

# **POLITICAL PARTIES, ELECTIONS AND REFERENDUMS ACT 2000**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 1: The Electoral Commission**

##### ***Sections 1 to 4 and Schedules 1 and 2 : Establishment of Electoral Commission and bodies with related functions***

35. Sections 1 to 4, together with Schedules 1 and 2, make provision for the establishment and constitution of the Electoral Commission, the Speaker's Committee and the Parliamentary Parties Panel. The Electoral Commission will be a body corporate independent of any government department and will report directly to Parliament. The National Audit Office (established under section 3 of the National Audit Act 1983) is an example of a body which has a similar relationship to government and Parliament. The arrangements for the appointment of Commissioners are modelled upon those for the appointment of the Comptroller and Auditor General under section 1 of the 1983 Act.
36. Electoral Commissioners are to be appointed by Her Majesty on the presentation of an Address from the House of Commons. The procedure for their appointment also requires consultation with the leaders of each registered political party with two or more sitting Members of the House of Commons. The number of Commissioners is to be from five to nine. It is envisaged that the Commission's membership will rise to nine when the functions of the Parliamentary and Local Government Boundary Commissions are transferred to the Commission under sections 16 and 18 to 20 of the Act. The Commissioners will enjoy substantial security of tenure. Under *subsection (3) of section 3* appointments will be for up to ten years with, under *subsection (5)*, the possibility of re-appointment. An Electoral Commissioner may only be removed from office on an Address of the House of Commons to that effect and such an Address may only be moved if the Speaker's Committee has presented a report stating that the Committee is satisfied that one or more of the grounds for removal, specified in *paragraph 3(5) of Schedule 1*, has or have been made out.
37. To ensure the independence of the Electoral Commission from political parties *subsection (4) of section 3* provides that no person may be appointed as an Electoral Commissioner if he is a member of a registered party or, in the last ten years, has been an officer or employee of a party, or held a relevant elective office, or been named as a donor in a register of donations maintained by the Commission. A Commissioner will cease to hold office if he is nominated as a candidate at a relevant election; takes up any office or employment with a registered party, recognised third party or permitted participant; is named as a donor to one of the aforementioned organisations; or becomes a member of a registered party (*paragraph 3(3) of Schedule 1*).
38. *Section 2* establishes the Speaker's Committee which will have general oversight of the exercise of the Commission's functions and, in particular, responsibility for approving its budget and five-year corporate plan. Its role will be similar to that of the Public

Accounts Commission (established by section 2 of the National Audit Act 1983) in relation to the National Audit Office. The Committee will be chaired by the Speaker of the House of Commons. There will be eight other members, namely, the Home Secretary, a Minister for Local Government, the Chairman of the Home Affairs Select Committee and five Members of the House of Commons appointed by the Speaker.

