

## Changing the Electoral System

The 1997 general election could be the last held under the present system of first past the post. Labour and the Liberal Democrats have agreed to hold a referendum on electoral reform during the next Parliament if there is a change of government. This briefing examines the implementation of this joint commitment. Its principal conclusions are:

If the aim is to hold the referendum in time for any changes to be in place at the next general election, an advisory referendum needs to be held at the latest in 1999, to allow time thereafter to legislate and then to implement the change.

If this timetable is too tight, the referendum could be held at around the time of the next general election in 2001/2; and implemented in time for the following general election in 2005/6.

The referendum could take one of two forms:

- a single alternative system could be run off against the current first past the post system.
- several systems could be put to the electorate in a multi-option referendum.

The choice of alternative system could be determined through an independent advisory commission. The terms of reference of an advisory commission need to be drafted in general terms, to provide sufficient guidance without predetermining its outcome. In terms of membership, the Government will need to decide:

- whether nominations should be invited from electoral reform organisations and/or political parties.
- whether the commission should be a group of experts, or see themselves as facilitating a consultation exercise.

The referendum will need to be authorised in legislation. It will need to be supervised by an independent Electoral Commission, also established in legislation, and charged with:

- providing public information and education.
- reviewing constituency boundaries, if the vote is for change.

Legislation would need to be introduced in 1998 if a regional list system is to be used for the European Parliament elections in June 1999.

Any change to the electoral system for the House of Commons needs to be resolved prior to any move to establish an elected House of Lords.

It is possible that the 1997 general election will be the last UK general election held under the current first past the post (FPTP) electoral system. Through their Joint Consultative Committee on Constitutional Reform, Labour and the Liberal Democrats have agreed on the process for a referendum on electoral reform, as well as on the initial timetable. This briefing examines the implications of this joint commitment to a referendum, and considers the process of holding a referendum and the implementation of any change to the electoral system which may result. It does not discuss the merits or features of different electoral systems. The briefing focuses on the following issues:

- how to determine the electoral systems to be put forward in the referendum.
- the form of the referendum.
- the timing of the referendum and of any consequent changes.
- interconnections with other reforms.
- the legislation required to implement any changes.

### Which Alternative System?

The 1976 Hansard Society Commission on Electoral Reform noted that: "It has been estimated that there are at least 300 different electoral systems which either are, or have been, in use or which have been seriously considered at one time or another". This reflects the varied historical evolution of electoral systems in different countries as much as it does the mathematical possibilities. It is also an indication of the potential for fragmentation among those campaigning for electoral reform. For an effective decision on a new electoral system to be taken through a referendum, the range of options clearly needs to be narrowed down. This could be done in one of two ways:

- a single alternative system could be put forward against the current FPTP system. The choice of alternative system to be put in the referendum could be determined through an independent advisory body, or as the result of political agreement.
- several systems could be put to the electorate in a multi-option referendum.

### An Advisory Body

In the report of their Joint Consultative Committee, Labour and the Liberal Democrats agreed that: "A commission on voting systems for the Westminster Parliament should be appointed early in the next Parliament to recommend the appropriate proportional alternative to the first past the post system. Among the factors to be considered by the commission would be the likelihood that the system proposed would command broad consensus among proponents of proportional representation. The commission would be asked to report within twelve months of its establishment."

The commission would thus be asked to identify a single reform option to be run off against the existing system in a referendum. In comparison to a multi-option referendum, a referendum putting forward a straight choice between the status quo and a specified alternative would make the provision of public information in the referendum campaign relatively straightforward, and make a clear result more likely. It would also make the process more predictable in that there will be only two possible outcomes. For electoral reformers there would be an incentive to unite behind the single option recommended by the commission, because the only alternative on offer would be FPTP.

However, no one should underestimate the difficulty of identifying a single reform option. This is a highly political exercise; and some of those involved in the electoral reform movement are most unlikely to sink their differences. The government will risk being denounced for having predetermined the outcome, through the terms of reference given to the commission, and by the people chosen to serve on it. The definition of the commission's task, its status and its membership, will be crucially important to the credibility of the exercise.

