



# THE ASSOCIATION OF ELECTORAL ADMINISTRATORS

## Written Evidence submitted in response to the Review of the Electoral Commission by the Committee on Standards in Public Life

### Questions about the mandate of The Electoral Commission

- 1. Is the mandate set out in the Political Parties, Elections and Referendums Act 2000 conducive to the efficient and effective operation of The Electoral Commission as the regulator of elections and party political donations in the UK?***
- 2. In the light of the experience of the last five years are there any appropriate revisions to the mandate of the Commission that should be made to the Political Parties, Elections and Referendums Act 2000?***

1.1 The Association's main interest in the mandate of the Electoral Commission (EC) relates to its duties in terms of electoral administration (largely the registration of electors, the conduct of elections and referendums and the review of boundaries). The Association has limited interest in the responsibilities that relate to the regulation of political parties. In general terms, the Association has an over-riding concern that six years after the creation of the EC, some of the activities envisaged as transferring to the EC have not yet happened (e.g. the payment of election expenses, review of parliamentary boundaries). Additionally, the Association has a concern that there is considerable overlap between the work of the Commission and that of the Government department responsible for electoral matters (currently the Department for Constitutional Affairs (DCA)). This leads to duplication of work on certain matters relating to policy development etc. and this of itself leads to confusion about roles and responsibilities. It is also probably wasteful in resource terms.

1.2 In terms of the specific mandate contained within the 2000 Act, the Association believes that:

(a) the duties relating to the registration of political parties are at the right level and allows the EC to carry out those duties in an effective and consistent manner. There is a specific concern outside of these duties relating to the perceived "unfairness" of the system as it operates for independent candidates. However, the control of that is outside the scope of the 2000 Act. A technical change which should be made to

ensure the efficient and effective administration of elections would be to change the date (by making it earlier) that proposed parties can register in advance of an election or registered parties can change their particulars;

(b) the provisions relating to the payment of expenses for all registration and election duties should be transferred to the EC without further delay and with a new system to replace the current outdated system administered by the DCA. This would represent a major change to that which currently operates insofar as the DCA only currently funds European parliamentary and UK parliamentary elections through payments from the Consolidated Fund. To achieve high and consistent standards in electoral administration, the Association believes it important that funding for the whole service becomes a centralised function and taken out of the control of individual local authorities. There is a wider argument here relating to the point made in paragraph 2.1 of the Committee's Issues and Questions paper. There is a case for changing the present position relating to electoral administration within Great Britain and modelling a new system on that which applies in Northern Ireland and in many other countries. The EC would be a candidate for taking on this role. Although the Association would not necessarily subscribe to that view, it does consider that an informed debate should take place around this issue and the Committee is encouraged to give some consideration to this important matter as part of the current review.

(c) the consultation mechanisms which affect the work of the EC can be cumbersome and there are examples of this problem which have led to severe difficulties in terms of effective electoral administration. The leading example of this was the all-postal pilots in four English regions for the European parliamentary elections in June 2004. After a lengthy period of consultation, the Government decided to ignore the EC's recommendations. The effect of this was that the parliamentary process was so late that major administrative and logistical difficulties ensued for the four regions. The Association is of the view that the consultation process both of and by the EC needs to be more streamlined and contained in a way to ensure that administrative, logistical and operational difficulties do not arise in terms of the proper conduct of elections and/or the ability of electors to exercise their democratic rights.

(d) in terms of giving advice and assistance, the present powers are appropriate and have been well exercised by the EC in recent years.

(e) the reports produced by the EC after elections cause concern in terms of a value for money test. They are often extremely long and detailed but add little to the greater debate about the conduct of elections in this country. It is the Association's view that there would be more value in shorter reports which identify areas for further review or recommendations for change based on the experiences of the particular election which is the subject of the report.