39. The Act's provisions in relation to the funding and financial accountability of the Electoral Commission are intended to balance the need to ensure the Commission's financial independence from the government of the day with appropriate safeguards for ensuring proper financial control. Under [paragraphs 14 and 15 of Schedule 1](#) the Commission will be required to produce both an annual estimate of its income and expenditure and, each year, a five-year plan covering its aims, objectives and resource requirements over that period. Both will be subject to the approval of the Speaker's Committee which, in examining the estimate and five-year plan, will have regard to whether they are consistent with the economical, efficient and effective discharge by the Commission of its functions. The Committee may make modifications to the estimate or plan insofar as they are appropriate in achieving those objectives.
40. In examining the Commission's annual estimate and five-year plan, the Speaker's Committee will be required both to consult and to have regard to the advice of the Treasury and also to have regard to reports on examinations which the Comptroller and Auditor General will be required to undertake annually (under [paragraph 16 of Schedule 1](#)). It is intended that it should be possible for the Comptroller and Auditor General in any particular year to examine only selected aspects of the Commission's work, for example its voter education functions.
41. Both the estimate and the five-year plan will be laid before Parliament. The Electoral Commission will also be required to prepare annual accounts in accordance with Treasury directions. These accounts will be examined and certified by the Comptroller and Auditor General before being laid before Parliament.
42. Parliament's scrutiny of the work of the Commission will also be facilitated by the requirement that the Commission must lay before Parliament an annual report on the performance of its functions ([paragraph 20 of Schedule 1](#)). The Speaker's Committee, too, will be under an obligation to report at least annually to the House of Commons on the exercise of its functions ([paragraph 1 of Schedule 2](#)). Such reports will include the Committee's reasons for making any modifications to the annual estimates or five-year plan submitted by the Commission.
43. *Section 4* establishes the Parliamentary Parties Panel. The panel will be composed of a representative from each of those political parties with two or more sitting MPs (in the current Parliament there are eight such parties: Labour, Conservative, Liberal Democrat, Ulster Unionist, Scottish National Party, Plaid Cymru, Social Democratic and Labour Party and Democratic Unionist Party). *Subsection (2)* specifies that the function of the panel shall be to submit representations or information to the Electoral Commission about such matters affecting political parties as the panel think fit. The Commission is required to consider any representations or information they receive from the Panel but is not obliged to act on them (*subsection (3)*).

### **Commission's general functions**

44. Sections 5 to 13 provide the Electoral Commission with a broad range of functions primarily in relation to the oversight of electoral matters in the United Kingdom.

### ***Section 5 : Reports on elections and referendums***

45. [Section 5](#) requires the Commission to prepare and publish reports on the administration of elections to the United Kingdom, European and Scottish Parliaments and to the Welsh and Northern Ireland Assemblies and of referendums to which Part VII of the Act applies (that is, a referendum held throughout the United Kingdom or one or more of its

constituent parts, or in one or more of the nine English regions specified in Schedule 1 to the Regional Development Agencies Act 1998). *Subsection (3)* additionally provides for the Commission, if requested to do so by the National Assembly for Wales, to report on referendums held under section 36 of the Government of Wales Act 1998. (Section 36 of the 1998 Act empowers the National Assembly for Wales to hold a poll for the purpose of ascertaining the views of the public about whether or how any of the Assembly's functions should be exercised.)

## ***Section 6 : Reviews of electoral and political matters***

46. While legislation on electoral matters will remain the responsibility of the government, *section 6* provides for the Commission to keep under review and report on matters relating to elections and referendums, the redistribution of parliamentary and local government boundaries, the regulation and funding of political parties, political advertising and the law relating to all such matters. While the Commission will be expected to exercise its own initiative in reviewing electoral law, there may also be particular issues which the government of the day considers should be examined as a matter of priority. *Subsection (2)* therefore provides the Secretary of State with a power to require the Electoral Commission to review and report upon any such matter within a prescribed timescale.

## ***Section 7 : Commission to be consulted on changes to electoral law***

47. *Section 7* identifies a number of instrument-making powers under existing electoral law which are now to be exercised by the Secretary of State only after consulting the Electoral Commission. These powers are generally concerned with the administration of elections – for example, powers to designate returning officers for elections and to specify arrangements for the conduct of local government elections and elections to the devolved legislatures. The extant instruments made under the statutory provisions listed in *subsection (2)* are:

- a) The European Parliamentary Elections Regulations 1999 ([SI 1999/1214](#));
- b) The European Parliamentary Elections (Returning Officers) Order 1999 ([SI 1999/948](#));
- c) The Returning Officers (Parliamentary Constituencies) (England) Order 1995 ([SI 1995/2061](#), as amended), the Returning Officers (Parliamentary Constituencies) (Wales) Order 1996 ([SI 1996/897](#)) and the Returning Officers (Parliamentary Constituencies) (Scotland) (No.2) Order 1996;
- d) The Local Elections (Principal Areas) Rules 1986 ([SI 1986/2214](#), as amended); the Local Elections (Parishes and Communities) Rules 1986 ([SI 1986/2215](#), as amended); and the Parish and Community Meetings (Polls) Rules 1987 ([SI 1987/1](#), as amended);
- e) The Representation of the People Regulations 1986 ([SI 1986/1081](#), as amended), the Representation of the People (Scotland) Regulations 1986 ([SI 1986/1111](#), as amended) and the Representation of the People (Northern Ireland) Regulations 1986 ([SI 1986/1091](#), as amended);
- f) The National Assembly for Wales (Representation of the People) Order 1999 ([SI 1999/450](#)). No order has yet been made under section 36(4) or (5) of the Government of Wales Act 1998;
- g) The Scottish Parliament (Elections etc.) Order 1999 ([SI 1999/787](#));
- h) No order has yet been made under section 34 of the Northern Ireland Act 1998.
- i) No order has yet been made under section 17A(3) of the Greater London Authority Act 1999.

***Section 8 : Powers with respect to elections exercisable only on Commission's recommendation***

48. *Section 8* specifies a number of functions of the Secretary of State which will be exercisable only upon the recommendation of the Commission. *Subsection (1)* provides that one such function is that of giving directions to registration officers under section 52(1) of the Representation of the People Act; hitherto this power has not been exercised. *Subsection (3)* identifies a number of instrument-making powers to set limitations on expenses by candidates and parties at elections. The Secretary of State is empowered, by *subsection (2)*, to vary the monetary limits to take account of inflation, but any more substantial variation can only be made on a recommendation of the Commission.
49. The extant instruments made under the statutory provisions listed in subsection (3) are:
- a) Article 3 of the Greater London Authority Election (Expenses) Order 2000 ([SI 2000/789](#)) sets limits on election expenses by candidates at elections to the Greater London Authority;
  - b) Articles 41 and 42 of the Scottish Parliament (Elections etc.) Order 1999 ([SI 1999/787](#)) and Articles 46 to 48 of the National Assembly for Wales (Representation of the People) Order 1999 ([SI 1999/450](#)) set limits on expenses by candidates and registered parties at elections to the Scottish Parliament and Welsh Assembly respectively;
  - c) Regulation 15 of the European Parliamentary Elections Regulation 1999 ([SI 1999/1214](#)) sets limits on election expenses by registered parties at elections to the European Parliament. Section 76 of the Representation of the People Act 1983 as applied, with modifications, by Schedule 1 to the European Parliamentary Elections Regulations 1999 sets limits on election expenses by individual candidates.

***Section 9 : Involvement of Commission in changes in electoral procedures***

50. *Section 9* provides for the involvement of the Electoral Commission in pilot schemes to test new electoral procedures conducted under section 10 of the Representation of the People Act 2000. Section 10 of the 2000 Act enables local authorities to conduct pilot schemes, with the approval of the Secretary of State, to test alternative procedures as to when, where or how voting at local government elections is to take place, or how the votes cast at such elections are to be counted. Section 9 enables the Commission to co-sponsor particular pilot schemes in conjunction with a local authority. The section also confers on the Commission the functions in relation to pilot schemes and the roll-out of successfully piloted electoral innovations which are set out in sections 10 and 11 of the 2000 Act, as amended by paragraphs 16 and 17 of Schedule 21 to the Act.

***Section 10 : Giving of advice and assistance***

51. *Section 10* empowers the Commission to provide advice and assistance to local authorities, the devolved administrations and international bodies. Under this provision the Commission could, for example, provide assistance to the National Assembly for Wales with the conduct of a poll under section 36 of the Government of Wales Act 1998, to the Scottish Executive with a review of aspects of the law in respect of local elections in Scotland and to the United Nations or the Commonwealth with the organisation or monitoring of elections in another member state.
52. *Subsection (3)* also enables the Commission to provide advice and assistance to registration and returning officers, registered political parties, recognised third parties (within the meaning of section 88), permitted participants in a referendum campaign (within the meaning of section 105), and others. The Commission is expected to take over from the Home Office the functions of promoting best practice in the way in which

registration and returning officers discharge their functions under the Representation of the People Acts and other enactments relating to elections.