**Terms of Reference** The choice of electoral system will depend on the criteria it is expected to meet and it may be difficult to draft terms of reference that provide sufficient guidance without predetermining the review's outcome (should the remit, for example, make any reference to the desirability of retaining single member constituencies, which would immediately favour some systems against others?). The Labour Party's Plant Committee experienced similar difficulty, which they described when explaining their working methods: "We then attempt[ed] to establish a set of criteria against which we believe any defensible electoral system should be judged. There are many such criteria and no single system can score equally highly against them all. Hence, there cannot be an ideal system. What is necessary is to come to a view about which system or systems do best against what are taken to be the most important criteria. This has to be a political rather than a technical judgement" [*Democracy, Representation and Elections* (summary), September 1991]. This argues for the commission to be set up with very general terms of reference. Drawing on the Joint Committee agreement, these could be:

- to consider proportional electoral systems for the House of Commons, and in particular the likelihood of different systems commanding broad consensus among proponents of proportional representation.
- to recommend a single proportional electoral system to be put forward as an alternative to FPTP.
- to report within 12 months.



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a clear job description for the members of the  
 commission, which would sharpen up thinking  
 about the nature of the commission's task and  
 the kind of people needed to carry it out. In  
 particular the following questions will need to  
 be addressed:

- What should be the overall size of the commission? It is more likely to reach agreement on a single proportional system if it is small rather than large: half a dozen rather than a dozen members.
- Should it contain experts? Almost certainly yes; but most experts are well known for their support for a particular electoral system. It may be necessary openly to acknowledge this and attempt to achieve a balance of different views; or to bring in the expertise through the staffing of the secretariat, or by recruiting specialist advisers like the experts who advise parliamentary select committees.
- Should nominations be invited from electoral reform organisations? It will be impossible for the commission to reach agreement if some of its members consider themselves to be mandated representatives of a particular view or interest. Instead organisations should be invited to submit evidence rather than have an active presence on the commission.
- Should nominations be invited from the political parties? For the same reasons political parties should be invited to submit evidence.
- Should people be invited to represent FPTP? Logic suggests not, since the commission's task is to find a proportional alternative.
- Should the commission be a closed group of experts, or see themselves as facilitating a consultation exercise?

This last may be the most important consideration in terms of who is invited to serve on the commission and its approach to its task. The commission could not merely invite evidence but could commission opinion polls and engage in more proactive activities such as citizens' juries and public meetings. Such work would inform the commission's view as to which option was most likely to attract a broad consensus and could lay the foundations for the public education programme which would be undertaken prior to the referendum. This would leave the way open to appoint commission members from non-expert backgrounds, but skilled in facilitating public consultation, perhaps chaired by a non-partisan figure such as a judge. The commission's working methods may also need to include detailed modelling of the likely effects of different electoral systems, or at least of the one recommended, to ensure that such information is available to inform the referendum campaign.

a Government to maintain a neutral, or indeed a united, stance on the outcome of the referendum. The more options put forward, the greater the number of ways in which the party could split and the more indecisive the Government could appear.

### The Referendum

Referendums need legislation to authorise the Government to spend money and to organise the referendum. Election machinery must be adapted and the cost of organising the ballot and any grants to campaigning groups must be voted by Parliament. There are three ways in which a referendum on electoral reform could be legislated for:

- through stand alone legislation concerned solely with the referendum.
- through 'generic' legislation authorising a number of referendums.
- in substantive legislation to change the electoral system, with its implementation dependent on the outcome of the referendum.

Most discussions of the proposed electoral reform referendum assume that the referendum will be legislated for by one of the first two methods. With such an advisory referendum there is of course no guarantee that the Government and Parliament will support the legislation necessary to put its outcome into effect. With the third option the referendum triggers the change; and the referendum and the change to the electoral system can be authorised in a single piece of legislation. However, it would require the Government to invest valuable parliamentary time in passing legislation which might never come into force - this would be particularly unattractive to a Government which was not committed to change. The advantage would be that the public debate would be informed by the parliamentary deliberation during the passage of the bill.

