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Select Committee on the Constitution

5th Report of Session 2012–13

Electoral Registration and Administration Bill

Report

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Electoral Registration and Administration Bill

1. The Electoral Registration and Administration Bill had its second reading in the House of Lords on 24 July 2012, having been brought from the Commons in June. It is due to commence its committee stage on 29 October. The Bill has been committed to a Committee of the Whole House.
2. The Bill delivers the commitment made by the coalition in their *Programme for Government* to “reduce electoral fraud by speeding up the implementation of individual voter registration”. The Bill has two substantive parts. Part 1 replaces the scheme of household voter registration, which has been used in Britain since the nineteenth century, with individual electoral registration (IER). IER is already used in Northern Ireland, where it was introduced in 2002. Part 2 contains various provisions reforming aspects of electoral administration.
3. The Bill is clearly of constitutional importance. The Electoral Commission has described it as providing for “the biggest change to the voter registration process since the universal franchise”.¹ As a measure of constitutional reform it follows on from the Fixed-term Parliaments Act 2011, the Parliamentary Voting System and Constituencies Act 2011 and the now abandoned House of Lords Reform Bill.
4. The Bill was preceded by a white paper and draft legislation,² which was subject to public consultation and to pre-legislative scrutiny by the House of Commons Political and Constitutional Reform Committee (PCRC), who reported on the matter in November 2011.³ As such, the Bill is the first measure of constitutional reform under the coalition Government to have reached the House of Lords having been preceded by a white paper, public consultation and pre-legislative scrutiny.⁴ **We welcome these elements of the Bill’s development, not least in the light of the recommendations we made last session in our report on *The Process of Constitutional Change*.**⁵ Moreover, it is clear that, in this instance, the public consultation and pre-legislative scrutiny to which the Government’s proposals have been subject have improved those proposals, as they have developed in response to concerns that have been aired.⁶
5. Most of the principles underpinning the Bill enjoy cross-party support.⁷ Indeed, in the last Parliament the Political Parties and Elections Act 2009

¹ Electoral Commission, *Briefing on the Electoral Registration and Administration Bill*, July 2012, p 2.

² Cm 8108, June 2011.

³ Political and Constitutional Reform Committee, 10th report (2010–12): *Individual Electoral Registration and Electoral Administration* (HC 1463). The Government’s response to the public consultation and to the PCRC’s report was published in February 2012, as Cm 8245.

⁴ None of these occurred in respect of the Fixed-term Parliaments Act 2011 or the Parliamentary Voting System and Constituencies Act 2011. While there was extensive pre-legislative scrutiny on the House of Lords Reform Bill, that measure never reached this House.

⁵ Constitution Committee, 15th report (2010–12), HL Paper 177.

⁶ See Cm 8245, *op. cit.*

⁷ They also enjoy the support of the Electoral Commission.

was passed, which made provision for IER to be phased in, at least in the first instance on a voluntary basis, over a number of years. Whereas the principle of IER enjoys cross-party support, however, the means by which and the pace with which it should be introduced are contested.

6. The debate is about the extent to which the completeness of the electoral register may be risked for the sake of its accuracy, and in the interests of preventing fraud. All parties appear to accept that electoral fraud in the United Kingdom is rare: but all parties are aware that it does occur, and are committed to minimising it.⁸ The current electoral register is estimated by the Electoral Commission to be 85% to 87% complete and 85% accurate. This translates to there being over six million voters missing from the register.⁹
7. When IER was introduced in Northern Ireland the completeness of the register diminished to start with, by at least 10%. Now, ten years on, its completeness has recovered to the same level as in Great Britain but its accuracy is much higher, at 94%.
8. Concern has been expressed in the House as to whether the Bill does enough to minimise the extent to which the move in Great Britain to IER will, at least initially, diminish the completeness of the electoral register.¹⁰ Reductions in the completeness of the register seem likely to occur particularly in some urban areas, where there is a high density population in privately rented accommodation. There may be a disproportionate effect on the young, the very old, the disabled and those from black and minority-ethnic communities.¹¹ In the second reading debate in the House these concerns were expressed most forcefully by Opposition members,¹² but others urged that the twin goals of accuracy and completeness be striven for hand in hand, without the one being given undue priority over the other.¹³
9. The legitimacy of parliamentary government is dependent upon the right to vote. The protection of the franchise is accordingly of the utmost constitutional importance, and the electoral registration system must reflect this fact. **We hope that the House will impress upon the Government the need to do everything possible to maximise the completeness of the electoral register, as well as its accuracy.**
10. Also controversial are aspects of the way in which the Bill extends the scope of powers delegated to ministers. The House of Lords Delegated Powers and Regulatory Reform Committee (DPRRC) reported on the Bill in July,¹⁴ concluding that several instances of delegated power were “inappropriate”¹⁵

⁸ The move to IER is not designed to address other forms of electoral fraud, such as personation or fraud in postal voting.

⁹ See HL Deb, 24 July 2012, col 616 (Lord Wallace of Saltaire).

¹⁰ In the Bill the Government have addressed a number of concerns expressed by the PCRC and by the Electoral Commission that the scheme proposed in the 2011 white paper did not do enough in this regard. That the Bill is in this respect an improvement on the draft legislation has been welcomed by the Electoral Commission (see, for example, its briefing, *op. cit.* n 1, p 4).

¹¹ HL Deb, 24 July 2012, col 624 (Lord Falconer of Thoroton).

