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22 MAR 2005



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Boundary Commission for Wales

Ein Cyf/Our Ref: BCW/  
Eich Cyf/Your Ref:  
Dyddiad/ Date: 20th March 2006

**The Committee on Standards in Public Life**  
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### **The Eleventh Inquiry: the Electoral Commission**

The Boundary Commission for Wales (BCW) are grateful for the opportunity to comment on the Issues and Questions Paper relating to the Eleventh Inquiry. The Commission have carefully considered the issues set out in the Paper and the responses are set out in the attached document.

The Commission feel that there are sufficient grounds for there now to be a different approach adopted to the review of parliamentary boundaries than that originally proposed in the Political Parties, Elections and Referendums Act 2000. The devolving of powers to the National Assembly for Wales and to the Scottish Parliament provides a rather different context for the review process of both parliamentary and local government boundaries. The Commission suggests in their commentary, that consideration should be given to legislating to remove all boundary setting functions from within the Electoral Commission.

I have copied this letter to the Chairman of the Commission (the Speaker of the House of Commons) and to the Boundary Commissions for Northern Ireland, Scotland, and England.

Yours faithfully,

Edward H. Lewis  
Cyd Ysgrifennydd / Joint Secretary

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Mae'r Comisiwn yn croesawu gohebiaeth a galwadau teleffôn naill ai yn Gymraeg neu yn Saesneg  
The Commission welcome correspondence and telephone calls either in English or Welsh

# The Eleventh Inquiry: the Electoral Commission

## Introduction

The Boundary Commissioners for Wales (BCW) have had an opportunity to consider your recently published paper setting out the key issues and questions on which the Committee intends to focus during the Eleventh Inquiry into the mandate, governance and accountability of the Electoral Commission (EC).

The Inquiry takes place against a background of concerns about arrangements for postal voting following recent legal cases, the safeguards for voter registration, and allegedly circumventory loans to political parties. Additionally, the Inquiry will also be examining whether the division of responsibilities is right between the EC and other public bodies in promoting public awareness in elections and the democratic system. It will also examine whether the EC is sufficiently independent of Government and how well its accountability to Parliament works.

The EC's role as set out in the Political Parties, Elections and Referendums Act 2000 (PPERA), encompasses both executive and advisory functions. It has a very wide remit of responsibilities and during the past five years we have seen the rapid development of the organisation to meet the challenges contained within the Act. It is responsible for overseeing a number of aspects of electoral law. In addition it has the role of managing referendums and promoting voter awareness and advising those involved in elections on practice and procedure, as well as reporting on the administration of every major election. Promoting public involvement accounts for a significant amount of the EC's expenditure.

Section 14 of PPERA provides that the Electoral Commission shall establish a Welsh Boundary Committee and section 16 provides for the transfer of functions from the BCW to the Welsh Committee. Part 1 of Schedule 3 of PPERA in effect amends the 1986 Act to substitute the Welsh Committee for the BCW. However none of these provisions is yet in force in relation to the Welsh Committee so that the BCW continues to exist and to operate under the unamended 1986 Act.

From 1 July 1999 the functions of the Secretary of State for Wales (in relation to the Local Government Boundary Commission for Wales) were transferred to The National Assembly for Wales. **In January 2001, the Local Government and Housing Committee of the Assembly welcomed its Minister's decision, not to use the powers available under the PPERA to transfer the powers of the Local Government Boundary Commission for Wales (LGBCW) to the EC. The LGBCW therefore also continues to exist.**

The Issues and Questions paper poses a range of questions, but the Commissioners will restrict their observations to those issues where they believe they can make a contribution to the Inquiry. These issues are outlined below and lead to the recommendation that the BCW's functions should not be transferred to a Welsh Committee of the Electoral Commission.

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### Efficiency

The 1986 Act, in its unamended form, provides for Wales a comprehensive code for the carrying out of electoral reviews by an independent body, the BCW. The BCW completed the recent Periodical Report on time and without challenge. The recommendations of the BCW contained in its report will be implemented without change by the Parliamentary Constituencies and Assembly Electoral Regions (Wales) Order 2006. From a purely practical point of view there is little point in winding up one body and replacing it with another.

