

MEMORANDUM

POLITICAL PARTIES, ELECTIONS AND REFERENDUMS BILL

Background

1. The Political Parties, Elections and Referendums Bill, which has now completed Commons Committee in the UK Parliament introduces a number of measures in relation to political party's expenditure and donations to political parties. It will set up a UK Electoral Commission to monitor these arrangements which will also take on the work of the Parliamentary Boundary Commissions and take a lead role in the development of electoral law and practise. The Bill is the UK Government's response to the Fifth Report of the Committee on Standards in Public Life (The Neill Committee) "The Funding of Political Parties in the United Kingdom" (Cm. 4113).

Content of the Bill

2. The Bill deals almost entirely with reserved matters in that the Scotland Act reserves the registration and funding of political parties, elections for membership of the House of Commons, European Parliament and the Scottish Parliament, and the franchise at local government elections. The major proposals in the Bill are the creation of an Electoral Commission, control on donations to political parties and campaign expenditure, accounting requirements for parties;

3. Part I of the Bill would establish an Electoral Commission and sets out the general functions proposed for it, other than those functions relating to the registration of political parties, the scrutiny of political parties' and third parties' income and expenditure and the administration of referendums which are covered in Parts II to VII. The general functions of the Commission include:

- reporting on particular elections and referendums;
- the review of electoral law;
- the provision of guidance in relation to party political broadcasts; and
- promoting understanding of electoral and political matters.

Part I also provides for the transfer to the Electoral Commission of the functions of the four Parliamentary Boundary Commissions and of the Local Government Commission for England and the Local Government Boundary Commission for Wales.

Proposal

4. There are, however, 5 areas in which the Scottish Executive would like the Bill to apply to devolved local government elections. Four of these provisions are enabling powers which will allow the Scottish Parliament to take decisions in the future, while the fifth will directly amend legislation governing the conduct of devolved local government elections. In seeking to include the enabling provisions in the Bill it should be noted that the Executive has not taken any view on whether or not the powers should be exercised, only that the option should remain open to the Executive and Parliament for future use.

Work of the Local Government Boundary Commission for Scotland

5. The Bill already includes provisions for the Home Secretary by Order to transfer to the Electoral Commission one or more functions of the Local Government Boundary Commission for England. Similar provisions are included to allow the National Assembly for Wales to transfer the work of the Welsh Commission. The Executive believe that it would make sense to have a similar power to allow the Scottish Ministers (subject to the control of the Scottish Parliament) to decide at some future point if it wants to transfer the work of the Local Government Boundary Commission on local government boundary reviews to the Electoral Commission. In order for the Scottish Ministers to be able to do so, the Bill will need to include an enabling power. It will be for the Scottish Ministers to decide if they wished to invoke the power and for the Scottish Parliament to exercise control over the use of the power.

Candidates' expenses at local government elections

6. The Bill confers on the Electoral Commission the function of monitoring compliance with any enactments relating to candidates' expenses at UK, Scottish and European Parliamentary elections and at local government elections in England and Wales. At present, candidates' expenses at local government elections in Scotland, as with other elections, are not monitored in any official way. Expenses returns are simply made available for public inspection. Unless the same function is conferred on the Electoral Commission as regards local government elections in Scotland, candidates expenses at these elections would be subject to less scrutiny than equivalent elections in England and Wales. It is therefore proposed that the Bill should include an enabling provision which would allow the Scottish Ministers (subject to the control of the Scottish Parliament) to confer this function on the Electoral Commission. While it will be for the Scottish Ministers to decide whether or not to introduce monitoring arrangements for local government elections in Scotland, and what those arrangements will be, it would make sense to give them the option of using the Electoral Commission to do so.

Advice to returning officers from the Electoral Commission

7. Provisions are included in the Bill which allow the Electoral Commission to provide advice and assistance to various organisations and individuals. These include returning officers at "relevant elections". Local government elections in Scotland are not included in the definition of "relevant election" in the Bill. If as expected, the Electoral Commission becomes the conduit of guidance on electoral practice, then it would not make sense to prevent local government returning officers from seeking advice from the Commission. It is proposed that the Bill should include an enabling power which would allow the Scottish Ministers (subject to the control of the Scottish Parliament) to allow the Electoral Commission to provide advice and assistance in connection with Scottish local government elections.

Electoral Commission's function in relation to Education

8. The Bill provides that the Electoral Commission shall promote public awareness of electoral systems and systems of local government. Local Government and local government elections in Scotland are not included. It is proposed that the Bill should include an enabling

power which would allow the Scottish Ministers (subject to the control of the Scottish Parliament) to allow the Electoral Commission to promote public awareness of systems of local government in Scotland and or electoral systems.

Amendment to section 75 of the Representation of the People (ROP) Act 1983

9. Section 75 of the ROP Act 1983 prevents election expenses being incurred by persons other than a candidate, election agent or persons authorised by them. There is an exception if the amount does not exceed £5 in aggregate. Section 75 applies at present to both Parliamentary and local government elections. The European Court of Human Rights found section 75 of the ROP Act in breach of the European Convention of Human Rights (*Bowman judgement of 19 February 1999*). As a result, the Home Secretary is considering including provisions in the Bill which will amend section 75 for Parliamentary elections to raise the exception to £500 and for local government elections in England and Wales to £50 plus 0.5p per elector.

10. The Executive believe that that it would make sense to use the opportunity offered by the Bill to amend section 75 for local government elections in Scotland. Although the next local government elections are not due until 2002 there is a possibility of a by-election at any point and unless section 75 is amended it will remain incompatible with ECHR.

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