

Written Evidence from Professor Alan Renwick¹

Public Administration and Constitutional Affairs Committee The Elections Bill inquiry

Summary

- *This evidence relates to clauses 12–14 of the Elections Bill, which propose changes to how the Electoral Commission is held to account.*
- *In considering such changes, ministers and parliamentarians should recognise their own potential conflict of interest: the Electoral Commission regulates political activities. Changes should therefore be proposed only after an independent review. That course has been followed in the past, but not in this case. A proper basis for legislating on these sensitive matters therefore does not exist.*
- *The proposal for a Strategy and Policy Statement risks violating the independence of the Electoral Commission. It should be dropped, or at least tightly limited.*
- *The Speaker’s Committee should not combine the functions of scrutinising budget and spending (as now) and general policy and activity (as proposed).*
- *Statute should provide that the Speaker’s Committee will not have a single-party majority. The Committee should also include lay members.*
- *The proposed Strategy and Policy Statement violates the Sewel convention, and no good reason for doing so has been provided.*
- *A review of Electoral Commission accountability is needed in light of the devolution of many electoral matters to the Scottish Parliament and Senedd.*

Introduction

1. Professor Alan Renwick leads the UCL Constitution Unit’s research on elections, referendums, and citizens’ assemblies. He has published three books on processes of electoral reform around the world. He has recently conducted multiple research projects examining ways of improving the conduct of elections and referendums.² He is currently leading a project examining attitudes to democracy in the UK.³
2. This evidence submission addresses clauses 12–14 of the Elections Bill. These clauses relate to the Electoral Commission’s accountability. They raise concerns of two kinds, which the following paragraphs examine in turn: (1) they infringe upon the

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² [Independent Commission on Referendums](#) (Constitution Unit, 2018); Alan Renwick and Michela Palese, [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) (Constitution Unit, 2019); [Working Group on Unification Referendums on the Island of Ireland](#) (Constitution Unit, 2020).

³ [Democracy in the UK after Brexit](#).

Commission's independence; (2) they do not sufficiently attend to the devolution of many electoral functions in Scotland and Wales in recent years.

Ensuring Both Accountability and Independence

General Principles

3. Balancing accountability and independence is often delicate. That is especially so for the Electoral Commission, given its function in regulating political activities. In its 2007 *Review of the Electoral Commission*, the Committee on Standards in Public Life summed the situation up very clearly:

The question "Who guards the guardians?" is one that is often posed in the context of organisations and individuals charged with regulating the activities of government bodies and elected representatives in a democratic society

However, in the case of The Electoral Commission, charged with the regulation of key aspects of the democratic process itself, this poses a particular challenge. The regulation of party political finances and the electoral system involves potential conflicts of interest among members of the executive and the legislature – principally the House of Commons. Regulation of these areas can directly affect the political prospects of individual MPs, Ministers and their political parties. In a parliamentary democracy it is necessary for the regulator, The Electoral Commission, to be held accountable, either by the Government – and through it to Parliament – or by Parliament directly, particularly for the use of public money in fulfilling the statutory functions set for it by Parliament. But any system of accountability must also protect the Commission's independence and impartiality from the possibility of undue influence for partisan political or electoral advantage.⁴

4. These words remain valid. In particular, the 'potential conflicts of interest among members of the executive and the legislature' should be kept firmly in mind. They imply a key basic principle: members of the executive and legislature should not embark on significant changes to the mechanisms by which the Electoral Commission (or a similar body) is held to account without a review by actors who are not subject to the same conflict of interest.
5. That principle has been followed in the past. The Electoral Commission was established through the Political Parties, Elections, and Referendums Act 2000 (PPERA) on the basis of recommendations made by the Committee on Standards in Public Life (CSPL) in its fifth report, *The Funding of Political Parties in the United Kingdom*.⁵ Subsequent reforms were made through the Political Parties and Elections Act 2009 on the basis of CSPL's 2007 *Review of the Electoral Commission*, just cited. Those reforms introduced

⁴ Committee on Standards in Public Life, [Review of the Electoral Commission](#) (Eleventh Report, Cm 7006, 2007), para 4.1–4.2.

⁵ Committee on Standards in Public Life, [The Funding of Political Parties in the United Kingdom](#) (Fifth Report, Cm 4057–I, 1998).

partisan Electoral Commissioners and gave the Speaker's Committee on the Electoral Commission a central role in the appointment of Commissioners.

