



HOUSE OF LORDS

Select Committee on the Constitution

4th Report of Session 2010–11

**Government
response to the
report on
Referendums in the
United Kingdom**

Report

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Select Committee on the Constitution

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To examine the constitutional implications of all public bills coming before the House; and to keep under review the operation of the constitution.

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Government Response to Referendums in the United Kingdom

1. On 7 April 2010 we published a report¹ on Referendums in the United Kingdom.
2. The Government responded with a letter from Mark Harper MP, dated 30 September 2010. The response is reproduced here, for the information of the House, in the Appendix.

¹ HL Paper 99, Session 2009–10

APPENDIX: GOVERNMENT RESPONSE

Letter from Mark Harper MP

I welcome the 12th Report of the House of Lords Select Committee on the Constitution. The Report was published shortly before the dissolution of the previous Parliament and, given the profile and importance of the subject, the Government has considered its response carefully in light of the recent introduction of the Parliamentary Voting System and Constituencies Bill.

The new Government has set out an ambitious and far-reaching programme of political and constitutional reform over the next five years. Referendums are an important part of our package of reforms and the Committee's Report therefore provides a timely consideration of their use and the legislative framework which underpins them.

The Coalition Programme for Government sets out the areas where referendums, or the possibility of referendums, are proposed:

- on the voting system for the House of Commons. The Parliamentary Voting System and Constituencies Bill was introduced to the House of Commons on 22 July 2010 to give effect to this commitment;
- on whether or not further powers should be devolved to the National Assembly for Wales;
- to amend the 1972 European Communities Act so that any proposed future treaty that transfers areas of power, or competences, from the UK to the EU would be subject to a referendum on that treaty;
- to allow local residents the opportunity to approve or veto excessive council tax increases;
- as part of giving people the "Community right to build";
- to give residents the power to instigate local referendums on any local issue; and
- to create directly elected mayors in the 12 largest English cities, subject to confirmatory referendums and full scrutiny by elected councillors.

I note the Committee's reservations over the use of referendums generally. The Government agrees that national referendums should be exceptional events, but does not share the Committee's general concerns such as that referendums have been used in an *'ad hoc'* manner and as a 'tactical device'. We are firmly committed to giving people a greater say in politics and we believe that referendums can be one means of achieving this.

The Report's exploration of the existing legislative framework for referendums—the Political Parties, Elections and Referendums Act (PPERA) 2000—is valuable. The Report rightly notes that this legislation has not yet been tested in a national referendum. The only previous referendum held under the auspices of PERA was the 2004 referendum on whether to set up an elected regional assembly in the north east of England.

The Government's proposed national referendum on the Parliamentary voting system—due to be held on 5 May 2011—will provide an important test of the PERA framework. The Parliamentary Voting System and Constituencies Bill

specifies a number of additional provisions and regulations that will apply in respect of the proposed referendum on voting reform. We will review their effectiveness and the effectiveness of PPERA generally before deciding whether or not to bring forward any amendments to the framework legislation for referendums.

A formal Government response is provided in the attached memorandum to each of the Committee's principal recommendations, as summarised in chapter 7 of the Report. I would like to thank the Committee for its work on this subject. I welcome the experience and scrutiny that the Committee brings to bear on all issues it considers, and I look forward to debating this and other matters with the Committee as the new Government carries forward its programme of political and constitutional reform.

