PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

ELECTIONS BILL

Tenth Sitting

Thursday 21 October 2021

(Afternoon)

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Monday 25 October 2021

The Committee consisted of the following Members:

Chairs: Christina Rees, † Sir Edward Leigh, Mark Pritchard, Rushanara Ali

† Anderson, Fleur *(Putney)* (Lab)
† Badenoch, Kemi *(Minister of State, Department for Levelling Up, Housing and Communities)*
† Bell, Aaron *(Newcastle-under-Lyme)* (Con)
Bristow, Paul *(Peterborough)* (Con)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Furniss, Gill *(Sheffield, Brightside and Hillsborough)* (Lab)
Gibson, Peter *(Darlington)* (Con)
† Grady, Patrick *(Glasgow North)* (SNP)
† Harris, Rebecca *(Lord Commissioner of Her Majesty's Treasury)*
Hollern, Kate *(Blackburn)* (Lab)
† Kruger, Danny *(Devizes)* (Con)
† Mayhew, Jerome *(Broadland)* (Con)
O'Hara, Brendan *(Argyll and Bute)* (SNP)
† Randall, Tom *(Gedling)* (Con)
† Shelbrooke, Alec *(Elmet and Rothwell)* (Con)
† Smith, Cat *(Lancaster and Fleetwood)* (Lab)
Smith, Nick *(Blaenau Gwent)* (Lab)

Adam Mellows-Facer, Chris Stanton, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 21 October 2021

(Afternoon)

[Sir Edward Leigh *in the Chair*]

Elections Bill

Clause 12

Strategy and policy statement

2 pm

Patrick Grady (Glasgow North) (SNP): I beg to move amendment 61, in clause 12, page 20, line 42, at end insert—

"(4A) The Secretary of State may not designate the statement under section 4A unless the Scottish Parliament has, before the end of the 40-day period, passed a motion of the form 'That the Parliament approves the draft Electoral Commission strategy and policy statement so far as it relates to the Commission's devolved Scottish functions'."

This amendment would require the Scottish Parliament to approve an Electoral Commission strategy and policy statement so far as it relates to the Commission's devolved Scottish functions before the strategy could have effect.

The Chair: With this it will be convenient to discuss amendment 75, in clause 12, page 20, line 42, at end insert—

"(4A) The Secretary of State may not designate the statement under section 4A unless the Scottish Parliament and Senedd Cymru have each, before the end of the 40-day period, passed a motion in the form 'That this Parliament approves the draft Electoral Commission strategy and policy statement so far as it relates to the Commission's devolved functions.'"

This amendment would require the Scottish Parliament and Senedd Cymru each to approve an Electoral Commission strategy and policy statement so far as it relates to the Commission's devolved functions before the strategy could have effect.

Patrick Grady: It is a pleasure to serve under your chairmanship once again, Sir Edward.

Anyone who has dealt with similar clauses in other Bills, through which the UK Government have sought to legislate in ways that would affect Scotland or devolved matters, will not be surprised to learn that here, the SNP is seeking is introduce the principle of consent rather than just consultation. The Electoral Commission has oversight across the United Kingdom, including of areas that are regulated by the devolved Administrations, and our position is always that laws and regulations affecting Scotland should be made in Scotland, or at the very least approved or consented to by the Scottish legislature.

Amendment 61 and Labour's amendment 75, which we would be happy to support in lieu of amendment 61, provide for the Scottish Parliament's scrutiny of, and agreement to, sections of the Electoral Commission's statement, but only in so far as they relate to devolved functions; we are not asking for a UK-wide veto. We will get on to the merits or otherwise of the statement, and its existential point, later.

We will take an active interest in the parts of the statement that affect Scotland. Amendment 61 may end up being a little-used power, because in the Government's draft statement, which is very high level, I can see only one mention of Scotland and devolved matters: paragraph 18 on the principles, on page 8, refers to the Crown Office and the Crown Prosecution Service. I doubt anyone particularly objects to that.

I suspect that we will hear from the Minister that the amendment is unnecessary and bureaucratic. *[Interruption.]* I have pre-empted her; we could have just the one contribution in this debate. We could write each other's speeches. The amendment, however, goes to the point and function of the devolution settlement. Unfortunately, we see the Government riding roughshod over it, not just in the Bill, but across the piece. We saw that in the United Kingdom Internal Market Act 2020. We see the Government routinely ignore the legislative consent motion process and legislating without the consent of the devolved Administrations, when previously a lack of consent would have been respected. Unfortunately, I suspect that this legislation will end up being another example of that.

The amendment also speaks to a point that I have made several times on Second Reading and in Committee about divergence north and south of the border. That is not a huge problem for those of us on the SNP benches, but it is something that people who want to make the case for a strong and stable Union really need to think about.

Debate on the point of the statement will follow when we come to the clause stand part debate; we have significant concerns about the existence of a statement guiding the Electoral Commission, certainly in the way that is proposed, but if we are to have that statement, the devolved Administrations' consent should be required to the parts of it that apply to them.

I accept that a Government Bill requires consultation, but as we often see, consultation does not necessarily mean that consensus or any kind of agreement can be achieved. Our amendment 61—and the Labour amendment, which requires consent from Senedd Cymru as well, and which we would be happy to support—would strengthen the requirements of the Bill and respect the devolution settlement. I would be happy to withdraw amendment 61 in favour of amendment 75, but we want to hear from the Minister first.

Cat Smith (Lancaster and Fleetwood) (Lab): Sir Edward, given that we are taking amendments 61 and 75 together, I would like to speak to the amendment that appears in my name and those of my hon. Friends.

I thought the hon. Member for Glasgow North made the case strongly, and I agree with him, although we come at it from slightly different positions. While he would like to see Scotland separate from the United Kingdom, I would very much like to see the United Kingdom strengthened and I support the Union.

