

GOVERNANCE PROJECT



The role of the Electoral Commission

- R.11.1. Although the EC has performed an important role as the independent body overseeing and regulating elections in the UK since 2001, both the EC, and UK electoral law more widely, would benefit from further clarification, strengthening, and consolidation. Elections are at the heart of how power is allocated in the UK and the processes for fair and transparent elections need to be as robust as possible. The Commission does not believe that there can be a serious argument against the effective underpinning of the strength and fairness of our democracy. The EC is the only body currently capable of taking on that role.
- R.11.2. The EC undertakes important work in providing guidance to the electoral administration community, and in promoting public awareness of electoral matters. However, reflecting our governance approach, our Recommendation focusses on its reporting on the quality of elections, the regulation of political donations and expenditure, the promotion of electoral registration, the running of national referendums and investigation and enforcement powers.
- R.11.3. The Recommendation does require primary legislation, not least since the existing position is enshrined in legislation. However, the proposed changes should be reasonably easy to draft (in some cases, amounting to nothing more than revocation of recent changes that have undermined the independence and authority of the EC). The proposed unification and codification of electoral law would for the most part be an essentially mechanical task. The Commission does not expect these changes to result in a material net increase in associated costs.

We recommend that:

Independence for the EC should be strengthened

- R.11.4. A statute should set out the overriding responsibility of the EC, as an independent body, to safeguard and improve the electoral process, and its openness and fairness, in the United Kingdom.
- R.11.5. The EC should be chaired by a recently retired judge of High Court rank or above, chosen by the Lord Chief Justice in consultation with existing EC Commissioners. Ministers should have no role in the selection of the chair of the EC, nor its Commissioners.
- R.11.6. To underline and protect the independence of the EC, the provisions of the Elections Act 2022 which provide for a Strategy and Policy Statement from the Government should be repealed.

There should be clearer Election laws and information

- R.11.7. Electoral law should be brought together and set out in a single, pan-electoral legislative framework, easily accessible in one place by all.
- R.11.8. Primary legislation could be used to consolidate those aspects of electoral law for which there are no current proposals for change. Such legislation would allow a single set of polling rules to apply to all elections, and would cover:
- a. the current electoral franchise;
 - b. the current voting system for national elections;
 - c. electoral administration;
 - d. the election timetable;
 - e. conduct of the poll; and
 - f. provisions on legal challenges to elections and regulation of the electoral offences.

- R.11.9. This primary legislation would set out electoral law for all elections including devolved elections but the devolved legislatures could make amendments to the above primary legislation via devolved statute, to reflect their areas of jurisdiction.
- R.11.10. Voters should be able to verify online whether they are on the register for the address at which they are living so that, amongst other benefits, potential voters can see whether they are registered and do not put in superfluous requests for registration.

The EC should have stronger enforcement powers

- R.11.11. Section 19 of the Elections Act 2022 should be repealed. This change will permit the EC to undertake criminal proceedings. The EC's Head of Legal Service, appointed by the EC Chair in consultation with the Director of Public Prosecutions, should be given the powers of a Chief Crown Prosecutor.
- R.11.12. The EC should take over prosecutions under the Representation of the People Act(s), as well as the Political Parties and Referendums Act 2000, with the ability to prosecute acts of intimidation or bribery.
- R.11.13. The EC's existing investigatory powers should be strengthened, including powers equivalent to those currently exercised by the National Crime Agency, and it should have access to resources to operate them. Those powers should include the ability to open an investigation into any circumstance where it appears to the EC that an attempt is being made to circumvent the existing legal restrictions in relation to the funding or administration of any relevant election. All investigations should be opened within 12 months of the date of any potential offence (or its being brought to the attention of the EC).
- R.11.14. The EC should have power to make anti-avoidance rules where an EC investigation demonstrates that circumvention of existing legal restrictions is being achieved.
- R.11.15. The maximum fine leviable by the EC should be raised to £500,000 per offence, or 4% of total campaign spend, whichever is larger. In order to avoid a fine, parties and campaigns should be permitted to amend minor financial reporting errors with the EC before any sanctions are imposed.
- R.11.16. All donations to political parties by unincorporated associations should be subject to the requirement that the association disclose the source of its own funding. The current rule whereby no transparency as to the source of funding is required, in respect of donations by an unincorporated association which amount in aggregate in any calendar year to less than a specified threshold, should be terminated.

Parliament

- R.11.17. The EC should report to Parliament every 5 years on the quality of electoral democracy in the UK, indicating areas for improvement, for consideration by the Government of the day.
- R.11.18. The statute should specify that the Government should never have a majority on the Speaker's Committee on the Electoral Commission.

Certain additional, background material for this Recommendation is available on the website for the Commission (<https://www.ukgovernanceproject.co.uk>).