(f) the responsibility for all boundary matters should be transferred to the EC as soon as possible. This would include the work of the Boundary Commissions in terms of UK parliamentary boundaries. Considerable difficulties and confusion for the

electorate is caused by the lack of consistency in determining various electoral boundaries. As part of this more consistent approach, the rules relating to the work of the EC should be amended to ensure that co-terminosity between boundaries becomes the accepted norm in undertaking such reviews. An alternative approach would be to establish a new Commission to deal with all boundary matters at all electoral levels. Either way, it is important for the reasons set out above that boundaries are dealt with by one national body working to a uniform set of rules.

### ***3. In particular, is there an appropriate balance between the executive and advisory functions of the Commission?***

3.1 This question raises an important point of principle which largely relates to the advisory functions of the EC. The current arrangements do lead to confusion for the electorate at large and electoral administrators in particular. Although the EC has much improved its performance in this field in the last three years and works closely with those responsible for providing the electoral registration and elections administration services, there is little doubt that the present arrangements do not assist the process in terms of improving performance and standards across the piece. Similarly, advice that is given on the basis of "we can only advise" and subject to caveats about "only the Courts can decide" and "you should take your own legal advice" is not altogether helpful in achieving consistency of practice and clarity of approach. Equally, the DCA can and do use the EC's duties to give advice on these matters as a screen behind which to hide.

3.2 In essence, the above arrangement is less than satisfactory and one which attracts adverse comment from our members. Given the current position relating to the provision of services at local authority level with personal responsibility falling on the Electoral Registration Officer and the Returning Officer, it is difficult to propose an alternative and improved system.

3.3 However, this is an area which the Association believes needs to be reviewed in the context of achieving improved levels of service. One option might be to consider granting the EC limited powers of direction in respect of these matters similar to that given to Regional Returning Officers for the European parliamentary elections in 2004. This could work well and provide a degree of uniformity and consistency which is currently lacking.

3.4 The current difficulties could be exacerbated if and when the Electoral Administration Bill currently before Parliament becomes law. The legislation will introduce the requirement for performance standards relating to electoral administration and it is currently envisaged that the EC will be responsible for "policing" these standards. This will throw into sharp focus a possible conflict between the EC's executive and advisory functions in terms of its relationship with one of its key stakeholder groups. This will be a completely new role for the EC and one which could lead to potential difficulties.

3.5. A further potential conflict of interest arises from another issue contained

within the Bill. The Bill provides the necessary legislative background for the introduction of the CORE scheme for electoral registration. It also provides for a "CORE keeper" to be defined. Current thinking within the DCA appears to be moving to a position where the EC would be defined as the keeper. There is clearly a potential conflict here given the EC's other regulatory responsibilities in terms of party funding and its need to use the electoral register for checking on donations to parties. The Association has suggested as much in its response to the CORE consultation paper earlier this year and other parties which responded to that paper have made a similar point.

3.6 A further issue which might be appropriate for consideration in terms of regulatory powers relates to matters concerning the conduct of agents and candidates at elections. Under present legislation, there is a significant "gap" in the possibilities of sanctions being applied to any person who breaches the law or administrative requirements relating to elections or whose behaviour falls short of that which would normally be expected of persons standing for or holding public office. Persons found guilty of corrupt or illegal practices by the courts are subject to certain disqualifications from being registered as electors or standing for office for specified periods.

3.7 However, the number of successful prosecutions which lead to such disqualifications are very limited indeed. Additionally, there are a number of technical breaches of the law where complaints do not necessarily end in prosecutions because the prosecuting authorities deem it not to be in the public interest to proceed that far.

3.8 A particular issue which often attracts a negative response from the electorate is the behaviour of some agents and candidates during election periods. One way of improving this situation would be to introduce a code of conduct for these categories which would stipulate minimum standards of behaviour to be adopted and specify the do's and don'ts of how to conduct an election campaign together with reference to the legal duties that fall on participants. However, to be effective, a code of conduct needs to be enforced and the Association believes that the EC could play an effective role in this matter. Such a code would need to have statutory backing similar to the code of conduct for local government. The recent experience of other "voluntary" codes in these fields is that they have not achieved universal compliance in the field despite considerable agreement and debate by the interested parties at national level, e.g. the code on postal voting.

