

The UK Government's Response to the OSCE/ODIHR's Election Assessment Mission Report on the 2010 UK Parliamentary General Election

September 2011

Introduction

Following an invitation from the United Kingdom's delegation to the Organisation for Security and Co-operation in Europe (OSCE), its Office for Democratic Institutions and Human Rights (ODIHR) sent an Election Assessment Mission (EAM) to observe the General Election held on 6 May 2010. The Government is grateful to the OSCE/ODIHR for its analysis of the running of the election contained within its Election Mission Assessment Report¹, which was the second of its kind in relation to a UK General Election.

We are pleased to note the OSCE/ODIHR's general finding that 'the 6 May 2010 general election was administered in a transparent and professional manner and demonstrated an open, pluralistic and highly competitive process'. However, we also recognise that it is always possible to make improvements to established systems, and we continue to keep the electoral process under review to ensure it continues to work well. In this respect many of the Election Assessment Mission's recommendations have been helpful to our consideration of electoral policy since the 2010 General Election. We have taken the time to consider the experience of the polls in May 2010, and believe the set of responses offered below reflects the considerations we have already made.

This document sets out thematically our response to each of the Assessment Mission's recommendations by subject. It also sets out the Government's views on some of the other comments made in the report.

¹The OSCE/ODIHR's Report is available at: <http://www.osce.org/odihr/elections/69072>

Recommendations

Legal Framework for Elections

- *The legal framework for the elections should be consolidated, simplified and modernized through the conduct of a comprehensive review of all relevant legislation and legal acts. This would improve the transparency and accessibility of the electoral legislation.*

We agree that there could be benefits to bringing together the complex legal framework which governs elections, but also recognise that the continual evolution of electoral law signals the healthy debate which exists around the electoral process and its development in the UK. One of the principal statutory functions of the Electoral Commission is to provide guidance to help voters and administrators understand the aspects of the electoral landscape relevant to them. The Law Commission are undertaking a review of electoral law as part of their 11th programme, which was laid before Parliament on 19 July 2011. This is a significant piece of work. The initial scoping stage of the review, which will include public consultation, will take until the end of 2012. If the Government and the Law Commission agree to the project proceeding beyond that point, the intention is for a Draft Bill to be produced for early 2017. This timetable would allow new legislation to apply to the 2020 Parliamentary general election.

The Electoral Quota

- *Consideration should be given to adhering more closely to the electoral quota for all constituencies across the United Kingdom, in line with electoral best practices concerning the equality of the vote.*
- *Consideration could also be given to basing the electoral quota on the size of the population, rather than on the number of voters as it is generally recognized that a member of parliament represents his/her entire constituency and not only the voters.*

We agree with the principle that the size of constituencies should be as similar as possible so that every voter's ability to affect the final result is broadly the same. This is why we brought forward provisions in the Parliamentary Voting System and Constituencies (PVSC) Act 2011 earlier this year requiring the four independent Boundary Commissions to conduct a review of constituency boundaries based on the principle that seats must be of more equal size. However, it is important that in determining constituency boundaries, the Commissions are able to take account of historic local boundaries, and so there will continue to be slight variations between the size of each constituency. As a rule, constituencies must now be within 5% of this

quota, although there will remain two preserved constituencies in Scotland and two constituencies on the Isle of Wight, to take account of local geography.

The PVSC Act 2011 also makes provision for further reviews every five years, ensuring that boundaries remain up to date and fair: it is also important that constituencies do not become out of date and unequal, as is the consequence of the 8-12 years between reviews at present. We consider that continuing to use the definitive registered electorate, and holding reviews more often, is a more clear and effective way of keeping constituencies up to date than relying on estimated data (such as population estimates) and attempts to predict what might change in the future.