On those grounds, there is a strong Unionist case for amendment 75, which is about respect for the devolved nations. When the Conservative Government continue to treat the Senedd Cymru and the Scottish Parliament with such disrespect, particularly regarding the strategy and policy document, it threatens the Union. From one Unionist to another, I implore my colleagues on the

Government side of the House to look again at how deeply disrespectful the Government's approach to the Scottish Parliament and the Welsh Senedd is.

While I disagree with the hon. Gentleman on the reasons that we have come to this view, his amendment is very good, although I think ours is slightly better on the grounds that it also includes the Senedd Cymru.

The Minister of State, Department for Levelling Up, Housing and Communities (Kemi Badenoch): As Opposition Members will probably have guessed, we believe that the amendments are unnecessary, for two reasons. First, the provisions for the introduction of the strategy and policy statement, as the hon. Member for Glasgow North said in his speech, already provide a mechanism that will take into account the views of Welsh and Scottish Ministers where the statement relates to the Electoral Commission's devolved functions.

Under proposed new section 4C(2) of the Political Parties, Elections and Referendums Act 2000, Welsh and Scottish Ministers are specifically listed as statutory consultees, which means that they will be consulted before the statement is subject to the approval of the UK Parliament. It would be both impractical and unnecessarily burdensome for the UK Government to be required to put the statement to the approval of the devolved Parliaments as well. It will be for the Scottish and Welsh Governments to determine their own processes for coming to a view on whether to suggest any changes to the statement.

Secondly, and very importantly, the Committee is no doubt aware that the Welsh and Scottish Governments have already recommended that the devolved Parliaments do not grant legislative consent to this measure. This Government's view is that a statement applying to both the reserved and devolved functions of the Commission would ensure greater consistency across the UK for the Commission and all those involved in elections. It is regrettable that that was the decision they reached. However, I am keen to continue to engage with my Scottish and Welsh counterparts to mitigate any unintended consequences, and as such I am considering what amendments we may need to make to these provisions in relation to devolved matters.

Based on those considerations, an amendment of this kind would become redundant. For those reasons, I urge the Committee to oppose the amendments.

Patrick Grady: To respond briefly to the Minister, I still think the point about consent is important. I welcome whatever reassurances she is giving, and we look forward to seeing what they turn out to be. However, the Government are proposing further amendments, which they should not have to do at this stage of the Bill's passage. This could have been dealt with at a previous stage; they could have consulted the Scottish Government and Welsh Ministers in advance of bringing this measure forward in the first place. Purely on the basis that SNP amendment 61 covers only the Scottish Parliament, and I think we should test this for both the Scottish Parliament and the Senedd Cymru, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: Does the hon. Member for Lancaster and Fleetwood wish to propose amendment 75 formally?

Cat Smith: I do wish to push the amendment to a vote. I am disappointed by the Minister's response. I hope she might consider further. She referred to the fact that the legislative consent motions from both the Scottish Parliament and the Welsh Senedd are not likely to be given. Does she not recognise that this is a deeply worrying trend, which strengthens the arguments of separatists who want to break up our United Kingdom? The amendment tabled in my name and that of my hon. Friends seeks to strengthen the Union. I am deeply disappointed by her Government's attitude to the Union—for a Conservative and Unionist party, they are doing a fairly shoddy job at the moment.

Amendment proposed: 75, in clause 12, page 20, line 42, at end insert—

"(4A) The Secretary of State may not designate the statement under section 4A unless the Scottish Parliament and Senedd Cymru have each, before the end of the 40-day period, passed a motion in the form 'That this Parliament approves the draft Electoral Commission strategy and policy statement so far as it relates to the Commission's devolved functions.'"—*(Cat Smith.)*

This amendment would require the Scottish Parliament and Senedd Cymru each to approve an Electoral Commission strategy and policy statement so far as it relates to the Commission's devolved functions before the strategy could have effect.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 8.

Division No. 19]

AYES

Anderson, Fleur	Grady, Patrick
Furniss, Gill	Smith, Cat

NOES

Badenoch, Kemi	Kruger, Danny
Bell, Aaron	Mayhew, Jerome
Clarkson, Chris	Randall, Tom
Harris, Rebecca	Shelbrooke, rh Alec

Question accordingly negatived.

Kemi Badenoch: I beg to move amendment 1, in clause 12, page 23, line 13, leave out—

"and (3) (consultation requirements) do"

and insert

"(consultation requirements) does".

This amendment makes it clear that only the consultation requirements under new section 4C(2) of the Political Parties, Elections and Referendums Act 2000 may be disapplied under new section 4E(4) (and not the requirement to lay a draft strategy and policy statement before Parliament).

The Chair: With this it will be convenient to discuss clause stand part.

Kemi Badenoch: I now turn to clause 12, and the measures in the Bill that concern the Electoral Commission. Members of the Committee will agree that it is vital that we have an independent regulator that commands trust across the political spectrum. The public rightly expect efficient and independent regulation of the electoral system. The purpose of the clause is to make provision for the introduction of a strategy and policy statement that sets out guidance that the Electoral Commission must have regard to in the discharge of its functions. The commission will be required to report to the Speaker's

[Kemi Badenoch]

Committee on the Electoral Commission on what consideration it has given to the statement in the exercise of its functions within 12 months of a statement being designated, and every 12 months thereafter.

The clause sets out clearly the type of guidance the statement may contain, which includes Government strategic priorities relating to elections, referendums and other matters in respect of which the commission has functions. As the statement will contain Government guidance, and the Government's views of the commission's priorities, it will therefore be drafted and designated by the Secretary of State. However, the statement will be subject to a statutory consultation with the Speaker's Committee on the Electoral Commission, the Public Administration and Constitutional Affairs Committee and the Electoral Commission itself before being subject to parliamentary approval. That will ensure that the Government must consider Parliament's views and will allow Parliament to have the final say over whether the statement is designated.

Patrick Grady: Does that mean that Parliament will have the opportunity to amend the statement? Will Opposition Members, or Government Back Benchers, be able to table textual amendments to the Government's statement, or will it be for the Government to amend a draft statement in the light of consultation responses?

