

## Constitutional Reform and Governance Bill Commons Report Stage - Tuesday 2 March

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.<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.

---

<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.

## 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

### **Regional Counting Officers**

---

**Government New Clause 24** would require the Chief Counting Officer at the referendum to appoint a Regional Counting Officer for each region in Great Britain, the regions being the same as those used at the European Parliamentary elections. This would create an intermediate level of responsibility and accountability between the Chief Counting Officer, who would oversee the conduct of the entire referendum, and counting officers, who would administer the referendum locally.

The clause would require Regional Counting Officers to certify, for their region, the number of ballot papers counted, and the number of votes cast for each answer to the referendum question. Under PPERA, the Chief Counting Officer is required to appoint counting officers for a referendum. This clause would allow that duty to be delegated to Regional Counting Officers at the Chief Counting Officer's discretion.

Following the last referendum held under PPERA in 2004, the Commission called on the government to establish a Regional Counting Officer role in law, building on the experience of that referendum, and the successful example of regional coordination provided by Regional Returning Officers at European Parliamentary elections in the UK. We therefore welcome this clause which we believe will be beneficial in enabling more effective management of the referendum, ensuring consistent standards of administration, and bringing a greater degree of assurance to the results process.

### **Electoral Commission accounts in relation to specified matters**

---

**New Clause 26** provides HM Treasury with powers to direct the Commission to produce accounts other than its annual accounts. We understand that these powers of direction are similar to those that Treasury has to direct other Government departments such as the Ministry of Justice to prepare accounts across financial years for fees and charges relating to elections.

We understand that the wider powers of direction that the new clause enables would be desirable in relation to the Commission's role in setting fees and charges for a referendum. However, given that the amendment does not specify that the powers of direction would apply only to the Commission's work on referendums we would welcome clarification from Government as to the new clause's intention and reassurance that its application would not be applied more widely.

## Referendum on voting systems

---

Further amendments have been tabled to **Clause 29** (Referendum on voting systems).

**Amendment 28** would remove the requirement for Parliament to consider and approve any draft order specifying the question or fixing the date of the poll for a referendum on voting systems. **Amendments 32-34** would remove from the Secretary of State the power to specify by order the question to be asked at a referendum on voting systems. Instead, it would require the Secretary of State to submit any question for approval by the Electoral Commission.

We have made clear previously that we are content with the approach currently set out in PPERA which would apply to other referendums held under that framework, whereby the Government proposes the referendum 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 believe that the existing approach strikes the right balance between Government responsibility for proposing the question, Commission responsibility for providing an independent assessment of it, and overall Parliamentary accountability in approving the question.

## Overview – timing of parliamentary election counts

An amendment was accepted during Commons Committee 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. We outlined our concerns in our Committee stage briefing about the workability of the amendment. A Government amendment and new clause have now been tabled which make further changes to this provision.

A new clause has also been tabled which seeks to limit the time between a UK Parliament seat becoming vacant and the subsequent by-election being called.

## Comments on amendments

### Parliamentary elections: counting of votes

---

**Amendment 57** would remove Clause 86 from the Constitutional Reform and Governance Bill. In its place, **Government New Clause 37** would:

- Place 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.
- Require the Electoral Commission to issue guidance for Returning Officers on complying with the new duty.
- Require 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.

- Require the Commission to include in its report on the administration of any UK Parliamentary election a list of the Returning Officers who had submitted a statement.

We welcome the removal of Clause 98 from the current Bill. We have set out previously our concerns about the Clause, in particular our view that it would not be appropriate for the Secretary of State to give guidance to independent Returning Officers on the discharge of their statutory duties.

We particularly welcome the provision in new **clause 37** 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. However, we do continue to have some concerns about new **clause 37** as outlined below:

### **The timing of changes to electoral law**

The Constitutional Reform and Governance Bill was introduced in July 2009, and it has now reached the last stage of consideration by the House of Commons, 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 have highlighted previously the risk that such late changes may have an impact on the effective conduct of elections.

### **Developing and issuing guidance on the new duty to begin counting votes with four hours of close of poll**

The Electoral Commission will issue guidance for Returning Officers on any changes to the Parliamentary Elections Rules as soon as possible once the Bill receives Royal Assent.

We do not believe that such guidance could – or should attempt to – anticipate all of the possible reasonable steps which might be taken by a Returning Officer

in order to comply with the new duty imposed by this Clause, for a number of reasons:

- The extent to which steps taken by Returning Officers are considered reasonable will need to be determined on a case by case basis – e.g. what is considered reasonable for a compact borough constituency may not be for a more geographically disparate county constituency; what is considered reasonable for a constituency where there are no combined local government elections may not be for a constituency where the parliamentary election is combined with local government elections.
- In addition, what are considered to be “reasonable steps” will to a degree depend on the level of financial resources available to returning officers and, in particular, the extent to which they will be able to claim payment from the Consolidated Fund for additional expenses incurred in taking what they consider to be “reasonable steps”.

To ensure Returning Officers are able to make decisions on the correct approach the Government should also clarify how it would assess whether any additional costs incurred in ensuring that the counting of votes begins within four hours of close of poll are reasonable, and amend its guidance notes for Returning Officers as appropriate.

We will continue to work with all parties as the Bill progresses to seek resolution to these remaining issues.

### **Timing of parliamentary by-elections**

---

**New Clause 15** would limit to ten weeks the time between a UK Parliament seat becoming vacant and the subsequent by-election being called. The Clause would also provide for certain exceptions to this rule, including when a Parliament has been sitting for more than 55 months.

We noted in our report on the November 2009 Glasgow North East constituency by-election that the complex set of rules that govern how a Parliamentary by-election is called can lead to constituencies being without Parliamentary representation for several months. We recommended that the UK Parliament should reconsider the procedures for calling a Parliamentary by-election to ensure that electors have an opportunity to elect a new MP promptly.

While we believe that more needs to be done to improve the workability of this clause as currently drafted we support the principle of bringing greater clarity to the process and timetable for holding UK Parliamentary by-elections.

---

### **Further information**

For further information, please contact Aileen Keyes, Public Affairs Manager on 020 7271 0628 or [akeyes@electoralcommission.org.uk](mailto:akeyes@electoralcommission.org.uk)