

COMMITTEE ON STANDARDS IN PUBLIC LIFE REVIEW OF ELECTORAL COMMISSION – THE GOVERNMENT'S VIEW

1. The Government welcomes this opportunity to contribute to the Committee on Standards in Public Life review of the Electoral Commission. The Commission was created by the Political Parties, Elections and Referendums Act (PPERA) 2000 and has been in operation since 2001 when its first Commissioners were appointed. So it is timely that after five years a review of its experience is undertaken and lessons learned for the future.
2. Throughout the lifetime of the Commission, the Government has worked closely with it, while respecting its independence. There have been several major pieces of legislation in that time, including the European Parliamentary Elections Act 2002, the Electoral Fraud (Northern Ireland) Act 2002, the European Parliament (Representation) Act 2003, the Regional Assemblies (Preparations) Act 2003, the European Parliamentary and Local Elections (Pilots) Act 2004, and the Electoral Administration and Northern Ireland (Miscellaneous provisions) Bills, which are still in Parliament. And a considerable amount of secondary legislation has also been passed and implemented. In all of this the partnership between the Government and the Commission and key stakeholders, in particular electoral administrators and returning officers, has been invaluable. There have been differences of view about policy, but this has not prevented the formation of a positive working relationship, which continues to this day.
3. The Government's comments below focus mainly on the questions about the Commission's mandate. This is where the interests of the Government and the Commission come together most closely. The Commission's role in the registration of political parties, regulation of political donations and control of campaign expenditure are clearly of great importance to our democracy; but detailed comment is best left to the political parties themselves. The Government's main concern is that the system should work effectively and be seen to work well. Notwithstanding the controversy that has been generated by greater openness about donations and more recently about the status of certain loans to political parties, the Government believes that the Commission has delivered what was intended by PERA.
4. It is also important to look to the future. Much has changed in the past five years. The role of the Commission in the development of policy has probably taken on a prominence that was not expected back in 2000. Expectations about what it is able to achieve have risen as a result. At the same time it faces a number of significant operational challenges, which would not have been foreseen in 2000, such as the development and monitoring of performance standards for local authority elections officials and most likely the role as "keeper" of the Co-ordinated On-line Record of Electors (CORE).

The balance between policy-making and operational commitments is the central theme of the Government's comments below.

The mandate of the Electoral Commission

Questions

- ✍ *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?*
- ✍ *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?*
- ✍ *In particular, is there an appropriate balance between the executive and advisory functions of the Commission?*
- ✍ *Has the appropriate balance been struck in the division of responsibilities between the Electoral Commission and other public bodies in promoting awareness of and participation in elections and referendums?*
- ✍ *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?*

Political party issues

5. The first, second and fifth questions are concerned with the registration of political parties, the regulation of donations and the control of campaign expenditure.
6. As noted in the introduction we believe that the Commission has operated broadly as intended by PPERA.
7. In recent months, concern about undisclosed loans to political parties has surfaced. This has centred on the fact that only those loans made on non-commercial terms have to be declared as donations. The suggestion has been that this enables some lenders to maintain anonymity, typically ahead of an election campaign, and then allow a loan to be converted to a donation at a less politically sensitive time. The Government has responded to this concern, with the broad support of the political parties, by introducing

legislation in the Electoral Administration Bill, amending PPERA, to put the disclosure of loans on largely the same footing as donations, thus increasing transparency further.

8. At the same time, the Prime Minister has asked Sir Hayden Phillips to conduct a review of the funding of political parties. The review's terms of reference are:
 - ✍ To examine the case for state funding of political parties including whether it should be enhanced in return for a cap on the size of donations;
 - ✍ To consider the transparency of political parties' funding;
 - ✍ And; to report to the Government by the end of December 2006 with recommendations for any changes in the current arrangements.
9. The review will report in December 2006. The Government will then need to decide whether legislation is needed to improve the system of party funding and to ensure that public confidence is sustained. The Commission conducted a review of party funding between 2003-4, culminating in its report *The Funding of Political Parties*. The evidence accumulated during the Commission's review will be of assistance to Sir Hayden's review.
10. In addition to the new role which the Commission is taking on in relation to the regulation of loans to political parties, the Northern Ireland (Miscellaneous Bill) is further expanding its mandate by amending PPERA to require the Commission to regulate donations to political parties in Northern Ireland from 1 November 2007. The system of regulation of donations in Northern Ireland will be different from that which exists in Great Britain: it will require the Commission to hold donation reports from Northern Ireland parties confidentially for a transitional period, and to verify donations to Northern Ireland parties from individuals and bodies who can donate to Irish parties under Irish law (and will be permitted to donate to Northern Ireland parties under the new legislation). It is intended that the regulation of loans to political parties to Northern Ireland will also take place on this basis.
11. The Commission has also begun a wide-ranging programme of work looking at the openness, accountability and regulation of political party financing. It will consider whether the Commission has the right powers to regulate the political parties' and candidates' finances, and whether the penalties and criminal sanctions available are appropriate and workable. It will also consider whether transparency is enough for effective regulation of party finances and to secure public confidence. The project and its key outputs will serve as the principal means through which the Commission co-ordinates and manages its contribution to Sir Hayden's review.
12. The Government is aware that many politicians and their parties feel that the system of regulation is too onerous and that the Commission does not have a proper feel for the practicalities of politics because its own organisation is so

