

Political Parties and Election Bill Commons Consideration of Lords Amendments – 13 July

This note sets out the Electoral Commission's views on amendments made to the Bill in the House of Lords which the Commission believes raise significant issues of workability or policy. The note does not comment on every amendment tabled.

Please note the clause references in this note correspond to the Bill as it went to the Lords (HL Bill 26)

Overview of the PPE Bill

- Healthy political parties are vital to the democratic process, and the regulatory structure that governs their funding has to be fit for purpose, reflecting the fact that many of those with statutory responsibilities under the law are volunteers. The Bill proposes some helpful changes to the regulatory structure. The investigatory powers and new civil sanctions will enable the Commission to act proportionately to secure compliance with the rules.
- We welcome the Government's commitment to introduce individual electoral registration in Great Britain to help improve the completeness and accuracy of the register.
- We also welcome changes that the Bill will bring to the make up of the Commission itself – in particular the proposals which will enable the Commission to employ staff with more recent party political experience and the introduction of four Commissioners nominated by political parties.

INVESTIGATORY POWERS OF THE COMMISSION

Clause 2 and Schedule 1 – Investigatory Powers of the Commission

It is important for the Commission to have access to the right supervisory and investigatory powers. **Clause 2 and Schedule 1** of the Bill contain important proposals which fill gaps in the powers provided by the Political Parties Elections and Referendums Act 2000 (the 2000 Act). For instance the Bill would for the first time enable us to obtain information from donors to political parties, in a situation where we have reasonable grounds to believe the law has been broken.

Lords Amendments 51, 52 and 53

The Commission supports **Lords amendments 51, 52 and 53** which reduce slightly the scope of our restated supervisory powers. They provide that we cannot routinely request information from a person who ceased to be an officer of a regulated entity more than five years ago, and cannot make supervisory visits

to premises occupied by persons who are no longer regulated by us but who have been in the past. We would not expect to use supervisory powers in these cases, and it is sensible to exclude them from the Bill.

Lords Amendments 54, 55, 61, 62 and 64

We support **Lords amendments 54, 55, 61, 62 and 64** which require the Commission to obtain approval from a magistrate before entering the premises of a supervised individual or organisation to inspect documents for supervisory purposes. We are content that the new provision is appropriate and workable. This new process for approval by a magistrate will only be available where the Commission has asked for permission to visit premises for routine supervisory purposes on a voluntary basis, and that permission has been unreasonably refused. The new process does not give the Commission any powers to seek entry to premises, either by a warrant or through other means, for the purpose of investigating a suspected breach of the law.

Lords Amendment 56

The Commission does not oppose **Lords amendment 56** which places the power to issue a court order requiring the production of documents to the High Court or the Court of Session, rather than to the county court or sheriff.

Lords Amendments 57, 58, 59, 60, 63 and 65

We welcome **Lords amendments 57, 58, 59, 60, 63 and 65** which extend the court order procedure introduced in the Commons stages of the Bill to ensure that statutory notices requiring the provision of documents can be enforced. The Lords amendments provide that the procedure can be used where a regulated entity fails to comply with a statutory notice requiring information or explanations, as well as documents. Such information can be critical to an investigation into a suspected breach of the law. Where a statutory request for such information is not complied with, the court order process provides a simpler and more proportionate solution than a criminal prosecution for failure to comply with the original request.

ELECTORAL COMMISSIONERS ETC

Clause 5 – Four Electoral Commissioners to be persons put forward by political parties

Lords amendments 2, 3 and 4

We welcome **amendments 2, 3 and 4** which would increase, to three, the number of persons proposed to be Electoral Commissioners, by each leader of the three largest nominating political parties.

It is important for the process for appointment of nominated Commissioners to be more open and competitive to encourage greater public confidence. Increasing

the number of nominations from each party will give greater choice for the Speaker's Committee which we would hope will ensure a balance of different types of elections and party experiences from among the nominated Commissioners.

The Speaker's Committee will want to give consideration to whether they might appoint an independent panel, as they do for other Commissioner appointments, to select from any party nominations and to ensure that our UK wider remit is reflected among the Board as a whole.

Clause 7 – Political Restrictions on Electoral Commissioners and staff

Lords amendments 5, 6 and 7

The Bill proposes to reduce from 10 year to one year, the current prohibition on the employment of those who have held office in a political party, made a reportable donation or been in paid employment in a party. The only exception to this rule would be the post of Chief Executive where the limit would be reduced from 10 years to five years.

The Commission supported **Lords amendment 6** to Clause 7 which has the effect of enabling certain specified posts to be subject to a longer ban on political involvement than the standard 12 months envisaged in Clause 7 of the Political Parties and Elections Bill.