There is a wider case for generic referendums legislation to ensure that all referendums are held under a common set of ground rules regardless of the issue. However, time constraints will probably mean the devolution referendums proposed by the Labour Party for Scotland and Wales will be legislated for separately. Apart from these two referendums, the only other stand alone referendum is likely to be for a strategic authority for London (the referendums on a single European currency and on regional assemblies for England are likely to be authorised in the substantive legislation on these two issues). Generic legislation authorising referendums therefore seems unlikely.

In each previous UK referendum, rules have been drawn up *ad hoc*. The independent Commission on the Conduct of Referendums, which reported in November 1996, recommended that for future referendums there would be advantage in

extensive use of computer modelling and increased resources could speed this process up considerably if that were necessary. Nonetheless it is likely that at least a year will be required to complete any significant changes.

It may be desirable to include at least a preliminary boundary review as part of the modelling research undertaken by an advisory commission. This would mean that information about the likely new constituency boundaries would be available to voters during the referendum campaign, to provide a clearer picture of the implications of a new system. It would also speed up the implementation process post-referendum.

It has been suggested that a new electoral system might be phased in, to reduce the threat to sitting MPs and to extend the timetable for boundary reviews. In 1918, an attempt to phase in STV was made during the parliamentary debates on the Representation of the People Act. A trial was proposed in 100 constituencies, but was blocked by sitting MPs in those constituencies. More recently, evidence to the Plant Committee included a proposal for phasing in an Additional Member System (AMS) system over a series of Parliaments. This could be done by reducing the number of constituency seats and introducing a corresponding number of list seats, over a number of boundary reviews. For example, if it were decided to address the current over-representation of Scotland and Wales and to focus the next boundary review on constituencies currently well under their electoral quota, it would be possible to produce 40-50 list seats for the next election (around 6% of seats). Phasing in change is unlikely to find favour because it is more likely to be blown off course and would lead to the charge that MPs had been elected under different electoral systems. It would be least problematic with a mixed system such as AMS, where a mixture between constituency and list MPs would be the final objective.

**Party Preparation** A change in the electoral system could present the political parties with organisational difficulties. The key factor will be the time needed to select candidates for the new constituencies. It should be possible to select 'shadow' candidates prior to final boundary decisions, but a period of at least six months will be needed for any such shadow decisions to be confirmed. A further factor which parties will need to consider is changes to their campaign techniques. In a FPTP system all campaigning strategies are geared around the targeting of winnable marginals. There will be pressure from the organisational wings of parties for time to adapt to any new system: allowing for this will need early consideration if organisational pressures are not to be a reactive force against change.

## Connected Reforms

**European Parliament Elections** Article 138(3) of the Treaty of Rome provides for the introduction of a system of elections to the European assembly on the basis of "direct universal suffrage, in accordance with a uniform procedure for all member states". Direct elections were first held in 1979, but there is as yet no uniform voting system across Europe, largely because the UK insists on retaining FPTP elections, except in Northern Ireland, which returns three MEPs by STV. Pressure for change has come from the European Parliament and from countries such as Germany and the Netherlands. The report of the Joint Consultative Committee confirmed that both the Labour Party and the Liberal Democrats support the introduction of a proportional electoral system based on regional lists (RLS). There is however no commitment in the Joint Committee's report to introduce the change in time for the next European Parliament elections in June 1999.

A regional list system was put forward by the Callaghan government in a White Paper (*Direct Elections to the European Assembly*) in April 1977 and incorporated as an option in the European Assembly Elections Bill, but was rejected by the Commons in favour of FPTP. The 1977 version of RLS is ready in legislative form and would need minimal adjustment for use in 1999. Necessary changes include:

- accommodation of STV in Northern Ireland.
- adaptation to new regional structures: at least to the boundaries of the new Government Offices for the Regions, with the possibility of subsequent adjustment, so that if regional government is established regional lists could cover the same regions as regional assemblies.
- the extra European Parliament seats allocated to the UK in 1993.