6. But that principle is not being followed in the present case. No inquiry preceded the announcement of the proposed changes by the Minister for the Constitution in a written statement on 17 June 2021. CSPL had conducted an inquiry into *Regulating Election Finance*, which included consideration of the role and governance of the Electoral Commission. But that inquiry did not report until 7 July 2021⁶ – after the proposals were announced and, indeed, after the Elections Bill was introduced, on 5 July. The proposals bear no relation to CSPL's recommendations. This is a wholly inappropriate approach to law-making on a topic where such care – and recognition of potential conflicts of interest – is needed.

Accountability and Independence: The Strategy and Policy Statement

7. Clause 12 of the Bill will, if enacted, empower the Secretary of State to designate a 'Strategy and Policy Statement', after consultation and subject to approval in both Houses of Parliament. The written statement announcing this proposal said that the Statement would likely include 'a statement of priorities for the Electoral Commission', 'executive and legislative priorities during this Parliament in relation to elections', and 'principles for the Electoral Commission'.⁷
8. The need for such a statement has not been adequately explained. The Commission already has responsibilities, which are set out in PPERA. If these need to be changed or refined, that should be done through primary legislation, with the scrutiny and scope for amendment that such law-making entails. The Commission should not be swayed by the short-term priorities of those in power at any given time: electoral rules should be designed for the long term. The proposed Strategy and Policy Statement thus risks improperly limiting the independence of the Commission.
9. The written statement said 'It is commonplace for the Government and Parliament to set a policy framework by which independent regulators should work.'⁸ But this is not commonplace in relation to regulators of political activity, where potential conflicts of interest exist and the need to protect independence is especially great. I am aware of no case comparable to what is proposed here.
10. Given these considerations, the proposed Strategy and Policy Statement should be dropped. At the least, its scope should be tightly constrained in legislation.

Accountability and Independence: The Role of the Speaker's Committee

11. Clause 13 of the Bill empowers the Speaker's Committee on the Electoral Commission to 'examine the performance by the Commission of the Commission's duty ... to have regard to strategy and policy statement'.

⁶ Committee on Standards in Public Life, *Regulating Election Finance* (July 2021).

⁷ Chloe Smith, '[Increasing Parliamentary Accountability in Electoral Policy](#)', written statement UIN HCWS100, 17 June 2021.

⁸ *Ibid.*

12. In its 2007 report, CSPL specifically considered whether the same committee should scrutinise the Commission’s budget and efficient use of funds on the one hand, and its policies and activities on the other. It concluded that these roles should not be combined:

[T]he Committee believes that there is an important distinction between the accountability for setting and approving The Electoral Commission’s budget, scrutinising its effectiveness, efficiency and economy on the one hand; and accountability to Parliament for its policies, actions and decisions on the other. ... [I]n the Committee’s view, there is a significant risk that if these two functions are combined in the same parliamentary committee then there would be, at the very least, a perception that The Electoral Commission’s impartiality and independence could be compromised. ... In short, the Committee believes there would be the risk that The Electoral Commission could become unduly influenced in the way it performed its operational activities by concerns about the possible impact these might have on the setting of its budget.

For this reason the Committee does not believe that the remit of the Speaker’s Committee should be extended to include wider scrutiny of the activities, policies and decisions of The Electoral Commission, nor that a new parliamentary body be created with such a combined and extended mandate.⁹

13. Instead, CSPL proposed that there ‘should be an annual debate in Parliament on the work of The Electoral Commission’ (recommendation 38) and that the relevant select committee – then the Committee on Constitutional Affairs, now the Public Administration and Constitutional Affairs Committee – should ‘build upon its emerging practice of taking regular opportunities to scrutinise The Electoral Commission’s policies, actions and decisions’ (recommendation 39).
14. As above, the principle should be applied that the mechanisms by which the Electoral Commission is held to account will not be changed without an independent review. In this case, what is proposed directly contradicts the conclusions of the 2007 review. That is not a proper basis for legislating.

Accountability and Independence: The Composition of the Speaker’s Committee

15. Clause 14 of the Bill proposes one change to the composition of the Speaker’s Committee: the Minister responsible for the constitution will be able to attend. So long as that does not increase the number of ministers able to participate in the Committee’s work – that is, so long as the Minister for the Constitution attends only in lieu of the Minister for the Cabinet Office – this is not problematic. The intent of the original legislation was always that the minister with responsibility for elections, as well as the minister with responsibility for local government, should be able to attend.
16. Another aspect of the Committee’s composition does, however, require attention – especially, though not exclusively, if the Committee’s powers are expanded as proposed in the Bill. At present, for the first time ever, there is a single-party majority among the Committee’s members. That is unacceptable. For the Commission’s independence and impartiality to be maintained and seen to be maintained, its governance arrangements

⁹ Op. cit. (note 4), para 4.17–4.18.

must be cross-partisan and non-partisan. For the body responsible for recommending Commissioner appointments – and potentially for scrutinising a Strategy and Policy Statement – to have a majority from one party breaches a basic principle of electoral integrity.