Kemi Badenoch: I do not believe that is the case. We would have to bring in a different statement if Parliament did not allow it, and during a parliamentary debate views could be considered.

The Secretary of State will be required to consult Scottish and Welsh Ministers with regard to any guidance relating to the commission's devolved Scottish and Welsh functions. To ensure that the statement remains relevant, the clause requires that at least once every five years since the previous statutory consultation, the Secretary of State must review and determine whether to revise or withdraw the existing statement. The Secretary of State must then consult the statutory consultees previously listed before laying a revised or unamended draft statement before Parliament for approval.

It is important for the Government to be able to make swift changes to the statement when needed. That is why the clause provides that, within the five-year period, the Government may on their own initiative or at the request of the commission, review the content of the statement from time to time. When doing so, the Secretary of State must inform the statutory consultees of any proposed changes and consult the Speaker's Committee on whether those changes require a statutory consultation. Should the Secretary of State disagree with the Speaker's Committee's opinion, they may proceed with laying the draft statement before Parliament for approval only after issuing a ministerial statement outlining the reasons for disagreeing with the Committee's opinion.

On Government amendment 1, it was always our intention that any revisions to the strategy and policy statement, apart from typographical or clerical errors, should be submitted for parliamentary approval, both within the five-year period and at the five-year review point. However, since introduction, we have identified that the wording of proposed new section 4E(4) to PPERA could unintentionally enable the Secretary of State to determine that, following a revision to the statement within the five-year period, the obligation to lay the draft statement before Parliament does not apply. That could have the unintended consequence of allowing the Secretary of State to bypass the requirement to submit the statement for parliamentary approval. That was never our intention, and the Government are clear that the strategy and policy statement must be subject to appropriate levels of parliamentary scrutiny. For that reason, we have tabled Government amendment 1, which clarifies that new section 4E(4) does not disapply the requirement on the Secretary of State to submit the revised statement for parliamentary approval.

2.15 pm

In summary, the measure will improve the accountability of the commission to Parliament, while ensuring that Parliament remains firmly in control of approving any change to any future iteration of the statement. I urge the Committee to support the Government amendment and the clause, as amended.

Cat Smith: Part 3 of the Bill, and clause 12 in particular, represent a deeply worrying step for our democracy, and I do not say that lightly. It is not fair on any Government. It might be the Minister's party in government today, but we legislate for future Governments that could be of other parties, including parties not represented in this room. It is not for any Government to dictate the priorities of an independent watchdog, and yet these proposals allow the Government of the day to set the agenda for the Electoral Commission.

Kemi Badenoch: Strategy and policy statements are not unique to this regulator. We have had them for other independent regulators. We had one for Ofgem, and it is also mentioned in the energy White Paper, so why is it fine for other regulators, but not this one?

Cat Smith: I am very clear about this. I will come to it later in my remarks in more detail, but, roughly speaking, regulation of the Electoral Commission regulates elections in which Governments are elected. There is a difference between the regulation of democracy in elections and the regulation of water companies, for example. There are distinct reasons why it is important that an Electoral Commission in particular has independence from the Government of the day. Indeed, that can be seen in examples from similar democracies. New Zealand, Australia and Canada are three democracies that we look to and that, for historical reasons, have structures similar to our own. It very much looks as though the Government are trying to rig democracy in their favour by directing the strategy and policy of the Electoral Commission, and that is very different from other regulators.

The existence of an independent regulator is fundamental to maintaining confidence in our electoral systems and, therefore, confidence in our democracy. That is particularly important when the laws that govern elections are made by a small subset of the parties that stand in elections. Many parties that stand in elections in our country do not have Members of Parliament elected, and much of the legislating on this will be done in secondary legislation. We have only three political parties represented in this

room. We have more than that elected to this House, and there are many more parties that the Electoral Commission regulates that do not have any Members of Parliament on the green Benches. I stress that having a very small subset of participants in a process making decisions on the regulation of an independent regulator is deeply troubling.

The commission's independence needs to be clear for voters and campaigners to see. The commission needs to be seen to be fair and impartial. If we see this measure alongside previous calls by some Government Members on the green Benches—although I do not think by anyone in this room today—to abolish the Electoral Commission in its entirety, it does strike me as a worrying trend. I have been looking at similar democracies—the three obvious ones are Canada, New Zealand and Australia—where there is a complete separation between the Governments and their electoral commissions. A country where the Electoral Commission is told what to do by the Executive is not a country with free or fair elections. The regulator of our elections needs to be independent and impartial and must not be subject to political control.

I have tried to think of other examples. I am a football fan and this is like being able to decide who the referee is and whether they grant a penalty. We would all like to see our clubs do well, but it would be deeply unfair to the teams that we play, so we would not go along with it. We would not allow a gang of criminals to decide whether the police could investigate a crime, and nor should the governing party decide the political strategy of the supposedly independent—this raises that question—Electoral Commission.

Far from increasing the powers of independent electoral regulators, and giving them the powers they need to defend and protect our democracy, it looks like the Government are intent on stripping the Electoral Commission of its ability to do its job in this field. These proposals threaten to end the commission's independence and put control of how elections are run in the hands of those who have won them, which seems intrinsically unfair. These are the actions of a Government that fear scrutiny, as we have seen in other recent legislation.

I draw hon. Members' attention to the evidence sessions held by the Public Administration and Constitutional Affairs Committee, where we heard from Helen Mountfield QC. She said that the Bill arguably breaches international law and that

"the removal of the independence of the Electoral Commission is potentially legally problematic"

and breaches the UK's constitutional standards. I feel that clause 12 should be removed in its entirety.

I finish by responding in more detail to the Minister's previous intervention. The ministerial powers to specify statements for Ofcom, Ofgem and Ofwat do not include giving guidance about specific matters or functions for which those regulators are responsible. That is a completely out-of-the-ordinary and inappropriate abuse of power. The example strategy and policy statement that was published last month illustrates the scope of this power and how it could be applied in reality.