Franchise

- *The existing legislation on the suffrage rights of prisoners should be brought in line with the judgments of the ECtHR.*

Following the European Court of Human Rights' ruling in 2005 in the case of *Hirst (No.2) v UK* that the current blanket ban on convicted and sentenced prisoners voting was contrary to Article 3, Protocol 1 of the European Convention on Human Rights (the right to free and fair elections), the Government has been considering the question of prisoner voting carefully. A second prisoner voting rights case - *Greens and MT v UK* - became final on 11 April 2011 and set a deadline of six months for the Government to bring forward legislative proposals to end the current ban on prisoners voting.

In July the Grand Chamber of the European Court of Human Rights accepted the referral of an Italian prisoner voting rights case known as *Scoppola (No.3)*. In view of this, the Government requested an extension to the deadline set in *Greens and MT* to enable it to take account of the final judgment in *Scoppola* when developing its proposals for the UK. The Government was notified on 31 August that the Court has granted an extension of six months from the date of the *Scoppola* judgment. The Government welcomes the decision of the Court and believes it is right to consider *Scoppola* and the wider legal context before setting out next steps on prisoner voting. Given the close relationship between the cases, the Government also sought leave to intervene in the proceedings before the Grand Chamber in *Scoppola* and on 5 September was notified by the Court that the Government will have the opportunity to express our views on the principles in the *Scoppola* case.

Electoral Administration

- *In view of technical challenges posed by the short timeframe for the conduct of general elections, consideration could be given to extending the length of the official pre-electoral period so as to facilitate the organization of the process. As general and local elections are often conducted simultaneously, it is also recommended that the timetables for these elections be harmonized.*
- *Consideration should be given to developing more detailed procedures governing the conduct of the process by the ROs. In addition, consideration could be given to making ROs more clearly accountable to a centralized authority in order to ensure that procedures are applied consistently across the UK.*

We agree with the OSCE/ODIHR that the extension of the UK Parliamentary electoral timetable to bring it into line with that for local elections would help resolve some of the technical challenges posed by the current shorter timetable. Since last year's election we have considered the issue carefully and have brought forward draft provisions² to extend the timetable for Parliamentary elections from 17-25 working days, and will make a corresponding change for the by-elections timetable, which would take effect in time for the next scheduled General Election in 2015.

These draft provisions would allow postal votes to be issued to relevant electors earlier than is currently possible. We believe that this will have particular benefits for overseas electors and Service voters stationed outside the UK as it will allow more time for the dispatch and return of postal votes to overseas locations. It will also have benefits for administrators and help to reduce risks to the effective conduct of polls, as both elections officials and their suppliers will be able to spread out their workload by starting to print ballot papers sooner (because the deadline for parties to nominate candidates will be brought forward from 11 to 19 working days before the poll) and there will be a less concentrated period for actions to be undertaken towards the end of the timetable.

Turning to the second recommendation, we continue to believe that it is important that Returning Officers remain independent and that the Government should have no direct role in managing or monitoring the performance of Returning Officers - not least because voters must be satisfied that elections are managed by politically neutral, independent officials. While the independence of Retuning Officers can result in some variances in the details of the way elections are administered from one place to another, we nevertheless feel that the legislation governing their conduct is clear and comprehensive. Allied to this, the EC provides guidance to ROs which also helps

² <http://www.cabinetoffice.gov.uk/sites/default/files/resources/draft-electoral-administration-provisions.pdf>

ensure consistency of approach. Any variances in approach that remain can arise from a need to provide an effective service in diverse locations which differ considerably in geography and demographics. Moreover, where oversights have been identified in legislation, we have taken steps to rectify them: for example, we have published draft legislation which would allow candidates standing under a joint party description to have an emblem included on the ballot paper, as is the case for candidates standing for a single party. We will continue to look at any such issues as they arise.

The legislation governing the administration of elections and the Electoral Commission's accompanying guidance provide a platform from which Returning Officers can provide services to electors in a consistent manner. The Commission also produces performance standards for and assesses Electoral Registration Officers and Returning Officers against these standards. At a more strategic level, the Government has an overview of the electoral landscape and we will continue to consider the arrangements for the delivery of elections to support voters' experience at the polls.