***Section 11 : Broadcasters to have regard to Commission's views on party political broadcasts***

53. *Section 11* provides that the Commission's broad oversight of the way elections are conducted should extend to providing guidance on party political broadcasts. At present, sections 36 and 107 of the Broadcasting Act 1990 provide for the Independent Television Commission and the Radio Authority to draw up conditions requiring a licence holder both to include party political broadcasts in its services and to observe any rules in relation to party political broadcasts which the Commission or Authority may determine. The Independent Television Commission and the Radio Authority may determine the political parties on whose behalf party political broadcasts may be made and the length and frequency of such broadcasts. The British Broadcasting Corporation and Sianel Pedwar Cymru are not subject to any similar statutory requirement, but nonetheless provide air time for party political broadcasts as part of their role as public service broadcasters.
54. The Neill Committee suggested that, while it should not be for the government to direct that broadcasters provide party political broadcasts, there could be a role for the Electoral Commission in putting forward non-binding views in relation to, for example, the scheduling of broadcasts. *Section 11* requires the Independent Television Commission and the Radio Authority, in determining the rules provided for under sections 36 and 107 of the Broadcasting Act 1990, to have regard to the views of the Electoral Commission. *Subsection (3)* would place the British Broadcasting Corporation and Sianel Pedwar Cymru, in determining their policy with respect to party political broadcasts, under a similar duty. It is not intended that these provisions should give the Commission a prescriptive role in relation to editorial and broadcasting decisions, which are properly a matter for the broadcasters themselves, nor is it intended that broadcasters should be required to seek the views of the Commission before deciding whether to transmit each and every party political broadcast.

***Section 12 : Policy development grants***

55. *Section 12* provides for the Commission to develop and, once it is approved by the Secretary of State, administer a scheme for the payment of policy development grants to registered political parties. It will be for the Commission to propose, and the Secretary of State to approve, the formula or criteria by which such grants are allocated to eligible political parties. *Subsection (1)* restricts the making of such grants to parties which are represented by at least two sitting Members of the House of Commons (in the current Parliament there are eight such parties: Labour, Conservative, Liberal Democrat, Ulster Unionists, Scottish National Party, Plaid Cymru, Social Democratic and Labour Party and Democratic Unionist Party). The purpose of such grants will be restricted to the development of policies which are to form part of individual parties' political platforms; it is not intended that they be used for the development of parties' internal policies or in respect of their organisation and administration or of campaigning. *Subsection (8)* limits the total amount of disbursements under such a scheme to £2 million in any financial year.

***Section 13 : Education about electoral and democratic systems***

56. *Section 13* of the Act provides for the Commission to have a role to play in encouraging voters' participation in the democratic process by enabling it both to carry out programmes of education or information and to provide financial assistance to other bodies carrying out such programmes. The scope of this section is intended to be such that voter education is not restricted to addressing the mechanics of exercising the vote but is also able to address, through attention to the role of government and other elected bodies both at local, national and European level, the purpose and importance

of exercising the vote. Any programmes conducted by the Commission under this section may only explain any current or pending electoral systems or systems of local and national government. *Subsection (2)* defines a ‘pending’ system as a system that has been enacted by Parliament but is not yet in force. The Commission will not be empowered to put the case for alternative electoral systems which have not been enacted by Parliament.