The breadth of the example statement strayed, I would argue, from the scrutiny of the commission and into decision making and directing how decisions are made. Some of the content would have an impact on the commission's independence, for example by specifying considerations to which it must have regard when carrying out its enforcement work. I do not believe that this clause should stand part of the Bill and we would like to vote against it.

Patrick Grady: The Minister said in her opening remarks that it is important that we have independent regulation, so that the public can have confidence in our elections. The implication of that is that we do not currently have independent or impartial regulation of elections. It implied that somehow the Electoral Commission, as currently constituted, is fundamentally flawed and failing in its duty. That is a substantial claim and none of the evidence we heard, or any of the debates about this Bill, suggests that that is the case. That is perhaps why the Government are coming at this with a slightly different motivation, as alluded to by my colleague on the Labour Front Bench.

The Electoral Commission itself has said in briefings about this Bill that, as currently drafted, the provisions of part 3 are not consistent with the Electoral Commission operating as an independent regulator. It has said that the scope of ministerial powers to specify statements for Ofcom, Ofgem and Ofwat, which was the example given by the Minister, does not include giving guidance about specific matters or functions for which those regulators are responsible. Therefore, this is in effect a power grab by the UK Government, which is consistent with their approach in a whole range of areas.

The Electoral Commission is already accountable to the House through the Speaker's committee. We have regular questions in the Chamber, precisely to provide some of that accountability. The members of that committee, on behalf of the whole House, scrutinise the operation of the commission. There are also procedures at Holyrood and in the Senedd Cymru to ensure that the Electoral Commission self-accounts for its operations in those parts of the United Kingdom.

The Minister herself said, in response to my intervention, that there will be no ability for this House to amend the statement. It would be for the Government, if they were defeated, to withdraw the statement and bring something back in its entirety. The Government are taking and retaining control of the entire process: taking away accountability from this House and handing power to the Secretary of State.

In the future, if Back Benchers have questions about the operation and actions of the Electoral Commission and what it has done, to whom will they ask the questions? Will the questions be on the Floor of the House at commissioners questions or will they be for whichever Department happens to have responsibility for the operation of the Electoral Commission at any given time? That is not particularly clear. I appreciate the Minister is here from the levelling-up Department, but a completely different Department was leading on this Bill when it was introduced.

At some point when we are discussing regulations in any Committee like this, someone will ask, "Quis custodiet ipsos custodes?"—I hope my Latin gets some brownie points from you, Sir Edward. "Who is watching the watchers?" is the philosophical question at the heart of the clause and what the Government are trying to do to

[Patrick Grady]

the Electoral Commission. We as politicians—as elected parliamentarians, which was an important point from the hon. Member for Lancaster and Fleetwood—have an active and vested interest in the regulation of elections; even more so a Government who have been elected and want to stay elected. However, the clause allows the Government to mark their own homework—an often-favoured phrase of Ministers—and direct the body that oversees what is supposed to be an impartial process.

Aaron Bell (Newcastle-under-Lyme) (Con): I compliment the hon. Member on his Latin. In the Pickles report, Lord Pickles says:

"The current system of oversight of the Electoral Commission—by the Speaker's Committee on the Electoral Commission—does not provide an effective third-party check on its performance…The Electoral Commission continues act to as a commentator and lobbyist on both policy and law. Yet government should not be lobbying government."

Should we not ask the same question of the Electoral Commission that he asks of this Committee?

Patrick Grady: In that case, I hope the hon. Member will support the amendment to provide for lay membership of the Speaker's committee to enhance that level of scrutiny and indeed to ensure that there is not a Government majority on that committee. No one is saying we should not expand scrutiny of the Electoral Commission's operations; we are saying that the clause will reduce scrutiny and put more control in the Government's hands. It is not good enough to say that statements can be consulted on and indeed might change between Governments as Governments change. In fact, that is more dangerous and would lead to inconsistency, which would really start to diminish the commission's impartiality.

No one can say, "Well, this is a bland and harmless overall statement of principles that people have already agreed to," when it provides directives and powers to give directives that are not found elsewhere either in UK regulators or in comparable commissions in the Commonwealth such as those of Canada, Australia and New Zealand. Conservative Members in particular are generally so proud that people in those countries look to the mother of Parliaments for their inspiration and to this glorious United Kingdom as an example of democracy that others should aspire to. Those countries have done that—well, they may have done that—and they have independent regulators that are accountable to their Parliaments and legislatures, not to their Executives. The SNP opposes this power grab and will oppose the clause.

Kemi Badenoch: It is pretty obvious that Opposition Members are making a mountain out of a molehill. It is well established for a Government to provide policy guidance to independent regulators via policy statements such as with Ofgem and Ofwat, as I said in my intervention on the hon. Member for Lancaster and Fleetwood. It is also entirely appropriate for a Government to provide a steer on electoral policy and ensure that their reforms on electoral law are properly implemented. That does not fetter operational enforcement decisions on individual cases or change the Electoral Commission's statutory duties.

The fact is, the Electoral Commission is created in law and the strategy and policy statement does not supersede the legislation. That is not the intention, and the measures in the Bill do not do that. If there were a conflict, the commission would have to defer to the law and not to a statement.

On who can amend a statement, there are multiple ways for Parliament to indicate its intention if it does not like the content of a statement. That does not need to be specifically through an amendment—there are other ways in which procedurally we as parliamentarians can let our views be known.

At present, the Electoral Commission is not properly accountable to anyone. As a result, its failings such as on electoral fraud in Tower Hamlets have never been addressed. The Speaker's committee has not provided enough robust scrutiny on such issues.

Cat Smith: I thank the Minister for giving way on that point, because I am the only member of the Committee who is also a member of the Speaker's Committee on the Electoral Commission. I agree that that committee is not as effective as it should be. Is she minded to support amendments to strengthen the Speaker's Committee on the Electoral Commission, perhaps by ensuring that no one party has overall control? That would strengthen the committee and scrutiny of the Electoral Commission, which we all want.

2.30 pm

Kemi Badenoch: I will answer more fully on those amendments when we come to that part of the debate.

