



Northern
Ireland
Office

Government response to the Electoral Commission Report on the Northern Ireland Assembly election on 5 May 2011

Government response to the Electoral Commission's report: Report on
the Northern Ireland Assembly election on 5 May 2011

May 2012

**ELECTORAL COMMISSION REPORT ON THE NORTHERN IRELAND
ASSEMBLY ELECTION AND THE AV REFERENDUM IN NORTHERN
IRELAND**

GOVERNMENT RESPONSE

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Introduction

1. On 5 May 2011 combined Assembly Elections, local elections and UK-wide referendum on whether to change the voting system for UK Parliamentary elections to the Alternative Vote system were held in Northern Ireland.

2. This was a significant landmark in Northern Ireland electoral terms. For the first time ever three electoral events were held simultaneously. It was also the first time local and Northern Ireland Assembly elections had been combined.

3. The referendum from a UK perspective will be covered in greater detail by the Cabinet Office in their formal response to the Electoral Commission, which will be published shortly. The referendum was the first national referendum since 1975 which was held under the framework provided in the Political Parties, Elections and Referendums Act 2000 (PPERA).

4. We welcome the Electoral Commission statutory reports: 'Report on the Northern Ireland Assembly election on 5 May 2011' and 'Referendum on the voting system for UK parliamentary elections: Report on the May 2011 referendum'. We are pleased to offer our response to the Electoral Commission's recommendations as far as they apply to Northern Ireland. We believe it is important that lessons are learned by all concerned where improvements might be made and in this regard we are grateful for the analysis and recommendations within the reports.

5. Overall we agree with the Electoral Commission that the polls on 5 May in Northern Ireland ran smoothly and were administered well. Electoral administrators, in particular the Chief Electoral Officer for Northern Ireland (CEONI) and his staff, and the Electoral Commission should be commended for their part in ensuring that voters' experience of the poll was a positive one.

6. This document responds to the 9 recommendations aimed at the Government in the report on the Northern Ireland Assembly election and the one Northern Ireland specific recommendation in the report on the referendum.

7. Other recommendations were made to the CEONI. They will be considered within the over-arching review of the electoral process which the CEONI and his staff are undertaking. Amongst other things the CEONI review is looking at communications, staff training, absent voting and late registration processes, general planning and management of polling day and of the count process. The CEONI expects to complete his review by autumn 2012.

8. More generally, the Electoral Commission report reflects criticism expressed within the media and by some members of the public over the length of time taken to complete the count. It is important to recognise that, with three polls taking place on the same day, the process of verifying ballot papers was the biggest such exercise ever undertaken in Northern Ireland. While it is true that some delays were experienced during the verification process, we should not lose sight of the fact that all counts were completed within a two day timeframe and – most importantly - the results were accurate. It is also important to recognise that under the single transferable vote (STV) system it would not be possible significantly to reduce the length of time taken for the count unless the process were to move from manual to electronic counting. Nevertheless we have asked the CEONI to explore ways of speeding up the count process and this is being addressed, including looking at the potential for electronic counting, as part of his overarching review of the election process.

9. The Electoral Commission was heavily involved in the planning arrangements for the polls in 2011, and we welcome particularly their commitment to continue to work constructively with the CEONI to address some of the issues which have been raised.

Recommendations and Responses

Northern Ireland Assembly Election

Electoral Commission Recommendation: Amend the law to permit the name of the election being contested to be clearly printed on the ballot paper when elections are combined in any part of the UK.

1. This recommendation covers the whole of the UK, not just Northern Ireland. The report notes that observers and party representatives said that on an individual basis the ballot papers were clear and easy to read. However, under poor-quality or fading light they were more difficult to tell apart. The Commission suggests that one way of distinguishing the different elections would be to allow the name of the election to be printed on the ballot paper. The CEONI has made a similar suggestion. We will give this careful consideration.

Electoral Commission Recommendation: Amend or clarify the law in respect of the use of languages, other than English, on electoral documentation in Northern Ireland.

2. No provision is made for languages other than English to be used on nomination papers. During the election an Assembly candidate provided his address in Irish. After considering the matter the CEONI accepted the nomination, but the Electoral Commission recommended that the Government clarify the legislation in respect of the use of languages other than English on electoral documentation in Northern Ireland.

3. We agree that there would be merit, in advance of future elections, in clarifying the position, and will give this further consideration.

Electoral Commission Recommendation: Amend the Electoral Administration Act (2006) so that the performance standards regime that applies in Great Britain is extended to Northern Ireland.

