

Cities and Local Government Devolution Bill 2015

House of Commons Second Reading

14 October 2015

Introduction

This briefing sets out the Electoral Commission's view on key issues arising from the Cities and Local Government Devolution Bill, ahead of its Second Reading in the House of Commons on Wednesday 14 October.

We have not commented on all clauses of this Bill, and the absence of comment does not imply that we support them.

This briefing covers:

- Clause 20 – Governance arrangements for local government: entitlement to vote
- Party Election Broadcasts for independent candidates at London mayoral elections

Clause 20 – Governance arrangements for local government: entitlement to vote

Clause 20 was added to the Bill during its consideration by the House of Lords, to amend the local government franchise for England and Wales so that the voting age would be changed from 18 to 16. The change would have effect for all elections in England and Wales which currently use the local government franchise: local government elections in England and Wales, including elections for the Mayor of London and the Greater London Assembly; Police and Crime Commissioner elections; National Assembly for Wales elections; and European Parliament elections. The change would come into effect two months after Royal Assent to the Bill.

Decisions on the franchise for elections are important issues for Parliament to decide on, although the Commission will comment on the practical implications and workability of any amendments to the Bill in these areas where needed. In particular, the Commission's view is that any changes to the franchise for any future elections should be clear in sufficient time to enable all those who are eligible to be able to register and participate in the elections.

We are concerned that there is likely to be very little time to ensure that all 15- to 17-year-olds who may be newly eligible to vote are able to register successfully before the significant elections which will take place in May 2016, including: National Assembly for Wales elections; Police and Crime Commissioner elections; and local government elections in England, including elections for the Mayor of London and the Greater London Assembly.

Newly eligible electors will need to know what action they have to take before the deadline for applications to register to vote on 18 April 2016, including applying individually by providing their National Insurance number or an alternative proof of their identity. The annual canvass of households is currently underway across England and Wales, with the revised registers due to be published by 1 December 2015, which means that Electoral Registration Officers (EROs) will have missed an important opportunity to communicate messages to young people and their families about any change to the franchise.

We are particularly concerned that, despite being nearly six months away from the deadline for registering to vote at the May 2016 elections, there is currently no clarity or certainty about the legislative framework for delivering such a significant change to the franchise. Following Royal Assent to the Bill in the coming months, there will also need to be substantial changes to secondary legislation in order to implement a change to the voting age, which will need to be scrutinised and approved by Parliament before they come into effect.

It is likely that a separate registration initiative, led by EROs and supported by the Electoral Commission, would also be required in the short period of time before the May 2016 elections to inform and encourage eligible 15 to 17 year-olds to register to vote. This would need to be reinforced by significant public awareness activity, including political literacy initiatives, at both the national and local level. Additional funding would be needed to make sure that these activities could be delivered alongside the plans that will already be in place ahead of the April 2016 registration deadline.

The experience of lowering the voting age for some polls in Scotland has demonstrated the benefits of early certainty about changes to legislation. Legislation to lower the voting age to 16 for the September 2014 Scottish Independence Referendum was clear more than a year before the referendum. Legislation to lower the voting age for Scottish Parliament and local government elections in Scotland was clear ahead of the 2015 annual canvass of households, almost a year before the May 2016 Scottish Parliament elections. This means that EROs in Scotland have been able to target 15 to 17 year olds as part of their scheduled annual household canvass activities during this summer and autumn.

We also note that the recent St. David's Day Agreement highlighted the consensus in place among all parties that the administration and conduct of local government elections, and elections to the National Assembly for Wales, including the franchise for these elections, should be a matter for the National Assembly for Wales - this is expected to be addressed in the upcoming draft Wales Bill.

We therefore recommend that, if Parliament amends the voting age for the local government franchise for England and Wales as part of this Bill, any change should not be commenced until after the May 2016 elections and should take into account the position in Wales.

Party Election Broadcasts for independent candidates at London mayoral elections

In January this year, we published our 'Standing for Election' report¹, which followed a wide ranging consultation on the current system and rules across the full range of elections and set out proposals for reform. In this report we made a recommendation that the law should be changed to enable independent candidates, where feasible, to have Party Election Broadcasts (PEBs) reiterating a recommendation we made after the last London Mayoral election in 2012.

In 2012 an issue arose during the London Mayoral election as part of the broadcaster's deliberations, which suggested the law might not allow for the possibility that an independent candidate could receive a broadcast in principle.

When we considered this ourselves after the 2012 election we concluded that, in our view, Section 37 of PPERA prevents independent candidates from qualifying for PEBs as it provides that a broadcaster must not include in its services any party political broadcast made on behalf of a party which is not a registered party. Whilst Section 40(1) of PPERA defines 'party' as including any organisation or person, our view is that section 37 prohibits a broadcaster from including a party political broadcast (which we consider would include a PEB) from any organisation or person other than a registered political party in its services.

We set out in the 'Standing for Election' report our view that we could see be no reason why an independent candidate at a London Mayoral election should be treated differently from a party candidate. Even with a change in the law, an independent candidate would not automatically gain an election broadcast at the Mayoral Election as they would still need to pass the threshold set by the broadcasters to demonstrate they had 'sufficient support'. However, if an independent candidate were to pass this threshold the current law appears

¹ http://www.electoralcommission.org.uk/_data/assets/pdf_file/0008/180458/Standing-for-Election-in-the-UK-report-Jan-2015.pdf

potentially exclusionary and presents a barrier to participation in the Mayoral election.

Both the BBC Trust and ITV responded to our Standing for Election consultation at the time noting that they would welcome a clarification to the law in this area. In addition, following its own review of the Rules on Party Political and Referendum Broadcasts, Ofcom also underlined its support for the law being clarified.

With the London Mayoral election scheduled for May 2016, we have highlighted to the Government that **we would welcome an amendment to the Cities and Local Government Devolution Bill to clarify that independent candidates may receive election broadcasts** if it is considered within the scope of the Bill.

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