The Pickles review on electoral fraud recommended such reforms to improve accountability, and that the Government put in place a stronger emphasis on and remit for preventing electoral fraud.

There is something more concerning in the statements that I have heard from Members on the other side of the Committee, however. The Electoral Commission does not regulate politicians; it regulates the electoral process. Parliament is sovereign; we are the ones who make the rules. If anything, Opposition Members' statements almost sound as though they think the Electoral Commission is there to assist the Opposition in holding the Government to account, which is just another type of bias.

Cat Smith *indicated dissent.*

Kemi Badenoch: That is what it sounds like. If, as they believe, and as we believe, the Electoral Commission is truly independent, a strategy and policy statement that all of Parliament votes on should be sufficient. On that point, I stress that Her Majesty's Government and Ministers are separate from political parties, which the Electoral Commission regulates. Ministers act in line with the public interest and the provisions of the "Ministerial Code". The points that those Members are making are well outside the scope of what the Electoral Commission should be doing. This is not a worry about accountability, and a good strategy and policy statement will not affect the commission's ability to do its work.

Amendment 1 agreed to.

Question put, That the clause, as amended, stand part of the Bill.

The Committee divided: Ayes 8, Noes 4.

Division No. 20]

AYES

Badenoch, Kemi	Kruger, Danny
Bell, Aaron	Mayhew, Jerome
Clarkson, Chris	Randall, Tom
Harris, Rebecca	Shelbrooke, rh Alec

NOES

Anderson, Fleur	Grady, Patrick
Furniss, Gill	Smith, Cat

Question accordingly agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clause 13

EXAMINATION OF DUTY TO HAVE REGARD TO STRATEGY AND POLICY STATEMENT

Question proposed, That the clause stand part of the Bill.

Kemi Badenoch: The Speaker's Committee on the Electoral Commission is a statutory committee whose existing remit is narrowly restricted to overseeing the commission's finances and the appointment of Electoral Commissions. The purpose of the clause is to expand that remit.

That expansion will contribute to improving the parliamentary accountability of the Electoral Commission by giving the UK Parliament the tools that it needs to effectively hold the commission accountable. The clause will expand the role of the Speaker's committee and empower it to examine the commission's performance in its duty to give regard to the strategy and policy statement. That will enable the committee to perform a scrutiny function similar to that of parliamentary Select Committees in that it will be able to retrospectively examine the commission's activities in the light of the regulator's duty to give regard to the strategy and policy statement.

That new power will sit alongside the committee's existing statutory duties, which we are not amending. To be clear, under the clause, the committee will not be able to proactively direct the commission's decision making either. The commission will remain fully operationally independent and will continue to be governed by the electoral commissioners. To support that expanded scrutiny function, the clause also gives the committee powers to request relevant information from the commission in such forms as the committee may reasonably require—oral or written evidence, for instance.

To protect the integrity of the commission's enforcement function, the provisions will ensure that it is not required to disclose information that might adversely affect any current investigation or contravene data protection legislation. The clause also makes provisions for the protection of witnesses against defamation claims, and for any evidence given by a witness not to be used in civil, disciplinary or criminal proceedings against the witness, unless the evidence was given in bad faith. That is necessary to afford a degree of protection to witnesses.

For the reasons I have set out, the clause will improve the accountability of the commission to the UK Parliament while respecting the regulator's independence and enforcement proceedings. I therefore urge that the clause stand part of the Bill.

Cat Smith: The Opposition broadly support the principle of expanding scrutiny of the Speaker's Committee on the Electoral Commission. However, we have some issues with the membership, which we will come to when we debate a subsequent clause, so I will hold back some of my remarks until then.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14

MEMBERSHIP OF THE SPEAKER'S COMMITTEE

Cat Smith: I beg to move amendment 66, in clause 14, page 25, line 12, at the beginning insert—

"(A1) In section 2 of PPERA (Speaker's Committee), after subsection (2)(d) insert—

'(e) two lay members appointed to membership of the Committee by the Speaker of the House of Commons.'"

The Chair: With this it will be convenient to discuss amendment 65, in clause 14, page 25, line 20, at end insert—

"(1A) In section 2 of PPERA (Speaker's Committee), at the end of subsection (4) insert—

'and the Speaker shall ensure that the governing party does not have a majority on the Committee.'"

Cat Smith: Amendment 65 prevents a situation in which the Speaker's Committee on the Electoral Commission can have a majority from the governing party in the House of Commons. The committee currently has a Government majority, and the Bill seeks to strengthen and increase that majority. If we saw that happening in any other democracy around the world, I do not think that we would be sitting back and not saying anything.

As the primary mechanism through which the Electoral Commission is accountable to Parliament, we are concerned that, for the first time, the Speaker's Committee on the Electoral Commission in the current Parliament has been composed of a majority of MPs from the governing party. This would have been a good opportunity for the Government to be able to correct what I think was an inadvertent error of circumstances.

Although it is normal for Committees to have a governing party majority, it is especially important in the case of the Electoral Commission that oversight is balanced, given that it is responsible for electoral law, including making decisions that may be perceived to have been against a political party that may have membership on the committee. The Bill involves many attempts by the Government to dodge scrutiny, which seems to be a theme running not only through this legislation but through others, so I encourage Members to prevent a situation whereby the Executive has a majority on a committee that aims to scrutinise our democracy.

Amendment 66 proposes to include laypersons on the Speaker's committee. The voice of voters and major stakeholders in the Electoral Commission's work is absent

[Cat Smith]

from oversight of the regulator. Including laypersons on the committee would enhance non-partisan scrutiny and bring a very different perspective. There are precedents for including lay members on committees overseeing issues that should be outside partisan interests. Lay members sit on both the Speaker's Committee for the Independent Parliamentary Standards Authority and the Committee on Standards. Amendments 66 and 65 are complementary to ensuring that there is no Government majority on the Speaker's Committee on the Electoral Commission.