Voter Registration

- *Consideration should be given to reconsidering the time limit within which voters can apply for 'rolling registration' with a view to allowing the EROs sufficient time to conduct checks.*
- *Consideration should be given to introducing an identification requirement for voters when applying for registration as a safeguard against fraudulent registration.*
- *Consideration should be given to ensuring that all voter registration data UK-wide is kept in a consistent and compatible format, ideally using the same software. A UK-wide system allowing for co-ordination and verification of voter registration information would help identify and eliminate multiple entries.*

As has been noted above, the Government has announced plans to extend the timetable for UK Parliamentary elections. Although the intention is that several key deadlines within the timetable will be changed to assist voters and administrators alike, it is proposed that the deadline for applying to register to vote should remain at 11 days before the poll. We believe it is important that eligible electors who decide they wish to participate in polls should be given as much time to register themselves as is possible, while allowing a period of time for registrations to be properly checked. Given the heightened awareness of an impending poll, once it has been formally announced, it is natural that a number of people will want to register themselves once the election campaign period has started in the weeks before the poll, and we believe we should support this as far as reasonably possible.

Furthermore, in line with the coalition agreement commitment to “*reduce electoral fraud by speeding up the implementation of individual electoral registration*” (IER), we have brought forward draft legislation to make IER become compulsory from 1 July 2014 with a special transitional arrangement in place for registered electors who do not register under the new system so that they are included on the electoral register for the General Election in the following year. New eligible electors (including home movers) must register under IER as must those registered electors with an absent vote who wish to retain this arrangement.³ This will not only ensure that individuals are not reliant on other members of their household for their registration, by requiring each person to make their own application and doing away with household registration, but will also improve the accuracy of the register and have benefits for the integrity of elections because the register will no longer be as vulnerable to fraudulent or fictitious entries. Only once an applicant has been verified will they be added to the register.

Dual registration is allowed in the United Kingdom for eligible electors that reside in more than one location. Whilst such electors can vote in each of the areas they reside in at local authority elections, it is illegal for them to vote in more than one constituency at a UK or European Parliamentary General Election.

It is for the locally based EROs and ROs to contract with suppliers for services to support systems for electoral registration and the management of polls. In Great Britain there is no central database of elector records and nor do we have any plans to introduce one. The management of electoral registration is a function best carried out by EROs because they best understand the needs of their areas.

³ The White Paper and Draft IER legislation is published online at:
<http://www.cabinetoffice.gov.uk/sites/default/files/resources/individual-electoral-reform.pdf>

Electoral Integrity

- *Additional safeguards should be introduced in order to restore the confidence in the postal voting procedure and to protect the integrity of the process. An example of good practice can be found in Northern Ireland.*
- *OSCE/ODIHR reiterates its recommendation that serious consideration should be given to introducing a more robust mechanism for identification of voters. Existing national and local government-issued cards could be considered for this purpose and voters could be obligated to sign the voters' list before being issued a ballot paper.*
- *Legal provisions related to the transfer of election materials, in particular marked postal ballots, should be reviewed with the view to excluding a possibility for those materials to be handled by third parties.*

In addition to this recommendation, we also note the following comments on electoral integrity from the OSCE/ODIHR's report:

In the conduct of elections, a strong emphasis is placed on enfranchisement and voter participation, as well as on trust in the conduct of the process. While the system functions overall well under these conditions, concerns are regularly expressed with regard to the lack of safeguards against possible fraud resultant from a weak system of voter registration and postal voting, compounded by the absence of a requirement to produce identification at any stage of the process. Interlocutors of the OSCE/ODIHR EAM concurred that urgent measures were necessary with regard to the above concerns in order to maintain the trust of the electorate and the integrity of the process.

