

Committee on Standards in Public Life

Review of The Electoral Commission



Issues and Questions Paper

The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

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CHAPTER 1 INTRODUCTION

The Committee and its terms of reference

- 1.1 The Committee on Standards in Public Life was set up in October 1994 by the then Prime Minister, the Rt Hon John Major MP. Its terms of reference are:

To examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

- 1.2 On 12 November 1997, the present Prime Minister, the Rt Hon Tony Blair MP, announced additional terms of reference:

To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.

This Inquiry is located within these combined terms of reference. The Committee has published ten Inquiry reports. They are listed at Appendix 1.

- 1.3 Since April 2004, the Chair of the Committee has been Sir Alistair Graham. Other members of the Committee are Lloyd Clarke QPM, Rita Donaghy CBE, Professor Hazel Genn CBE, Dame Patricia Hodgson CBE, Baroness Maddock, The Rt Hon Baroness Shephard DL, Dr Elizabeth Vallance and Dr Brian Woods-Scawen DL.

The scope of the Inquiry

- 1.4 The Electoral Commission occupies an important and unique position in British public life in general, and in particular in the institutional architecture designed to secure high standards and build trust in the democratic process. The Commission was established as an independent statutory authority on 30 November 2000. This followed the recommendations of the Committee's Fifth Report, **The Funding of Political Parties in the United Kingdom** (Cm 4057-October 1998) and the subsequent commencement of the Political Parties, Elections and Referendums Act 2000.
- 1.5 The Commission is headed by a Chairman with four other Commissioners, none of whom has connections to any political party. The Commission is not accountable to the Government, but reports directly to Parliament through a committee chaired by the Speaker of the House of Commons ('the Speaker's Committee'). The Commission has a UK-wide remit and has offices in London, Edinburgh, Cardiff and Belfast.

- 1.6 The Commission's role encompasses both executive and advisory functions. The Commission is responsible for overseeing a number of aspects of electoral law: the registration of political parties; the monitoring and publication of significant donations to registered political parties; and the regulation of national party spending on election campaigns. In addition, the Commission has a number of roles relating to: the conduct of referendums held in the UK; promoting voter awareness; advising those involved in elections on practice and procedure; and reporting on the administration of every major election.
- 1.7 From the above description it can be seen that electoral affairs are at the heart of our constitutional arrangements. The responsibilities of The Electoral Commission have an impact on key issues such as voter registration, arrangements for postal voting and standards of propriety in financing political parties. Each of these issues has been the subject of recent public concern, and each contributes to citizen engagement in politics and the broader question of political legitimacy. There are other key issues which are less high profile but still relevant, such as the rules governing the conduct of referendums; the status, training and capacity of returning officers; and the public awareness work of The Electoral Commission and others.
- 1.8 For these reasons it is important to ask now, some five years after its creation and following the second general election to be held since its establishment, whether the Commission's mandate, governance arrangements and accountability framework are fit for the Commission's stated purpose of "*promoting integrity, involvement and effectiveness in the democratic process*".

The Committee's interest

- 1.9 The Committee's terms of reference, set out above at paragraphs 1.1 and 1.2, were extended in 1997: *To review issues in relation to the funding of political parties, and to make recommendations as to any changes in present arrangements.*
- 1.10 In its Fifth Report, **The Funding of Political Parties in the United Kingdom**, the Committee made recommendations for the introduction of controls on political donations to:
- Ensure transparency about the funding of political parties;
 - Reduce the possibility of secret influence over Ministers or policy; and
 - Raise public confidence in the probity of the political process.
- 1.11 The extensive nature of the changes required to the regulation of 'political money' convinced the Committee on Standards in Public Life of the need for "a totally independent and authoritative Election Commission with widespread executive and investigative powers". The Committee envisaged "the Commission taking over responsibility for the registration of political parties and, in conjunction with the existing network of returning officers, having broad oversight of the conduct of elections" [CSPL Fifth Report, 1998, S.9-S.10].
- 1.12 In July 1999, the Government published a White Paper and a draft Bill (Cm 4413) in response to the Fifth Report, which followed the vast majority of the Committee's recommendations. Subsequently, the Political Parties, Elections and Referendums Bill 2000 was introduced into Parliament in January 2000 with the Bill receiving Royal Assent in the following November.
- 1.13 The present Inquiry will focus on the core issues of mandate, governance and accountability of The Electoral Commission. In practical terms this means examining its current responsibilities and the balance between its executive and advisory functions. This is in the context of a number

of public concerns which have arisen over (for example) arrangements for voter registration, postal voting following a number of high-profile legal cases, and allegedly circumventory loans to political parties. It also means examining whether The Electoral Commission is sufficiently independent from Government and how well its accountability to Parliament works.