The Commission supports this amendment as a helpful mechanism to enable the Commission to function effectively, especially when dealing with matters that are highly politically sensitive. The Commission does not envisage that this designation would apply to more than a handful of posts within the staff body and in each case the Commission would consider the merits of the case for designation. The Commission will consult the Speaker's Committee on the designation of posts. We will publish information regarding the designation of posts on an annual basis.

After Clause 7

Lords Amendment 8

This amendment inserted a new clause into the Bill which the Commission supported at Lords Report. The government amendment builds upon a proposal put forward by Lord Norton of Louth, to narrow the scope of the Commission's current duty to promote public awareness of electoral systems and related matters, systems of government and the institutions of the European Union. The effect would be to remove the duty to promote awareness of systems of government and the institutions of the European Union (except where such activity was related to promoting awareness of electoral systems).

The Commission's main focus is already on electoral systems - encouraging and explaining voter registration and providing information on how to take part in elections. The amendment would allow the Commission to continue to provide

some information on systems of government and democratic institutions where this is important in explaining the relevance of the democratic process, while also providing a clearer focus.

POLITICAL DONATIONS AND EXPENDITURE

Clause 8 - Declaration as to source of donation

The Commission supports the aim of Clause 8, which is to increase transparency in respect of donations and to act as a procedural reminder of the law on routing donations via third parties. It is important that the new administrative burdens that the clause imposes on parties and donors are proportionate.

Lords amendments 9, 10, 13 and 66, 67 and 68 to Schedule 1

These amendments would increase the threshold for the new declaration requirement relating to party accounting units and individual regulated donees, bringing it into line with the £7,500 threshold that applies to party headquarters and members' associations. This would reduce the administrative burden on local parties and regulated individuals. The Commission supports this change on the basis that it is a more appropriate way of reducing burdens than the alternative of an increase in the donation reporting threshold to party accounting units.

This increase to the declarations threshold would preserve the value of the new declarations provision as a procedural reminder of the law on agency in respect of larger donations, without undermining either the integrity or the transparency of political finances, since the law on agency will continue to apply to all recordable donations over £500, and all donations of over £1,500 to party accounting units will still be published. The Commission will re-emphasise the importance of complying with the law on agency, in respect of all donations including those that fall below the £7,500 threshold, in its advice and guidance to regulated entities.

Lords amendments 11 and 12

Those regulated by the 2000 Act can only accept donations over a certain value from "permissible" sources. An individual donor is defined as permissible if registered in an electoral register. **Lords amendments 11 and 12** narrow the definition of when an individual donor is permissible. The clause as amended now provides that an individual will be a permissible donor only if (i) on an electoral register, (ii) resident in the UK for income tax purposes, and (iii) not a non-domiciled resident.

As the Commission has said in previous briefings on this provision, it is clearly for Parliament to decide the criteria that will determine which individuals and other types of donor are permissible. The Commission's role is to apply the law in carrying out its regulatory role, and to advise Parliament and others on whether proposals for changes to the law are workable.

We are concerned that if these Lords amendments are agreed in their current form, those we regulate will be unable to comply with the resulting law, which is therefore likely to be unenforceable in practice. Our key concerns about the clause as amended in the Lords are:

- in many cases it is likely to be difficult for the political party or regulated person who has received a donation to confirm whether the donor is permissible under the Bill's definition. Recipients of donations can quite easily check whether an individual donor is on an electoral register – electoral register information is available to political parties for this purpose. However, the Bill provides donation recipients with no right to obtain reliable information (for example, from HM Revenue & Customs) about the donor's tax status.
- this will create serious uncertainty and difficulty for those we regulate, because it will remain a criminal offence not to return a donation from an impermissible source within 30 days of receiving it.
- we know that each year, individuals make over a thousand reportable donations, and there will be many lower-value donations that are not reportable to us, but that can only be accepted if they come from a permissible source. The recipient of each of these donations may be subject to prosecution if they keep a donation which turns out to be from an impermissible source, but may be unable to carry out a reliable check to establish whether they can in fact keep it.
- there is also no provision for the Commission to carry out such checks, so we would not be able to ensure that donations reported to us comply with the law on permissibility.

If Parliament wishes to change the test that the 2000 Act uses for the permissibility of individuals to achieve the effect intended by the Lords amendments, it should address these issues.

After Clause 9

Lords Amendment 14

The Commission supports **Lords amendment 14** which introduces a new clause to the Bill. The clause 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.

Lords Amendments 15 and 23

The Commission welcomes **Lords amendments 15 and 23**, 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

Lords Amendments 16, 17, 18, 19, 20, 21 22 and 24

The Commission is content with these Lords amendments, which clarify the process by which holders of elective office can appoint a compliance officer to assist them in meeting their obligations under the 2000 Act.