Kemi Badenoch: The Speaker's Committee on the Electoral Commission is a statutory committee, the membership of which is set out in the Political Parties, Elections and Referendums Act 2000 and includes five Back Benchers, who are appointed by the Speaker of the House of Commons, and four ex officio members. It is a cross-party committee and chaired impartially by the Speaker. As such, it is expected to work on consensus across party lines, as is the case for all parliamentary committees, regardless of their political majority. There has never been any suggestion that the presence of a Government majority has fettered the Speaker's committee's ability to work constructively with the Opposition in holding the Electoral Commission to account.

The Speaker's Committee on the Electoral Commission's composition currently reflects the wider majority in the House of Commons, as is usually the case for parliamentary committees. Contrary to some of the claims made by the Opposition during the debates about the Bill, it does not have an in-built Government majority. The Speaker already has the necessary statutory powers to appoint five Back Benchers of his choosing.

Therefore, the Opposition's amendment 65, which seeks to ensure that the Government do not have a majority on the Speaker's committee, is wholly unnecessary as it seeks to resolve a non-existent problem. Also, as I said earlier in the debate on clause 12, it hints at there being a political motive, rather than a desire to strengthen the Speaker's committee.

Our view is that amendment 66 should also be opposed, as it is inappropriate. As the Committee will know all too well, it is extremely rare for lay members to be appointed to parliamentary Committees. On the rare occasions that it has happened, extensive consideration was given by previous Parliaments to ensure there were strict criteria determining the appointment process, length of mandate and political background of those lay members. This is necessary to ensure that the addition of lay members to parliamentary Committees does not undermine the role of parliamentarians in their scrutiny function.

None of this important reflection work appears to have been done by the Opposition in tabling this amendment, which simply seeks to pander to false claims that the Speaker's Committee on the Electoral Commission has an in-built Government majority. The perspective of voters and members of the public is rightly represented on that Committee by its members, as parliamentarians. It would be both highly unusual and unnecessary in this case to appoint lay members to the Speaker's Committee on the Electoral Commission. Parliamentarians should be trusted to duly scrutinise the work of the Electoral Commission while having regard for preserving public confidence in the integrity of our elections.

For these reasons, I urge the Committee to oppose both amendments.

Patrick Grady: If the Minister is saying that the amendment to provide that the Government do not have a majority is fixing a "non-existent problem", the logic of that is the amendment should not cause a problem either. Also, the Government might want to consider—this may be hard to believe at the moment—that they may not be in power forever. At some point in the future, another party or parties may form a majority in this House and may wish to legislate, regulate and all the rest that flows with the taking of power. At that point, I have a feeling that a Conservative Opposition's view on all these matters might suddenly change. So the Government might want to think about some of that, in relation not just to this amendment, but other things in the future.

The point about lay membership was very well made by the Labour Front-Bench spokesperson. It is not uncommon to find lay members on certain consultative and advisory Committees associated with this House, and indeed in other parts of public life. Given that some of the Minister's own Back Benchers were asking earlier for increased impartiality in the Speaker's committee, I would have thought that the presence of lay members, who can bring in outside expertise without worrying about the transition that might happen at an election or whatever, would be quite helpful.

I will be very happy to support any amendments that the Labour party chooses to push to a vote.

Aaron Bell: It is a pleasure to serve under your chairmanship, Sir Edward, and to follow the hon. Member for Glasgow North; it is good to hear that the SNP also appreciates that Governments are not forever and the electorate may eventually turn on the Government at any given time, based on their record over a long period. It is good to know that he knows that he, too, is mortal.

The clause will provide more efficiency in Government by allowing somebody to stand in for a Minister on the Speaker's committee. That makes perfect sense. Having spoken to the previous Minister in charge of this Bill, I am aware that there has been a problem in the past. Therefore, it is a perfectly sensible clause and it is disappointing, as the Minister said, that the Opposition have chosen to insert what looks like something born of political motivation into its amendment.

I have the utmost faith in Mr Speaker's ability to determine the membership of the Speaker's committee as he sees fit and I have the utmost faith in that Committee's capability to consider any questions that come before it in a cross-party, consensual way, as the Minister said. Therefore, in common with the Minister, I urge everybody on this Committee to reject these amendments.

Cat Smith: I have to say, as a Member of the Speaker's Committee on the Electoral Commission, that I do not think there is any risk of the Government losing a vote on that Committee, given the imbalance of the numbers.

The Minister is right that it is rare to have lay members on parliamentary Committees, but it is not unheard of, and I think that it is a jolly good idea and would like to push it to a vote.

2.45 pm

Jerome Mayhew (Broadland) (Con): We are all talking about the Speaker's committee and we have heard from the Minister that the Speaker himself has the power to appoint up to five members from the Back Benches, which demonstrates that there is no Government majority built in to that Committee, save in one situation, where it would require the connivance of the Speaker to create a majority for whichever Government were in power at the time. From my perspective, that is vanishingly unlikely. I have great respect for the position of Speaker, and I am prepared to rely on his good judgment to ensure that the proper balance is maintained in this Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 8.

Division No. 21]

AYES

Anderson, Fleur	Grady, Patrick
Furniss, Gill	Smith, Cat

NOES

Badenoch, Kemi	Kruger, Danny
Bell, Aaron	Mayhew, Jerome
Clarkson, Chris	Randall, Tom
Harris, Rebecca	Shelbrooke, rh Alec

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Kemi Badenoch: Clause 14 will facilitate Government participation in proceedings of the Speaker's Committee on the Electoral Commission. That is necessary because, given wider commitments, it has not always been possible for the Minister for the Cabinet Office to attend the Speaker's committee meetings, despite the fact that they are an ex officio member of the Committee under the Political Parties, Elections and Referendums Act 2000. Only members named in the legislation are entitled to participate in proceedings of the Speaker's committee. However, in practice, another Minister of the Crown with responsibility for the constitution will generally exercise functions relating to elections and the constitution on behalf of the Minister for the Cabinet Office. This clause will therefore allow concurrent membership for the Minister for the Cabinet Office and a Minister of the Crown with responsibilities in relation to the constitution who is appointed by the Prime Minister.