1.14 The Committee is interested in substantive policy issues (e.g. postal voting and voter registration) insofar as they throw light on the core issues of the mandate, governance and accountability of The Electoral Commission. In paragraph 1.16 below we set out our research strategy to the inquiry which develops this theme.

1.15 A number of issues recently considered in a Review of work of The Electoral Commission for the Speaker's Committee are excluded:

- detailed administrative processes of The Electoral Commission, including business and financial planning, resource allocation, estimate preparation and forward planning;
- how the Commission assesses the effectiveness of policy outcomes; and
- the role of the Treasury and National Audit Office in reviewing Estimates and Corporate Plans for The Electoral Commission.

Research

1.16 In line with previous practice, and emphasising the Committee's evidence-based approach, the Committee has a small research budget to commission a number of case studies to deepen its understanding of the core issues. The Committee intends to invite proposals for the examination of the development and operation of one or more policy area within the remit of The Electoral Commission with the primary task of illustrating what lessons can be learned about the mandate, governance and accountability of the Commission itself (see Question 14, Chapter 3 below). The research should be capable of being completed by the end of June 2006. The Committee does not wish to restrict the choice of policy areas at this stage but it is particularly interested in:

- Voter registration;
- The regulatory framework for referendums;
- Proposals for the funding of political parties in the context of The Electoral Commission's existing responsibilities for the regulation of donations to political parties; and
- The status, training and capacity of returning officers.

1.17 The Committee is contacting academics and others working in this field inviting expressions of interest for this work. A shortlist of those who have expressed an interest will then be drawn up for submission of proposals. We would welcome expressions of interest from any others with capacity in this area. Such expressions of interest, with a short statement of capability in this field, should be e-mailed for the attention of the Assistant Secretary to the Committee to **standards.evidence@gnet.gov.uk by 28 February 2006.**

1.18 Additionally, Sir Alistair Graham, the Chairman of the Committee, will lead a small delegation to North America later this year to gather comparative material and widen the Committee's understanding of how the work undertaken by The UK's Electoral Commission is carried out internationally, and the mandate, governance and accountability arrangements of such bodies.

Purpose of the consultation paper

- 1.19 This consultation paper examines the mandate, governance and accountability of The Electoral Commission. The full scope of the Inquiry will depend upon the evidence received, but this paper sets out the main issues which seem most relevant at this stage. The Committee does not consider itself restricted to the questions asked here. The issues and questions sections of the paper are intended to stimulate and focus public debate and to invite responses. For convenience, a complete list of questions is set out in Chapter 3. The questions are not exclusive, nor intended to preclude comments on related issues.
- 1.20 Respondents are encouraged to set out fully the reasons in support of their views. Where respondents are unsatisfied with present arrangements or approaches, they are encouraged to describe how to amend, improve or replace them.

How to submit evidence

- 1.21 The Committee would welcome written submissions on any or all of the subjects raised in this consultation paper. While some questions are best answered by those with specialist knowledge or direct experience of The Electoral Commission, others can be addressed by any citizen interested in the effective regulation of elections at every level in the United Kingdom or interested in building public trust in the democratic process. There is no need or requirement for respondents to answer every question or to confine submissions to the specific questions in the paper.
- 1.22 Respondents should note that **the Committee's terms of reference specifically preclude it from investigating individual cases or specific allegations of misconduct. Nor has the Committee any powers to require others to do so.** But the Committee may take account of information on material cases in formulating its recommendations.
- 1.23 All submissions, with the exception of those that appear to the Committee to be defamatory, will be displayed on the Committee's website at www.public-standards.gov.uk and be available for public scrutiny as soon after they are sent to the Committee as is practicable. They will also be published with the final report. Any respondents who would prefer their submissions to be treated as confidential should state this clearly and their wishes will be respected so far as they are compatible with the provisions of the Freedom of Information Act 2000 and any other legal obligations placed on the Committee.
- 1.24 Submissions and further evidence in response to this paper should be sent by email to: **standards.evidence@gtnet.gov.uk**

Alternatively, they can be delivered to us at the following address:

The Committee on Standards in Public Life
35 Great Smith Street
London SW1P 3BQ.

The closing date for submissions is 16 May 2006.

- 1.25 Further copies of this document may be obtained free of charge from the Committee by telephoning 020 7276 2589. It may also be accessed, along with other Committee publications, via the Committee's website: **www.public-standards.gov.uk**. More information about the Committee can be found at the same address.