### Cost

In terms of cost the BCW has the advantage of sharing its staff with the LGBCW. Staff have been switched between local government and Parliamentary activities as the workload demanded. This has had the financial advantage of keeping the costs of the parliamentary review to a minimum while at the same time utilising the skill and experience of the secretariat of LGBCW and providing them with a full programme of work during a period when the cycle of local government reviews had been completed. Looking forward, a similar situation will arise some time after 2012 when the next round of local government electoral reviews have been completed and preparations will be necessary for the Sixth Periodical (parliamentary) Report.

The Commissioners have also noted in the Minutes of the Twelfth Meeting of Speaker's Committee (2 February 2005) the following discussion with Mr Sam Younger, Chairman of the EC, and Mr Peter Wardle, Chief Executive in relation to the EC's Main Estimate, 2005-06 and Five-Year Plan, 2005-06 to 2009-10:

*"The Committee asked what assumptions underpinned the projected jump in staff numbers from 2007-08. Mr Wardle said that the transfer of responsibility for reviewing parliamentary constituency boundaries to the Electoral Commission would involve the appointment of five members of staff in respect of each of Scotland, England and Wales. Mr Younger said that these would in effect be jobs transferred from the respective Boundary Commissions, so the overall effect on the public purse would be broadly neutral."*

Our experience suggests that the estimate of five full-time members of staff could be rather high. During the Fifth General Review the maximum number of full-time equivalent staff employed on the Review in any month was 2.26. However, because of the flexibility we had in drawing upon staff time as required up to nine people might have been involved for short periods of time. As far as Wales is concerned, the effect of the transfer of responsibilities to the EC is unlikely to be even broadly cost neutral.

**The continuation of LGBCW as an Assembly Sponsored Public Body suggests strongly that the original proposals under the PPERA are no longer appropriate.**

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### **Contact with local communities**

Five years ago criticisms were expressed following the Fourth Periodical Report to the effect that BCW was not "in tune" with the people of Wales because it was at that time based in London. A Memorandum of Agreement was set up between the Department of Transport Local Government and the Regions (then the host Department), the National Assembly Local Government Modernisation Division and the Local Government Boundary Commission for Wales (LGBCW), for the secretariat of LGBCW to serve also the needs of the Parliamentary Boundary Commission for Wales.

This arrangement has worked well. BCW has benefited from being locally based. For instance, the local inquiries conducted during the recent Review demonstrated that a local presence, local knowledge and local contacts were essential for the reviewing body to carry out its functions effectively and to maintain credibility with the electorate.

Furthermore, so far as Wales is concerned, determination of the Parliamentary constituencies is inextricably linked to determination of the Assembly constituencies; you will be aware that Schedule 1 to the Government of Wales Act 1998 provides that "The Assembly constituencies shall be the parliamentary constituencies in Wales", and this identification is perpetuated under the Government of Wales Bill currently before Parliament. There is therefore a strong case for maintaining a review body (i.e. the BCW), independent of London influence. It also follows that the Welsh Assembly has a legitimate interest in whether the BCW should continue in being or be replaced by a committee of the Electoral Commission. It would be an odd situation if on the one hand the Government of Wales Bill, when it is enacted, were to devolve increased powers to the Assembly, whilst at the same time PPERA reversed this in terms of the Parliamentary review process. (It should be noted that Schedule 1 of the Bill assumes that the Welsh Committee is already in existence) A national body having the power to change Assembly constituency boundaries, albeit through the establishment of a Welsh committee would in the view of the BCW be a return to the pre-2000 situation whereby people in Wales will again feel that they are remote from the review processes. Additionally for the reasons already stated, the continuation of the LGBCW significantly alters the situation.

### **Range of functions**

The mandate set out in PPERA for the Electoral Commission is an extensive one. The general functions contained in the Act are wide ranging and some of the more difficult areas, which have been encompassed in the Act, have been the subject of much discussion. An example of this is the issue of postal voting. The question of the EC's electoral boundary functions is an area, which has not been addressed in depth with only

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the functions of the Local Government Commission for England being so far subsumed into the EC.