A decision would also be required on the detail of how the list system would work in practice: for example, would parties determine the order of candidates on lists or would voters be able to indicate their preferences for different candidates?

**An Elected House of Lords** Changing the electoral system for the House of Commons will have implications for the design of a proposed electoral system for the House of Lords. To reinforce their complementary roles, the two chambers will need to have a different franchise. Whether the system for the House of Commons is to be changed will therefore need to be resolved prior to any move to establish an elected House of Lords.

## Legislation

In addition to legislation for the referendum and for any new electoral system, legislation would also be required to establish an Electoral Commission and for changes to the electoral

system used for European elections. The timing of this legislation will depend on the target date for implementation as well as on other commitments and pressure on parliamentary time. An Electoral Commission will need statutory status for the wider functions which are proposed for it (see Constitution Unit's briefing, *Establishing an Electoral Commission*) and to safeguard its independence. If an Electoral Commission is to take on responsibility for the voting reform referendum with a view to implement any change prior to the next general election, legislation will be needed at the latest during the 1998-99 Session.

Legislation to change the electoral system for the European Parliament elections could stand alone or could be part of an Inter-Governmental Conference follow-up bill. The IGC follow-up bill will have its own timetable set by the IGC. For the electoral system to be changed by a stand alone bill in time for the 1999 European Parliament elections legislation will need to be introduced in the spring or summer of 1998.

## Timetables

The timing of any referendum on electoral reform will depend on the priority it is given. In the report of the Joint Consultative Committee, Labour and the Liberal Democrats stated: "Both parties believe that a referendum on the system for elections to the House of Commons should be held within the first term of a new Parliament". This would require a very tight timetable. If the referendum is held during the next Parliament and the vote was for change the legitimacy of the next election might be called into question if the new voting system had not been implemented. This effectively means that either the referendum must be held in time to make the change, or it must be postponed until the time of the general election in 2001/2.

The factors determining the timing include:

- the target date for the introduction of any change.
- the timing of any other referendums (and elections).
- the time needed for the advisory commission to report on an alternative proportional system.
- the time needed for parliamentary debate and consideration of the commission's recommendation.
- the time needed for legislation (one or two bills).
- the time needed for public education.
- the time needed for the implementation of a new electoral system, if supported.
- the inevitable distraction a referendum will present to other parliamentary and Government business.
- the Government's view of the balance of political advantage, which may change during the course of the Parliament.



Another factor is cost. If the referendum is held at the same time as a nationwide poll (the European Parliament elections in June 1999, or the general election in 2001/2) there is a potential saving of up to £50 million. It would also maximise turnout. The second of the New Zealand referendums on an electoral system was held at the same time as the general election, and secured a turnout of 82.6%, against the 55.2% turnout at the first, free-standing referendum of 1992. However, combining the referendum with an election risks tainting the result. The Commission on the Conduct of Referendums recommended against a combined ballot, because as the Hansard Society 1981 report *Referendums - Guidelines for the Future* pointed out: "When referendums come frequently, and come mixed up with other issues, the public attention given to them is likely to be much less. The turnout and the decision may be shaped by the other matters being voted."

The following timetables illustrate three possible options. The first two show the referendum being held during the next Parliament, the third

at the time of the general election in 2001/2. All would require careful and determined forward planning. They are included to show how tight the timetable is likely to be, and how early the process may need to start.

Option A is very tight, in particular in the first two years. One way of easing the timetable would be to go for a post-legislative referendum, with a single bill (like the Scotland Act 1978) which legislates for the referendum and for the change, if approved by the referendum. This would be less of an advisory referendum in that a referendum result in favour of change would trigger the introduction of the new system. The timing in Option B for the passage of the legislation is tight, but there is more time for the boundary reviews to be completed.