This clause will also revoke the Transfer of Functions (Speaker's Committee) Order 2021, which served a similar purpose and allowed a Minister of the Crown in the Cabinet Office with responsibility for the constitution to deputise for the Minister for the Cabinet Office whenever necessary at meetings of the Speaker's Committee on the Electoral Commission.

I want to state clearly on the record that, in contrast to what some Opposition members have claimed, this clause will not increase the total number of Government members or votes on the Committee. Nor will it allow the Minister for the Cabinet Office and the Minister of the Crown to be appointed by the Prime Minister to attend Committee meetings at the same time, or to have two votes. Rather, the clause will merely allow a Minister of the Crown to deputise for the Minister for the Cabinet Office as and when he is unable to attend Committee meetings. There will continue to be only two ex officio Government members, with two votes, in total on the Speaker's Committee on the Electoral Commission. Together, the Minister for the Cabinet Office and the Minister of the Crown deputising for him amount to only one member and one vote, because they cannot both attend Committee meetings.

Following the recent machinery of government change, a transfer of function order will be laid separately to replace any mention in this provision of the Minister for the Cabinet Office with a reference to the Secretary of State for Levelling Up, Housing and Communities. As Minister of State at the Department for Levelling Up, Housing and Communities with responsibility for local government, it is expected that I will be appointed by the Prime Minister to be the other ex officio Government member of the Speaker's Committee on the Electoral Commission. This clause is necessary to duly facilitate Government participation in proceedings of the Speaker's Committee on the Electoral Commission, and I urge that the clause stand part of the Bill.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

Criminal proceedings

Question proposed, That the clause stand part of the Bill.

Kemi Badenoch: The purpose of clause 15 is to maintain the existing role of the Crown Prosecution Service and the Public Prosecution Service in Northern Ireland in bringing prosecutions under electoral law by clarifying the extent of the Electoral Commission's powers. The Electoral Commission has publicly stated in its 2020-21 to 2024-25 interim corporate plan that its intention is to develop a prosecutorial capability that would allow it to investigate suspected offences and bring them directly before the courts. For the avoidance of doubt, the commission has never brought a criminal prosecution to date. While the commission considers that the current legislation provides scope for it to develop this function, this has never been explicitly agreed by the Government or Parliament, and could risk wasting public money while duplicating the work of the prosecution authorities that are already experts in this domain.

Clause 15 therefore amends the Political Parties, Elections and Referendums Act 2000 to expressly remove the potential for the commission to bring criminal prosecutions in England, Wales and Northern Ireland. This will not apply in Scotland, where there is already a single prosecutorial authority. This clause will not amend any of the commission's other existing powers: the commission will continue to have a wide range of investigatory and civil sanctioning powers available to it. It will also remain able to refer criminal matters to the police, as is currently the case.

[Kemi Badenoch]

To reiterate, the purpose of this clause is to maintain the existing role of the Crown Prosecution Service and the Public Prosecution Service in bringing prosecutions under electoral law by clarifying the extent of the Electoral Commission's powers. The effect of the clause is to amend paragraph 2 of schedule 1 to the Political Parties, Elections and Referendums Act 2000 to provide for expressly removing the potential for the Electoral Commission to bring criminal prosecutions in England, Wales and Northern Ireland. It also maintains the existing prohibition on the commission borrowing money, and relocates it to proposed new paragraph 2(2) of schedule 1. As I mentioned earlier, it is not necessary to include similar provisions for Scotland, as it is already clear that the Lord Advocate, acting through the Procurator Fiscal Service, has sole responsibility for criminal prosecution in Scotland. For those reasons, and to bring much-needed clarity to electoral law, I urge that the clause stand part of the Bill.

Patrick Grady: As the Minister has said, this clause relates to England, Wales and Northern Ireland. It does not really cover Scotland because of the nature of the Crown Prosecution Service, and in olden times, this might have been one of those clauses that was subject to the English votes for English laws procedure. I always like to speak on things that might have been covered by the EVEL procedure.

I want to reflect a little bit on this clause, though, because the Electoral Commission and other stakeholders have expressed concerns about what the Government are trying to do here. The Government giveth a statement, a direction to the Electoral Commission, and then they taketh away, saying that the commission cannot have the powers that it wants in order to be able to do its job right now—to increase its capability to prosecute. Throughout scrutiny of this Bill, we have heard from Government Members about rampant corruption threatening the integrity of the UK system. We have heard that Tower Hamlets was not an isolated case—people were prosecuted in that case, and brought to justice—but that similar cases are happening all over the country; it is just that we do not know about them, and they need to be investigated and prosecuted. Here is an opportunity for prosecution, but the Government are taking it away.

Other regulators have this power, either at an English, a Welsh, or a UK-wide level, including the Financial Conduct Authority, the Health and Safety Executive, the Information Commissioner's Office and the Food Standards Agency. As such, this goes back to the point I made about some of the earlier clauses in this part of the Bill, about what the Government are trying to do here and the power grab that they are determined to effect. I fully accept that the regulatory and prosecutorial regimes north and south of the border are different, so it is not the SNP's place to challenge this clause or press it to a vote, but it is important that those points are put on record.

Aaron Bell: It is a pleasure, once again, to follow the hon. Member for Glasgow North. I could not disagree more with his point about a power grab. This is a clause that provides welcome clarity. The Electoral Commission has neither the capacity nor the competence to act as a prosecutor; I believe there are too many conflicts of interest. It would end up marking its own homework, because it would be providing advice and guidance on the law first, and then acting as an arbiter and prosecutor over its own decisions. That is clearly a matter for an independent Crown Prosecution Service and for the police, all overseen by the courts.

We can only think about what happened in the EU referendum, in which the Electoral Commission was criticised for the legal advice it gave, for failing to ask for evidence from the accused, for the handling of documents, for its enforcement decisions and, ultimately, its flawed bids for criminal prosecutions against leave groups, which were then thrown out by the police and the courts. It was incredibly embarrassing for the Electoral Commission because Vote Leave had followed the advice that the Electoral Commission had given it on making donations to other campaigns, such as BeLeave. That perfectly illustrates the potential conflicts of interest in this area.