17. The centrality of the principle of cross-partisanship has been widely upheld. In its 2007 report, CSPL noted, ‘The Speaker’s Committee explained in its written evidence [39/1] that this composition [of the Committee] reflects the fact that the Speaker has exercised his power to nominate five backbench members in a manner which “ensures no individual political party has an overall majority, unlike the Public Accounts Commission”’ (para 4.12). It went on:

The composition of the Speaker’s Committee ensures that no political party has a majority (although this requires the continuation of the Speaker’s current practice for nominating members which should be formalised in the procedures of the Speaker’s Committee) (para 4.18)

Similarly, in its 2021 report, CSPL writes:

It was brought to our attention that, for the first time, a majority of the members of the Speaker’s Committee on the Electoral Commission are from the governing party. This is unfortunate and the Committee agrees that “independence can be ensured only if cross-party consensus is maintained”. (para 3.27)

18. The requirement for the Speaker’s Committee not to contain a single-party majority should now be placed on a statutory footing. That this basic principle of electoral integrity has been violated shows that existing safeguards are insufficient.
19. In addition, Dr Alistair Clark has proposed, in previous evidence to this committee and elsewhere,¹⁰ that the Speaker’s Committee should, like committees such as the Speaker’s Committee for the Independent Parliamentary Standards Authority and the House of Commons Committee on Standards, include lay members. This is a sensible proposal, which I wholeheartedly endorse. If it is adopted, the principle of no single-party majority should be applied among the Committee’s politician members.

The Implications of the Devolution of Electoral Matters

General Principles

20. In its 2007 report, CSPL examined whether accountability arrangements for the Electoral Commission were appropriate in light of devolution. It concluded that they were, noting, ‘The Electoral Commission has a UK-wide remit, and electoral and political party funding law are not devolved matters’ (para 4.36). Since then, however, responsibility for many electoral matters has been devolved to the Scottish Parliament and the Senedd. The Commission is partly funded by the devolved legislatures and can receive instructions from them.

¹⁰ PACAC, ‘[Written Evidence from Dr Alistair Clark](#)’, The Work of the Electoral Commission inquiry, March 2021; Alistair Clark, ‘[Elections Bill: a modest proposal to improve the Speaker’s Committee on the Electoral Commission](#)’, Constitution Society blog, 12 July 2021.

21. In light of these changes, a general review of whether Electoral Commission accountability adequately reflects the structure of devolution is needed. In 1998, the Scotland Act provided that decisions made by ministers in relation to a body with both devolved and non-devolved responsibilities (a ‘cross-border public authority’) should, at minimum, be made in consultation with Scottish ministers (section 88). Subsequent orders have increased the requirement in relation to a wide range of such bodies, often specifying joint decision-making by UK and Scottish ministers, (see especially Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) Order 1999).
22. There is no such provision, however, in relation to the Electoral Commission. And the provisions of the Elections Bill will exacerbate the problem.

Devolution: Strategy and Policy Statement

23. The Bill provides that the proposed Strategy and Policy Statement may cover devolved matters, with a requirement only that the Secretary of State ‘consult’ Scottish and/or Welsh ministers in such cases (clause 12, new clause 4C(2)). The Secretary of State may also revise an existing Strategy and Policy Statement without such consultations, in such cases being required merely to ‘notify’ Scottish and/or Welsh ministers (clause 12, new clause 4E(4) and (6)).
24. These provisions clearly violate the existing devolution settlement and, therefore, the Sewel convention. How they can be justified is not apparent: no change has occurred to necessitate them.

Devolution: Appointment of Electoral Commissioners

25. All Electoral Commissioners are currently appointed on an Address from the House of Commons, which itself is made following a recommendation from the Speaker’s Committee. In recent years, when proposing a Commissioner with responsibility for Scotland or Wales, the Speaker’s Committee has consulted the relevant Presiding Officer or included a representative of the relevant Presiding Officer in the panel constituted to identify and shortlist candidates.¹¹ But there is no statutory requirement even for this limited level of consultation.
26. It is difficult to justify this arrangement in light of the devolution of electoral functions, and there is a need for a considered review. One solution would be for the Commissioners with responsibility for Scotland and Wales to be appointed on the proposal, respectively, of the Scottish Parliament and the Senedd.

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¹¹ See, e.g., Speaker’s Committee on the Electoral Commission, ‘[Appointment of the Scotland Commissioner](#)’ (Third Report of the 2016–17 Session, HC 500, 21 July 2016).