Alternatively a much more leisurely timetable (Option C) could be adopted building up to a referendum at the same time as the next general election in 2001/2. Depending on the result, the new electoral system would then be introduced

<b>Option A:</b>		<b>Pre-legislative referendum, two bills, tight timetable</b>
1997	July	Establish Advisory Committee.
1998	January	Advisory Committee reports.
	March	Introduce bill to authorise referendum and establish Electoral Commission.
	October	Bill receives Royal Assent.
	December	Electoral Commission established. Six months to generate public information about voting system options in referendum.
1999	June	Referendum held on electoral reform.
	November	Depending on referendum result, legislation introduced to change electoral system.
2000	July	Bill receives Royal Assent. 9-12 months to redraw parliamentary boundaries.
2001	May-September	Parties select candidates for new seats.

<b>Option B:</b>		<b>Post-legislative referendum, one bill, tight timetable for legislation and public information</b>
1997	September	Establish Advisory Committee.
1998	September	Advisory Committee reports.
	December	Introduce bill to authorise referendum and implement change and to establish an Electoral Commission.
1999	July	Bill receives Royal Assent.
	September	Electoral Commission established. Six months to generate public information about voting system options in referendum.
2000	April	Referendum held. Depending on referendum result, 12-18 months to conduct boundary reviews.
2001		Boundary changes implemented through secondary legislation. Parties select candidates for new seats.

<b>Option C: More leisurely timetable, two stage legislation</b>	
1997	September Establish Advisory Committee.
1998	September Advisory Committee reports.
1999	January Government responds to Advisory Committee recommendation and includes legislation for referendum and Electoral Commission in next Queen's Speech.
	November Introduce bill to authorise referendum and establish Electoral Commission.
2000	July Bill receives Royal Assent. Electoral Commission established. 12 months to generate public information about voting system options in referendum.
	Hold referendum, possibly at same time as general election.
	Depending on referendum result, legislate for new system and redraw parliamentary boundaries.
2005/6	General election under new system.

in time for the following election in 2005/6. The added complication to the process would be that the general election could bring a change of Government and the possibility that the new Government would not be committed to implementing any change supported in the referendum.

### Summary of Decisions Needed

- Is the target to change the electoral system in time for the next election (if the referendum result supports this)?
- If so, how long will it take to change the electoral system (i.e. when does legislation changing the electoral system need to be through Parliament and therefore when does referendum need to be held?)
- What kind of referendum? (single reform option vs. FPTP, or a multi-choice referendum)
  - if a multi-choice referendum, one stage or two?
  - if single reform option, how is this to be determined (independent machinery or political decision?) and how long will it take?
- Will the Cabinet be allowed to divide, or have to observe collective responsibility?
- What machinery needs to be in place for referendum (and when does it need to be done?)
  - Electoral Commission?
  - reformed Boundary Commissions?
- Which Minister, and which department, should be appointed to lead the process?

### About the briefing

The Constitution Unit is a research project set up in April 1995 to conduct an independent inquiry into the implementation of constitutional reform. The Unit aims to: analyse current proposals for constitutional reform; explore the connections between them; and identify the practical steps involved in putting constitutional reforms in place.

A series of reports is being published by the Unit. Each report will be accompanied by a briefing. The reports deal with the practicalities of planning and legislating for constitutional reform; reform of the House of Lords; the introduction of devolved assemblies in Scotland, Wales and the English regions; human rights legislation; the relationship between constitutional reform in the UK and changes in Europe; and the conduct of referendums. In addition, the Unit is publishing a number of stand-alone briefings, of which this is one.

In the preparation of this briefing, the Unit has been advised by a wide network of experts who have contributed to our work. The principal author is Katy Donnelly. Neither our advisers nor the Faculty of Laws, University College London (where the Unit is based) are responsible for the conclusions and recommendations in this briefing, which are those of the Unit alone.

Copies of reports can be obtained direct from the Unit at a cost of £10 each. Briefings are available free of charge.



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