

Parliamentary Voting System and Constituencies Bill Report Stage

7, 8 and 9 February 2011

Please note that this briefing paper comments only on certain aspects of the Bill, or amendments tabled to date, which the Commission believes raise significant issues of workability or policy. We also welcome amendments that give effect to recommendations we have previously made. The note does not comment on every amendment tabled, and the absence of comment on an amendment does not imply that we support it. Should any amendments be published prior to Days 2 and 3 of Report Stage that require comment, we will issue an additional briefing.

PART 1 - VOTING SYSTEM FOR PARLIAMENTARY ELECTIONS

Clause 1 – Referendum on the alternative vote system

During the Committee stage of the Bill members of the House of Lords agreed an amendment tabled by Lord Rooker, which removed 5 May 2011 as the date for the referendum, replacing it with a provision allowing the referendum to be held on any date before 31 October 2011.

Amendment A2 reinstates 5 May 2011 as the specified date for the referendum, while giving the Minister the power to make an order, subject to the affirmative resolution procedure, providing for a later date for the referendum if the Minister ‘is satisfied that it is impossible or impractical for the referendum to be held on 5 May 2011, or that it cannot be conducted properly if held on that day’.

We welcome the renewed clarity that this amendment provides in relation to the date of the referendum, while recognising the need to have some flexibility over this should unforeseen or exceptional circumstances arise.

Were the date of the referendum to be moved to anything other than 5 May the Commission would advise of any specific risks associated with any particular date.

Amendments 1 and 2 both propose amendments to the referendum question, to ask voters whether they want to change from first past the post and an enquiry to be established to select an alternative system, and to ask voters whether they would

like to change from 'first past the post' to 'supplementary vote' (as opposed to 'alternative vote').

Where a referendum question is set out in a Bill providing for a referendum, as with the PVSC Bill, the Political Parties, Referendums and Elections Act 2000 (PPERA) requires us to consider the wording of the proposed question and publish a statement of our views on its intelligibility. We published a statement on 30 September 2010 of our views of the original question contained in the Bill, and the question was subsequently amended in the House of Commons to reflect our recommendations.

In the event that the question currently included in the Bill were to be replaced with a different question, the Commission would consider whether it was appropriate to comment on the intelligibility of the new question, taking into account the available time for further scrutiny or amendment of the Bill by Parliament; views expressed by Members of Parliament during debate on the amendment including any request for the Commission to comment on the wording of a new question; and any relevant evidence available from previous voter research exercises.

Making a significant change to the question at this stage in the Parliamentary process would make it very unlikely that we would have sufficient time to undertake work with voters to ensure that the revised question could be easily understood and answered, in time for Parliament to consider our views and decide on the final question before the Bill completes its remaining Parliamentary stages. Therefore if Parliament wishes to support these amendments we would have to advise against holding the referendum on 5 May 2011.

Clause 4 and Schedules 5-8 – Combination of Polls

Amendments 5 – 5E, 6, 7 and 7A seek to alter the provisions in the Bill that allow for scheduled elections across the UK to be combined with the poll for the referendum, if they are taking place on the same day.

While the date of the referendum is not currently specified in legislation, it is proposed that the referendum should take place on the same day as the scheduled elections on 5 May 2011 in England, Scotland, Wales and Northern Ireland. 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 elections scheduled to take place on the same day, in the interests of ease of understanding and participation by voters.

It therefore remains our view that such provision is needed, and we welcomed the amendments that were accepted in the House of Commons to include such provisions in the Bill. We therefore do not support these amendments which would remove the combination provisions currently in the Bill that apply to England and Northern Ireland.

Amendment 5F would require the counting of votes in all constituencies for the Scottish parliamentary elections to be carried out immediately following the close of polls on 5 May 2011. The Commission recognises the wish to ensure that the result of any election is known as soon as practicable after the polls close and the Chief Counting Officer has, therefore, already directed that the counting of votes in the referendum will not begin until 4pm on Friday May 6. This will ensure Returning Officers can devote their resources to counting Scottish Parliamentary votes first.

However, Returning Officers have a responsibility to ensure that the count and results are accurate and accepted and there are a number of factors which should be taken into account in deciding when to begin the counting of votes in each area. These include the number of ballot papers to be verified and counted, the geography of the constituency, the availability of staff and counting venues, the security of ballot boxes, and the volume and management of postal votes returned across the constituency. We therefore do not support this amendment and also suggest that the House might want to consider the views of the Scottish Parliament when debating this amendment.

Clause 5 – Press Comment etc not subject to spending controls

Amendment 9 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 the 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.

However, 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 the designated Referendum Campaign Broadcasts. While we therefore support the intention behind this amendment we are not sure that it is necessary to ensure the intended outcome.