3.9 There is an argument that the EC should be given certain regulatory powers to investigate and adjudicate upon the "lesser" matters described above together with alleged breaches of the code of conduct introduced for agents and candidates. The model of the Standards Board for England and Wales is one that could be employed. In such a model, the EC would have limited forms of sanction available to it such as terms of disqualification and the ability to refer matters to the prosecuting authorities where the sanctions were not thought sufficient. An appeals mechanism would also need to be in place.

***4. Has the appropriate balance been struck in the division of responsibilities between The Electoral Commission and other public bodies in promoting public awareness of and participation in elections and referendums?***

4.1 In reality, there was very little co-ordinated activity in the fields of promoting public awareness or participation prior to the establishment of the EC. What there actually was tended to be left to NGOs such as the Electoral Reform Society or the Hansard Society on a national basis or individual local authorities through their Returning Officers. The only other activity of raising awareness relied heavily on the work undertaken by political parties in terms of presenting their policies and candidates.

4.2 Since the EC took on this role, the situation has vastly improved and the Association would wish to place on record its appreciation of what the EC has achieved and continues to achieve in these fields.

***5. Does The Electoral Commission operate as a strategic regulator in exercising its responsibilities in relation to:***

- (a) the registration of political parties;***
- (b) the regulation of donations to parties; and***
- (c) the control of campaign finance?***

5.1 The Association has little or no involvement in these matters and is unable to comment further other than the comment made in paragraph 1.2(a) above.

### **Questions about the governance of The Electoral Commission**

***6. Does the independent legal status of The Electoral Commission provide it with sufficient independence from Government?***

***7. Is the financing of The Electoral Commission – through a combination of income received by the Commission for services, and money provided by Parliament from the Consolidated Fund – compatible with its independent regulatory role? Is there a more appropriate way of financing The Electoral Commission?***

6.1 The Association is of the view that the current arrangements do not satisfy the test of independence. It is a widely held perception within the membership that the EC is largely ignored by Government (e.g. the all postal voting pilots in 2004 or the question of individual registration more recently) or is unwilling to adversely comment on Government or political activity because of the practical issues of both financial and appointing controls that the government of the day has over the activities of the EC and tenure of appointment of the Commissioners. This may be more perceived than real but nevertheless it has to be a matter of concern that the perception exists at all.

6.2 The issue of legal status does not, of itself, guarantee independence when the financing of the EC is almost totally reliant on funding arrangements which effectively fall to be decided by members of political parties. An organisation without proper funding arrangements is always going to be in difficulties and whether it is a separate legal entity or not is somewhat irrelevant in terms of carrying out its responsibilities if it does not have the necessary financial resources in place.

6.3 The Association's view is that a different method of financing should be found which relates more closely to funding arrangements for other non-departmental public bodies who operate in a similar way or at a similar level. One such method might be through a different accounting and reporting route which is explored in more detail in the next section of this evidence. A model such as the way in which the Audit Commission is funded and governed through its Commissioners might be an improvement on the current arrangements.

6.4 A further drawback of the present system relates to the need for the EC to make a special case for the necessary funding for "additional" development work. Given that the EC has to submit a five year plan, there should be sufficient flexibility within the arrangements to allow for the funding to be available for items which have been included in the approved plan or which have arisen because of government or legislative requirements without the need for "special" bids having to be made to the Speaker's Committee in such circumstances. This is particularly so given the overall requirements to consult the Treasury on the five year plan and the statutory responsibility on the Comptroller and the Auditor General to produce "3e" reports on the activities of the EC. As an associated matter, there would be considerable merit in moving to a three year rolling programme of funding with a direct link between the funding programme and the five-year plan.

