

RESPONSE TO OSCE/ODIHR

Introduction

Following an invitation from the United Kingdom (UK) Delegation to the Organisation for Security and Co-operation in Europe (OSCE), its Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Expert Team (EET) to observe aspects of the General Election held on 7 May 2015 relating to the implementation of legislation and application of election procedures, voter registration and campaign finance. The Government is grateful for the analysis and recommendations in the OSCE/ODIHR Election Expert Team Final Report.

The UK Government welcomes the overall finding that ‘the legal framework provides a sound basis to conduct genuine elections’ whilst also recognising that all systems can be improved. Hence the UK Government keeps all aspects of the electoral system under review. The Government will also be carefully considering recommendations made by Sir Eric Pickles’ independent review into tackling electoral fraud published in August 2016.

As the OSCE/ODIHR recognises, changes had taken place for this election in the form of the introduction of Individual Electoral Registration, and amendments to regulations on party and campaign finance. Previous OSCE/ODIHR recommendations had also been implemented to allow voters in line at the close of poll to vote, to extend and harmonise the timetables for different elections, and provide additional safeguards for postal voting. Changes to constituency boundaries were not made however following the suspension of the relevant review in 2013. The Government’s planned future work includes consideration of recommendations of the Law Commissions in their review of electoral law (their interim recommendations were published on 4 February 2016)¹, intended to address the voluminous, fragmented and repetitive nature of electoral law.

These developments have important implications to the accessibility and security of the electoral system and are referred to where relevant in our response to the OSCE/ODIHR’s recommendations.

¹ <http://www.lawcom.gov.uk/project/electoral-law/>

A. PRIORITY RECOMMENDATIONS

1. The OSCE/ODIHR reiterates its recommendation to address the deviation in constituencies from the electoral quota to ensure equality of the vote.

As the OSCE/ODIHR note, the Parliamentary Voting System and Constituencies Act 2011 provides for more equal sized constituencies in the UK, and for the number of constituencies to be reduced from 650 to 600. The Act as originally enacted required the four Boundary Commissions to conduct a boundary review and submit their final recommendations to Government before 1 October 2013, and thereafter to conduct a review every 5 years. However, as the law stands since the passage of the Electoral Registration and Administration Act 2013, a review, which commenced on 24 February 2016, must report by October 2018. The recommendations of the Boundary Commissions then the changes will be in place for the 2020 General Election, subject to Parliamentary approval of the secondary legislation.

Without the implementation of these boundary reforms, MPs would end up representing constituencies that are drawn up based on data that is over 20 years' old, disregarding significant changes in demographics, house building and geographical migration.

The Government's reforms, implemented by an independent body, will ensure fair and equal representation for the voting public across the United Kingdom – both for the 2020 General Election, and in the future.

2. The OSCE/ODIHR reiterates its recommendation that the existing legislation on the suffrage rights of prisoners should be brought in line with the judgments of the ECtHR.

The UK's ban on prisoner voting continues to be in place and, as we have consistently stated, remains a matter for Parliament to determine.

3. Authorities should consider removing the numbering on the back of the ballot linked to individual voters, which challenges the principle of secrecy of the vote.

In the UK, all ballot papers must have a ballot paper number printed on the reverse, which is unique to each ballot paper and runs sequentially. When the ballot paper is issued, either to a postal voter, or a voter in a polling station, the voter's elector number is recorded against the ballot paper number. This record forms the 'corresponding number list'. The list and the ballot papers are sealed up separately to each other at the close of poll and stored securely for a year, after which they are destroyed.

In the event of a legal challenge or a police investigation into an alleged electoral offence the documents may be accessed via an order of the House of Commons, the High Court or a county court, in order to assist with determining the validity of the allegations. In the absence of this system it would be necessary to put in place a

measure to provide assurance that the person casting their vote at the polling station was the proper person by, for example, requiring them to present identification before they could be issued with a ballot paper. The Government will be carefully considering proposals on voter identification which have been made by both the Electoral Commission and Sir Eric Pickles.

The Government will consider whether to remove ballot paper numbers from the reverse of ballot papers in the event it decides to adopt such a measure but does not favour doing so in the absence of one.

We also note the comments by OSCE/ODHIR EET about variations and inconsistent application of procedures by election officials in some constituencies. In Great Britain the administration of elections is decentralised, except for local elections in Scotland which are subject to a form of central management. In Northern Ireland a form of central management applies to all elections.

Under the decentralised system in Great Britain, electoral registration is the responsibility of Electoral Registration Officers (EROs) who are appointed by local authorities, while the running of elections is the responsibility of local Returning Officers (ROs), who are generally the Chief Executive (or a senior officer) of the local authority. The roles are independent of the local authority and legally distinct from each other, although in England and Wales they are usually held by the same person. The arrangement allows consideration of local issues in planning for elections. While this can result in some variations in the application of procedures, the UK Government believes that this is outweighed by the benefits of taking a local approach to electoral integrity.

