

'Democracy Day'
Planning for referendums
on PR and Lords reform

by Ben Seyd

March 1999

£5.00

Contents

Introduction	.....	1
The electoral reform referendum	.....	1
Introducing a new electoral system	.....	2
Other electoral contests	.....	4
The legal framework for the referendum	.....	5
Reform of the House of Lords	.....	6
‘Democracy Day’ - Constitutional coherence	.....	7
‘Democracy Day’ - Public understanding of the issues	.....	8
Conclusion	.....	9
Annex 1 - Timescale for the referendums on electoral change and Lords reform		

Introduction

With the devolution programme underway, two of the most important potential changes to the UK's constitution are electoral reform and reform of the House of Lords. Both measures would, if introduced, radically alter the nature of our political and constitutional systems. The government has initiated what may turn out to be the start of the process, by committing itself to a referendum on electoral reform for the House of Commons, and by establishing a Royal Commission to explore stage two of Lords reform, following the removal of the hereditary peers.

Changing the electoral system and reforming the Lords both raise a host of substantive issues, which are beyond the scope of this Briefing (although many of the questions relating to Lords reform are being addressed by the Constitution Unit in separate research projects¹). There are a number of other taxing issues, however, that face policy makers involved in planning for the next stage of the reform process, notably over timing. It is these logistical issues that this Briefing addresses; in particular, the timing of any referendums held to legitimate the reforms. The Briefing also considers two related issues: should there be a referendum on Lords reform (pages 6-7) and, if so, should this be held at the same time as that on changing the electoral system (pages 7-8). This 'twinning' approach has been floated recently,² in the suggestion that the public has its say in the form of a 'Democracy Day' referendum.

The electoral reform referendum

The government is committed, under its 1997 election manifesto, to holding a referendum on electoral reform, although no date is specified. The pre-election report of the Joint Consultative Committee on Constitutional Reform, with the Liberal Democrats, recommended that a referendum on electoral reform be held "within the first term of a new Parliament". The government's more recent position was given by the Prime Minister in November 1998, in a written answer to a parliamentary question on the timing of the referendum:

"The date has not been decided. It had always been envisaged that the referendum would take place before the next election. It should be held at the earliest moment it is sensible to do so, in the light of all the constitutional changes we anticipate and the recommendations of the Jenkins Commission. If it proves impossible to do so before the election for sound practical reasons, then it should be held at the earliest moment it is appropriate to do so." (House of Commons, 11 Nov)

Within the Labour Party, the only existing commitment is for a year long consultation of members, running until the end of 1999. Aside from this, the issues that will determine the timing of the referendum are a mixture of "sound practical" factors, constitutional

¹ For example, on models of second chambers overseas, which the Unit is currently examining. See its reports: *An Appointed Upper House: Lessons from Canada* (Nov 1998) and *A Vocationally Based Upper House: Lessons from Ireland* (Feb 1999). See also the Unit's more general reports: *Reform of the House of Lords* (Apr 1996) and *Reform of the House of Lords – A Step by Step Guide* (Jan 1998).

² Reported in the *Financial Times* (8 December, 1998) as an idea emanating from the Liberal Democrats.

coherence and political expediency. The last is likely to be the determining factor, but is also the most difficult to assess. This Briefing attempts to set out the issues irrespective of whether the government decides to adopt a positive, negative or neutral attitude to electoral reform at the referendum. Where the government's attitude is vital for the timing of the referendum, this will be explored.

The "sound practical" factors are the easiest to set out clearly. These relate principally to:

- the measures and timing involved in introducing a new national electoral system;
- other scheduled electoral contests;
- the legal framework covering the conduct of a referendum.

Introducing a new electoral system

The timescale for introducing a new electoral system for the Commons was put by the Jenkins Commission at eight years.³ In its 1997 report on '*Changing the electoral system*', the Constitution Unit offered a range of alternative timescales; the most leisurely estimated a time lapse of six years between the introduction of a Bill to authorise a referendum and a general election under a new system, with the tightest timescale estimated at four years.⁴ The issues that need to be dealt with during this timescale are (in chronological order):

- legislation for the referendum;
- public education on the issues, lasting at least 2-3 months;
- legislation to introduce the new electoral system (assuming this is supported at the referendum);
- redrawing of constituency boundaries;
- new selection methods for party candidates.

