

POLITICAL PARTIES, ELECTIONS AND REFERENDUMS BILL

SECTION 93 OF THE REPRESENTATION OF THE PEOPLE ACT 1983

Introduction

1. This memorandum proposes that the Deputy Minister for Local Government put down a motion to the effect that the Parliament endorses the principle of replacing Section 93 of the Representation of the People Act 1983 with a provision placing a duty on broadcasters to draw up a code of practice as respects the involvement of candidates in broadcasts pending an election; and agrees that provision to this end in the case of local government elections in Scotland should be considered by the United Kingdom Parliament as part of the Political Parties, Elections and Referendums Bill.

2. The Parliament has already agreed an earlier motion, S1M-628, in relation to the Political Parties, Elections and Referendums Bill. This was agreed to in March and covered a quite separate set of issues, mainly using the Bill to create the future option of conferring certain functions in relation to local government elections in Scotland on the Electoral Commission.

Issue

3. Section 93 of the Representation of the People Act 1983 deals with broadcasting during elections. It provides that pending any election it shall not be lawful for any item about the constituency or electoral area to be broadcast on radio or television if any of the candidates who are for the time being candidates at the election takes part in the item and the broadcast is not made with his consent. It also provides that anyone taking part in such a broadcast which is made either before the latest time for delivery of nomination papers or is made after that time but without the consent of any candidate remaining validly nominated, that person is guilty of an illegal practice, unless the broadcast is made without his consent.

4. That section was designed to ensure a level playing field among candidates at a Parliamentary or Local Government election with respect to access to broadcasting and items of local interest. In brief, its effect is to prevent a broadcast from taking place unless all of the candidates standing nominated for an election consent.

5. This provision works satisfactorily where the only candidates standing nominated are from the major parties in the area in question. Where, however, independent candidates or candidates for special issues are amongst those nominated, their refusal to consent to a broadcast has the effect of preventing a debate between the candidates of the major parties on some local issue being broadcast.

6. The UK Government therefore proposes to replace section 93(1) with a duty on the broadcasters to draw up a code of practice as respect to the involvement of candidates in broadcasts, including items about the constituency, in the case of a Parliamentary election, or electoral area, in the case of a local government election, during the time when such an election is pending. The Bill will be amended to require the broadcasters, before making the code of practice, to have regard to any views expressed by the Electoral Commission about its contents. It is envisaged that the code will ensure that broadly equal weight is given to candidates standing in the name of the principal parties. In Scotland and Wales, those parties will, of course, include the Scottish National Party and Plaid Cymru.

7. The question is whether this provision should be extended to Scottish local government elections which are devolved. If the provision is not extended to the conduct of local government elections in Scotland, then the existing section 93 will continue to apply to these, and the codes of practice drawn up by the Broadcasting Authorities will not apply. This does not make sense. It would be better to have one regime governing all broadcasting in the run-up to elections.

8. A motion inviting the Parliament to agree this proposal will be lodged for approval.