

Parliamentary Voting System and Constituencies Bill

House of Lords Committee Stage – Days 4 and 5
13 and 15 December 2010

Please note that this paper provides an update to the briefings previously issued on Committee Stage and only comments on certain aspects of the Bill, or amendments, which the Commission believes raise significant issues of workability or policy and have not yet been debated. The note does not comment on every amendment tabled, and the absence of comment on an amendment does not imply that we support it.

Clause 3 – Conduct of the Referendum

Amendment 37A seeks to introduce a sub-Committee of the Electoral Commission, which will include representatives with experience of referenda and elected office, to exercise all its powers and functions in relation to the referendum.

On 1 October 2010, in line with amendments in the Political Parties and Elections Act (PPEA) 2009, four new Commissioners were appointed with the agreement of Parliament to the board of the Electoral Commission with first hand political experience. We therefore do not feel that this amendment is necessary.

Clause 4 – Combination of Polls

Amendment 39 seeks to remove the provision that would require the polls for the proposed referendum and the Scottish Parliament election in 2011 to be taken together where the dates of those polls are the same. We do not support this amendment.

When the Bill was introduced, the Commission made clear that the legal framework for the referendum must provide for formal combination of the referendum poll with any elections scheduled to take place on the same day, in the interests of ease of understanding and participation by voters, and we welcomed the amendments that were accepted in the House of Commons to include such provisions in the Bill.

It remains our view, irrespective of the date of the proposed referendum, that provision is needed for combination of the referendum poll with other polls scheduled to take place on the same day.

Clause 5 – Press Comment etc not subject to spending controls

Amendment 39AB has the effect that Party election broadcasts during the referendum period will not be broadcast if they contain references to the merits of different electoral systems or to the referendum.

In other aspects of Political Parties, Elections and Referendums Act (PPERA) 2000, such as those relating to party spending, different electoral events are considered as distinct for regulatory purposes. To be consistent with this we believe election broadcasts should not be permitted to encourage people to vote for a particular referendum result.

It is worth noting that Section 127 of the PPERA currently prevents broadcasters from transmitting any broadcast where its purpose or main purpose is or can be assumed to be to further a referendum campaign for a particular outcome, other than by the designated Referendum Campaign Broadcasts.

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

The Commission welcomes **clause 6** and **Schedule 9** which introduce controls and reporting requirements on certain loans and similar transactions to registered campaigners in this referendum. The provisions are similar to those introduced for political parties, individuals and members associations in 2006. They cover transactions where a campaigner intends to use benefits arising from the transaction to meet referendum expenses.

The provisions will provide transparency about the use of loans and similar arrangements, on commercial or other terms, to fund campaigning. Registered campaigners will be required to report certain information about such transactions in their referendum expenses return, along with the information on donations that PPERA already requires them to report.

The provisions will also place restrictions on the sources of loans and similar transactions to registered campaigners, equivalent to the existing restrictions on sources of donations. After the provisions have commenced, it will only be possible to enter into such transactions where the other parties to the transaction are 'authorised participants'. These are people and organisations in the same categories as those who can make donations to registered campaigners, such as individuals who are on an electoral register, and companies that are registered and carrying on business in the UK.

The provisions introduce a number of new criminal offences that apply where campaigners and others fail to comply with the controls. In order to allow 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 equivalent offences relating to loans to political parties.

We welcome Government **Amendment 39B** in the name of Lord McNally which further amends the Bill to make these sanctions available in respect of the new offences relating to loans to campaigners in the referendum.

Schedule 1 – Further provisions about the referendum

Amendments 103 – 107 seek to require, rather than permit, the Chief Counting Officer at the referendum to direct Regional Counting Officers (RCOs) and Counting Officers (COs), and to require those directions to include directions specifically about the duties of RCOs and COs in relation to voters with disabilities.

Amendments 114 – 119 seek to require Counting Officers to ensure that the polling places used at the proposed referendum are accessible to disabled voters, and to notify voters of alternative voting options.

It is clearly important that the voting process is accessible to all electors and that the needs of different groups of people are taken into account. The Chief Counting Officer will issue instructions and directions to RCOs and COs that cover their existing duties in relation to accessibility and disabled voters under relevant equality and electoral legislation. These include:

- ensuring that polling stations meet the accessibility requirements of the Disability Discrimination Act
- ensuring that information, forms and notices relating to the voting process are available in alternative, accessible formats
- encouraging participation in the proposed referendum, and providing information about the different methods of voting available and how to access them
- making available enlarged sample versions of the ballot paper and tactile voting devices in each polling station to enable voters with visual impairments to vote

Amendments 108 and 109 strengthen the duty on the Electoral Commission to provide information to voters about each of the two voting systems referred to in the referendum question.

We intend to send an information booklet about 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. This booklet will be available in a range of formats including Braille, audio and large print.

Amendment 110 seeks to place a duty on the Electoral Commission to take particular steps to ensure that support and information is available to disabled voters, and to issue guidance about equality of access to the voting process.

We take seriously our duties as a public body under equality legislation, including the Disability Discrimination Act and the Equality Act 2010 (due to come into force in April

2011), to ensure, among other things, that the information we provide is accessible and available in alternative formats.

As at other elections in the UK, voters who have a disability may ask polling station staff for assistance with voting, or may take someone with them to the polling station to help them cast their vote. And people voting by post may ask someone to help them with the process of completing their ballot paper and postal voting statement. The Chief Counting Officer's instructions for polling station staff will recognise that different voters will have a wide range of needs and aim to ensure that staff are able to meet them.

While we recognise the importance of ensuring the voting process is as accessible as possible, we do not believe that these amendments are necessary given the existing duties and responsibilities of counting officers and the Electoral Commission.

Amendment 111 seeks to remove the provision that sets out how the result of the proposed referendum may be challenged, that is, only by a claim for judicial review filed within 6 weeks of the certification to which the challenge relates. There does not appear to be any corresponding amendment to replace this provision. If accepted, this amendment would therefore leave the referendum result open to challenge for a longer period of time than is presently provided for, and potentially via other avenues than judicial review.

The Commission believes it is important that there is a clear, proportionate and timely mechanism for challenging the referendum result and that the current provision is the most appropriate, and that therefore this amendment is unhelpful. The current provision also follows the precedent of the last referendum held under the framework of the Political Parties, Elections and Referendum Act 2000, and is consistent with the provisions in the draft National Assembly for Wales Referendum (Assembly Act Provisions) (Referendum Question, Date of Referendum Etc.) Order 2010, which has been approved by Parliament.

Schedule 2 – Rules for conduct of the referendum

Amendments 112A-C and 113 seek to make alterations to the timetable for the proposed referendum and to the hours of poll. These alterations would create inconsistencies between the timetable and polling hours for the referendum and for the elections scheduled to take place on 5 May, which would be confusing and unhelpful for voters.

Amendment 115 seeks to limit to 1,050 the number of electors allocated to any polling station for the proposed referendum. The Commission does not believe such a provision is necessary. The Chair of the Commission is the Chief Counting Officer for the proposed referendum and intends to issue directions to Counting Officers as to the maximum number of electors to be allocated to any polling station, and the associated minimum number of staff to be present at each polling station.

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