4. In Great Britain (GB) Registration and Returning Officers have no formal accountability mechanisms other than the performance standards set

by the Electoral Commission under the Political Parties, Elections and Referendums Act 2000, and via challenge through the courts. By contrast the CEONI is a statutory officer holder appointed by the Secretary of State and accountable through him to Parliament. The CEONI has statutory registration objectives relating to the accuracy and completeness of the electoral registers. Each year the CEONI must produce a report on how he has discharged his functions, including an assessment of how he has met his registration objectives. This report is sent to the Secretary of State who must lay a copy of it before Parliament.

5. Current arrangements for Northern Ireland are therefore very different to those in GB. There is in place a robust and transparent accountability mechanism. For those reasons we do not believe there is merit simply in extending the performance standards that apply elsewhere in the UK to Northern Ireland as the Electoral Commission suggests.

6. However we believe that there would be merit in aligning performance standards across the UK where this is possible, and particularly where it would better enable comparison across the UK. We therefore welcome the commitment from the Electoral Commission to work with the CEONI to develop some appropriate performance standards, and look forward to seeing their joint proposals in due course.

Electoral Commission Recommendation: Review the deadlines for absent voting in Northern Ireland so that those who apply during the 'late registration window' can avail of an absent vote if they are eligible.

7. Current legislation does not permit those applying to register during the late registration window in Northern Ireland to apply for an absent vote. While we want to ensure that many as possible of those who are entitled to vote can do so, we must also ensure that the electoral register is accurate and prevents fraudulent applications. Indeed for that reason those who apply to register during the 'late registration window' must supply additional supporting evidence with their application.

8. We believe there is a balance to be struck. Last year 17,124 people applied to register during the late registration period. All of these applications had to be processed by Electoral Office for Northern Ireland (EONI) staff. Adding in applications for absent votes during this exceptional busy period has the potential either to compromise that checking process or to reduce the time available to process late registration applications. However we will certainly look at this issue to see whether there is any scope for greater flexibility.

Electoral Commission Recommendation: Review the arrangements for postal voting in Northern Ireland to ensure that there is consistency across the UK.

9. The number of postal votes issued in Northern Ireland is proportionately lower than elsewhere in the UK. In GB postal votes are available on demand. In Northern Ireland electors must give a valid and acceptable reason for applying for any absent vote, whether a proxy or a postal vote. Reasons may include the inability to attend the polling place due to illness, disability or absence on the day of poll due to work commitments or holiday arrangements. All applications are checked against the personal identifiers provided at the time of registration including date of birth and signature.

10. These provisions were introduced as part of a range of measures to combat electoral fraud and the perception of electoral fraud in Northern Ireland and have been largely been successful. Current arrangements seem well understood and widely accepted and while they are kept under review we would not want to introduce changes which would increase the risk of fraud or decrease confidence in the process. For that reason there are at present no plans to change arrangements for postal voting in Northern Ireland so that that there is postal voting on demand.

11. There are some areas where greater consistency is being delivered because GB is following Northern Ireland's example. For example current legislation requires local authorities in GB to check a minimum of 20% of postal votes – i.e. to ensure checking of the signature and date of birth

against those held centrally. New legislation will require 100% of such votes to be checked, bringing GB in line with Northern Ireland, where this already happens. More generally the new system of Individual Electoral Registration being introduced in GB is very similar to that which is currently in place in Northern Ireland.

Electoral Commission Recommendation: Consult with parties across the UK on the future of polling agents with a view to having their role either abolished or modified.

12. The Electoral Commission has made recommendations about the role of polling agents in its earlier reports. This recommendation encompasses the UK as a whole but we understand there are no plans to introduce this measure in GB.

13. In relation to Northern Ireland there was previous consultation on this issue in 2008. There was little consensus from the respondents who included the Northern Ireland political parties. Some suggested that the perceived illegal activities of polling agents had been undermining confidence in the electoral process and that they should be abolished. Others stressed that polling agents were key to ensuring public trust in the electoral system. There was some limited support for the introduction of specific provisions regulating the conduct of polling agents, but the majority of those who responded on that issue were satisfied that existing legislation provided sufficient clarity.

14. We will however look at this issue again and welcome further discussion with the Electoral Commission and with CEONI.

Electoral Commission Recommendation: Review freepost at combined elections in Northern Ireland, consulting political parties and relevant stakeholders to develop recommendations.

15. Candidates standing in Assembly and local council elections are entitled to send a 'freepost' election communication to each elector in the constituency or area in which they are standing. Freepost at local elections is not available for local elections in the rest of the UK. The cost of freepost for Assembly candidates was just over £1.03m and for local council candidates was £767,000.

16. During the campaign for the 2011 elections some parties proposed producing combined Assembly election and local council election communications, thus saving production and postage costs. Current legislation, however, stipulates that a 'freepost' election communication must only contain 'matter relating to the election'. The intention behind this is to ensure that freepost is not used for improper purposes (for example advertising goods or services) but it means that parties were prohibited from using their freepost entitlement to issue a single election communication covering both Assembly and local council candidates.