Clause 7 - Interpretation

Amendment 10A 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 the proposed date of 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

Amendment 31 sets the minimum period between Royal Assent and the poll at six months. We have previously said that, providing the Bill receives Royal Assent in sufficient time to allow a referendum period of at least 10 weeks before the poll, and the rules for the administration of the referendum and other polls taking place on the same day have been clear well in advance of polling day, there will be adequate time to register campaigners and designate lead campaign organisations, so that they can put their arguments to voters. We therefore do not think that this amendment is necessary.

Amendment 31A seeks to place a duty on the Electoral Commission to secure the agreement of the Speaker's Committee to any proposed work to promote public awareness of the referendum.

The Commission agrees that it is very important that any work to promote public awareness is discussed with the Speaker's Committee but does not believe that this amendment is required as it has already presented its plans for public awareness, and the costs associated with it, to the Speaker's Committee for their agreement.

Amendment 32 seeks to place a duty on the Electoral Commission to prepare and distribute an explanatory leaflet to all households in the United Kingdom.

We agree that it is important for voters to receive impartial information regarding the choice being put to them in the referendum, which is why 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. We therefore do not feel that this amendment is necessary.

The Electoral Commission has published on its website information on the referendum, along with a paper that sets out the process that the Commission has used to ensure that the content has been tested with members of the public, academics and plain English experts. The content of our public awareness booklets will draw on this information.

Amendment 33 seeks to add a provision to the Bill to require Regional Counting Officers and Counting Officers for the proposed referendum, and Electoral Registration Officers, to take steps to ensure that electors who arrive at a polling station to vote within the hours of poll are able to do so.

Amendment 34 seeks to permit electors who have arrived within the precincts of the polling station during polling hours (i.e. 7am-10pm) and have not been able to vote by 10pm to be able to cast their vote.

In relation to **amendment 33**, The Commission has always been clear that good planning is an essential part of managing the problem of queues at polling stations. While we support the principle of this amendment, we do not feel that it is necessary, as its intended outcome can be achieved through the Chief Counting Officer's power of direction for the referendum (as provided for in the Bill).

The Chief Counting Officer intends to direct Counting Officers at the proposed referendum, and she has made clear to Counting Officers the key aspects on which she intends to issue directions. These include the preparations that must be made to ensure that potential risks are identified and properly managed and that there are sufficient resources in place to effectively deliver the polls. Counting Officers will be required to adhere to the Chief Counting Officer's specified staffing ratios¹ and to have contingency arrangements in place to respond to issues that arise on polling day.

However, following problems experienced by voters queuing at polling stations at close of poll at the May 2010 UK Parliamentary general election, we recommended that the Government should urgently change the law so that people who are entitled to vote at a polling station and who are in the queue to enter the polling station at the close of poll are allowed to vote. **Amendment 34** appears to seek to achieve this outcome.

We made clear our concern to Government before the Bill was published, and to Parliament when the Bill was introduced, that without a change to the primary legislation, there remains a risk that voters will be affected by similar problems at the 2011 polls as were experienced in May 2010. We were disappointed that the Government did not choose to act on this recommendation at the time. However, a change to the rules around close of poll would be a significant one, and the details of any changes would need very careful consideration to ensure that they could be consistently applied and did not have any unintended consequences. For a UK-wide referendum consistency of administration across all counting areas is particularly important to ensure that voters have the same opportunity to participate wherever they live.

¹ These include a maximum of 2,500 electors to be allocated to any one polling station, and the following minimum staffing ratios: one Presiding Officer per polling station; one poll clerk for up to 1000 electors; two poll clerks for up to 1750 electors; three poll clerks for up to the maximum 2,500 electors.

Amendment 34 is drafted in a way that we believe could be open to different interpretations, which could lead to inconsistent practice. Therefore, although we fully support the principle of the amendment, there is not sufficient time to consider the full implications of this amendment and how it might work in practice, and to consult with the Regional Counting Officers for the proposed referendum. We feel unable to support it at this stage in the planning and legislative process.

Schedule 2 – Rules for conduct of the referendum

Schedule 3 - Absent voting in the referendum

As the Bill stands, entitlement to a postal vote is restricted to those who have successfully applied for a postal vote in the referendum, or who have been granted a postal vote at UK Parliamentary elections for a definite or indefinite period.

The Commission has previously highlighted the risk that many voters who have applied for postal votes for other polls taking place on 5 May may incorrectly assume that they will also receive a postal vote for the referendum. It is possible that many of these voters will be away at the time of the referendum and therefore would not be able to vote in person at a polling station.

We therefore welcome **amendments 34A–AS, 34AU–AX, 36 and 37** which would have the effect of granting a postal vote to any person who is on the postal voters list for any poll with which the referendum is combined, and who is entitled to vote in the referendum. The amendments introduce similar arrangements for proxy and postal proxy voters. We believe that these amendments will support effective participation in the referendum.

PART 2 - PARLIAMENTARY CONSTITUENCIES

Responsibility for Parliamentary boundary reviews lies with the Boundary Commissions for England, Scotland, Wales and Northern Ireland and is not the responsibility of the Electoral Commission.

Further information

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