stringently non-political. PPERA specifically precludes any person who is linked to a political party from being appointed as an Electoral Commissioner. On the first of these points, regulation of the parties, the Electoral Administration Bill contains a number of measures aimed at easing the burden of regulation. On the second, the Government is not in a position to make recommendations about how the Commission might be able to take more account of the realities of political life; but it notes the issue and would be comfortable with a solution that allowed for some political input which had cross-party support and did not materially compromise the independence of the Commission.

Local Government Issues

13. The 2000 Act mandate for the Electoral Commission also includes certain responsibility – through the operation of the Boundary Committee for England – in respect of local government structure and boundary changes. Under the Local Government Act 1992 the Secretary of State must first request the Electoral Commission to make recommendations as to whether a structural change should be made. It is also possible to look at local government structure and boundaries where the Secretary of State decides there is to be a referendum for an elected Regional Assembly under the Regional Assemblies (Preparations) Act 2003 (local government reviews). Under both Acts the responsibility for the review of structure and boundaries and making recommendations for change to the Secretary of State is that of the Electoral Commission (the Boundary Committee in the case of local government reviews). The Secretary of State can only implement changes through Parliament after seeking the advice of and following receipt of a recommendation from the Electoral Commission. The Electoral Commission also has a role (as have local authorities themselves) in changes to parish arrangements, particularly parish electoral arrangements, under the 1992 Act and the Local Government and Rating Act 1997
14. In addition the Electoral Commission has sole responsibility for electoral arrangements in local government (the reviewing and implementing of the number and boundaries of electoral areas and the number of councillors) in local authorities. The 1992 Act also places a duty on the Electoral Commission to undertake periodic electoral reviews of each principal area in England and the Commission has recently completed reviews of all local authorities in England and is now undertaking further reviews where in their judgement it is necessary.
15. The Government believes that it is entirely right for the responsibility for decisions on local government electoral arrangements in principal local authorities to be wholly in the hands of the independent Electoral Commission. In this way public confidence in the integrity of local electoral arrangements can most effectively be maintained. The electoral reviews recently successfully completed by the Electoral Commission demonstrate

the wide public support for (notwithstanding that in particular cases there are critics of any electoral proposals) and the benefits of these arrangements.

16. However these considerations do not apply to the Electoral Commission's role in relation to local government reorganisation or large scale boundary change. The experience of the last reorganisation of local government in the 1990s show clearly the weaknesses and drawbacks of involving an independent Commission in making proposals about local government structural change. This is not to say that reorganisation cannot be undertaken through such an approach – indeed as shown by the Regional Assemblies Act, it is sometimes appropriate. However the Government is clear that such an approach is neither the only nor necessarily the best way in which to achieve local government restructuring.
17. We are currently engaging in a wide debate about the future of local government including ideas about restructuring existing two tier areas, creating unitary structures. Whilst we will be setting out details of the approach we will be taking in the forthcoming Local Government White Paper, we have made it clear that any future local government restructuring following the debate will be on the basis of proposals for new structures made by councils themselves. We would seek to implement such proposals through fresh primary legislation.