This is not just about the referendum. If we go back some time to 2005, when Labour were last in government, there was a controversy about loans to political parties before the 2005 general election. Again, that was fuelled by questionable advice from the Electoral Commission. If it was then marking its own homework on those loans, after the election, the Labour party would have felt in the same position that the leave campaigners did. It is welcome that the Electoral Commission has never brought prosecutions until now, but given the demand and clamour for that in recent years, I really welcome the fact that this clause makes it clear that that cannot happen in future.

Tom Randall (Gedling) (Con): I am grateful to the Minister for giving way. We have mentioned Tower Hamlets again. Perhaps another footnote in this is that the Electoral Commission registered a political party, Tower Hamlets First, without checking whether it had a bank account, which it did not. It is perhaps further evidence that giving further powers to the Electoral Commission may not be the best idea, and that they should be given to other bodies instead.

Aaron Bell: I thank my hon. Friend for his point about Tower Hamlets—a case that he knows well. Indeed, the Pickles report said:

> "Despite years of warnings on misconduct in Tower Hamlets, the Electoral Commission gave the Borough's electoral system a gold-star rating for electoral integrity in its inspection reports"

and went on to say that it was a tick-box inspection of town hall electoral registration departments. There are other reasons why we need to have better scrutiny of the Electoral Commission and why we need the clause that we debated previously, but the point about criminal proceedings is the one that I particularly wanted to speak to. I will leave it there and let colleagues come in.

Jerome Mayhew: It is an absolute pleasure to follow my hon. Friend the Member for Newcastle-under-Lyme. I associate myself with all his comments. However, this is, with respect, actually a wider issue than just dealing with the Electoral Commission and the evidence that we have heard about the referendum and Vote Leave.

At the beginning of this process, the Committee heard first-hand oral evidence on the negative impacts of an organisation that provides guidance, sets the rules,

and then seeks to prosecute. It is part of a wider problem that we have experienced in just the last couple of years. We only have to look at the Post Office, which is another private prosecuting authority, and its conduct in the Horizon case—the greatest miscarriage of justice that this country has ever experienced—including a sub-postmistress constituent of mine receiving a suspended prison sentence as a result of that miscarriage of justice.

It simply goes to show the issues with these conflicts of interest between investigating and then being a prosecuting authority—or "marking your own homework", as my colleague just mentioned.

Alec Shelbrooke (Elmet and Rothwell) (Con): Does my hon. Friend recall that one of heads of the Electoral Commission was found to be highly political in their online posts?

Jerome Mayhew: I was aware of that. I am grateful for that intervention. It highlights the dangers that we tread when we have the Electoral Commission entering into a more politicised role. Furthermore, it is not just the Post Office; I also have a real concern about the Care Quality Commission, which is another private prosecuting authority. It was, to its own surprise—I suspect—given prosecuting powers under health and social care legislation in 2015. Under that legislation, it can prosecute for negligent care that causes harm in a health environment. However, since then, its record has been very poor in the number of prosecutions taken forward. A terrible scandal took place in my constituency over the last two years at the Cawston Park hospital, which was an assessment and treatment unit where, through neglect and at least one case of direct physical abuse, which was caught on CCTV, three patients died over a 27-month period. While I have to be careful what I say, it is certainly the case that currently no prosecution has followed that terrible series of events.

3 pm

That was partly the reason for a meeting I had with the Law Commission last week, in the company of the Norfolk safeguarding adults review board, to press the case for removing private prosecution powers from all those quangos, inter alia. The best place for prosecutions is with the Crown Prosecution Service, which is set up and dedicated to that purpose, instead of with an adjunct power of an organisation which, in the example of the Care Quality Commission, is primarily a regulator set up to work with organisations to ensure compliance and give guidance over a long period, just as the Electoral Commission is. That is a relationship. In contrast, with the prosecuting authority, a breach is found and penalties are then enforced. There is a fundamental conflict there, and we need to move away from that and towards the Crown Prosecution Service. I thoroughly support the Government in this measure.

Kemi Badenoch: As I sum up, I would like to add a further point in response to accusations that the clause represents a power grab. I wholeheartedly agree with the excellent points made by my hon. Friends. However, I thought it was also worth reminding the Committee that the Crown Prosecution Service has criticised the Electoral Commission's suggestion that it should have prosecution powers. The Crown Prosecution Service noted that

"the CPS deals with criminal offences under the RPA and criminal charges under PPERA, while the Electoral Commission has civil powers to deal with PPERA cases. We assess this is an appropriate division. There are important prosecutorial functions that the CPS has vast experience of, and expertise in, including police PACE processes, adherence to CPIA legislation and to disclosure rules."

It continued:

"In our view, a criminal-civil divide provides a good level of precision… Any unintentional blurring of the lines would be counter-productive."

Those are the Crown Prosecution Service's words, which explain why the clause is important. I would also like to remind the Committee that the Electoral Commission has civil sanctioning powers that apply to referendums and elections. More serious matters can be referred to the police and the CPS, and then considered by a court of law. The courts already have the power to levy unlimited fines, but the Electoral Commission still has civil sanctioning powers, which we believe are sufficient.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

The Chair: I am not on now till Wednesday week, so, if you finish before then, may I say it has been an absolute delight to work with you all? If you are still talking about the Bill on Wednesday week, I shall look forward to this Committee with the greatest anticipation.

Ordered, That further consideration be now adjourned. —(*Rebecca Harris.*)

3.3 pm

Adjourned till Tuesday 26 October at twenty-five minutes past Nine o'clock.

Written evidence reported to the House

EB10 Liberal Democrats

EB11 Labour Unions—National TULO (National Trade Union & Labour Party Liaison Organisation)

EB12 League Against Cruel Sports

EB13 Equality Commission for Northern Ireland and the Northern Ireland Human Rights Commission