## **Commission’s electoral boundary functions**

### ***Section 14 : Boundary Committees***

57. *Section 14* requires the Electoral Commission to establish four Boundary Committees, one for each part of the United Kingdom. These Boundary Committees will take on the functions of the Parliamentary and Local Government Boundary Commissions transferred to them under the provisions of sections 16 and 18 to 20. Each Boundary Committee will be chaired by an Electoral Commissioner and include at least two other members who must be either Electoral Commissioners or Deputy Electoral Commissioners (appointed under the provisions of *section 15*). The minimum membership of three for each Boundary Committee reflects the size of the Parliamentary Boundary Commissions (paragraph 2 of Schedule 1 to the Parliamentary Constituencies Act 1986 provides for the appointment of four Commissioners, but the Chairman in each case, the Speaker of the House of Commons, does not take part in the Commissions’ deliberations). Where the functions of a Local Government Boundary Commission are transferred to a Boundary Committee, the minimum membership of that committee will be increased to five (the Local Government Commission for England currently has a membership of seven). *Subsection (6)* provides for the appointment of assessors to the Boundary Commissions who will provide expert advice on population changes and on mapping. The subsection mirrors the equivalent provision in respect of the Parliamentary Boundary Commission contained in paragraph 5 of Schedule 1 to the Parliamentary Constituencies Act 1986 (Schedule 22 to the Act provides for the repeal of this provision).

### ***Section 16 : Transfer of functions of Boundary Commissions***

58. *Section 16* provides for the transfer of the functions of the four existing Parliamentary Boundary Commissions to the Electoral Commission. Although originally established by the House of Commons (Redistribution of Seats) Act 1949, the Parliamentary Boundary Commissions are currently established under section 2(1) of the Parliamentary Constituencies Act 1986. Section 3 of that Act requires each of the Boundary Commissions for England, Scotland, Wales and Northern Ireland to “keep under review the representation in the House of Commons of the part of the United Kingdom with which they are concerned”. In addition to their functions under the Parliamentary Constituencies Act, the Boundary Commissions are also responsible under the devolution legislation for the review of regional boundaries for elections to the devolved legislatures in Scotland and Wales.
59. *Subsections (1) and (2)* of section 16 give effect to Schedule 3. *Part I of Schedule 3* amends the Parliamentary Constituencies Act 1986 so as to set out the respective roles and functions of the Electoral Commission and the Boundary Committees in relation to the review of parliamentary constituency boundaries. *Paragraph 2 of Schedule 3* amends section 3 of the 1986 Act so as to vest the function of keeping parliamentary constituencies under review and submitting reports to the Secretary of State in the Electoral Commission itself. *Paragraph 3 of Schedule 3* inserts a new section 3A into the 1986 Act which specifies that, where the Commission intends to prepare and submit a report, the Boundary Committees will carry out a review of their respective areas and submit proposals for recommendations for inclusion in the report. New section 3A(4) requires the Boundary Committees to comply with any directions given to them by the Commission, although any such directions would need to be consistent with the rules for the redistribution of seats in Schedule 2 to the 1986 Act.

60. On receipt of a Committee's report new section 3A(3) of the 1986 Act sets out five possible courses of action open to the Electoral Commission. It could:
- accept the proposed recommendations;
  - accept the proposed recommendations subject to modifications agreed with the Committee;
  - reject the proposed recommendations and require the Committee to reconsider its proposals;
  - reject the proposed recommendations and require the Committee to undertake another complete or part review; or
  - in the case of a review into part only of the area for which the Committee is responsible, take no further action.
61. *Paragraph 4 of Schedule 3* amends section 4 of the 1986 Act so as to remove the power of the Secretary of State to modify the recommendations of the Electoral Commission proposing changes to parliamentary constituency boundaries. However, it would remain open to the Secretary of State to modify the Commission's recommendations if the initial order seeking to give effect to them was rejected by either House of Parliament.
62. *Paragraphs 5 to 7 of Schedule 3* make consequential changes to sections 5 and 6 of and Schedule 2 to the 1986 Act. It will be for the Electoral Commission itself to give notice of the start of a review but for the relevant Boundary Committee to publicise the effects of the proposed recommendations. Where the Commission intends to modify or reject a Boundary Committee's recommendations it will be under a duty to have regard to any representations which follow publication of a Committee's recommendations.
63. *Part II of Schedule 3* make equivalent amendments to Schedule 1 to the Government of Wales Act 1998 and Schedule 1 to the Scotland Act 1998 (which make provision in respect of the review of boundaries in relation to elections to the National Assembly for Wales and the Scottish Parliament).

