

## Parliamentary Voting System and Constituencies Bill Commons Consideration of Lords Amendments 15 February 2011

This note sets out the Electoral Commission's views only on amendments made to the Bill in the House of Lords which the Commission believes raise significant issues of workability or policy. We also welcome amendments that give effect to recommendations we have previously made. The note does not comment on every amendment tabled and the absence of comment on an amendment should not imply that we support it.

### PART 1 - VOTING SYSTEM FOR PARLIAMENTARY ELECTIONS

#### Clause 1 – Referendum on the alternative vote system

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During Committee Stage the House of Lords agreed to **Lords amendment 2**, which removed 5 May 2011 as the date for the referendum, replacing it with a provision allowing the referendum to be held on any date before 31 October 2011. The Commission has always been clear that it is for Parliament to specify the date for the proposed referendum, but that there must be clarity and certainty about that date.

We therefore welcomed **Lords amendment 3**, which reinstated a specified date for the referendum, while giving the Minister the power to make an order, subject to the affirmative resolution procedure, providing for a later date for the referendum if the Minister 'is satisfied that it is impossible or impractical for the referendum to be held on 5 May 2011, or that it cannot be conducted properly if held on that day'.

We welcome the renewed clarity that this amendment provides in relation to the date of the referendum, while recognising the need to have some flexibility over this should unforeseen or exceptional circumstances arise. Were the date of the referendum to be moved to anything other than 5 May the Commission would advise of any specific risks associated with any particular date.

#### Clause 6 and Schedule 9 – Control of loans etc to permitted participants

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Clause 6 and Schedule 9 introduce controls and reporting requirements on loans to registered campaigners in this referendum. The provisions are similar to those

introduced for political parties, individuals and members' associations in 2006, and cover transactions which a campaigner intends to use in order to meet referendum expenses. The Commission has issued guidance for campaigners on what the rules mean and how to comply with them<sup>1</sup>.

The provisions introduce a number of new criminal offences that apply where campaigners and others fail to comply with the controls. In order to enable the Commission to carry out its regulatory role effectively and proportionately, the Political Parties and Elections Act 2009 introduced new civil sanctions (such as monetary penalties and compliance notices) for many of the criminal offences in PPERA, including the offences regulating loans to political parties, as an alternative to criminal investigation and prosecution. We welcome **Lords amendment 6** which makes these civil sanctions available in respect of the new offences in the Bill relating to loans to referendum campaigners.

## Clause 7 - Interpretation

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**Lords Amendment 1** was added to the Bill at Report Stage and introduced a turnout threshold in order for the referendum to be binding.

The amended clause states that "If less than 40% of the electorate vote in the referendum, the result shall not be binding." The question of whether the proposed referendum should be subject to any minimum turnout threshold is for Parliament to decide, and neither the Chief Counting Officer nor the Electoral Commission have expressed any view on the merits of the amended clause.

**Lords Amendment 8** was made at Third Reading to provide further details on the terms used in the new provision however, while the amendment uses the definition of the franchise in the Bill for the 'electorate' it does not clarify whether it would include amendments made to the electoral register up to and including polling day to correct clerical errors. Secondly, the amendment does not specify whether the turnout figure should be based on all ballot papers included in the count for the referendum (including spoiled ballots) or only valid votes.

It is vital that there is further clarity on these points before the Bill becomes law, so that the Chief Counting Officer can provide Parliament with the information it would need in order to consider whether the threshold has been reached.

We would also welcome clarification that Counting Officers would be under an explicit duty to provide official electorate data to the Chief Counting Officer for the purpose of determining whether the threshold had been reached.

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<sup>1</sup> Available at [http://www.electoralcommission.org.uk/\\_data/assets/pdf\\_file/0017/105605/to-loans-pvs-rc.pdf](http://www.electoralcommission.org.uk/_data/assets/pdf_file/0017/105605/to-loans-pvs-rc.pdf)

## Schedule 1 – Further provisions about the referendum

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### **Role of the Electoral Commission**

There were no changes made to this Schedule in the House of Lords, however, Members may be interested in our plans for public awareness work around the scheduled elections and proposed referendum on 5 May. It is important for voters to receive impartial information regarding the choice being put to them in the referendum, which is why we intend to send an information booklet about the elections and the referendum to each household in the UK which will include information not only about the voting systems but also about how to take part in the referendum, including how to register and how to vote in all the polls on 5 May.

The Electoral Commission has published on its website information on the referendum, along with a paper that sets out the process that the Commission has used to ensure that the content has been tested with members of the public, academics and plain English experts. The content of our public awareness booklets will draw on this information.

## Schedule 2 – Rules for conduct of the referendum

### Schedule 3 - Absent voting in the referendum

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As the Bill stood, when it was introduced into the Lords, entitlement to a postal vote was restricted to those who had successfully applied for a postal vote in the referendum, or who had been granted a postal vote at UK Parliamentary elections for a definite or indefinite period.

The Commission had previously highlighted the risk that many voters who had applied for postal votes for other polls taking place on 5 May might incorrectly assume that they will also receive a postal vote for the referendum. We therefore welcome **Lords amendments 36, 37, 38, 42 to 61, 63 to 80, 86, 87, 90, 91, 94 and 95** which mean that a postal vote is now automatically granted to any person who is on the postal voters list for any poll with which the referendum is combined, and who is entitled to vote in the referendum. The amendments introduced similar arrangements for proxy and postal proxy voters. We believe that these amendments will support effective participation in the referendum.

## Further information

For further information, please contact Caroline Bolshaw, Public Affairs Manager on 020 7271 0632 or [cbolshaw@electoralcommission.org.uk](mailto:cbolshaw@electoralcommission.org.uk)