The executive and advisory functions of the Electoral Commission

Policy development – *Voting for Change*

18. The Commission has a statutory duty to review electoral law and procedures and to advise the Government on changes. It advises those involved on the conduct of referendums. It reports on the conduct of most major elections (and referendums). It also reports on pilots of changes to electoral administration, including all-postal voting pilots and electronic voting pilots.
19. The Commission has had many successes in this field. Between 2002 and 2003 it conducted a series of policy reviews on various aspects of the electoral process. The findings of these were pulled together in its report *Voting for Change*, which was published in June 2003. This sets out well how electoral services work in the UK and what the main challenges are. The Government has responded positively to the report, and, as the Commission has pointed out, around 70% of its recommendations have been accepted and have been included in the Electoral Administration Bill.
20. The work that went into *Voting for Change* will therefore lead to results on the ground, helping to improve people's access to the electoral process, enhancing administrative efficiency and effectiveness and strengthening security.

21. There is one concern, however, that the Government wishes to express about how the Commission has taken its findings forward, following the publication of *Voting for Change*.
22. *Voting for Change* contained what was a large “shopping list” of reforms to the electoral process. But none were costed; nor was there sufficient consideration of the practical implementation issues. Both have to be considered by Government before it embarks on legislation. *Voting for Change* naturally created expectations about legislation, and the Commission could have done more to help explain why the Government could not legislate in the short term, given the lack of costings and the need for detailed consideration of implementation issues.

Policy development – all postal voting

23. Another aspect of the Commission’s role in developing policy is demonstrated by the experience of all-postal voting. This is where all registered electors receive a postal ballot pack, which they can return by post (although there are opportunities to take them to public offices if voters have worries about getting their vote to the returning officer). This is different to postal voting on demand, which was introduced in 2001 and applies to all elections – all-postal voting has only taken place as a pilot in local elections, and in June 2004, four regions of England in the European Parliamentary elections.
24. Three rounds of all-postal voting pilots took place at local government elections in 2000, 2002 and 2003. In the majority of the 67 pilots in these three years, turnout was boosted considerably. In its evaluation of the 2003 elections pilots, *The shape of elections to come*, the Commission concluded that all-postal voting was ready to be rolled out at all local government elections. Also in 2003, in its report on the National Assembly for Wales elections, the Commission recommended that all-postal voting should be used in 2007, to encourage turnout.
25. In the combined European and local elections of 2004 all-postal voting was piloted in four regions covering 14m electors. The Commission, having recommended two regions to the Government (North East and East Midlands) and tentatively a third (Scotland), did not support the Government’s decision to pilot in four regions, and this became a matter of intense political controversy during the passage of the Pilots Bill. The result of this was that the elections process was scrutinised in an unprecedented way in 2004 and some printing difficulties (which were resolved in good time) also became a political issue. Subsequently, in its evaluation of the 2004 elections, *Delivering democracy?*, the Commission reversed its support for all-postal voting. The principal reason given was that there was strong public support for choice in methods of voting.

26. The Commission's change in policy was not based on concerns about fraud or the need for individual registration. *Delivering democracy?* also found that people in the pilot regions were satisfied with all-postal voting by a margin of two to one. However, security issues have become conflated with those about choice, and the distinction between all-postal voting and postal voting on demand has also become blurred, in parliamentary and other public debate. This is partly because of the prominence given to the Birmingham fraud case in 2004 and 2005; but also because of the focus on individual registration as a security issue.
27. An example of this is in the Commission's November 2005 report on the North East regional assembly and local government referendums, which took place in November 2004. There was a 46-47% turnout, which was regarded as a successful outcome. The Commission, however, in its evaluation of the referendum in November 2005, made no connection between turnout and all-postal voting. It did acknowledge that there was "a lack of any significant concern around security at the referendums", but then also reiterated its concerns about the risk of fraud in future elections and proposed individual registration as a solution (see paragraph 3.43 of the report).
28. The result of merging a number of different issues is that there is no longer any consensus behind all-postal voting, although it has proved to be an effective way of encouraging turnout at elections and referendums.

The Commission's operational role

29. The Commission's role in providing administrators with advice and guidance has been one of its successes. The quality of its training materials in recent elections and the North East referendum has been recognised by those using them. Its seminars have also been well attended and regarded very positively. Government officials have also participated in these and this is an area where the partnership between the Commission and Government has worked very well. Government and Commission officials are also working together on the secondary legislation flowing from the Electoral Administration Bill and the project for implementing the measures in the Bill.
30. The secondary legislation flowing out of the relevant provisions of the Northern Ireland (Miscellaneous Provisions) Bill will also reflect close consultation between the Government and the Electoral Commission. Commission officials have already worked closely with NIO officials in planning the operation of the new system to regulate donations to political parties in Northern Ireland, and their advice will be essential in setting out the detail of this in regulations. The same will apply in relation to the regulations in relation to the regulation of loans to Northern Ireland political parties. The Commission is also represented on the Project Board (chaired by the Chief

Electoral Officer for Northern Ireland) which is co-ordinating the implementation of the new electoral registration arrangements (also provided for in the Miscellaneous Provisions Bill) in Northern Ireland.