RECOMMENDATION	GOVERNMENT'S RESPONSE
Referendums—arguments for and against	
<p>The balance of the evidence that we have heard leads us to the conclusion that there are significant drawbacks to the use of referendums. In particular, we regret the <i>ad hoc</i> manner in which referendums have been used, often as a tactical device, by the government of the day. Referendums may become a part of the UK's political and constitutional practice. Where possible, cross-party agreement should be sought as to the circumstances in which it is appropriate for referendums to be used</p>	<p>The Government is committed to renewal of our political system to make it more transparent and accountable. A fundamental concept underpinning this aim is the transfer of power from the Executive to Parliament, and from Parliament to people. The Government believes that referendums can be a valuable means of giving people a greater say over important issues, at both the national and local level. However we recognise that national referendums cannot and should not be held on every important issue.</p> <p>We agree with the Committee's indication that significant constitutional changes, such as changing the electoral system for the House of Commons, are appropriate subjects for a referendum, and that changing the voting system for the House of Commons merits such a poll. The Government has introduced legislation providing that a national referendum will be held on whether to adopt the alternative vote system for future elections to the House of Commons. In Wales, a referendum on further powers for the National Assembly for Wales will be held in accordance with the provisions in the Government of Wales Act 2006. We will introduce legislation to require that any proposed future treaty that transfers competences or areas of power from the UK to the EU will be subject to a referendum. In addition, the use of any major ratchet clause which amounted to the transfer of an area of power from the UK to the EU will also be subject to a referendum. Local people will also be given the power to hold local referendums on any local issues in their areas.</p> <p>Parties across Parliament will have the chance to consider legislation as it goes through Parliament.</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
	We also published on 30 July a consultation paper on local referendums to veto excessive council tax increases. The deadline for responses to the consultation was 10 September. Following consideration of the consultation response, we would expect legislation to be introduced in the forthcoming Parliamentary session.
Referendums on constitutional issues	
<p>Notwithstanding our view that there are significant drawbacks to the use of referendums, we acknowledge arguments that, if referendums are to be used, they are most appropriately used in relation to fundamental constitutional issues. We do not believe that it is possible to provide a precise definition of what constitutes a “fundamental constitutional issue”. Nonetheless, we would consider to fall within this definition any proposals:</p> <ul style="list-style-type: none"> To abolish the Monarchy; To leave the European Union; For any of the nations of the UK to secede from the Union; To abolish either House of Parliament; To change the electoral system for the House of Commons; To adopt a written constitution; and To change the UK’s system of currency. <p>This is not a definitive list of fundamental constitutional issues, nor is it intended to be.</p> <p>A written constitution could provide a more precise definition of a “constitutional issue”, and define which issues required a referendum before any change. The arguments for and against introducing a written constitution are outwith the scope this inquiry.</p>	<p>The Government agrees that it is difficult to determine precisely in what circumstances a referendum should be held. The Government notes the Committee’s suggestions for those occasions when a referendum would be appropriate and agrees that this provides a useful guide, but does not and cannot represent a definitive list.</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
<p>It is possible to set out in legislation specific issues which should be subject to a referendum, as has been done in the past. Although one Parliament cannot bind another, Parliament might not lightly repeal such legislation. But, since it is impossible precisely to define what constitutes a “fundamental constitutional issue”, it follows that it is impossible to set out in legislation an all-encompassing list of such issues that should be subject to a referendum.</p>	<p>The Government agrees with this statement. We do not propose to set out in legislation the issues which should be subject to a referendum.</p>
<p>Parliament should judge what issues will be the subject of referendums. In its first report, this Committee stated that it would “focus on issues of constitutional significance” determined by whether an issue raises “an important question of principle about a principal part of the constitution”. We believe that this provides a useful test, first, of whether an issue is of fundamental constitutional significance, and second, of whether a referendum is therefore appropriate.</p>	<p>The Government agrees that Parliament should judge which issues are the subject of national referendums.</p>
<p>Other uses of referendums</p>	
<p>Given our concerns about the use of referendums, we are not convinced by the arguments in favour of citizens’ initiatives. Nonetheless, we acknowledge that there is a need to encourage greater citizen engagement in the democratic process. The use of such tools as citizens’ assemblies and citizens’ juries may be worthy of consideration in this regard</p>	<p>The Government supports the principle of greater citizen engagement in the democratic process, as set out above. We are open to considering the best means to achieve this, and believe that the referendums and other constitutional reforms we are taking forward will help meet this objective.</p>
