

Parliamentary Voting System and Constituencies Bill

House of Lords Committee Stage – Day 5

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 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 PERA 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.

Amendments 39AC and **126** seek to make significant changes to the spending limits that will apply to campaigning at the referendum after the Bill receives Royal Assent. The amendments would maintain the proposed £5m spending limits for the designated lead campaign groups on each side of the question, but would reduce the limit for other campaigners that are not registered political parties from £500,000 to £50,000.

The amendments would also set the limit for all political parties that have registered to campaign at the referendum at £500,000, whereas the Bill allows higher spending limits for those parties that obtained more than 5% of the vote at the last UK Parliamentary general election.

These are significant changes to the provisions for spending limits at UK-wide referendums set out in the Parliamentary Parties, Elections and Referendums Act 2000 (PPERA). Parliament may wish to consider whether the change might affect the

ability of campaigners to put their arguments effectively to voters, and the potential implications of changing one aspect of the PPERA rules on campaign spending without further consideration of the overall regulatory structure.

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.

Clause 7 - Interpretation

Amendment 40B seeks to change the voting areas for the referendum so that they are the same as UK parliamentary constituencies. The voting areas currently in the Bill reflect the voting areas for the scheduled elections on 5 May 2011, the polls for which are to be combined with the poll for the referendum if they take place on the same day.

We understand that it is the Government's intention that the referendum should take place on 5 May 2011. We do not support this amendment as making such a significant change to the rules for the referendum this close to 5 May would create an unnecessary risk to the successful delivery of the scheduled elections and the referendum. It would also increase the complexity of administering the combined polls.

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.

Amendment 110ZA seeks to strengthen the relationship between the Chief Counting Officer (CCO), Regional Counting Officers and Counting Officers in the delivery of public awareness work. The Electoral Commission has no objections to this amendment, but would highlight the work that is already underway to achieve what is intended by this amendment. The CCO has established a working group that includes Regional Counting Officers to co-ordinate activity ahead of the planned polls and the Commission's plans for public awareness have been shared with this group, as well as with Counting Officers and Electoral Registration Officers.

Materials will be developed by the Electoral Commission for use by electoral administrators to support their public work awareness and ensure appropriate co-ordination with the Commission's own activity.

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.

Further Information

For further information, please contact Caroline Bolshaw, Public Affairs Manager on 020 7271 0632 or cbolshaw@electoralcommission.org.uk