The Government is committed to ensuring the integrity of the electoral process and tackling fraud wherever it arises. We are always willing to consider ways to ensure the voting process remains secure. In respect of postal voting, the OSCE/ODIHR is right to note that the Electoral Administration Act 2006 strengthened the security of postal voting by requiring applicants to provide personal identifiers (their signature and date of birth) which can subsequently be checked against the corresponding identifiers on the statement which voters must submit alongside their ballot papers. Electoral Registration Officers are currently required to check at least 20% of the identifiers returned although the Government has provided the funding for 100% checking at recent elections, and information collected by the Electoral Commission shows that the majority of Acting Returning Officers were able to check the personal identifiers on 100% of postal vote statements which were returned at the 2010 General Election. The Government is pleased to announce that it will be developing legislative proposals to mandate the 100% checking of postal vote statements.

In Northern Ireland, postal voting is limited to certain categories of people who are unlikely to be able to attend their polling station, such as those absent for reasons of disability, education or employment. Historically, there were strong drivers for more stringent controls on absent voting in Northern Ireland – in the past there had been inordinately high turnout and clear and organised attempts to impact the integrity of

the vote. In Great Britain such drivers are not evident – as has been reflected in the Electoral Commission / ACPO report on the 2010 polls published earlier this year. Postal voting on demand has proved a popular option for voters since it was introduced in 2001: it has become the option of choice for voters who find it difficult to cast their vote in person, for whatever reason, and enables voters to participate who would otherwise be unable to do so. It is important that the Government ensures the electoral process remains as simple and straightforward as possible in an effort to support participation in voting. However, we continue to keep postal voting arrangements under review.

We agree with the OSCE/ODIHR's observation that the way elections are conducted in the UK places an emphasis on voter participation and trust in the voting public, and are pleased to note the conclusion that the system functions well on this basis. However, we have noted the concerns reported to the OSCE/ODIHR about further perceived weaknesses in the system, as well as their recommendations about voter identification, signing for ballot papers and the transfer of election documents (including postal votes) by third parties. There are several unresolved issues which surround these particular recommendations. For example, in the absence of a universal form of ID in the UK, any voter identification requirement would need careful consideration to ensure that it covers all voters; and criminalising the handling of registration forms and postal votes by third parties could present access barriers for those who rely on neighbours or relatives to help them submit these documents. Whilst there is provision in statute for voters at a polling station to sign for their ballot paper, it has not been commenced because there is no comprehensive list of voters' signatures available against which poll clerks could check the signatures provided. In the light of these outstanding issues, we are considering how best to ensure the integrity of the electoral process is maintained and our approach will take into account wider reforms to registration and voting processes. In particular, the plans to accelerate the introduction of individual voter registration will help protect against fraud by improving the accuracy of the electoral register.

Election Observation

- *These provisions should be expanded to allow election observers to monitor all stages of the election process, including voter and candidate registration and work of election administration prior to election-day.*

In response to past recommendations made by the Electoral Commission, which were echoed by the OSCE/ODIHR in its 2005 EAM report, provisions were made in the Electoral Administration Act 2006 for the Commission to accredit individuals and organisations to observe most parts of the electoral process. In particular, observers may already attend the issue or receipt of postal ballot papers, proceedings at the poll and the counting of votes. Some of this work takes place before polling day and observers have attended, for example, postal vote opening sessions. The registration of electors and day to day administration of elections offices are obviously ongoing activities throughout the year and may not lend themselves readily to the kind of organised observation that an electoral event does. However, we will discuss with the Electoral Commission and electoral administrators, the question of whether observers should be enabled to watch other aspects of the process, taking into account any implications for candidates, voters and electoral administrators.

Voting and Counting

- *In line with the underlying principles of enfranchisement and participation, which are prevalent in other aspects of the process, consideration should be given to allowing voters standing in line at the close of poll to be issued a ballot and vote.*
- *Additional attention should be paid to ensuring adequate equipment and staff are allocated to polling stations. Consideration could be given to introducing a maximum number of voters per polling station, and a ratio of poll clerks per polling station commensurate with the number of registered voters in order to ensure that all potential voters can be processed during the opening hours of polling stations.*

In addition to these recommendations, we also note the following comments on proxy voting from the OSCE/ODIHR's report:

[...] according to OSCE/ODIHR EAM interlocutors, the development of postal voting appears to have rendered the proxy voting option somewhat redundant.

