Introduction

This response sets out the Electoral Commission’s views on the relevant provisions contained within the draft Wales Bill.

This briefing comments on:

- The proposed changes to legislative competence for the administration of National Assembly and local government elections in Wales and the regulation of party and election finance rules in Wales.
- The Electoral Commission’s role and accountability.

The Electoral Commission is an independent body established in 2000. We regulate party and election finance and set standards for well-run elections and referendums. We work to support a healthy democracy, where elections and referendums are based on our principles of trust, participation and no undue influence.

Legislative competence for the administration and regulation of the National Assembly for Wales and local government elections in Wales

Background

The draft Wales Bill would provide the National Assembly for Wales with legislative competence for the administration and regulation of National Assembly for Wales and local government elections in Wales.

This would include providing the Assembly with new powers relating to:

- The conduct of elections to the National Assembly for Wales and local government in Wales.
- The timing of polls for a Welsh general election.
- The combination of polls for National Assembly for Wales and local government elections.
- The registration of electors, including the franchise, for National Assembly for Wales and local government elections.
- Limitations on candidates’ election expenses.
- Campaign expenditure at National Assembly for Wales and local government elections.
- Controls on donations and regulation of expenditure by third parties at National Assembly for Wales and local government elections.

The draft Bill would also transfer legislative competence for the following parts of the Political Parties Elections and Referendums Act 2000 (PPERA)¹ relating to political parties

---

¹ Political Parties Elections and Referendums Act 2000
and non-party campaigner at National Assembly for Wales and local government elections in Wales to Welsh Ministers:

- the definition of regulated spending;
- the definition of notional spending;
- the restrictions on incurring spending or making payments (including deadlines for receiving and paying claims);
- controls on donations to non-party campaigners
- the reporting requirements;
- the timetable for publishing returns submitted to us; and
- the spending limits for political parties and non-party campaigners at National Assembly for Wales elections.

In the event of changes to the current rules for National Assembly for Wales and local government elections we will at that time provide advice on the practical implications and the impact on voters, campaigners and electoral administrators in Wales and – if relevant – elsewhere in the UK.

Any changes to the electoral process, including to franchise and the electoral system, should be clear and made in sufficient time to enable voters to understand how these may impact on them and their participation in elections.

Similarly, any changes to appropriate legislation should be made six months prior to the commencement of the change (e.g. polling day / the beginning of the canvass). This would ensure that those involved with implementation have sufficient time to plan and properly resource the change and would allow for any necessary public awareness work.

The Commission as a statutory consultee

We note that the draft Wales Bill affects S.7 of PPERA\(^2\) and welcome the fact that the duty for the Secretary of State for Wales to consult the Electoral Commission on any draft Order relating to the conduct of a Welsh general election will be transferred to Welsh Ministers.

Modifying forms in relation to elections for the return of Assembly members

Under existing legislation\(^3\) the Secretary of State has the power to modify any form contained in, or in regulations or rules made under the Representation of the People Acts to enable it to be used both for the original purpose and in relation to elections for the return of Assembly Members.

This provision has not been transferred to the draft Wales Bill.

We would be grateful for clarification that extending the legislative competence of the National Assembly would allow these modifications to be made by Welsh Ministers.

The Electoral Commission’s role and accountability

---

\(^2\) Section 7(2) of the Political Parties, Elections and Referendums Act 2000

\(^3\) Section 13 (4)b of the Government of Wales Act 2006
The Commission currently has a full programme of work in place for National Assembly and local government elections in Wales.

Under PPERA, the Electoral Commission is accountable to the UK Parliament’s Speaker’s Committee for its work. The St David’s Day proposals had recommended that the Electoral Commission should continue to operate on a UK-wide basis, with the National Assembly having competence over its functions in relation to National Assembly and local government elections in Wales. The draft Wales Bill, however, only transfers competence to the National Assembly in respect of the provision for the Commission to prepare, lay and publish reports.

This differs from the position in Scotland where, in addition to transferring legislative competence for the Electoral Commission’s reporting functions to the Scottish Parliament, an amendment to the Scotland Bill 2015 also proposes the same for the Commission’s functions relating to finance and the provision of regulations that it makes.

Further consideration is necessary as to the Electoral Commission’s functions in respect of finance and the provision of regulations for work relating to National Assembly for Wales and local government elections in Wales. We would be happy to have these discussions with relevant officials ahead of the publication of a Wales Bill.

22 November 2015

---

4 St David’s Day Agreement
5 Scotland Bill