Public hearings

1.26 In addition to receiving written evidence, the Committee intends to hold a number of public hearings later this year, throughout the United Kingdom. The provisional dates for these hearings in 2006 are:

- June 13, 15, 21, 27
- July 6, 11, 13, 18
- September 7, 14.

Further details will be published on the Committee's website: **www.public-standards.gov.uk**. The Committee regrets that it is unlikely to be possible to invite every respondent who expresses an interest in giving oral evidence to participate in the public hearings.

CHAPTER 2 THE INQUIRY

The Mandate of The Electoral Commission

2.1 The role and duties of The Electoral Commission are set out in the Political Parties, Elections and Referendums Act 2000 (PPERA). In outline, the Commission is responsible for overseeing a number of aspects of electoral law, including the registration of political parties and third parties¹, monitoring and publication of significant donations to registered political parties and holders of elective office, and the regulation of party spending on election campaigns. Under section 13 of PERA, The Electoral Commission also has a responsibility to promote public awareness and involvement in the democratic system. This accounts for approximately half of The Electoral Commission's expenditure. The Commission also has a role in advising those involved in elections, on changes to electoral policy and procedures, and is required to report on the administration of every major election and referendum. The Commission has a stated aim through its work to gain public confidence and encourage people to take part in the democratic process within the UK. Unlike many electoral commissions outside the UK, the Commission does not have responsibility for maintaining and updating electoral rolls, employing electoral services staff, or conducting parliamentary or local elections.

The Electoral Commission's functions include:

The registration of political parties

- 2.2 The Commission is responsible for the registration (and the maintenance of the registers) of political and third parties and for the wide range of elections to local government, decentralised administrations, the UK and European Parliaments. Under the PERA only candidates standing on behalf of a registered political party are allowed to use a description on a ballot paper at an election. Groups or individuals that do not register with the Commission can only describe themselves as 'Independent' or have a blank entry against their candidates name on the ballot paper.
- 2.3 The requirement to register was introduced to ensure that the finances of all political groups are properly regulated, and once a party has registered with the Commission, it is subject to rigorous financial controls. A party may not be registered unless it has adopted a scheme, approved by the Commission, which sets out the arrangements for regulating the financial affairs of the party and the regulation of their income and expenditure.
- 2.4 Groups that wish to register as a political party can choose to register in either Great Britain or Northern Ireland or both. A party can only contest elections in the part(s) of the UK that it is registered in.

- 2.5 When registering, parties must decide whether the headquarters of the party will manage the finances of the whole party, or whether they should register 'accounting units', which manage their own finances independently of the party headquarters (for example, a constituency party of a national party).
- 2.6 In order to register a political party, a group must submit to The Electoral Commission basic information including a notional fee and:
- an application form giving details of the party name, at least two party officers, where in the UK the party is to be registered and whether the party will have any accounting units;
 - a copy of the party's constitution; and
 - a financial scheme showing how the party will comply with the financial controls.
- 2.7 The Electoral Commission can refuse to register a party if it considers that the name of the party may cause offence or confusion with other parties. Once a party is registered with the Commission, it is required to ensure that it maintains an accurate entry on the register of political parties and submits an annual confirmation of details.

The Regulation of donations to political parties

- 2.8 Regulations governing political donations in the UK were introduced for the first time in February 2001 following the commencement of the PPERA.
- 2.9 All political parties registered on the Great Britain register of parties (excluding parties registered as minor parties, i.e. parties which are registered only to contest parish and community elections) are legally required to abide by the regulations on accepting and reporting donations.
- 2.10 A 'donation' to a party includes not only a gift of money or property, but sponsorship, subscription, a loan, and provision of any property or service other than on commercial terms. Permissible donors are defined at section 54 of PPERA. Donations can be accepted from the following UK registered organisations and individuals:
- an individual registered in an electoral register;
 - a registered party;
 - a company;
 - a trade union;
 - a building society;
 - a limited liability partnership;
 - a friendly, industrial or provident society; and
 - an unincorporated association.

In addition, under certain circumstances, donations made from trusts, or made to meet the costs of overseas visits are also classified as donations from permissible donors.

- 2.11 Effectively, overseas donations are prohibited by PPERA, since only those individuals who are on the UK electoral register, and only organisations that are registered and carry on business in the UK, can make donations to political organisations in the UK.

- 2.12 Political parties are required to submit a quarterly donation report to the Commission listing all donations of more than £5,000 accepted by the party's headquarters. The Commission is required to register all recordable donations.