The Issues and Questions paper published by the Committee refers at paragraph 2.29 to the review of electoral boundaries and the creation of the English Committee in April 2002. The first sentence is misleading. At present the EC has a role in reviewing local government boundaries in England only. The EC will not have a role for reviewing local government boundaries in Wales. They do not yet have a role in the redistribution of parliamentary seats. Later on at page 13 the paper asks whether the EC "*operates as a strategic regulator in exercising its responsibilities in relation to*" various matters. There is a strong case for arguing that the EC should operate as a strategic regulator, and remain separate from and independent of the bodies responsible for carrying out boundary reviews.

### **Appointment of Commissioners**

The BCW was established under the House of Commons (Redistribution of Seats) Act 1944, as amended by the 1949 Act of the same name. Schedule 1 Para.1 of the legislation provides that the Speaker shall be the chairman of the Commission. The provision that the Deputy Chairman (who actually chairs meetings) be a High Court Judge comes from the House of Commons (Redistribution of Seats) Act 1958.

This arrangement has worked well. The BCW has been seen as an independent body providing an effective mechanism for reviewing constituency boundaries. There has been a distinct advantage in having a High Court Judge to chair meetings of the Commission: such a person provides the legal expertise necessary for interpreting the "Rules" for the redistribution of seats and also gives a degree of "gravitas" to the status of the Commission.

The BCW does not directly appoint Assistant Commissioners to oversee local inquiries but makes recommendations concerning suitable candidates to the Secretary of State. This follows an extensive search for suitably qualified individuals with a legal background. Importantly, they will not have played any part or had an involvement with any political party

Since its establishment, the BCW has built up and maintained a reputation for independence and political impartiality, which it considers to be vital for the successful conduct of reviews and the acceptance of its recommendations by Parliament. It is known that those who are actively involved with the reviews, which includes the Parliamentary political parties, greatly value this independence and impartiality.

Under PPERA, the Boundary Committees are provided for under section 14. Each Boundary Committee shall consist of a chairman and 2 or 4 other members (depending on whether or not they cover local authority boundaries as well as Parliamentary ones). Subsection (4) provides for appointment: " Only an Electoral Commissioner or a deputy

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Electoral Commissioner may be appointed a member of a Boundary Committee; and only an Electoral Commissioner may be appointed a Chairman of a Boundary Committee".

The mode of appointment of Electoral Commissioners is contained in section 3, which also provides that certain circumstances (e.g. membership of a registered party) will disqualify someone from being a Commissioner. Each Commissioner has to be appointed " on an address from the House of Commons". The purpose of these provisions seems to be to ensure that a Commissioner shall be as non-partisan as possible and presumably of high quality. The EC also has the power to appoint Deputy Electoral Commissioners. Section 15 provides that the same matters that disqualify a Commissioner will disqualify a Deputy Electoral Commissioner, and there are further grounds for disqualification in Schedule 1 Para.6. The Commission can also appoint Assistant Commissioners for matters such as specific inquiries.

The Electoral Commission therefore has power, independent of Parliamentary control, to appoint Deputies and Assistants, subject to regulation, which is intended to secure the political independence of the Commission in all its activities.

Question 8, in the Issues and Question Paper, relates to the appropriateness of the restrictions placed on those who may be appointed as an Electoral Commissioner. As already stated, section 3(4) of the PPERA prohibits the appointment of persons who have, or who have in the past ten years had, affiliations to political parties and that Section 15(3) also places the same restrictions on the appointment of Deputy Electoral Commissioners. The BCW consider that not only are such restrictions right and proper, they are key in preserving the independence and impartiality of the EC. To change this situation would challenge the future credibility of the EC.

We consider that the current restrictions relating to appointments are most important and should be maintained to ensure that all involved in the review process can be assured that electoral boundaries are not being gerrymandered. Should it be considered that persons who have had affiliations to political parties could be eligible for appointment as Electoral Commissioner or Deputy Electoral Commissioner, even for reasons apparently unconnected with the setting of boundaries, the BCW strongly recommend that its functions should not be transferred, and that consideration should also be given to removing all boundary setting functions from the Electoral Commission