17. The Electoral Commission have suggested that we review this issue, with a view to enabling parties to produce combined election communications where appropriate. We will give this consideration.

Electoral Commission Recommendation: Complete an equality impact assessment on candidate deposits and subscribers before making a final decision on the way forward in Northern Ireland.

18. Deposits are an established feature of most elections. Candidates for the UK Parliament, Scottish Parliament and Welsh Assembly all pay a deposit of £500; candidates for the Northern Ireland Assembly pay a deposit of £150. It has been suggested previously that, at its current level, the deposit for Northern Ireland Assembly elections serves no useful purpose and that if it is to be retained it should be increased to £500 in line with other UK elections.

19. At Northern Ireland Assembly elections, as at UK Parliamentary elections, candidates' nomination papers must be signed by the proposer and seconder and eight other subscribers. At Scottish Parliament or National Assembly for Wales elections candidates' nomination papers need only be witnessed (Scotland) or signed by one subscriber (Wales). Whilst the deposit at Northern Ireland Assembly elections is therefore smaller than that required at the Scottish Parliament and Assembly for Wales elections, the administrative requirements placed on candidates are greater.

20. We consulted on this issue in Northern Ireland in 2008. As the Electoral Commission notes, respondents were largely in favour of retaining or increasing the deposit, but wanted the subscriber system abolished.

21. We noted in our response to the consultation that deposits and the requirement for subscribers were linked in that both serve to discourage nominations from frivolous candidates. A higher deposit level would be likely to provide a greater disincentive to frivolous candidates which might in turn justify a significant reduction in the number of subscribers needed. However we agree that further work needs to be done to assess the equality implications of such a proposal, and will take this forward at the earliest opportunity.

Electoral Commission Recommendation: Consult stakeholders in Northern Ireland on what accountability arrangements could be put in place to enhance confidence and transparency in the CEONI's decision making.

22. As stated earlier in this document, the arrangements for electoral administration in Northern Ireland are unique in the UK. The system in Northern Ireland is administered centrally by the CEONI who is both the electoral registration officer for the whole of Northern Ireland and returning and counting officer for all elections and referendums. The CEONI is an independent statutory office holder who is appointed by and reports directly to the Secretary of State. He is accountable through him to Parliament and produces an annual report on his performance that must be laid in Parliament. The current arrangements provide a robust and transparent accountability mechanism and we have no plans to change them.

23. Notwithstanding his independent status, it is clearly important that the CEONI consults and engages with stakeholders at every level, including political parties, elected representatives, the media and, most importantly of all, the individual electors who are the bedrock for the democratic process. Much good work is already done. The CEONI already has regular meetings with representatives of all the major political parties at the Assembly Parties Panel meetings hosted by the Electoral Commission and has frequent contact on an ad hoc basis with party representatives. EONI was awarded the Customer Service Excellence Award (a government backed award that recognises high level customer service) in 2011 and is going currently through the annual review process in respect of on-going accreditation. However

CEONI is looking specifically at how communication and engagement with stakeholders can be further reviewed as part of his on-going overarching review of the electoral process (which has itself involved widespread consultation with those stakeholders, including political parties, local councils and the media.) We look forward to seeing his proposals, which will be made public in the autumn.

AV Referendum

24. The Referendum report, also published in October 2011, focused on the administration of the referendum and the impact on holding it on the same day as other polls. The report encompasses the UK as a whole and reflects the experience of voters, campaigners, those responsible for delivering the referendum poll and other participants. The Cabinet Office will shortly publish a separate response to the Electoral Commission on the referendum from a UK-wide perspective. There was only one specific recommendation for Northern Ireland.

Electoral Commission Recommendation: Provide the Chief Electoral Officer for Northern Ireland with a power to specify modifications to voter-facing forms and notices to ensure usability and intelligibility at elections to the Northern Ireland Assembly and local government elections in Northern Ireland.

25. We value the work that the Commission undertook to ensure the forms used for the referendum were thoroughly tested by voters and that they were accessible and easy to understand. It is clearly important to ensure that forms and notices for all elections and polls in Northern Ireland are as user-friendly as possible and we will consider with the CEONI, the Electoral Commission and other stakeholders how best to deliver this.

Conclusions

26. We are grateful for this report from the Commission on the conduct of the May 2011 Northern Ireland Assembly elections, and for their report on the AV Referendum. We value the analysis and recommendations they make which continue to inform and assist the development of electoral policy and

legislation. We also want to take this opportunity to thank the Electoral Commission for their work in helping to support all three polls in Northern Ireland in May 2011.

27. We share the Commission's view that the voter should at all times be at the heart of elections and we will continue to work closely with the Commission and with other stakeholders in order to deliver the best overall service to the voter.