31. Another operational success for the Commission has been the development of its Code of Conduct for postal voting. Although the degree to which political parties may handle postal votes remains contentious, the Commission's guidance, developed in cooperation with the police, administrators and the Government, has set out very clearly what is and is not acceptable. There can be no uncertainty as a result and this has helped a great deal in the local elections this year.
32. The operational – or executive – role of the Commission is set to increase in the future. It will be setting performance standards for electoral administrators and monitoring and reporting on them. It will be collecting financial information on elections so that for the first time we will get a clear picture of the overall costs of electoral services. It is likely to be the “keeper” of the Coordinated On-line Record of Electors, which will provide national access to electoral registration data. It will continue to provide training materials to administrators, and is promoting the regional coordination approach to local elections, which was pioneered by four regions for the first time in 2006. And there remains a possibility that the Commission will eventually assume responsibility for parliamentary boundary reviews.

The balance between policy and operations

33. So the Commission's operational role is crucial, and is probably where, in the next few years, it can add most value to the running of elections and democratic services in between elections. At the same time, the Government has developed a stronger policy-making capacity for elections than it may have had before 2000. Therefore, now may be the time for the Government to lead on policy development and for the Commission to concentrate on ensuring that electoral services are delivered successfully. The Government would continue to involve the Commission, administrators and other stakeholders in policy and legislation development to ensure that the electorate's needs are being met and that implementation issues are at the forefront of considerations.
34. The Government would also retain the option to ask the Commission to investigate particular issues, under section 6 of PPERA, although it would need to be mindful of the fact that the Commission may need to redirect its resources to operational matters and will therefore have less capacity for exploration of policy issues, if there was a shift in its role from policy to operational issues.

Promoting public awareness of democracy

35. The Commission now has considerable experience of promoting elections, referendums and the need to register. Many of its campaigns have been praised for their innovative approaches and surveys have shown that the campaigns have achieved good recognition.
36. The Commission also has an outreach programme incorporating a range of projects that engage “hard to reach” groups directly, to promote registration and turnout. It has been targeted primarily at those aged 16-24 who are outside the formal education system. In 2005, the Commission produced a “Democracy Cookbook” which provides useful information on techniques for engaging young people in democracy, and its website provides a further rich source of information.
37. In 2005, both the Commission and the Parliamentary Select Committee on Constitutional Affairs produced reports which showed the extent of under-registration amongst certain social groups, particularly young people and some ethnic minority groups. The Select Committee encouraged the Government and the Commission to use the findings of its report to develop strategies to increase levels of registration. It also suggested that the Government should provide a greater lead on how the agenda may move forward, and that imaginative campaigns were required at national, local and community levels, drawing upon all available expertise.
38. The Government responded to the Select Committee and to the evidence of under registration in London in the Commission’s *Understanding registration* report by launching an initiative in London which led to the *1824 collective* campaign in the first months of 2006, ahead of 13 March deadline for registering for the 2006 London borough elections. The *1824 collective* campaign was supported by a broad coalition of interests, including the Mayor of London, the Association of London Government, London’s electoral administrators, The Commission for Racial Equality, Operation Black Vote and the Electoral Commission. The evaluation of the campaign is close to completion and the indications are that awareness levels amongst the target groups has increased.
39. The *1824 collective* campaign was intended to complement the Electoral Commission’s nationwide advertising campaign, which given its need to cover the whole country, did not target particularly under-represented groups – with the exception of a campaign in Birmingham, which flowed from the partnership working on what became the *1824 collective*.
40. While the Commission was initially sceptical about the Government becoming involved in a publicity campaign, and was reluctant to alter its national approach to incorporate greater diversity, it was supportive of the *1824*

collective, whose own website provided links into the Commission's *aboutmyvote* site.