We are clear that electors who wish to cast their vote should not be prevented from doing so by administrative failings. In most cases where problems resulted from queuing at close of poll, the Electoral Commission found the common factor to be that inadequate planning processes and contingency arrangements were in place. Addressing these should be the priority before looking for a legislative solution, and we will work with the Electoral Commission, the AEA and electoral administrators to ensure adequate guidance on planning and contingency procedures is available, and

that electoral administrators have the support they need to carry out their vital role in ensuring elections are administered effectively.

It is also right that individual Returning Officers are not placed under undue restriction by Government when establishing the most effective ratio of polling stations for their electoral area. As noted above, different areas may have differing local needs and the local Returning Officer is best placed to identify those and put in place appropriate processes. However, we will work with the Electoral Commission to ensure that appropriate guidance on planning and contingency procedures is available, and that electoral administrators have the support they need to carry out their vital role in ensuring elections are administered effectively.

In respect of the OSCE/ODIHR's comments on proxy voting, reiterated from their 2005 report, the Government's view is that postal and proxy voting fulfil two very different functions. People might choose to appoint a proxy to vote on their behalf in a variety of circumstances where receiving and returning a postal ballot pack might prove difficult. Examples include overseas travel for reasons of employment or business, and long or short-term illness. Contrary to any suggestions that proxy voting is now redundant, the Government is pleased to announce that it will bring forward legislative proposals to extend the 'emergency' proxy voting facility to enable those called away on business or military service unexpectedly, and at short notice, before an election, to appoint a proxy to vote on their behalf. At present, this facility is only available to those who fall ill once the routine deadline for proxy applications has passed and we believe this extension will benefit many of those electors caught out by the present arrangements.

Conclusions

The UK Government was pleased to welcome the OSCE/ODIHR's Assessment Mission to observe a UK Parliamentary General Election for the second time in May 2010. It is always interesting to get feedback from experienced electoral observers from other countries who have seen varying systems and processes in place, and consider our processes in the light of their observations.

As has been outlined above, we have brought forward a comprehensive programme for constitutional reforms across the board, and work has already begun to address some of the points raised by the OSCE/ODIHR and others. Since the election, the Government has brought forward several pieces of legislation which should assist the smooth running of elections and have benefits for voters and electoral administrators alike, including the Fixed-term Parliaments Bill⁴ and the Parliamentary Voting System and Constituencies Act⁵. In addition, we have published draft legislation on three electoral administration provisions for pre-legislative scrutiny⁶ (including proposals to extend the timetable for UK Parliamentary elections and by-elections) which addresses issues raised by MPs, peers and electoral stakeholders, and proposes practical and sensible changes that will help to deliver more effective electoral administration. The draft legislation is intended to form part of a larger package of measures which will also include draft legislation on individual electoral registration (IER) which has been published separately.

We have noted the recommendations and findings within the Assessment Mission's report and recognise that, while a number of areas have already been resolved, there are other points within the report which remain under consideration. The Government continues to consider the effectiveness of the governance and administration of the UK electoral system, particularly focussing on the ease and comprehensibility of the system from the voters' perspective. In this respect, the Assessment Mission's analysis of the conduct of the last General Election will be a useful addition to materials that will inform further developments in electoral policy.

⁴ <http://services.parliament.uk/bills/2010-11/fixedtermparliaments.html>

⁵ http://www.legislation.gov.uk/ukpga/2011/1/pdfs/ukpga_20110001_en.pdf

⁶ <http://www.cabinetoffice.gov.uk/sites/default/files/resources/draft-electoral-administration-provisions.pdf>

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