OSCE/ODHIR EET also referred to concerns of electoral administrators that the removal of sequential numbering of the candidates on ballot papers would negatively affect the speed and accuracy of the count. In 2015, the UK Parliament approved legislation to remove numbering against the names of candidates on ballot papers for local, parish and UK parliamentary elections, which took effect for the polls scheduled on 7 May 2015. The changes made this aspect of the design of ballot papers more consistent with those of other polls. User testing of a cross section of members of the public had found that the numbering was seen as confusing, especially to new voters (for example, some were unsure whether to circle the number or mark the box in order to cast their vote). Removal of the numbering makes the ballot paper clearer and less cluttered for voters.

The Electoral Commission's report on the 2015 UK elections² found that while some respondents to its survey of ROs reported greater difficulty in counting for multi-member wards, the issues were a minority and concluded "the removal of numbers from UK Parliamentary and local government ballot papers does not appear to have caused any significant problems."

4. Consideration could be given to configuring the online registration system to enable voters to verify their status, including the eligibility for different elections.

² [Electoral Commission, *The May 2015 UK elections* \(July 2015\) p 50](#)

Since the OSCE conducted the research informing this report, the transition to Individual Electoral Registration has been successfully completed. The electoral register in December 2015 was 4% more accurate than before Individual Electoral Registration was introduced in 2014 and there were a record number of entries on the registers used for the EU referendum.

The UK Government is determined to build on this success and is working with local authorities and EROs to review current electoral registration processes and discuss modern, flexible, digital solutions to the different registration challenges faced at a local level. Now that the transition has been successfully completed, the Government is committed to removing burdensome processes wherever possible and practicable.

The OSCE states that: 'In Great Britain, an online voter registration system was launched by the CO in March 2015, via a constituency based web-portal' (p.5). In fact, the online registration web service www.gov.uk/register-to-vote was launched with Individual Electoral Registration in June 2014; since then almost 20 million applications have been submitted, 79% online. It may be expected that some applications will come from those unsure of their registration status but we do not think that this diminishes the success of making registration more convenient and accessible by introducing online registration. Now that Individual Electoral Registration is established the Government is looking at ways the IER digital service can be enhanced. A number of technical challenges, such as concerns over privacy and data security of a national database, would need to be overcome before any system which allowed individuals to verify their registration status and eligibility to vote in different elections online could be implemented. There may be other more viable solutions, such as improved filtering of duplicates within electoral management software.

The first step is to fully understand the impact of duplicate applications and then to explore a range of options to ascertain which are viable and which are appropriate compared to the scale of the problem. We recognise that some Local Authorities have looked at establishing local solutions and so, as part of this investigative work, we intend to study this existing practice to understand what lessons might be learnt and drawn upon.

5. Consideration could be given to reviewing the rules to allow Returning Officers to request voters to correct their application or to accept postal ballots in clear cases of transposition mistakes following the verification of voter personal identifiers.

Under the Postal Vote Identifier system, when a postal ballot pack is returned, the signature and date of birth (personal identifiers) on the postal vote statement are checked against those previously supplied by the elector to ensure they match, to confirm that the ballot paper has been returned by the registered elector. If the signature and / or date of birth are missing or do not match, the postal vote is rejected, which prevents potentially fraudulent votes from being counted.

The UK Government has introduced a change to allow ROs to notify voters where their postal vote has been rejected because of a mismatched signature or date of birth or both so they can take measures to avoid this in the future. This could also

enable the voter to identify if an attempt at fraud had been made with their postal ballot. A safeguard allows Electoral Registration Officers (EROs) to have discretion not to contact individuals suspected of electoral fraud.

The Government's main concerns about the OSCE/ODIHR's recommendation are firstly, whether it would make electoral fraud easier to commit. A transposition error, for example, may be more likely to be committed by a fraudster who has access to an elector's personal details, than a genuine voter who is used to providing their date of birth in the correct format. Secondly, the recommendation may increase the administrative burden to ROs in the run up to elections. An alternative to the recommendation may be to identify ways to maximise the number of people who enter their date of birth correctly first time, to avoid remedial action later, e.g. through improved voter information.

The Electoral Commission in its report on the elections on 7 May 2015³, reported that 4.6% of returned postal ballot papers were rejected after the personal identifiers were found not to match the records held by the ERO. It also reported that 30% of postal ballots were rejected either because the date of birth, or both date of birth and signature, did not match, and 4% because the date of birth was missing.

The Electoral Commission plan to collect data on the number of voters contacted by EROs after the 2015 polls and the proportion of these voters who supplied a fresh copy of their signature or other updated details in order to assess the effectiveness of ERO write outs to electors whose postal vote was rejected. The Government will await the result of the Electoral Commission's assessment before deciding whether further action is needed.

6. To enhance transparency, the authorities could consider adopting measures to require parties competing in the elections to accelerate the disclosure of campaign income and expenditure, linking it more closely to election timeframes.