Control of campaign expenditure

- 2.13 PPERA limits the amount of campaign expenditure that can be incurred by political parties at general elections to the UK and European Parliaments and devolved legislatures. PPERA specifies different categories of campaign expenditure that may be incurred by parties. Following the 2001 general election the Commission reviewed all the expenditure returns submitted by the 80 parties that contested the election. The findings from this review were used to produce comprehensive guidance for parties to help them comply with controls.
- 2.14 Under PPERA there is a ceiling on the amount of campaign expenditure that can be incurred during a 'relevant period'. It is an offence for a party to exceed the campaign expenditure limits specified.
- 2.15 There are reporting requirements for parties contesting elections and, if expenditure is in excess of £250,000, returns to The Electoral Commission must be prepared by a qualified auditor and signed off by the party treasurer. These returns are to be made available by the Commission for public inspection. It is an offence for a party that contested an election to fail to submit a campaign expenditure return.

Payment of returning officers and local government expenses incurred during elections and referendums

- 2.16 PPERA provides for the Commission to assume responsibility for the payment of returning officer and local authority expenses incurred during the conduct of referendums and elections. These provisions have not been commenced and the Department of Constitutional Affairs is currently responsible for administering these expenses.

Consultation and involvement on changes to electoral law and procedures

- 2.17 The Electoral Commission has a statutory duty to keep a range of electoral and political issues under review, and to be consulted by the Government on certain changes to electoral law. The Commission responds to consultations on statutory instruments, and it has to be consulted on arrangements for elected Regional Assembly referendums. It may be asked by the Government to review any matter identified by them as warranting consideration. When it makes recommendations requiring changes to legislation, it is for the Government to decide whether or not to act on them. The Electoral Commission has no powers to change the law itself.
- 2.18 Recent work completed by the Electoral Commission includes a wide range of reviews: **The marked electoral register** (2005), **Review of the timing of counts at Scottish Parliamentary and local government elections** (2006), **Review of recounts at elections to Scottish Parliamentary regions** (2006), **The funding of political parties** (2004), **Political advertising** (2004), and a package of reforms – under the headings **Voting for change** (2003) and **Securing the Vote** (2005) – which outline the key changes the Commission believes are necessary to ensure continued public confidence in UK elections and referendums.
- 2.19 In reviewing existing law and policy, the Commission aims to take into account the views of all those involved and affected by those policy areas, so consultation is a key part of its review projects. For most policy reviews formal public consultation documents are issued, inviting

comments and suggestions. Additionally, academic and survey research is used by the Commission to ensure that policy reviews and campaigns are evidence-based. Good examples of this approach include **Understanding Electoral Registration** (2005), and **An Audit of political engagement 2 – Research report** (March 2005). The audit of political engagement was published jointly with the Hansard Society and built on research from 2003 based on MORI's annual Political Engagement Poll. The work explores the UK public's level of political engagement and asks whether this has changed in the recent past.

- 2.20 Previous work included an examination of the application of Parts II-VI and VIII of the PPERA. These parts of PPERA regulate the activities and finances of all registered political parties, third parties, and other individuals and organisations involved in the political process. The review did not seek to revise the fundamental principles underlying the existing regulatory system controlling political finances, but focused on how the application of the current system could be improved. It is therefore critical to The Electoral Commission's approach to the challenging issue of proportionality in regulatory activity. The final report and recommendations were published in June 2003.
- 2.21 Since 2000, the Government has encouraged local authorities in England to undertake pilot schemes that test new methods of voting and voting arrangements at local elections which, if successful, might then be adopted more widely. The May 2003 pilots programme for local elections in England saw 39 of the 59 schemes offering all-postal voting. Subsequently, legislation was passed to allow all-postal voting pilots to take place at the combined European Parliamentary and English local elections in June 2004 across four regions. The Electoral Commission is required to evaluate every pilot scheme in England and Wales and may also evaluate Scottish pilot schemes. Evaluation reports are sent to the Government and published within three months of the election result. The Electoral Commission's report, *Delivering Democracy*, on the 2004 all-postal voting pilots, recommended that all-postal voting should not be pursued for statutory elections in the UK. The Government was not inclined to accept this advice although it agreed that the security concerns surrounding postal votes did need to be addressed. The Government also broadly endorsed the development of the Commission's recommendations which were published in **Securing the Vote** (May 2005).