¹² See, for example, the speeches of Lord Falconer of Thoroton (cols 621 ff) and Lord Wills (cols 643 ff).

¹³ See Lord Rennard (col 629) and Lord Norton of Louth (col 641).

¹⁴ DPRRC, 6th report (2012–13), HL Paper 39.

¹⁵ This was the DPRRC’s view of certain provisions of clause 2 (amending the Representation of the People Act 1983, Schedule 2, paragraphs 1 and 3) and clause 6(2).

or “inappropriately wide”.¹⁶ A number of these are Henry VIII powers (that is, powers enabling Ministers by order to amend provisions of primary legislation).¹⁷ We have consistently sought to draw Henry VIII powers to the attention of the House.

11. The Government state that flexibility and the “perceived possible need” to change matters at short notice justify the extensions of delegated power.¹⁸ The DPRRC were unpersuaded, not least because the matter “goes to the heart of someone’s entitlement to be registered” and, therefore, of their right to vote.¹⁹
12. The Electoral Commission has likewise expressed its concern that certain matters are to be dealt with under the Bill in guidance to be issued by the Secretary of State rather than in regulations that would require to be formally laid before Parliament. Thus, in its view, clause 1 should be amended to ensure that requirements about the determination of applications are set out in regulations rather than being solely at the discretion of the Secretary of State; and clause 2 should be amended to ensure that the evidence to be provided by a voter in an application for registration must be specified in secondary legislation, rather than determined solely by the Secretary of State.²⁰
13. Given the fundamental constitutional nature of this bill, we consider that any power granted to the executive to determine how the right to vote is exercised should be subject to effective parliamentary scrutiny. **For the Secretary of State to be able to determine requirements for exercising the right to vote without effective parliamentary oversight would be constitutionally improper. As such, we agree with the concerns expressed by the DPRRC and the Electoral Commission.**
14. In the last session we published a report on *Voting at the Close of Poll*.²¹ The House will recall that, at the general election in 2010, approximately 1,200 voters were denied the vote because of queues at polling stations, meaning that they could not cast their ballots before the 10 pm cut-off. In our report, we recommended that the law be amended, and the Electoral Commission agreed with us in this regard.²² Our recommendations were as follows: “The law should be amended so as clearly to provide that voters who are present, or in a queue, at a polling station at the close of poll are entitled to vote”; and “the Government should bring forward amendments to the law relating to voting at the close of poll, to be brought into force before the next General Election”.²³

¹⁶ This was the DPRRC’s view of certain provisions of Schedule 2 (amending the Representation of the People Act 1983, Schedule 2, para 1).

¹⁷ See clause 10(4). The DPRRC was of the view that the delegated power provided for in clause 6(1) should not extend to the power to amend primary legislation.

¹⁸ DPRRC, 6th report (2012–13), HL Paper 39, para 6.

¹⁹ *Ibid.*

²⁰ Electoral Commission, *op. cit.* n 1, p 8.

²¹ Constitution Committee, 23rd report (2010–12), HL Paper 245. No Government response to that report appears to have been received, although the committee was able to have an initial discussion about the matter with the Deputy Prime Minister when he gave oral evidence to the committee on 1 February 2012 (QQ 21–22).

²² See below.

²³ *Op. cit.*, paras 7 and 10.

15. In the House of Commons, the PCRC took a different view: namely, that the problems in 2010 were caused by poor planning and that the solution lies in better administration of elections, rather than in law reform.²⁴ The Government have agreed with the PCRC on this matter.²⁵
16. We note that such a change to the law has been made in Scotland for local government elections.²⁶ In its recently published report on this year's Scottish council elections, the Electoral Commission noted that this change to the law allowed three voters in South Lanarkshire to cast their ballots, who otherwise would not have been able to do so. The Electoral Commission stated that "while adequate planning and staffing of polling stations remains the priority for the avoidance of queues at the close of poll, the evidence from South Lanarkshire clearly demonstrates that no degree of planning can entirely mitigate the potential for queues" and described the fact that the law had been changed in Scotland as "a wise backstop which puts the interests of voters first".²⁷
17. In its comments on this Bill the Electoral Commission stated: "Though careful planning is essential, we are concerned that no degree of planning can entirely mitigate the potential risk of queues at the close of poll, and we believe that this simple change to the law would provide an important safeguard for all electors".²⁸ Following the experience of the Scottish council elections this year the Commission continues to recommend that the legal provision for voters queuing at 10 pm to be issued with a ballot paper should be put in place for all statutory elections in the UK.²⁹ **We agree.**

²⁴ Political and Constitutional Reform Committee, 10th report (2010–12): *Individual Electoral Registration and Electoral Administration* (HC 1463), para 98.

²⁵ See Cm 8245, paras 154–5. The Government do not mention the report of the Constitution Committee in these paragraphs.

²⁶ Rule 33(6) of the Scottish Local Government Elections Rules (see the Scottish Local Government Elections Order 2011, SSI 2011/399, Schedule 1).

²⁷ Electoral Commission, *Report on the Scottish Council Elections 2012*, para 2.34.

²⁸ Electoral Commission, *op. cit.* n 1, p 8. Such an amendment was debated in the House of Commons on the last day of the Bill's committee stage in that House. The amendment, moved by Eleanor Laing MP, was defeated on a division, by 284 votes to 211: see HC Deb, 27 June 2012, cols 359–74.

²⁹ Electoral Commission, *ibid.*, recommendation 5.