduly onerous given the particular circumstances of service voters. We are content with the current limit (set by the Secretary of State) of three years, but we believe that it is right that legislation allows this limit to be varied following appropriate consultation.

New Clause - Fraudulent applications for postal votes – offence

Amendment 131 in the names of Lord Bates and Lord Henley would change the maximum penalty for illegal absent voting applications or illegal attestations of such applications from a level five fine (£5,000) to six months in prison.

The Commission does not comment on the appropriate level of penalties for electoral malpractice. However, we would prefer any changes to the current sanctions to be considered holistically as part of a wider review of the measures available to combat electoral malpractice. The Government may wish to consider this issue as part of its vision for the future of electoral administration, which it has stated will be published in June of this year.

New Clause - All-postal voting

Amendment 132 in the names of Lord Bates and Lord Henley would insert in existing legislation a provision which prevents Electoral Registration Officers automatically sending out postal ballot papers for the purposes of an all-postal ballot. It appears that the intention behind this new Clause is to end the practice of all-postal voting.

While the Commission believes that all-postal voting should not be used at future statutory elections or referendums in the UK, we do not think this new Clause is necessary. It is not possible under existing legislation for all-postal voting to be used for such elections and referendums, and it is therefore not necessary to insert any additional provisions prohibiting it.

New Clause - Postal voting

The Electoral Commission believes that postal voting on demand should remain a central part of the voting system, because it offers convenience and choice to voters, including to those who might find it difficult to get to their polling station. At the 2008 local elections in England and Wales 14.8% of the registered electorate requested to vote in this way. Of those electors, 71.6% completed and returned their postal ballot papers. Further, public opinion research carried out after the 2008 local elections in England and Wales found that 46% of respondents indicated that it was 'crucially important' to them to have a choice of methods by which to cast their vote. In addition, 58% of postal-voting respondents indicated that having the option to cast their vote this way had encouraged them to vote. Of those who felt the option of postal voting encouraged them to vote, 56% indicated that they would not have voted without it.

The Electoral Administration Act 2006 tightened up the procedures of applying for a postal vote, meaning that electors now have to provide personal identifiers (their signature and date of birth) when applying for a vote, and also when casting their postal vote. As noted in our commentary under **Amendments 128 and 129 (see above)**, we have consistently argued that the level of personal identifier verification should be mandated as 100%.

We have continued to call for IER with personal identifiers to be introduced in Great Britain, which would provide a secure foundation and increase the integrity for all methods of voting. We therefore welcome the introduction of IER Clauses in the Bill (see commentary above).

Amendment 132A in the name of Lord Greaves would have the effect of ending postal voting on demand by providing that electors can only vote by post if they are unable to vote in person for one of a specified list of reasons; these reasons broadly match those currently attached to proxy voting applications. We do not support this new Clause, since, as demonstrated above, the abolition of postal voting on demand would significantly limit convenience and choice for voters.

Further information

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