### ***Section 18 : Transfer of functions of Local Government Commission for England***

64. *Subsection (1)* empowers the Secretary of State (in this case the Secretary of State for the Environment, Transport and the Regions) to transfer the functions of the Local Government Commission for England to the Electoral Commission or to the Boundary Committee for England.
65. The Local Government Commission for England was established by section 12 of the Local Government Act 1992 to carry out the functions given to it by Part II of that Act. The principal functions of the Commission under the 1992 Act are to review local government areas in England and make recommendations to the Secretary of State on whether or not changes to local authority structure, boundaries and electoral arrangements would be desirable. The Commission also has functions in connection with the review of parishes under sections 13 and 19 of the Local Government and Rating Act 1997. Finally, the Commission has functions in relation to the electoral arrangements for the Greater London Authority under Schedule 1 to the Greater London Authority Act 1999.
66. *Subsection (2)* provides that a transfer of functions order may make provision for, amongst other things, transferring to the Commission any relevant functions of the Secretary of State, terminating or modifying any such functions, and preventing the Secretary of State from exercising any relevant function unless he has obtained the advice of the Electoral Commission. It is proposed to exercise the order-making power in such a way as to transfer to the Electoral Commission full responsibility for reviewing electoral arrangements (that is, in respect of wards and county divisions)

and implementing any changes. In order that the Commission may implement changes to electoral boundaries it will be necessary to confer a power on the Commission to make statutory instruments (as provided for in *subsection (4)*). Responsibility for making changes to local authority administrative boundaries or to the structure of local government would continue to rest with the Secretary of State although any such changes could only be made with the advice of the Electoral Commission. The existing powers of the Secretary of State to direct the Local Government Commission for England to conduct a review of the structure and administrative boundaries of local authorities in a given area will be replaced by a power to request the Electoral Commission to undertake such a review. The cost of any structure or boundary review will be met by the Secretary of State (*subsection (9)*). *Subsection (5)* provides that in allocating transferred functions between the Electoral Commission and the Boundary Committee for England the provisions of an order made under subsection (1) must broadly correspond to the arrangements made for the allocation of functions between those bodies in respect of the review of parliamentary boundaries by the Parliamentary Constituencies Act 1986 (as amended by Part I of Schedule 3).

### ***Section 19 : Transfer of functions of Local Government Boundary Commission for Scotland***

67. *Subsection (1)* empowers Scottish Ministers to transfer to the Electoral Commission, or the Boundary Committee for Scotland, any of the functions of the Local Government Boundary Commission for Scotland (“the Scottish Commission”). The Scottish Commission was established by section 12 of the Local Government (Scotland) Act 1973. The principal functions of the Scottish Commission are to review local government and electoral arrangements in Scotland, with a view to considering whether or not to make proposals to Scottish Ministers for effecting changes which appear to the Commission to be desirable in the interests of effective and convenient local government. The scope of the order-making power is broadly similar to the one contained in section 18.

### ***Section 20 : Transfer of functions of Local Government Boundary Commission for Wales***

68. *Subsection (1)* empowers the National Assembly for Wales to transfer to the Electoral Commission, or the Boundary Committee for Wales, the functions of the Local Government Boundary Commission for Wales (“the Welsh Commission”). The Welsh Commission was established by section 53 of the Local Government Act 1972 to carry out the functions given to it by Part IV of that Act, as amended by the Local Government (Wales) Act 1994. The principal functions of the Welsh Commission are to review local government areas and electoral arrangements in Wales, with a view to considering whether or not to make proposals to the National Assembly for Wales for effecting changes which appear to the Commission to be desirable in the interests of effective and convenient local government. The scope of the order-making power is broadly similar to the one contained in section 18.