Giving advice and assistance on the conduct of elections and referendums

- 2.22 At the request of any "relevant body"² the Commission may provide the relevant body with advice and assistance in any matter in which the Commission has skill and experience. This includes the secondment of Commission staff. The Commission can also provide advice and assistance to registration officers, returning officers at relevant elections, registered parties, recognised third parties and permitted participants (within the meaning of Part VII of PPERA). The Commission can also provide advice and assistance to other persons "which is incidental to, or otherwise connected with, the discharge by the Commission of their functions".
- 2.23 The Electoral Commission is generally viewed as a source of electoral knowledge in the UK and has developed a range of products to support staff working in polling stations for the UK Parliamentary general elections. This includes good practice e-learning materials for Presiding Officers and Poll Clerks.

Reporting on the conduct of elections and referendums

- 2.24 The Electoral Commission is statutorily obliged to review the conduct of parliamentary elections. There have been a number of studies of the 2001 and 2005 general elections providing analysis of campaign expenditure of candidates and political parties, campaigns themselves, media

involvement, the impact of spending limits, and turn-out. Recent examples include **Election 2005: engaging the public in Great Britain** (December 2005) and **Election 2005: turnout. How many, who and why?** (October 2005). There have also been reports on the European Parliamentary elections in the UK and on, for example, pilot schemes trialling new ways of voting (see above, para 2.21).

Education about electoral and democratic systems

- 2.25 The Electoral Commission is required to promote public awareness of current and 'pending' electoral systems in the UK (not local government in Scotland but Scottish Ministers can override this), current systems 'of local government and national government in the United Kingdom', and the institutions of the European Union.
- 2.26 The Commission has made a significant contribution to promoting public awareness of electoral and democratic systems. It has delivered an Outreach Programme running activities across the UK in local communities. This Programme has recently been reviewed with a view to adopting a more 'enabling' approach to promoting awareness among hard to reach audiences. This will involve providing training and resources to partner organisations. There are Outreach staff based in all four of the Commission's offices (London, Cardiff, Edinburgh and Belfast). At the same time, a grants programme supports projects helping to promote awareness of electoral systems and UK structures of government. In addition, the Commission runs information campaigns, uses web-pages to promote awareness, distributes leaflets and occasionally contributes to educational resource material.

Policy on broadcasting

- 2.27 The Communications Act 2003 requires those broadcasters with public service obligations to include Party Political Broadcasts in their programming in accordance with rules determined by Ofcom. The BBC and S4C are also required to carry Party Political Broadcasts, but are not regulated by Ofcom. Each broadcasting authority (the BBC, S4C and Ofcom) must have a policy for the allocation of Party Political Broadcasts. In creating these policies the broadcasting authorities "will have regard to" The Electoral Commission's views. The Commission carried out a review of the role of Party Political Broadcasts and made a number of recommendations in its report **Party political broadcasting** in January 2003.
- 2.28 Section 12 of PPERA provides for parties represented in the House of Commons by two or more sitting Members to receive policy development grants. These are intended to assist parties in developing the policies that they will present in an election manifesto. The legislation provides the sum of £2million annually for this purpose. The Electoral Commission was required to develop a scheme for the distribution of the grants, and now to maintain the scheme and keep it under review.

Reviewing electoral boundaries

- 2.29 The Electoral Commission has a role in reviewing electoral boundaries including the redistribution of seats at parliamentary elections. PPERA makes provision for the Commission to establish four Boundary Committees for reviewing electoral boundaries, one for each of England, Scotland, Wales and Northern Ireland. Currently, only The Boundary Committee for England has been established with local government boundary review functions.
- 2.30 The Boundary Committee for England was established on 1 April 2002 and is a statutory committee of The Electoral Commission. It has taken over the functions of the now defunct Local Government Commission for England. An Electoral Commissioner chairs the Committee. The other four members are Deputy Electoral Commissioners.

- 2.31 The Boundary Committee undertakes electoral reviews: Periodic Electoral Reviews (PERs) and Further Electoral Reviews (FERs) and also structural reviews known as Local Government Reviews (LGRs).
- 2.32 In broad terms, the objective of an electoral review (PERs and FERs) is to ensure that, within each principal local authority area, the number of electors represented by each councillor is as nearly as possible the same. Electoral reviews are necessary because of changes in the electorate within the local authority areas. Following a PER the Boundary Committee submits recommendations to The Electoral Commission, which is responsible for determining whether to give effect to them and, if so, when.
- 2.33 A local government review is effectively a structural review of local government arrangements. The recent local government reviews were carried out specifically as part of the Government's plans for elected regional assemblies and produced recommendations for new unitary authorities that would combine the functions of both district and county councils.
- 2.34 The Electoral Commission has no involvement *per se* in the local government review (LGR) process. The Boundary Committee's recommendations are submitted to the Deputy Prime Minister. In the case of the LGRs the Boundary Committee submitted two options for change in each of the three northern regions to the Deputy Prime Minister in May 2004. The options for the North East were voted on by the electors of that area in a referendum on 4 November 2004, at the same time as a referendum on an elected regional assembly.

