

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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7th Report of Session 2010-11

**Parliamentary Voting System  
and Constituencies Bill**

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## The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session with the terms of reference “to report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny; to report on documents and draft orders laid before Parliament under sections 14 and 18 of the Legislative and Regulatory Reform Act 2006; and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments”.

### *Current membership*

The members of the Delegated Powers and Regulatory Reform Committee are:

Baroness Andrews

Lord Blackwell

Rt Hon the Lord Butler of Brockwell

Lord Carlile of Berriew QC

Baroness Gardner of Parkes

Lord Haskel

Rt Hon. the Lord Mayhew of Twysden QC DL

Baroness O’Loan

Lord Soley

Baroness Thomas of Winchester (*Chairman*)

### *Registered Interests*

Members’ registered interests may be examined in the online Register of Lords’ Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives and is available for purchase from the Stationery Office. Declared interests for this Report are in Appendix 1.

### *Publications*

The Committee’s reports are published by the Stationery Office by Order of the House in hard copy and on the internet at [www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/publications/](http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/publications/)

### *General Information*

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at [www.parliament.uk/about\\_lords/about\\_lords.cfm](http://www.parliament.uk/about_lords/about_lords.cfm).

### *Contacts for the Delegated Powers and Regulatory Reform Committee*

Any query about the Committee or its work should be directed to the Clerk of the Delegated Powers and Regulatory Reform Committee, Delegated Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020-7219 3103 and the fax number is 020-7219 2571. The Committee’s email address is [dpr@parliament.uk](mailto:dpr@parliament.uk).

### *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that “in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion” (Session 1991–92, HL Paper 35–I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, “be well suited to the revising function of the House”. As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006.

# Seventh Report

## PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES BILL

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1. This Bill had its Second Reading on 15 and 16 November. Part 1 makes provision for a referendum on whether to change the voting system for UK parliamentary elections, including provision (“the alternative vote provisions”) to amend existing electoral legislation in the event of a majority of “yes” votes in the referendum. Part 2 provides for the number of UK parliamentary constituencies to be reduced to 600, and for the Boundary Commissions’ future recommendations as to constituency boundaries. Despite its size, the Bill contains few delegations of legislative power. The Cabinet Office have prepared a memorandum and a supplementary memorandum explaining the delegated powers. The supplementary memorandum is printed in Appendix 2<sup>1</sup>.

### Commencement/Repeal Order — Clause 8

2. If the referendum produces a “yes” outcome, the Minister must make an order under subsection (1) of clause 8 bringing the alternative vote provisions into force on the day determined under subsection (3); in the event of a “no” outcome, he must make an order under subsection (2) repealing those provisions. The orders are not subject to any parliamentary procedure. Subsections (1) to (3) afford the Minister no choice about making an order, or about what it must contain. But subsection (4) enables the commencement order under subsection (1) to include transitional and saving provision. That in itself is not unusual; but, for an important constitutional measure of this kind, there is a judgement to be made about whether the additional delegation in subsection (4) is appropriate without any parliamentary control.
3. Paragraph 5 of the supplementary memorandum from the Cabinet Office explains that the government may wish, when bringing the alternative vote provisions into force for a proposed general election in 2015, to retain the existing voting arrangements for, say, any by-election that takes place between the commencement of the new provisions and that general election. But the power could be exercised to retain the present arrangements for other purposes too. In this particular case, therefore, the power to include transitional and saving provision may determine which form of voting system is to apply in the case of a particular parliamentary election. That is a significant power, which ought to be subject to Parliamentary control. **The Committee therefore recommends that an order under subsection (1) which includes transitional or saving provision made under subsection (4) should be subject to the negative procedure.**

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<sup>1</sup> Both the original memorandum and the supplementary memorandum are available on the Committee’s web pages: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/delegated-powers-and-regulatory-reform-committee/bills-considered/>

## **APPENDIX 1: ATTENDANCE AND DECLARATION OF INTERESTS**

Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.publications.parliament.uk/pa/ld/ldreg.htm](http://www.publications.parliament.uk/pa/ld/ldreg.htm). The Register may also be inspected in the Parliamentary Archives and is available for purchase from The Stationery Office.

No interests were declared at the meeting on 24 November 2010.

### **Attendance:**

The meeting was attended by Baroness Andrews, Baroness Gardner of Parkes, Lord Haskel, Lord Mayhew of Twysden, Baroness O'Loan, Lord Soley and Baroness Thomas of Winchester.

## APPENDIX 2: PARLIAMENTARY VOTING SYSTEM AND CONSTITUENCIES BILL

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### Supplementary memorandum by the Cabinet Office

#### INTRODUCTION

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee (“the DPRRC”) to assist with its scrutiny of the Parliamentary Voting System and Constituencies Bill (“the Bill”). It supplements the earlier memorandum that was prepared for the DPRRC.

#### PURPOSE AND EFFECT OF THE BILL

2. The purpose and effect of the Bill are as described in the Cabinet Office’s initial memorandum to the DPRRC on this Bill.

#### DELEGATED POWER

3. Clause 8(4): commencement or repeal of the alternative vote provisions: power to make transitional or saving provision

*Power conferred on:* Lord President of the Council or the Secretary of State

*Power exercised by:* order made by statutory instrument

*Parliamentary procedure:* no procedure

4. Clause 8 sets out the arrangements by which the alternative vote provisions (namely clause 9 of and Schedule 10 and Part 1 of Schedule 11 to, the Bill) are to be brought into force or repealed.

5. Clause 8(1) deals with the situation in which a simple majority of votes in the referendum is cast in favour of the alternative vote system becoming the voting system for Westminster parliamentary elections. In those circumstances, the alternative vote provisions can only be brought into force if a draft of the Order in Council bringing into force the new constituencies arrangements envisaged by Part 2 of the Bill has been submitted to Her Majesty in Council. By contrast, Clause 8(2) provides that the alternative vote provisions must be repealed by order if a majority of votes in the referendum are against implementing the alternative vote.

6. The power in clause 8(4) to make transitional or saving provision is available when an Order is made to commence the alternative vote provisions. As is frequently the case with a power to commence provisions by order, providing Ministers with the ancillary power in clause 8(4) was considered both sensible and necessary in order to ensure that the provisions can be implemented in a range of circumstances without undesirable consequences. For instance, if it is proposed to hold the proposed 2015 parliamentary general election under AV in the event of a “yes” vote it may be desirable to bring the AV provisions into force in advance of that, provided that an Order in Council had been submitted to Her Majesty in line with clause 8(1)(b). To commence the AV provisions to this timescale may be highly beneficial: it would give operational and administrative certainty about the provisions that will govern that election and allow appropriate preparations for the

election to be started by electoral administrators in good time before the election takes place. However, were a by-election to be needed between this coming into force date and the 2015 general election Ministers may well wish to make a saving provision to ensure that any such by-election should proceed under the First Past the Post system.

7. The power in clause 8(4) enables strictly limited provision to be made for the purposes of commencing certain provisions in the Bill that themselves will have been previously debated and approved by Parliament. In particular, the power does not enable supplementary, incidental or consequential provision to be made. Nor does it allow an Order made under it to amend or modify any other enactment. Consequently, it is not an unusual extension of a power to commence provisions of the Bill by Order. For each and all of these reasons, we did not consider that it was necessary to attach any parliamentary procedure to the use of this power.

Cabinet Office

November 2010