### ***8. Are the restrictions on who can be an Electoral Commissioner appropriate in the light of the responsibilities of Commissioners under the Political Parties, Elections and Referendums Act 2000?***

8.1 The Association believes that the current arrangements are entirely appropriate and that they should continue to apply. It is critical from a public confidence and perception perspective that Commissioners are seen as being totally independent of any political party or political affiliation. Equally, members of the Commission need to be seen to be independent from any political influence whatsoever. All of this is critical but none more so in terms of the EC's responsibilities for electoral administration and boundary reviews.

8.2 In the Association's view, the Commissioners should bring some relevant experience to the work of the EC. This is particularly true in relation to local government because of the linkage between the work of the EC and the responsibilities for electoral administration undertaken by local government.

## Questions about the accountability of the Electoral Commission

**9. Does the Speaker's Committee of the House of Commons constitute an appropriate accountability mechanism for The Electoral Commission?**

**10. If it does, are there any incremental changes to its composition, mandate or procedures which would contribute to its effectiveness?**

**11. If it does not, is there an alternative mechanism to make The Electoral Commission more accountable?**

9.1. The Association takes the view that the present arrangements are not satisfactory for the reasons set out in paragraphs 6.1 to 6.4 above. These arrangements rather sideline the EC in the sense of seeming removed from the mainstream of political activity and scrutiny. This, in turn, leads to difficulties in terms of proper parliamentary process. The Association would prefer to see a model based on the well-accepted and understood principle of select committee scrutiny.

9.2 Given the wide-ranging responsibilities of the EC and the need to demonstrate political independence, the Association would suggest that a new joint select committee of both Houses be established. The new committee could undertake scrutiny of the EC's work, approve the funding arrangements and provide the link to both Houses in terms of the wider parliamentary scrutiny and process. It would also be able to initiate its own reviews and inquiries where it thought it necessary and would have the considerable added benefit of bringing more members of parliament into contact with the day to day work of the EC. Similar arrangements would need to be put in place in terms of the devolved parliament and assemblies, where appropriate.

9.3 Within this model, the EC would still be required to produce annual accounts, estimates, a five-year plan and an annual report for consideration by the select committee. In short, the select committee would assume all the duties currently the responsibility of the Speaker's Committee but with a wider input from members of both Houses and with more direct accountability to Parliament.

**12. Are the devolved administrations of the UK appropriately incorporated into the accountability mechanism?**

12.1 So far as the Association is aware, the present arrangements appear to be appropriate. On a related issue, the Association can report that the offices of the EC in Belfast, Cardiff and Edinburgh work closely with the respective regional branches of the Association.

**13. Has the Parliamentary Parties' Panel and its decentralised variants been an effective way of The Electoral Commission engaging in dialogue with political parties? Is there a more effective way of conducting this dialogue?**

13.1 The Association has no direct experience of the work of the Parliamentary Parties' Panel and cannot therefore comment on its effectiveness. The Association does however believe that there is a compelling case to widen the current arrangements into regular "round table" meetings at which all stakeholders in the electoral process are represented and can exchange views on topical, logistical and policy matters with a view to the improvement of electoral administration within the country.

### **General question**

***14. The Committee would find it valuable to receive evidence about the development and operation of policy areas within the remit of The Electoral Commission that highlight issues regarding the Commission's mandate, governance and accountability.***

14.1 The current responsibilities of the EC in relation to the conduct of elections are not comprehensive, e.g. they have no remit in relation to Scottish local government elections, parish polls, local government referendums, business improvement district elections and there is considerable doubt about their responsibilities in relation to English parish council elections and Welsh community council elections. Given the modern tendency for combined polls, this is far from satisfactory, leads to a degree of confusion and duplication and provides a disjointed and incomplete service to those responsible for the above elections. The Association would suggest that responsibility for advice and guidance on these matters is also included within the EC's remit.

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**Chairman**

May 2006.