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?
3. In particular, is there an appropriate balance between the executive and advisory functions of The Electoral Commission?
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?
5. Does The Electoral Commission operate as a strategic regulator³ 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?

The Governance of The Electoral Commission

- 2.35 The Electoral Commission has an independent status. It is not a “servant or agent of the Crown” and does not have Crown privilege. The Commission is headed by a Chairman with four other Commissioners, none of whom have connections to any political party. The Commission is not accountable to the Government, but reports directly to Parliament through a committee chaired by the Speaker of the House of Commons (‘the Speaker’s Committee’). The Commission has a UK-wide remit and has offices in London, Edinburgh, Cardiff and Belfast. The Commission enjoys wide-ranging powers. Apart from borrowing money it may do anything which is calculated to facilitate, or is conducive to, the carrying out of any of its functions.
- 2.36 The Political Parties, Elections and Referendums Act (PPERA) 2000 sets out the role of Electoral Commissioners. There shall be not less than five, but not more than nine, Electoral Commissioners, and all are Crown appointments.
- 2.37 The current Electoral Commissioners are: Sam Younger (Chairman), Glyn Mathias, Karamjit Singh CBE, Sir Neil McIntosh CBE, and Pamela Gordon. Peter Wardle is the Chief Executive and Accounting Officer.
- 2.38 There are clear restrictions on who can be a Commissioner. These include any member, officer or employee of a registered party, anyone whom in the last ten years has been an officer or employee of a political party and any donor in the register of donations.
- 2.39 Electoral Commissioners are appointed under Royal Warrant, and in the same way Her Majesty appoints one of the Commissioners to be Chairman. The powers of Her Majesty are exercisable on an Address from the House of Commons, with no motion being made for such an Address without the agreement of the Speaker of the House of Commons and after consultation with the leaders of registered parties (with at least two Members in the House at the time who have taken the oath or made the corresponding affirmation).
- 2.40 PERA is otherwise silent on the procedures to be followed in appointing and re-appointing Commissioners. The first Electoral Commissioners were appointed in January 2001, through an open competition overseen by Home Office officials, two for a four-year term, three for a five-year term and the Chairman for a six-year term. The Home Office was at that time the lead Government department for electoral matters.
- 2.41 In 2004 it was necessary to decide what to do in relation to the first batch of appointments due to expire. Given the statutory independence of the Commission it was felt to be inappropriate for Government to take the lead, and in view of Mr Speaker’s statutory role in the appointments process, he took overall charge. A similar procedure was followed in 2005 in relation to the second batch of appointments due to expire. On both occasions each of the retiring Commissioners was reappointed.
- 2.42 An Electoral Commissioner is required to stand down from office if he or she:
- Consents to being nominated as a candidate at a relevant election or to being included in a list of candidates at such an election; or
 - Takes up office or employment with a registered party, is named as a donor or becomes a party member.

- 2.43 Commissioners can be removed from office by Her Majesty in pursuance of an Address from the Commons after the Speaker's Committee has presented a report to the House stating that they are satisfied of the 'grounds' variously set out in Schedule 1 of PPERA. This provision has not, so far, been invoked.
- 2.44 The salaries for Electoral Commissioners are paid out of the Consolidated Fund and specified in a resolution of the House of Commons. Individual Commissioners do not have to be paid the same. The Commission may appoint Deputy Electoral Commissioners, not exceeding the number the Commission, 'with the agreement of the Speaker's Committee', may determine. The current Deputy Electoral Commissioners are Ann Kelly, Colin Mellors, Joan Jones (CBE), and Robin Gray.
- 2.45 The expenditure of the Commission, so far as it cannot be met out of income received by the Commission, is met out of money provided by Parliament. For each financial year the Commission is required to prepare, and submit to the Speaker's Committee, an estimate of the Commission's income and expenditure.
- 2.46 For the purpose of assisting the Speaker's Committee, the Comptroller and Auditor General (CAG) is required annually to carry out an examination into the economy, efficiency or effectiveness with which the Commission has used its resources, report to the Speaker's Committee the results and include recommendations in the light of the examination.

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?
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?