41. The Government believes that the campaigning expertise that the Commission has developed, along with its independence from all political interests, makes it the most appropriate organisation to continue to take the lead in encouraging registration and turnout. However, there are positive lessons to be learned from the *1824 collective* and Birmingham campaigns about taking a more segmented approach to advertising campaigns in the future and about involving a wider coalition of partners. Local authorities, for example, have an important role to play. Some are already innovative in their approaches to encouraging registration and participation; and in the future, following the passage of the Electoral Administration Bill, the Government will be assisting them through the creation of a fund for promotional activities.

Governance questions

- ✍ *Does the independent legal status of the Electoral Commission provide it with sufficient independence from Government?*
- ✍ *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 Commission*
- ✍ *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?*
42. The statutory scheme for the appointment of members of the Commission for its financing was specifically designed to underpin its independence. The arrangements have worked well.
43. Financing of the Commission through the Speaker's Committee works satisfactorily. The Government is content with the current funding mechanism for the Commission and does not see any reason for it to be changed. It maintains the Commission's independence while ensuring strong oversight of the Commission's spending via the Speaker's Committee. The Government is pleased with the way the Committee fulfils this role by carefully scrutinising the Commission's request for resources in a healthily sceptical manner. We are also pleased that the Committee continues to consult the Government on the Commission's funding proposals and its preparedness to listen to and heed the Government's advice on funding.
44. The Government's position on the restrictions on who can be a Commissioner are referred to in paragraph 11 above.

Accountability questions

- ✍ *Does the Speaker's Committee of the House of Commons constitute an appropriate accountability mechanism for the Electoral Commission?*
- ✍ *If it does, are there any incremental changes to its composition, mandate or procedures which would contribute to its effectiveness?*
- ✍ *If it does not, is there an alternative mechanism to make the Electoral Commission more accountable?*
- ✍ *Are the devolved administrations of the UK appropriately incorporated into the accountability mechanism?*
- ✍ *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?*

45. The Government believes that the Speaker's Committee has provided an effective accountability mechanism for the Commission. It has scrutinised the Commission's financing, planning and delivery of outcomes closely and produces an annual report of its findings. One member of the Committee, Peter Viggers MP, takes parliamentary questions on behalf of the Commission.

46. The Speaker's Committee composition is appropriate; but there could be two elements of flexibility which would help Government ministers to make a full input:

- ✍ Occasionally it has been difficult for Government ministers to attend because of conflicting commitments. Currently, amongst DCA ministers, only Lord Falconer is permitted to attend. For practical purposes, the Government believes that it would be sensible if other DCA ministers could appear on his behalf when necessary, to ensure the necessary ministerial input to the Committee.
- ✍ When the Committee is discussing matters where the activities of the Commission in Scotland, Wales or Northern Ireland are specifically under consideration, it may be appropriate to invite the Secretary of State for the particular nations (or his or her representative) to the discussions, in addition to the responsible DCA Minister.

47. The Speaker's Committee secretariat may also benefit from some extra resource, as papers for meetings do tend to arrive very late, which can make

it difficult for ministers (and presumably other members of the Committee) to give as much thought as they would wish to the issues.

48. The effectiveness of the Parliamentary Parties Panel is a question primarily for the parties themselves. The Government usually meets the same Panel after it has met the Commission, to keep them informed of developments and to seek their views on a variety of issues. From this experience, the Government would observe that the panel comprises representatives of the parties' administration rather than the politicians, and therefore the discussions centre on issues that affect the administration. Therefore the Panel does not as currently constituted represent a channel for making the political input to the Commission which some regard as lacking.
49. Political parties are obviously essential to a healthy democratic system. Thriving political parties have generally been recognised as a crucial factor in a healthy democracy and, despite the rise in other outlets for political activity, the main way in which public opinion can be focused. Politicians are a useful resource for advice. Therefore as mentioned in paragraph 11, the Government would be comfortable with a solution that allowed for some political input which had cross party support and did not materially compromise the independence of the Commission.

Conclusion

50. The Government believes that the Commission been successful in meeting its wide-ranging remit since its inception. Greater openness about political parties' funding is healthy for our democracy, although it has also created some political controversy. The fact that the Commission has taken issue with the Government in some policy areas has not prevented an effective partnership developing on legislation, implementation and more recently, promotion of registration. And of course, those differences are a sign of the Commission's independence from Government.
51. Nonetheless, the differences in policy over the security of elections has contributed to public concerns about the integrity of elections.
52. Consequently the Government believes that a clearer distinction between its role and that of the Commission will be beneficial. The Government should lead on policy development with the Commission concentrating on its growing operational role, although we will continue to work closely together to ensure that any new policies are deliverable.