<p>We do not believe that local referendums are the most effective way of increasing citizen engagement with the local democratic process.</p>	<p>The Government considers that in some cases local referendums can be an effective way of increasing citizens’ engagement in their local area. They can play a role in supporting local decision making and empowering residents to make localism and the Big Society part of everyday life. This is why we are committed to giving residents the power to instigate local referendums on any local issue—and specifically on whether they are prepared to accept any excessive council tax increases proposed by local authorities in their area.</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
<p>We recommend that referendums should not be held on the same day as General Elections. For other elections we recommend there should be a presumption against holding referendums on the same day as elections but that this should be judged on a case-by-case basis by the Electoral Commission.</p>	<p>The Government considers that a case-by-case approach is appropriate in this area, as the policy approach depends on the nature of the combination of polls and the issues being considered in any referendum. However, we see no reason in principle why referendums cannot be held on the same day as other planned polls. Combination of polls is not unusual—General Elections are often combined with local elections, for example. The Government believes that voters are capable of distinguishing between different polls on the same day and making an informed choice in each. The Government also notes that combining polls saves money.</p> <p>Where it is proposed to combine a referendum with other polls—as in the case of the proposed referendum on the Parliamentary voting system—the Government works closely with the Electoral Commission and others responsible for running elections to ensure that any practical risks are properly managed. We note that the Commission has stated that on balance, it believes that it should be possible to deliver the different polls proposed for 5 May 2011 if the key practical risks to the successful conduct of the scheduled elections and a UK-wide referendum are properly managed.</p>
<p>Notwithstanding the Electoral Commission's assessment that it was extremely unlikely that a Secretary of State would ignore its advice on the wording of the referendum question we recommend that, rather than the Government making the final decision, the Electoral Commission should be given a statutory responsibility to formulate referendum questions which should then be presented to Parliament for approval.</p>	<p>The Government does not accept this recommendation. The Electoral Commission must be and must be seen to be independent and we believe it would be wrong in principle for the Commission to be granted such a broad power to determine matters which are fundamentally ones for Parliament to determine. The Government believes that the current arrangements provided for in legislation are adequate. It is right that, if the Government intends for a referendum to be held, it should propose the question which should be subject to</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
	discussion and agreement by Parliament. The Commission has a statutory duty to comment on the intelligibility of any referendum question that the Government proposes and its views will be taken into account during subsequent Parliamentary consideration. Where provision for the referendum is made by Order in Council rather than Bill, its views will be taken into account in framing the question included in the Order.
We recommend that the presumption should be in favour of questions posing only two options for voters but recognise that there may be occasions when multi-option questions are preferable. We look to the Electoral Commission to assess the merits of multi-option questions in their referendum question assessment exercise.	The Government agrees with this recommendation. Two options should generally be preferred, as this avoids ambiguous results and should help voter comprehension.
We are concerned about the effectiveness of the regulation of information provision in UK referendums. We commend the model provided by the 1992–3 electoral reform referendums in New Zealand when an independent body provided information and ran the public education process.	The Government believes it is important that voters are able to make an informed choice in any referendum, and the process for achieving that will depend, in part, on the subject matter of the poll.
Current regulation governing funding and campaigning in a referendum has not yet been tested in a national referendum. We note the concerns about the possible loopholes in the provisions of the PPERA relating to the funding of referendum campaigns. We welcome the Electoral Commission's decision to make its decision-making relating to designating lead campaign groups more transparent.	The forthcoming referendum on the Parliamentary voting system will provide important validation of the existing legislative framework. The Parliamentary Voting System and Constituencies Bill proposes a number of additional measures that will apply in relation to the proposed referendum on electoral reform. These include provisions to prevent evasion of controls on referendum expenses by permitted participants working together and measures to ensure that loans to permitted participants are regulated. We will review their effectiveness and the overall effectiveness of PPERA before deciding whether or not to bring forward any amendments to the generic legislation on any other UK-wide referendums.