The Accountability of The Electoral Commission

- 2.47 The Electoral Commission reports directly to Parliament through a committee chaired by the Speaker of the House of Commons. While the Speaker's Committee of the House of Commons is the pivotal accountability mechanism (see below, paras 2.49-2.52), a number of Parliamentary Select Committees have undertaken inquiries related to the work of the Commission.
- 2.48 The Commission has submitted written evidence to these inquiries and Commissioners and staff have appeared as witnesses before Select Committees. These include, for example, the Select Committees for Constitutional Affairs (electoral administration), the Committee on the Office of the Deputy Prime Minister (ward boundaries, postal voting), the Joint ODPM and Constitutional Affairs Select Committee (voter registration), the Northern Ireland Affairs Committee (electoral registration in Northern Ireland), the Treasury Select Committee, and the Welsh Affairs Select Committee (empowering children and young people in Wales).

- 2.49 PPERA provides that there shall be a Committee (to be known as ‘the Speaker’s Committee’) to perform the functions conferred on the Committee by the Act. The Speaker’s Committee can determine its own procedure.
- 2.50 PPERA sets out that the Speaker’s Committee consists of the Speaker, the chair of the relevant select committee, the appropriate secretary of state (a member of the House of Commons who is a minister with local government responsibilities), and five Members of Parliament. One appointment is made by the Prime Minister and the rest by Mr Speaker. The current membership includes the Speaker of the House of Commons, (Rt Hon Michael Martin MP), the Chairman of the Department of Constitutional Affairs Select Committee of the House of Commons (Rt Hon Alan Beith MP, Liberal Democrat), the Lord Chancellor (Rt Hon the Lord Falconer of Thoroton QC), and five members of House of Commons who are not Ministers of the Crown, appointed to the Committee by the Speaker of the House of Commons:
- Mrs Angela Browning MP (Conservative);
 - Lady Sylvia Hermon MP (Ulster Unionist);
 - Rt Hon Gerald Kaufman MP (Labour);
 - Humfrey Malins MP (Conservative); and
 - Peter Viggers MP (Conservative).

The Speaker’s Committee is currently awaiting the appointment of a Member of the House of Commons who is a Minister of the Crown with responsibilities in relation to local government.

- 2.51 The role of the Speaker’s Committee is set out in Schedule 2 of PPERA: *‘The Speaker’s Committee shall, at least once in each year, make to the House of Commons a report on the exercise by the Committee of their functions.’*
- 2.52 PPERA sets out terms of office for “appointed members” (not the Speaker, the Chairman of the relevant select committee or the Secretary of State). Appointed members cease to be members of the Committee if they cease to be an MP or “another person is appointed to the Committee in his place”. Otherwise, unless the member resigns by giving notice to the Speaker, tenure is for the duration of the Parliament in which the appointment was made. Members can be reappointed and are not restricted to serving one term.

Parliamentary Parties’ Panels

- 2.53 It is a requirement under the legislation that The Electoral Commission establishes a parliamentary parties’ panel. It was convened in February 2001. It has met quarterly since then. The legislation required the parties’ panel to be made up of the party Treasurers or their nominees. The Panel has therefore taken the flavour of a “Party Headquarters Panel. It has been one talking about very practical issues”.⁴ The original expectation that this would be a vehicle of consultation with senior MPs has not been realised.
- 2.54 Outside Westminster, there have been 13 meetings of the Northern Ireland Assembly’s Parties’ Panel. The Commission’s purpose in establishing this panel was to provide a useful forum for a two-way dialogue between parties represented in the Northern Ireland Assembly (currently suspended) and The Electoral Commission. Similar forums were also established in Wales and Scotland. The Electoral Commission meets with the political parties represented in the National Assembly for Wales on a regular basis and the minutes of these meetings are located on The Electoral Commission’s website.