There is little doubt that the eight year period identified by the Jenkins Commission could be reduced substantially, largely by a more rapid boundary redrawing exercise. The key issues determining the length of the exercise are: the geography of the new boundaries (which depends partly on the electoral system being used), the degree of public consultation deemed necessary and the resources committed to the exercise. If the government wanted a speedy review of parliamentary boundaries, it could commit far greater resources than normal to the exercise. This could shorten the process to around 2 years (the last two reviews having taken 7 years and 4 years), although it would be unwise to assume that the process could be constricted much further. The effect of this truncation would be to allow a new electoral system to be introduced in time for the 2006/07 general election following a referendum held early on during the next parliament. However, any decision to adopt this course of action would probably mean that the next parliament

³ *Report of the Independent Commission on the Voting System*, Cm 4090-I, October 1998, para 153

⁴ *Changing the Electoral System*, Constitution Unit, March 1997

would need to run close to its full five year length, and would thus tie the hands of the government in relation to the timing of the election after next.

There is an additional, and more substantial, objection to planning a referendum on electoral reform for early in the life of the next parliament. This is that it runs up against the most likely date for the promised referendum on UK entry into Economic and Monetary Union. Should Labour form a government after the next election, the EMU referendum will be the most important public consultation exercise of its second term, and its timing would take precedence over that on electoral reform.

The effect of this would be to push back the referendum on electoral reform until later on during a Labour second term; if the election was held in spring 2001 (spring 2002 at the latest) and the EMU referendum in autumn 2001 (autumn 2002), an electoral reform referendum might not be held until summer or autumn 2002 (summer/autumn 2003). But this would force a very tight timescale for introducing PR for the 2006/07 election, and may cause a delay in implementation until the following election (see chart on page 11). This would represent a high risk strategy should the government decide in favour of electoral change. For it would depend upon no change of government following the 2006/07 election, since the Conservative party could not, assuming the continuation of its current policies, be relied upon to implement a change to the voting system should it form an administration.

An alternative scenario is for a double referendum to be held early on in any second term, combining electoral reform and EMU. If, by 2001/2002, public attitudes to EMU had become clearly positive, then such a double PR/EMU referendum might be attractive to the government. At present, however, public views are far more equivocal, and a government inclined to support UK entry into EMU would surely not wish to complicate what is likely to be a difficult task by holding a referendum on another contentious issue at the same time.

These logistical considerations might incline the government towards holding a referendum within the current parliament. In this case, the next decision would be whether to hold the referendum apart from, or simultaneously with, the general election itself. The main advantages of a simultaneous event relate to:

- finance: a national referendum costs around £50m⁵, of which around £30m consists of staff costs. Although holding a referendum alongside a general election would not halve the costs involved in holding the two events separately, there would be some savings (of, say, around £20m); and
- turnout: when New Zealand held the second of its two referendums on voting reform coterminously with the 1993 general election, the turnout was 82.6% as against 55.2% in the first, stand alone, referendum held a year earlier.

⁵ *Changing the electoral system*, Constitution Unit, March 1997

However, there are good political reasons why the government might shy away from holding the referendum at the same time as a general election. Electoral reform is a fiercely contested issue within the Labour Party, among elected representatives,⁶ party members⁷ and party supporters.⁸ Even if the government adopted a neutral stance towards electoral reform, the internal party battle on the referendum might well blunt Labour's campaign in the main contest.