The Political Parties, Elections and Referendums Act (PPERA) 2000 sets out the current regulatory regime for political parties in relation to the disclosure and transparency of party income and expenditure. Donations and loans to political parties with a value of over £500 are regulated. There are specific rules setting out who parties can accept donations and loans from. Political parties are required to report quarterly on funding that they receive above a certain value. From the date on which Parliament is dissolved prior to a general election, political parties are required to submit donation and loan reports on a weekly basis until the date of the general election. The Electoral Commission publishes these weekly and quarterly reports online shortly after receiving them. It is a statutory requirement that the Commission make publicly available funding reports as soon as reasonably practicable after receiving them.

Political parties must also report on regulated spending, incurred during the 365 days prior to a general election, on campaigning to promote the party and its policies. Parties are required to report campaign spending, to the Electoral Commission within

³ [The May 2015 UK elections: Report on the administration of the 7 May 2015 elections, including the UK Parliamentary General Election, Electoral Commission \(July 2015\) pp 24 - 26](#)

3 - 6 months of the election; 3 months if campaign expenditure is below £250,000, 6 months if over £250,000. Parties are liable to a penalty if they do not submit their return on time. It is a statutory requirement that the Electoral Commission make campaign expenditure returns publicly available as soon as reasonably practicable after receiving them.

It would not be practicable for parties to disclose or report on campaign expenditure during the regulated period as spending is often cumulative and invoices will only be settled after the election is completed. Pre-poll spending returns would therefore not provide an accurate picture of party spending during the campaign and would place an unnecessary burden on parties without necessarily enhancing the transparency of campaigning.

B. OTHER RECOMMENDATIONS

7. Consideration could be given to limiting the amount a single donor may contribute to a candidate or political party in a year, in order to ensure that the democratic process is not distorted by undue influence of big donors, in line with Recommendation (2003) 4 of the Council of Europe, Committee of Ministers.

Individual donations to political parties are regulated under the Political Parties, Elections and Referendums Act (PPERA) 2000. The regulatory framework set out in PERA was based upon the 5th report of the Committee on Standards in Public Life on 'The Funding of Political Parties in the United Kingdom', known as the Neill Report. The Neill Report did not recommend that a limit be introduced on the amount which an individual, company or institution may contribute to a political party. It was considered that the introduction of a cap on donations may result in individuals who wish to give more evading the limit, possibly by sharing resources amongst friends and relations in order to legitimise any donation by sub-dividing it. It would be difficult to detect such strategies and thus, to enforce the cap and the level of regulation required to enforce such a system would not be justified by the purpose of the cap. Rather, it was the intention that the introduction of transparent and publicly available disclosure and reporting of donations and limits on campaign expenditure, both introduced in PERA, taken together, removed the need for any cap on donations.

Party funding in the UK, including limits on donations, was reconsidered by the 13th report of the Committee 'Political party finance: Ending the big donor culture'. During the last Parliament, the Government convened discussions between the three main political parties to discuss possible reforms in party funding as recommended in the 13th Committee report. Representatives met seven times during 2012 and 2013. Discussions were based on the principles identified by the Committee, including the implementation of donation caps. As on previous occasions, there was no agreement between the three parties on beginning party funding reform.

The Government remains clear that party funding reform is best achieved as far as possible by consensus. The Government remains open to constructive debate and dialogue on how we can further strengthen confidence in our democratic process, and increase transparency and accountability, including taking forward measures for discussion on promoting small-scale private fundraising.

8. Consideration could be given to adhering to a single formula for calculation of expenditure limits for political parties in view of ensuring equality and consistency of financial rules.

The rules for expenditure by political parties reflect the fact that most of their campaign expenditure is national rather than local. Where a political party campaigns in direct support of a candidate this expenditure must be accounted for against that candidate's spending limit.

The campaign expenditure limits for political parties ordinarily apply in the 365 days ending with the date of the election. The parties' national limit is calculated by multiplying the number of seats it is contesting by £30,000. However, this is subject to a minimum threshold which is set at 5% of the maximum limit rounded up to the nearest multiple of £30,000. This is intended to ensure that a political party which campaigns primarily at local government elections, but only fields a limited number of candidates at a parliamentary general election, does not inadvertently breach the expenditure limits for that election.

9. Consideration could be given to reviewing campaign finance rules pertaining to third parties, in view of ensuring transparency, integrity and accountability without unduly limiting their activities.

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 aims to ensure that third parties who want to influence the outcome of UK parliamentary general elections should do so transparently, while presuming the essential freedom to speak out on issues, which is a defining feature of civil society in this country.

Section 39 of the Act provides for a post-election review of the operation of the regulatory regime governing third parties at the 2015 General Election. Lord Hodgson of Astley Abbots CBE was appointed to lead the independent review on 28 January 2015.

Lord Hodgson was required to make a written report on the review and provide this to the Government Minister responsible, who had to lay a copy of the report before Parliament and publish the report. As a result, Lord Hodgson's review was published in March 2016. The Government is currently considering Lord Hodgson's recommendations in detail.

Conclusions

The UK Government is grateful to the OSCE/ODIHR for the observations of its Election Expert Team on the 2015 General Election, which provide a useful perspective from experts familiar with electoral systems outside the UK.

The UK Government intends to keep the OSCE's recommendations under consideration in its future work to improve the electoral system.