Table 1. **Powers and Duties of the Speaker's Committee**⁵

Agree with The Electoral Commission the maximum number of Deputy Electoral Commissioners (who serve only as members of Boundary Committees).	S.15(2)
To report to the House that one or more of the statutory grounds for removal of an Electoral Commissioner has been made out before a Motion for an Address for the removal of a Commissioner can be made.	Sch 1, para 3(5)
To designate the Commission's accounting officer and to specify his responsibilities.	Sch 1, para 19(1) and 19(2)
To receive The Electoral Commission's annual accounts.	Sch 1, para 18(1)(b)
To report to the House, at least once a year, on the exercise of its functions.	Sch 2, para 1
To examine The Electoral Commission's estimates; decide whether the Committee is satisfied that they are consistent with the economical, efficient and effective discharge by the Commission of its functions and modify them as necessary to make them consistent.	Sch 1, para 14(3)
To lay before the House of Commons, with or without modification, The Electoral Commission's five year plan.	Sch 1, para 15(4)
To consult the Treasury, and have regard to any advice it may give, before reaching decisions on The Electoral Commission's estimates and five year plan.	Sch 1, para 14(4) and (6); and 15
To receive the Comptroller and Auditor General's reports on the economy, efficiency and effectiveness with which the Commission has used its resources, and to have regard to the most recent report when considering the Commission's estimates and five year plan.	Sch 1, para 16(1); 14(4) and (6); and 15(3) and (5)
If the Committee modifies an estimate or five year plan, or does not follow any recommendations in a report to the Comptroller and Auditor General, or any statutory advice from the Treasury, the Committee should include a statement of the reasons in its next report to the House.	Sch 1, para 14(6) and 15(5)

Questions about the accountability of The Electoral Commission

9. Does the Speaker's Committee of the House of Commons constitute an appropriate and effective 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?
12. Are the devolved administrations of the UK appropriately incorporated into the accountability mechanism?
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?

CHAPTER 3 SUMMARY OF QUESTIONS

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

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?
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?

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

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.

Endnotes

¹ Under PPERA individuals and organisations that wish to spend more than £10,000 in England, or £5,000 in each of Scotland, Wales or Northern Ireland supporting or opposing a party or group of candidates must register with the Commission as a recognised third party. To register as a recognised third party, an organisation or individual simply needs to submit a notification to the Commission. Once registered as a recognised third party, a third party can spend more than £10,000/£5,000 across the UK, but is required to manage its finances in accordance with the PPERA's regulatory regime. A recognised third party can be any of the following:

- an individual registered on a UK electoral register or resident in the UK;
- a UK registered political party;
- a UK registered company;
- a UK registered trade union;
- a UK registered building society;
- a UK registered Limited Liability partnership;
- a UK registered friendly/building society;
- a UK based unincorporated association.

² The Scottish Parliament and Executive, the National Assembly for Wales, the Northern Ireland Assembly and its Executive Committee, a wide range of local authorities in England, Wales and Scotland, a national or regional parliament or government in a country other than the UK, a body in any such country having corresponding functions to the Commission, and supra-national organisations. [10(6)(a)-(i)].

³ Select Committee on Transport, Local Government and the Regions, **Minutes of Evidence**, Mr Sam Younger and Mr Roger Creedon, Wednesday 10 July 2002, Question 48.

⁴ See **A Modern Approach to Inspecting Services** (Audit Commission, 2004). In this context, the term “strategic regulator” means acting as a catalyst to help political parties meet their responsibilities as regulated bodies and concentrating on work where it will have most impact so that activity is proportionate and based on risk assessment.

⁵ Adapted from the Speaker's Committees First Report 2005, www.publications.parliament.uk/pa/cm200405/cmselect/cmspeak/255/25502.htm

APPENDIX 1

Previous reports by the Committee on Standards in Public Life

The Committee has published the following reports:

First Report, **Standards in Public Life**, London, May 1995, Cm 2850-1.

Second Report, **Standards in Public Life: Local Public Spending Bodies**, London May 1996, Cm 3270-1.

Third Report, **Standards in Public Life: Standards of Conduct in Local Government in England, Scotland and Wales**, London, July 1997, Cm 3702-1.

Fourth Report, **Standards in Public Life: Review of Standards of Conduct in Executive NDPBs, NHS Trusts and Local Public Spending Bodies**, London, November 1997.

Fifth Report **Standards in Public Life: The Funding of Political Parties in the United Kingdom**, London, October 1998, Cm 4057-1.

Sixth Report, **Reinforcing Standards: Review of the First Report of CSPL**, London, January 2000, Cm 4557-1.

Seventh Report, **Standards of Conduct in the House of Lords**, London, November 2000, Cm 4903-1.

The First Seven Reports: A Review of Progress, London, September 2001, Cm 4557-1.

Eighth Report, **Standards of Conduct in the House of Commons**, London, November 2002, Cm 5663.

Ninth Report, **Defining the Boundaries within the Executive: Ministers, Special Advisers and the permanent Civil Service**, London, April 2003, Cm 5775.

Survey of public attitudes towards conduct in public life, Prepared by BMRB Social Research for CSPL, London, September 2004.

Tenth Report, **Getting the Balance Right: Implementing Standards of Conduct in Public Life**, London, January 2005, Cm 6407.



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