More pertinent are the logistical objections to a joint election-referendum. The importance of educating the public on electoral reform might be compromised by holding the referendum at the same time as a general election, since some of the debate about, and information on, voting systems might get lost in the wider contest. And, crucially, in a political system in which the date of general elections is not fixed, and where the period of notice is only five weeks, there would be insufficient time to mount an effective education campaign, even if the outline of this had been planned in advance. New Zealand found in 1993 that holding a referendum at the same time as the general election - which was announced only seven weeks in advance - left too little time to mount an effective information programme.⁹

There is a strong case, then, for holding the referendum as a stand alone event, when the public can concentrate on the important issues involved, and an effective education campaign can be both planned and delivered. Moreover, the referendum will probably need to be held at least six months before any general election. This will avoid any intra-party disputes over electoral reform spilling over into campaigning for the election itself, and limit any chance of a government 'defeat' at the referendum having an adverse knock-on effect on its chances at the election itself. If the government wants to retain the option of holding an election as early as spring 2001, this would mean planning for a referendum to be held no later than autumn 2000.

Other electoral contests

The government has indicated that it will wait for the results of the elections to the Scottish Parliament and Welsh Assembly before announcing the date of the electoral reform referendum. This is presumably to see the reaction of voters, both in terms of voting behaviour and turnout. Should Labour perform badly, this might prompt many of its supporters to blame the new electoral system; should turnout be low, this will similarly

⁶ The government appears to have recognised this. One senior minister has been reported as saying that the government have decided to suspend collective Cabinet responsibility for the referendum on voting reform (*Financial Times*, 5 November 1998).

⁷ In a 1990 survey of party members, 58% agreed, and 31% disagreed, with the statement 'Britain's present electoral system should be replaced by a system of proportional representation'. See Seyd & Whiteley: *Labour's grassroots: The politics of party membership*, Oxford: Clarendon Press, 1992.

⁸ The 1996 British Social Attitudes survey found that 36% of people who identify with the Labour Party agreed with the proposition "Should change the electoral system", with 52% agreeing with the proposition "Should introduce PR so MPs match votes". See Curtice & Jowell: 'Trust in the political system', in *British Social Attitudes - The 14th report*, Aldershot: Ashgate, 1997

⁹ *Electoral reform in New Zealand: Lessons for the UK*, Constitution Unit, August 1998

hand ammunition to those campaigning against reform on the grounds that the public don't want to move from first past the post or don't understand the alternative systems. Alternatively, the results could be more positive. Both scenarios could impact on the timing of a national referendum, depending on whether the government wished to support, or oppose, electoral reform for the Commons.

On paper, the government could, following the May 1999 elections in Scotland and Wales, introduce, and hope to have passed, the enabling legislation for a referendum during the current session. With the planning of a voter education programme running alongside this, a national referendum on electoral reform could be held as early as winter 1999/2000. Alternatively, it could be held in spring 2000, at the same time as the elections for the Greater London Authority (4 May).

The legal framework for the referendum

The chances of an early referendum are limited, however, by the need to introduce a new legal framework to cover its conduct. The need for, and shape of, such regulations arise from the package of measures put forward by the Neill Committee on Standards in Public Life.¹⁰ The Committee recommended that referendums be subject to more stringent regulation than at present, and in particular:

- that core funding be made available to each side of the argument;
- that an Electoral Commission be established, including as part of its responsibility the allocation of this core funding;
- that the government refrain from distributing its own material relating to the referendum;
- that donations above £5,000 should be registered, and that any groups or figure wishing to spend £25,000 or more should register like a political party.

The government has indicated that it will produce a draft Bill to implement the "main findings" of the Neill Committee's report, and that this Bill will be ready for consultation before summer 1999.¹¹ In order that the legislation is on the statute book before the general election, this will almost certainly require the introduction of the full Bill in the 1999-2000 parliamentary session, although it is unlikely to complete its passage much before summer 2000.

If the electoral reform referendum were held back until the core of the Neill Committee's recommendations had been introduced, this would require a delay until winter 2000/01. The 6 month gap - between Royal Assent for the Bill and the establishment of the Electoral Commission - would be necessary to allow for senior positions within the Commission to be publicly advertised and filled. Given the point made above (page 4) about the government being likely to want to avoid a referendum date that fell too close to

¹⁰ *The funding of political parties in the United Kingdom*, Fifth report of the Committee on Standards in Public Life, Cm 4057, Oct 1998

¹¹ Hansard, House of Commons, 9 November 1998, column 47

a possible general election, the timescale necessitated by Neill begins to push the referendum towards the next parliament.