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<p>Current regulation regarding the role of government and political parties in a referendum has not yet been tested in a national referendum. Whatever role government and political parties play, it is necessary to ensure that the referendum process is seen by all to be fair.</p>	<p>The Government agrees with this recommendation. Political parties are free to campaign in referendums as permitted participants and we see no reason to change this. In relation to the forthcoming referendum on the Parliamentary voting system, members of the Government will be free to campaign on either side. The position that Government adopts in relation to any referendum should be judged on a case-by-case basis.</p>
<p>We recommend that there should be a general presumption against the use of voter turnout thresholds and supermajorities. We recognise however that there may be exceptional circumstances in which they may be deemed appropriate.</p>	<p>The Government agrees that there should be a presumption against turnout thresholds. These have the potential to distort the result of a poll and frustrate the express will of the people, in some cases effectively turning abstentions into 'no' votes.</p>
<p>We recognise that because of the sovereignty of Parliament, referendums cannot be legally binding in the UK, and are therefore advisory. However, it would be difficult for Parliament to ignore a decisive expression of public opinion.</p>	<p>The Government agrees with this recommendation. Under the UK's constitutional arrangements Parliament must be responsible for deciding whether or not to take action in response to a referendum result.</p>
<p>Any assessment of the overall regulatory framework relating to referendums and the role of the Electoral Commission are theoretical as neither has been tested in a UK-wide referendum. We therefore recommend that after the next UK-wide referendum:</p> <p>The Electoral Commission should analyse its experience (as it did for the 2004 North East referendum) and make recommendations for change to the regulatory framework and its role; and</p> <p>There should be thorough post-legislative scrutiny of the PPERA at an early date.</p>	<p>The Government agrees that evaluation should take place after the Parliamentary voting system referendum.</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
<p>We are sympathetic to the changes to the legislative framework suggested by the Electoral Commission following its analysis of the 2004 North East referendum. We recommend that the Government take steps to ensure that they are implemented.</p>	<p>The Government is responding to each of the changes suggested by the Commission as follows:</p> <p>Creation of a statutory Regional Counting Officer role.</p> <p>The Chief Counting Officer to have a power of direction in primary legislation over both Regional Counting Officers and Counting Officers to enable efficient organisation and co-ordination of the referendum.</p> <p>Following discussions with the Electoral Commission, we have included provision in the Parliamentary Voting System and Constituencies (PVSC) Bill for the creation of the Regional Counting Officer role for the purposes of the referendum proposes in that Bill, analogous to the Regional Returning Officer role used in European Parliamentary elections. We have also included provision for the Chief Counting Officer to have a power of direction over both Regional Counting Officers and Counting Officers at the poll. We will review how these provisions work in practice at that referendum and if the provisions work well we will consider implementing them for future referendums in light of experience.</p> <p>The restriction on the publication of promotional material by central or local government to apply from the start of the referendum period.</p> <p>The Government is concerned that putting in place such a requirement could impact upon the ability of Government to carry out its day-to-day duties, depending upon the subject of the referendum and the length of the referendum period. The Government believes that the existing 28-day restriction provided</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
	<p>for in PPERA is adequate and that any extension of that period needs to be considered on a case-by-case basis.</p> <p>The Commission to have powers to promote public awareness of the registration and voting processes at a referendum.</p> <p>The Government agrees with this recommendation and has provided for such a requirement in respect of the proposed referendum on the Parliamentary voting system. We will consider whether the generic legislation should be amended in the light of the experience of that referendum.</p> <p>The Commission to have a discretionary power to provide information to voters on the referendum options if it is unable to appoint designated organisations.</p> <p>As set out above, the Government believes it is important that voters are able to make an informed choice in any referendum, and the process for achieving that will depend, in part, on the subject matter of the poll.</p> <p>Aggregation of spending limits for permitted participants who operate to a common plan to bring them into line with the rules on spending by third parties in election campaigns. This would prevent participants circumventing spending limits by registering separately but acting together.</p> <p>The Government agrees with this recommendation and has provided for such a requirement in respect of the proposed referendum on the Parliamentary voting system. We will consider whether the generic legislation should be amended in the light of the experience of that referendum.</p> <p>A generic Conduct Order to set out the detailed regulations</p>

RECOMMENDATION	GOVERNMENT'S RESPONSE
	<p data-bbox="1081 280 1995 453">governing the administration of referendums held under the PPERA to ensure clarity and consistency for those involved in planning and running referendums and to allow them to develop a shared understanding of the rules that would apply to any referendum well in advance.</p> <p data-bbox="1081 475 1995 687">We note this recommendation with interest and will give it further consideration in the light of the operation of the referendum on the Parliamentary voting system, having particular regard to the operation of the additional provisions which create Regional Counting Officers and give the Chief Counting Officer power of direction over them and Counting Officers.</p>