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

Lords Amendments 25, 26 and 27

The Commission supports the aim of Clause 16 and schedule 4, 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.

The Commission supports **Lords amendments 25, 26 and 27** which extend the scope of the new provision to cover loans as well as donations from unincorporated associations.

Clause 13 – Increased thresholds in relation to donations etc

Lords Amendment 28

Clause 13 proposes significant increases to the donation permissibility and reporting thresholds in the 2000 Act. 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.

The Commission is content with **Lords amendment 28** 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.

Clause 19 – Filling Vacant European Parliament Seats in Northern Ireland

Lords amendments 29 and 30

Lords amendments 29 and 30 amend the European Parliamentary Elections Act 2002 so that when a European Parliamentary seat in Northern Ireland becomes vacant 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 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

Lords Amendment 31 and 32

These amendments would amend the European Parliamentary Elections Act 2002, with the effect that the Greater London Returning Officer (GLRO) for Greater London Authority elections could be appointed as the London Regional Returning Officer for the European Parliamentary elections.

The experience gained in carrying out the role of GLRO may mean that s/he is best placed to ensure the efficient running of the European Parliamentary elections in the London region and therefore to be appointed London Regional Returning Officer.

For these reasons, the Commission supports the amendment.

Before Clause 21

Lords Amendment 33

The Commission has previously recommended that the Government should actively explore options other than the Commission to assume the role of CORE keeper, including existing public bodies with experience of managing national databases, or a new administrative body. We therefore welcome the additional flexibility which **Lords amendment 33** provides by amending Part 1 of the Electoral Administration Act 2006 (EAA) to enable the Secretary of State to establish by order a corporation sole with a view to it being designated by a CORE scheme as the CORE keeper.

We note that the amendment gives the Secretary of State the power to establish by order an advisory panel to provide advice and support to the corporation sole and to make provision in relation to the functions, governance, accountability arrangements and funding of the corporation and welcome the fact that the Electoral Commission and the Information Commissioner must be consulted on any order proposed under the new Section 3A of the EAA.

We would, however, welcome clarification from the Government that the corporation sole established as CORE keeper would have sufficient operational independence from the Government so as to ensure confidence in the independence and integrity of its activities and decisions.

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

Lords Amendments 34, 35 and 36

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.

After Clause 21

Lords amendments 37, 38, 39, 40 and 41

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 **Lords amendments 37, 38, 39, 40 and 41**, 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 Lords amendments

Lords Amendment 37

We support **Lords amendment 37** 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.

Lords Amendment 38

The Commission supports **Lords amendment 38**, 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.

Lords Amendment 39

We are broadly content with the reporting arrangements set out in **Lords amendment 39**. 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 **Lords amendment 38** 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.

Lords Amendment 40

We broadly support the intent of **Lords amendment 40** which provides for a system of IER to be put in place if Parliament approves the introduction of compulsory IER with personal identifiers.

Lords Amendment 41

This amendment 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 stress that there must be careful consideration by the Secretary of State before putting in place any regulations making different provisions for different areas, since it could lead to inconsistencies in relation to the fundamentals of the IER framework implemented across the UK.

Clause 22 – Schemes for provision of data to registration officers

Lords Amendments 42 and 43

Lords amendments 42 and 43 introduce powers for Electoral Registration Officers (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.

Clause 29 – Commencement

Lords Amendment 50

Lords Amendment 50 enable the Secretary of State – following (a) a report by the Commission that recommends that the provision of personal identifier be made compulsory, or (b) the rejection by Parliament of a report by the Commission that provision by made compulsory – to require the Commission to submit, by a specified date, a further report on the provision of personal identifiers.

The amendments would have the effect of:

- limiting to 12 months after the Commission submits its first report the period in which the Secretary of State can require the Commission to produce a further report.
- providing that the further report will be disapproved by Parliament when either House decides against resolving to approve the report; or, if both Houses so decide on different days, when the first of them so decides.
- requiring EROs to comply with requests made in writing by the Commission for 'assistance that they reasonably require in connection with the preparation of' any reports under Clause 28.

We believe that it is for Parliament to consider whether there should be restrictions on when the Secretary of State can require the Commission to produce further reports on personal identifiers, and on the procedure through which Parliament can disapprove such reports.

Schedule 5 – Minor and consequential amendments

Lords Amendments 93, 94 and 95

The Commission supports **Lords amendments 93, 94 and 95**. We believe that there is a case for full addresses not to be publicly available on ballot papers or nomination documents. Equally, though, we believe that voters should have access to sufficient information to indicate a candidates' proximity or otherwise to the constituency in which they are standing.

Further information

For further information, please contact Aileen Keyes, Public Affairs Manager on 020 7271 0628 or akeyes@electoralcommission.org.uk