The alternative is for the government to hold the referendum prior to the enactment of the Neill legislation, but to seek a voluntary agreement with the other parties to observe the Committee's recommendations. A possible option in theory, it would be difficult to achieve in practice, because of the centrality of the Electoral Commission to the fair conduct of the referendum. The Commission would be responsible for deciding which lobby groups are to receive core funding, receiving disclosures of large donations and registering lobby groups wanting to spend over £25,000. An Electoral Commission is, thus, pivotal to the more open and regulated contest that the PR referendum will need to be. Yet it is also difficult to see how the Commission could be established prior to the full legislative enactment of the wider Neill reforms on party funding. The UK currently operates a largely voluntary approach to party funding, and the move to a statutory system, based around an ombudsman-type body, represents a major step that is likely to attract significant, and time consuming, debate.

Reform of the House of Lords

The timescale for second stage reform of the House of Lords is running just over one year behind that for electoral reform. The latter was informed by a Commission headed by Lord Jenkins, which reported in October 1998. The Royal Commission on Lords reform has been asked to report by 31 December 1999, with a Joint Parliamentary Committee, to consider the Commission's recommendations, following its report. It is highly unlikely that the government will be able to implement the Royal Commission's findings until after the next election. However, unlike the proposals of the Jenkins Commission - which are the subject of a year long consultation procedure within the Labour party - those of the Royal Commission are potentially more amenable to a rapid decision from the government. This would mean a referendum on Lords reform could potentially take place soon after the Joint Committee had concluded. Building in time for the enabling legislation to be passed, we might at this stage identify autumn 2000 as the likely earliest date for a referendum.

A more substantive question is whether second stage reform of the Lords should be put to a referendum. The government has no manifesto commitment to take this step; the possibility has been raised by those advocating a 'Democracy Day' referendum, involving a question on reform both of the Lords and of the electoral system for the Commons.

Referendums have already been held to legitimate constitutional change in Scotland, Wales, Northern Ireland and London, and are promised before any move to directly elected Regional Assemblies in England. It might be thought, then, that referendums have assumed the *de facto* force of a constitutional convention, and are now required prior to significant changes in the UK's political system. Yet Lord Irvine recently poured cold water on this status:

“We have not declared that a referendum must precede all changes with any constitutional dimension. An unequivocal manifesto commitment can obviously be sufficient democratic warrant; as with our pledge on the hereditary peerage”¹²

Given the improbability that the recommendations of the Royal Commission could be enacted prior to the next election, one means of gaining popular support for the reforms would, as the Lord Chancellor suggested, be through a clear manifesto commitment. Devolution to Scotland, Wales and London were clear manifesto commitments in 1997, yet were each deemed to require additional legitimation through a referendum. Reform of the Lords is arguably no less radical a piece of constitutional re-engineering than either of these measures and, at the level of principle at least, there is a strong case for submitting it to a referendum.

‘Democracy Day’ - Constitutional coherence

What, then, of the suggestion that electoral reform and Lords reform might be put to the public at the same time, in a ‘Democracy Day’ referendum? The justification for linking the issues of PR and Lords reform is the interlinkages between the two issues. Both are concerned with changes to, and the renewal of, Parliament, and voters would be asked to see the two issues as elements in this larger overall task. Government Ministers now explicitly point to the links between the reforms being proposed for the two chambers. In responding to the Jenkins’ Commission report on electoral reform for the Commons, for example, the Home Secretary listed a number of practical measures which he argued needed to be considered before deciding when a referendum on the issue should be held. One reason given was that:

“The government will want to take account of the radical and ambitious programme of constitutional reform that is taking place, particularly the reform of the House of Lords. It will want to consider how the new systems of election soon to be in operation in Scotland, Wales and for the European Parliament settle down. The constitutional reform programme should be looked at as a whole prior to any decision being made on this issue.”¹³

Given the close relationship between the functions and powers of the two Houses of Parliament, it is right that account be taken of one when reform of the other is being explored. This is particularly important in relation to decisions on the voting system, since the method used to elect members has direct implications for the legitimacy of each chamber, and thus the balance of power between them. Should the Royal Commission be expected to recommend a largely, or wholly, elected second chamber, a question would arise about whether the electoral system for the Lords could, and should, be decided before this issue had been resolved in relation to the Commons.

Currently, however, most commentators expect the Commission to recommend only a partly elected second chamber. Under this scheme, it is far less likely that the nature of the

¹² *The Government’s Programme of Constitutional Reform*, Annual Constitution Unit Lecture, 8 December 1998

¹³ Home Office press release 24/98, 29 October 1998

voting system used to elect members of the second chamber will have important implications for the relative legitimacy of the two Houses of Parliament. This suggests that the public would be able to make a meaningful decision about the two bodies at the same time. There remain other inter-relationships between the electoral systems for the Commons and Lords (eg. the size of electoral units, constituency boundaries) which might argue for the voting arrangements for the Commons to be resolved before those for the Lords are put to plebiscite: thus, voters might well wish to know what constituencies are to be used for elections to the lower chamber before deciding what scheme to support for the upper house. While this sequencing might be desirable in an ideal world, the inter-relationships between the chambers are arguably not of sufficient significance to prevent reform of the Commons and Lords being considered by the public in tandem.

Summarising, we can say that, in principle at least, the need for constitutional coherence does not place any significant obstacle in the path of a joint 'Democracy Day' referendum.

'Democracy Day' - Public understanding of the issues

A key issue in planning for a referendum, although one that is too frequently ignored, concerns public understanding. This is a particularly acute factor should a double referendum be held, since there is a question about how far voters could cope with information relating to two complex issues.

There is little way of knowing how the public would respond to a double referendum. Would the public be able to absorb the arguments over both reform of the Lords and electoral change for the Commons? New Zealand's referendums on electoral reform in 1992 and 1993 were both preceded by well funded and planned voter education programmes, which had a marked effect in raising public awareness of the issues involved.¹⁴ The programmes were highly intensive, however, and it must be open to doubt whether their effect would have been as marked if their message had been spread over another issue as well.

This situation did, in fact, nearly occur. Prior to the 1993 referendum, New Zealand was faced with a similar proposal to that currently being aired in the UK; namely, to include a question on reintroducing a Senate (the country then, as now, operated a single chamber legislature) alongside that on changing the electoral system. However, it was recognised that this would greatly increase the complexity of the referendum, and led to a parliamentary select committee recommending - and the government agreeing - that the Senate question be held over until after the result of the electoral reform referendum was known.

Nearer home, there are two European countries with long experience of referendums involving two or more questions on distinct topics. Since 1970, the majority of Italy's national referendums have involved multiple questions (12 in the June 1995

¹⁴ *Electoral reform in New Zealand: Lessons for the UK*, Constitution Unit, August 1998

referendum!).¹⁵ More pertinently, Ireland has held frequent multi-question referendums, mostly involving two questions (in 1968, 1972, 1979 and 1998) and, on one occasion, three questions (in 1992).

Only limited lessons can be drawn from the raw statistics produced by these contests. The twinning of issues in a single referendum does not appear to increase turnout levels: across the 18 referendums in Ireland between 1937 and 1995, average turnout was 55.0%, while for those contests involving two or three questions, turnout was slightly lower, at 52.5%.¹⁶ While twinning has not increased overall turnout, it might have helped raise turnout for one of the issues which, placed as a stand alone question, might have struggled to attract much public interest. This was probably the case in the most recent double referendum, in May 1998, when the question on ratification of the Amsterdam Treaty arguably benefited from being included alongside the more contentious issue of amending Articles 2 & 3 of the Irish constitution.¹⁷ The counter argument is that, while more people expressed an opinion on the Amsterdam Treaty, levels of understanding were lower, since the focus of the campaigns - and thus voters' attention - were on the issue of Articles 2 & 3.¹⁸

The limited experience of multiple issue referendums from Ireland suggests, therefore, that while overall turnout is unlikely to be boosted significantly, question twinning has some potential for raising the response rate on the less publicly contentious issue (in this case, probably Lords reform, since PR for the Commons is likely to be the more fiercely argued contest). But there would be a risk, under such a double referendum, of voters focusing on electoral reform to the detriment of the equally important and complex issue of Lords reform.

Conclusion

This discussion has attempted to analyse the mixture of political expediency and more rational planning that will ultimately determine the timing of the referendum on electoral reform and any link that this might have with the second stage of Lords reform. The arguments sketched out cannot be categorical; they merely suggest some of the main issues that policy makers will need to take account of in planning the next stage of the government's parliamentary reform programme. Where do the suggestions lead to?

A key external factor is the EMU referendum. If, as is likely, that event takes place soon into any second Labour term, it will make it difficult, although not impossible, to hold another referendum on electoral reform in time to introduce a new voting system for the 2006/07 election. An alternative would be to hold the referendum on PR at the same time as the general election. This would be a worse option, however, since the 'snap' nature of

¹⁵ See chapter on Italy in M Gallagher and P V Uleri (eds) *The Referendum Experience in Europe*, Basingstoke: Macmillan, 1996

¹⁶ See chapter on Ireland in the same volume.

¹⁷ See Jane O'Mahony 'The Irish referendum experience', *Representation*, 35:4, 1998

¹⁸ *Ibid*, p.235

the election's timing would leave little opportunity for an effective voter education campaign to be mounted.

On this scenario, the electoral reform referendum might best be planned for the current parliament. A government wishing to keep its options open about the timing of the general election might set winter 2000/01 as the latest date, assuming a possible election as early as spring or summer 2001. The main factor acting to delay the timing is the legislation to implement the recommendations of the Neill Committee. A government that wished to follow Neill's conclusions on the regulation of referendums would have to wait until at least early winter 2000 for the Electoral Commission to be established. Even this timescale might have to slip, to give the Commission a little more time to settle into its role before being confronted by what will be a keenly fought contest.

It appears, then, as though the government has relatively little room for manoeuvre. This review of the main considerations that the government will need to take into account in planning for the electoral reform referendum suggests that winter 2000/01 offers the best opportunity. But does this take a public vote on a politically explosive issue too close to a general election date for the government's comfort?

A referendum on PR held at this stage could be combined with one for Lords reform. There is a strong case in principle for submitting second stage reform of the Upper House to a public vote. While a 'Democracy Day' referendum risks conflating two issues which arguably should be treated separately (so that issues - eg. constituency boundaries - relevant to the Commons can be decided prior to their resolution in relation to the Lords), the timescale for Lords reform at least allows for a twin plebiscite should this be held in winter 2000/01.

Annex 1 - Timescale for referendums on electoral change and Lords reform

	Elections, referendums and other key events	Neill Committee legislation	Lords reform	Introduction of PR for Commons following referendum in 2000	Introduction of PR for Commons following referendum in 2002
1999	Scottish/Welsh elections End of Labour internal consultation on PR	Draft legislation ↓ Formal legislation presente	Royal Commission ↓		
2000	Greater London Authority elections	Legislation passed ↓ Electoral Commission est	Joint Committee considers report First date for HoL referendum	First date for PR referendum	
2001	General election: first date ⋮ EMU referendum			Legislation to introduce PR	
2002	General Election: last date			Legislation passed Boundary redrawing	First date in next parliament for PR referendum Legislation to introduce PR
2003					Legislation passed Boundary redrawing
2004				Boundaries redrawn	
2005				New party candidate selection methods in place	Boundaries redrawn
2006	General election				New party candidate selection methods in place
2007	General election				